



## **Australian Government**

### **International Air Services Commission**

#### **RENEWAL DETERMINATION**

<b>Determination:</b>	<b>[2019] IASC 113</b>
<b>Renewal of:</b>	<b>[2014] IASC 109</b>
<b>The Route:</b>	<b>Italy</b>
<b>The Applicant:</b>	<b>Qantas Airways Limited (Qantas) ABN 16 009 661 901</b>
<b>Public Register:</b>	<b>IASC/APP/201914</b>

**The Commission makes a fresh determination allocating to Qantas 400 third country code share seats per week on the Italy route for code share services with Emirates and British Airways. The determination is valid for five years from 8 June 2020.**

### **1 The application**

1.1 On 27 June 2014, the International Air Services Commission (the Commission) issued Determination [2014] IASC 109 (the Determination) allocating 400 seats per week of third country code share capacity in favour of Qantas which enables the airline to offer code share services operated by Emirates on the Italy route. On 6 September 2017, following changes to the Australia-Italy air services arrangements, the Commission issued Resolution [2017] IASC R03 recognising that the averaging-out methodology which was inserted in the bilateral arrangement applies to the capacity allocated in the Determination. (The averaging-out methodology for the use of the capacity allocation is further discussed in paragraph 2.5 below.) Furthermore, upon the request of Qantas, the Determination was varied on 2 March 2018 by Decision [2018] IASC 203 permitting Qantas to use the capacity for code share services with British Airways.

1.2 Under section 17 of the International Air Services Commission Act 1992 (the Act), the Commission must start its consideration of the renewal of a determination at least 12 months before the expiry of the Determination. The Determination expires on 7 June 2020. In view of this, the Commission sent, on 18 June 2019, a letter to Qantas inviting it to apply for renewal if it wished to renew the Determination. Qantas subsequently applied on 28 June 2019 for a renewal of the Determination for a further period of five years from 8 June 2020 and requested to retain the existing conditions. In a subsequent communication of 11 July 2019, Qantas requested the Commission to remove the conditions concerning the use of the capacity by Jetstar Airways Pty Limited.

1.3 As required by sections 12 and 17 of the Act, the Commission published a notice on 28 June 2019 inviting other applications for capacity. No applications were received. All non-confidential material supplied by the applicant is available on the Commission's website ([www.iasc.gov.au](http://www.iasc.gov.au)).

## **2 Relevant provisions of the air services arrangements**

2.1 Paragraph 7(2)(aa) of the Act requires the Commission not to allocate available capacity contrary to any restrictions on capacity contained in a bilateral arrangement(s).

2.2 Under the Australia - Italy air services arrangements, designated airline(s) of Australia (Australian airlines) may operate seven frequencies per week with any aircraft type. None of this capacity is currently allocated and no Australian carrier operates its own services on the Italy route. Australian airlines are entitled to perform their services with wet lease, code sharing, blocked space and/or other cooperative service arrangements with any airline.

2.3 Under the air services arrangements, Australian airlines may enter into arrangements with an airline or airlines of a third country to carry out services through code share arrangements. These code share arrangements may constitute up to 1700 seats per week in total in each direction on an annual average basis. Qantas currently holds a total capacity of 1000 third country code share seats while 600 third country code share seats have been allocated to Virgin Australia.

2.4 According to the Register of Available Capacity, there are currently 100 seats per week in each direction available for immediate allocation to Australian airlines for code share with third country airlines.

2.5 In June 2017, the Australia – Italy air services arrangements were updated to include an explicit reference that the weekly capacity entitlements allocated for code share services are to be averaged over 12 months. Under the averaging methodology, a carrier may exceed its weekly capacity allocation for code share services from time to time so long as the total amount of capacity utilised during the year does not exceed the total annual capacity allocation (weekly capacity allocated multiplied by 52 weeks).

## **3 Commission's consideration**

3.1 In considering an application for renewal of a determination under section 8 of the Act, the Commission must make the same allocation of capacity as the original determination unless the Commission is satisfied that the allocation is no longer of benefit to the public. In assessing the benefit to the public of an allocation of capacity, the Commission must apply the criteria set out for that purpose in the policy statement made by the Minister under section 11 of the Act.

3.2 Pursuant to section 11 of the Act, the Minister issued the International Air Services Policy Statement 2018 (Policy Statement) which came into effect on 28 March 2018. The Policy Statement sets out the range of criteria which the Commission is required to apply in assessing the benefit to the public of allocations of capacity.

3.3 Under section 14 of the Policy Statement, there is a presumption in favour of making the same allocation of capacity to the carrier seeking the renewal. However, if the Commission is considering whether the capacity allocation is no longer of benefit to the public, the Commission may have regard to the following matters:

- (a) the carrier seeking renewal has failed to service the route effectively; and
- (b) there are other applications for some or all of the capacity; and
- (c) the Commission, having regard to the reasonable capability criterion and any of the additional criteria that it considers relevant, is satisfied that a different allocation of the capacity would be of greater benefit to the public.

3.4 Under the reasonable capability criterion in section 8 of the Policy Statement, the Commission is to assess the extent to which all Australian carriers that are, or would be, permitted to use the capacity are reasonably capable of (a) obtaining any licences, permits or other approvals required to operate on and service the route to which the determination relate; and (b) using the capacity allocated under the determination. The Commission notes that Qantas is an established international carrier and is reasonably capable of obtaining the necessary approvals to use the capacity to operate on the route and of using the capacity to be allocated.

3.5 The Commission further notes that there are no other applicants seeking capacity on the route and there is no information to suggest that Qantas has failed to service the route effectively. The Commission, having considered the foregoing circumstances, did not consider it necessary to assess the application against the additional criteria in section 9 of the Policy Statement.

3.6 For the above reasons, the Commission is satisfied that renewing the capacity allocation would be of benefit to the public. The third country code share capacity sought to be renewed will be used to enable Qantas to continue offering, as marketing carrier, services operated by Emirates and British Airways in accordance with the air services arrangements between Australia and Italy.

3.7 Subsection 15(1) of the Act allows a determination to include such terms and conditions as the Commission thinks fit. Subsection 19(3) of the Act provides that, in including terms and conditions in the fresh determination, the Commission may make such changes to the terms and conditions included in the original determination sought to be renewed, including adding or deleting terms and conditions, where warranted by changes in circumstances since the original determination was made. The wording of the fresh determination below reflects the view of the Commission that determinations which renew original determinations should contain updated terms and conditions consistent with the legislative requirements and current air services arrangements.

3.8 Nothing in this decision should be taken as indicating either approval or disapproval by the Australian Competition and Consumer Commission (ACCC). This decision is made without prejudicing, in any way, possible future consideration of code share operations by the ACCC.

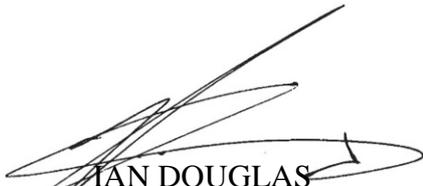
#### **4 Determination for renewal of [2014] IASC 109 allocating capacity on the Italy route to Qantas ([2019] IASC 113)**

4.1 Pursuant to section 8 of the Act, the Commission allocates to Qantas 400 third country code share seats per week in each direction on the Italy route, averaged over 12 months, in accordance with the terms of the Australia – Italy air services arrangements.

- 4.2 The determination is valid for five years from 7 June 2020.
- 4.3 The determination is subject to the following conditions:
- (a) Qantas is required to fully utilise the capacity by no later than 31 October 2020 or such other date as may be approved by the Commission.
  - (b) Only Qantas is permitted to utilise the capacity.
  - (c) Qantas is not permitted to utilise the capacity to provide code share or joint services with another carrier or any other person unless approved by the Commission (as per conditions set out in this determination).
  - (d) The capacity may be used by Qantas to code share on services operated by Emirates in accordance with the code share agreement between Qantas and Emirates dated 21 January 2013, as amended.
  - (e) The capacity may be used by Qantas to code share on services operated by British Airways in accordance with the code share agreement between Qantas and British Airways dated 19 November 2013, as amended.
  - (f) Qantas must apply to the Commission for approval of the use of the capacity if there are variations to the code share arrangement(s) which would change the relevant commercial aspects of the code share arrangement(s) from a free sale code share arrangement to a block space, or vice versa, or if Qantas proposes to add third country routes on which the airlines will code share where Australian capacity will be used for services on that route.
  - (g) To the extent that the capacity is used to provide code share or joint services, the airlines must take all reasonable steps to ensure that passengers are informed of the carrier actually operating the flight at the time of booking. Nothing in this determination exempts the airlines from complying with the Australian Consumer Law.
  - (h) Changes in relation to the ownership and control of Qantas are permitted except to the extent that any change:
    - results in the designation of Qantas as an Australian carrier under the Australia – Italy air services arrangements being withdrawn; or

- has the effect that another Australian carrier, or a person (or group of persons) having substantial ownership or effective control of another Australian carrier, would take substantial ownership of Qantas or be in a position to exercise effective control of Qantas, without the prior consent of the Commission.

Dated: 18 July 2019



IAN DOUGLAS  
Chairperson



IAN HARRIS  
Commissioner



KAREN GOSLING  
Commissioner