



## Australian Government

### International Air Services Commission

#### RENEWAL DETERMINATION

**Determination:** [2013] IASC 119  
**Variation of:** [2007] IASC 113  
**The Route:** Italy  
**The Applicant:** Qantas Airways Limited  
ACN 009 661 901  
**Public Register:** IASC/APP/201306

**The Commission makes a fresh determination allocating to Qantas 300 third country code share seats per week and permitting Qantas to code share on Emirates' services on the Italy route.**

#### 1 The application

1.1 On 11 October 2007, the delegate of the Commission issued Determination [2007] IASC 113 (the Determination), allocating to Qantas Airways Ltd (Qantas) 600 third country code share seats per week in each direction on the Italy route in accordance with the terms of the Australia – Italy air services arrangements. The Determination permitted Qantas to use the capacity to code share with Cathay Pacific.

1.2 Under 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 8 August 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 On 3 September 2012, Qantas applied to the Commission for renewal of the Determination.

1.4 As required by sections 12 and 17 of the Act, the Commission published a notice on 4 September 2012 inviting other applications for the capacity. On 11 September 2013 Virgin Australia applied for 300 of the 600 seats allocated to Qantas under the Determination.

1.5 On 8 March 2013, Qantas wrote advising the Commission that it wished to amend its request of 3 September 2012 to renew the Determination, by seeking renewal of 300 seats of the 600 seats allocated by this determination. In the same letter Qantas sought a variation to the (existing) Determination to reduce the allocated capacity to 300 seats and to enable it to code share with Emirates on the route. This request was approved in Decision [2013] IASC 214 of 25 March 2013.

1.6 All non-confidential material supplied by Qantas and Virgin Australia 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 There are seven frequencies per week for own-operated services available for immediate allocation to designated airlines of Australia (Australian airlines).

2.2 Australian airlines are entitled to perform their services with wet lease, code sharing, blocked space and/or other cooperative service arrangements with any airline. While code sharing with a bilateral country airline is unlimited, code sharing by Australian airlines with the airline or airlines of a third country is restricted to 1,000 seats per week in total in each direction. Until the Determination was varied by Decision [2013] IASC 214 to reduce capacity allocated to Qantas to 300 seats, all this capacity was allocated to Qantas.

## **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 this regard, the Commission notes that the allocation of capacity under the original determination has been varied from 600 to 300 seats, at the request of the airline.

3.2 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.

3.3 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.

3.4 The Commission notes that:

- there are no other applicants seeking the 300 seats of capacity for which Qantas has sought renewal;
- Virgin Australia has applied for 300 seats out of the 600 seats for which Qantas has originally applied for renewal, but as a result of Decision [2013] IASC 214, 300 seats have now been returned to the Register of Available Capacity; and

- Qantas is an established international carrier and is therefore reasonably capable of obtaining the necessary approvals to operate on the route and of implementing its application.

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

3.6 In these circumstances, the Commission is satisfied that renewal of Determination [2008] IASC 114, as amended by Decision [2013] IASC 214, would be of benefit to the public.

3.7 Further, Qantas wishes to continue to be permitted to code share with Emirates on services between Australia and Italy.

3.8 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.

3.9 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).

3.10 The Commission initially had concerns about the lack of code share capacity available for allocation to another Australian carrier on the Italy route. The application by Qantas to vary its Determination to return to the Register of Available Capacity 300 seats of third country code share on the Italy route has lessened the Commission's concerns. The Commission, notes, however, that Qantas still has 700 of the 1000 available third country code share seats and that Virgin Australia has previously applied for 300 seats on the route. The Commission would expect Qantas to return more capacity if it is not being fully utilised.

3.11 Further, in Decision [2013] IASC 213 and Decision [2013] IASC 214 the Commission granted Qantas' request to permit code sharing with Emirates on the Italy route. As the Commission noted in those decisions, there are several significant carriers operating one stop services between Australia and Italy via their home countries.

3.12 The Commission also notes that code sharing with Emirates on the Italy route forms part of the broader Qantas/Emirates alliance proposal. In its Draft Determination on the matter, the ACCC concluded that the alliance is unlikely to result in material

public detriments through its effect on competition on air services between Australia and the UK/ Europe. The ACCC noted that Qantas and Emirates services from Australia to the UK/ Europe via Dubai will compete with services from Australia to UK/ Europe via alternative hubs such as Singapore and Hong Kong. Further, the ACCC is of the view the alliance will face competition from a large number of established carriers with the ability and incentive to expand their operations in response to any attempt by the alliance to reduce or limit growth in capacity. These carriers include Singapore Airlines, Etihad Airways, Qatar Airways, China Southern Airlines, China Eastern Airlines and Air China.

3.13 For the above reasons, and as no submissions were received on Qantas' amended application for renewal of the Determination, the Commission did not consider it necessary to assess renewal of the determination with a condition allowing Qantas to code share with Emirates against the criteria in paragraph 5 of the Policy Statement.

3.14 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.

3.15 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.

#### **4 Determination for renewal of Determination [2007] IASC 113 allocating capacity on the Italy route to Qantas Airways Ltd ([2013] IASC 119)**

4.1 The Commission makes a fresh determination, under section 8 of the Act, in favour of Qantas Airways Ltd (Qantas), renewing the allocation of 300 third country code share seats per week in each direction on the Italy route in accordance with the terms of the Australia – Italy air services arrangements.

4.2 The determination is for five years from 8 August 2013.

4.3 The determination is subject to the following conditions:

- Qantas is required to fully utilise the capacity;
- only Qantas is permitted to use the capacity;
- Qantas is not 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 Qantas to code share on Emirates' services in accordance with:
  - the code share agreement between Qantas and Emirates dated 21 January 2013; or
  - any subsequent code share agreement between Qantas and Emirates, whether or not it replaces the existing agreement, with the prior approval of the Commission;
- under the code share agreement with Emirates, Qantas 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 Qantas from complying with the Australian Consumer Law;
- under the arrangements with Emirates, Qantas may only price and market its services, or share or pool revenues/profits on the route jointly with Emirates, as long as such practices are authorised by the Australian Competition and Consumer Commission under the *Competition and Consumer Act 2012* or otherwise authorised by the Australian Competition Tribunal, in the event of review by that Tribunal;
- 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 – 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: 25 March 2013



Jill Walker  
Chairperson



Stephen Bartos  
Member



Ian Douglas  
Member

