



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

**RENEWAL DETERMINATION**

<b>Determination:</b>	<b>[2013] IASC 114</b>
<b>Renewal of:</b>	<b>[2007] IASC 109</b>
<b>The Route:</b>	<b>Indonesia</b>
<b>The Applicant:</b>	<b>Qantas Airways Ltd (ACN 009 661 901) (Qantas)</b>
<b>Public Register File:</b>	<b>IASC/APP/201216</b>

**The Commission's delegate makes a fresh determination allocating 240 seats per week between Indonesia and Australia and 850 seats weekly with three frequencies beyond Indonesia for five years.**

**1 The application for renewal**

1.1 On 11 October 2007, the Commission issued Determination [2007] IASC 109 (the Determination) allocating 240 seats weekly in each direction between Indonesia and any one or more of the following points: Sydney, Melbourne, Brisbane, Perth and any other Australian point. The Determination also allocated 850 seats weekly in each direction with three frequencies beyond Indonesia any or all of which may serve Denpasar.

1.2 The Determination was varied by Decision [2007] IASC 211 to permit Air France to code share on Qantas-operated services between Denpasar and Singapore.

1.3 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 30 September 2013. In view of this, the Commission sent, on 12 August 2012, a letter to Qantas inviting it to apply for renewal of the Determination.

1.4 Qantas applied to the Commission on 3 September 2012 for a renewal of the Determination. The application includes the continued permission for Air France to code share on Qantas-operated services between Denpasar and Singapore.

1.5 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.

1.6 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 109 would be of benefit to the public.

2.7 Further, Qantas has requested to continue its code sharing arrangements with Air France on Qantas-operated services between Denpasar and Singapore.

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 must include a condition stating the extent (if any) to which any such carrier may use that capacity by providing joint international air services with another Australian carrier or any other person.

2.9 Under paragraph 3.6 of the Policy Statement, where capacity that can be used for code share operations is available under air services arrangements, including where foreign airlines have rights to code share on services operated by Australian carriers, the Commission would generally be expected to authorise applications for use of capacity to code share. However, if the Commission has serious concerns that a code share application (or other joint service proposal) may not be of benefit to the public, it may subject the application to more detailed assessment using the additional criteria set out in paragraph 5 (whether the application is contested or not). Before doing so, the Commission will consult with the Australian Competition and Consumer Commission (the ACCC).

2.10 The Commission notes that under the Australia – Indonesia air services arrangements, any designated airline of Australia may enter into codeshare, blocked space or other cooperative marketing arrangements, as the marketing and/or operating airline with another Australian airline or airlines, with an Indonesian airline or airlines, or with an airline or airlines of a third country.

2.11 The Commission does not have serious concerns that the continued use of the capacity on the Indonesia route in joint services with Air France may not be of benefit to the public. In this regard, it did not consult the ACCC on the matter.

2.12 The delegate, on behalf of the Commission will grant Qantas' request to allow Air France to continue code sharing on Qantas-operated services between Denpasar and Singapore. The delegate will include a condition which requires Qantas to comply with the Australian Consumer Law and to take all reasonable steps to ensure that passengers are informed of the carrier that is actually operating the flight.

2.13 Nothing in this determination in relation to code sharing should be taken as indicating either approval or disapproval by the ACCC. This determination is made without prejudicing, in any way, possible future consideration of code share operations by the ACCC.

### **3 Determination for renewal of Determination [2007] IASC 109 allocating capacity on the Indonesia route to Qantas ([2013] IASC 114)**

3.1 The delegate of the Commission makes a determination in favour of Qantas, allocating the following capacity under the Australia – Indonesia air services arrangements:

- between Australia and Indonesia, 240 seats weekly in each direction between Indonesia and any one or more of the following points: Sydney, Melbourne, Brisbane, Perth and any other Australian point; and
- beyond Indonesia, 850 seats weekly in each direction with three frequencies any or all of which may serve Denpasar.

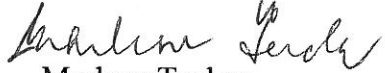
3.2 The determination is for five years from 1 October 2013.

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;
- the capacity may be used by any wholly-owned subsidiary of Qantas to provide joint services with Qantas;
- the capacity may be used by Qantas to provide joint services with Air France in accordance with:
  - the code share agreement, signed by Qantas and Air France dated 31 October 2004, as amended by Exhibit A.3;
  - or any subsequent code share agreement between Qantas and Air France for operations on the Indonesia route, with the prior approval of the Commission;
- under any code share agreement with Air France:
  - Qantas must price and sell its services on the route independently of Air France; and
  - Qantas must not share or pool revenues on the route with Air France;
- where the capacity is used to provide joint services on the route, nothing in this determination exempts Qantas and any wholly owned subsidiary from complying with the Australian Consumer Law. The airlines are required to take all reasonable steps to ensure that passengers are informed, at the time of booking, of the carrier actually operating the flight; and
- 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 – Indonesia 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: 8 March 2013

A handwritten signature in dark ink, appearing to read 'Marlene Tucker', with a stylized flourish at the end.

Marlene Tucker  
Executive Director  
Delegate of the IASC Commissioners