



**Australian Government**  
**International Air Services Commission**

**RENEWAL DETERMINATION**

**Determination:** [2013] IASC 102  
**Renewal of:** [2007] IASC 106  
**The Route:** Philippines  
**The Applicant:** Qantas Airways Ltd  
(ACN 009 661 901) (Qantas)  
**Public Register File:** IASC/APP/201216

**The Commission's delegate makes a fresh determination allocating 629 seats per week on the Philippines route for five years and allowing the capacity to be used by a wholly owned subsidiary.**

## **1 The application for renewal**

1.1 On 11 October 2007, the delegate of the Commission issued to Qantas Determination [2007] IASC 106 (the Determination) allocating 629 seats per week in each direction on the Philippines route.

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 2 April 2013. In view of this, the Commission sent, on 12 August 2012, a letter to Qantas inviting it to apply for renewal if it wished to renew the Determination.

1.3 Qantas applied to the Commission on 3 September 2012 for a renewal of the Determination. In its application, Qantas sought the inclusion of an additional condition permitting the capacity to be used by any wholly-owned subsidiary of Qantas.

1.4 The Commission published a notice on 4 September 2012, in accordance with sections 12 and 17 of the Act, inviting other applications for an allocation of capacity subject to renewal. No other applications were received.

1.5 All material supplied by the applicant is available on the Commission's website ([www.iasc.gov.au](http://www.iasc.gov.au)).

## **2 Delegate's consideration**

2.1 In accordance with section 27AB of the Act and regulation 3A of the *International Air Services Commission Regulations 1992*, the delegate of the Commission may consider the Qantas application. (For purposes of this determination, references to the Commission include the delegate of the Commission).

2.2 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.

2.3 Under paragraph 6.2 of the Minister's Policy Statement (No. 5) of 19 May 2004 (the Policy Statement), in circumstances where there is only one applicant for allocation of capacity on a route, only the criteria in paragraph 4 are applicable. Paragraph 4 provides that the use of entitlements by Australian carriers under a bilateral arrangement is of benefit to the public unless such carriers are not reasonably capable of obtaining the necessary approvals to operate on the route and are not reasonably capable of implementing their applications.

2.4 The Commission notes that:

- there are no other applicants seeking capacity on the route; and
- Qantas and its wholly-owned subsidiary, Jetstar Airways, are established international carriers and are therefore reasonably capable of obtaining the necessary approvals to operate on the route and of implementing their applications.

2.5 Under paragraph 8.1 of the Policy Statement, there is a presumption in favour of the carrier seeking the renewal.

2.6 In these circumstances, the Commission concludes that the renewal of Determination [2007] IASC 106 would be of benefit to the public.

2.7 Further, as part of the renewal, Qantas has requested the addition of a condition enabling capacity to be used by any wholly-owned subsidiary of Qantas.

2.8 Subsection 15(1) of the Act allows a determination to include such terms and conditions as the Commission thinks fit. Subsection 15(2) provides, in part, that the determination:

- may include a condition that, to the extent that any of the capacity is allocated to a particular Australian carrier, it may be used in whole or in part by any one or more of the following: (i) the carrier; (ii) a wholly-owned subsidiary of the carrier; (iii) if that carrier is a wholly-owned subsidiary of another Australian carrier—that other carrier.

2.9 The Commission notes that it has previously allocated capacity to Qantas to be used by its wholly-owned subsidiary in the interests of providing commercial and operational flexibility, consistent with the Act. The Commission considers that including this condition is consistent with the object of the Act and the Policy Statement, both of which make it clear that the Commission should have regard to the need for Australian airlines to be able to compete effectively with one another and with foreign airlines.

2.10 In the interests of providing commercial and operational flexibility, consistent with requirements of the Act, the Commission will authorise the use of the capacity by a wholly-owned subsidiary of Qantas.

2.11 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 Commission's current practice and current air services arrangements. Under the Act, the Commission may make changes to the terms and conditions included in the original determination where warranted by changes in circumstances since the original determination was made.

### **3 Determination for renewal and variation of Determination [2007] IASC 106 allocating capacity on the Philippines route to Qantas ([2013] IASC 102)**

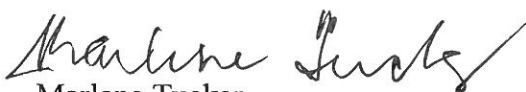
3.1 The delegate of the Commission makes, in accordance with section 8 of the Act, a determination in favour of Qantas, allocating 629 seats per week in each direction on the Philippines route under the Australia - Philippines air services arrangements.

3.2 The determination is for five years from 3 April 2013.

3.3 The determination is subject to the following conditions:

- Qantas is required to fully utilise the capacity;
- only Qantas or another Australian carrier which is a wholly owned subsidiary of Qantas is permitted to utilise the capacity;
- neither Qantas nor another Australian carrier which is a wholly owned subsidiary of Qantas is permitted to utilise the capacity to provide services jointly with another Australian carrier or any other person without the approval of the Commission;
- changes in relation to the ownership and control of Qantas are permitted except to the extent that any change:
  - results in the designation of the airline as an Australian carrier under the Australia – Philippines 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: 22 January 2013



Marlene Tucker  
Executive Director  
Delegate of the IASC Commissioners