



Australian Government
International Air Services Commission

RENEWAL DETERMINATION

Determination:	[2013] IASC 125
Renewal of:	[2008] IASC 121
The Route:	China
The Applicant:	Qantas Airways Limited (ACN 009 661 901) (Qantas)
Public Register File:	IASC/APP/2013

The Commission's delegate makes a determination allocating to Qantas 2,301 seats of capacity per week on the China route for five years.

1 The application for renewal

1.1 On 8 October 2008, the Commission issued Determination [2008] IASC 121 (the Determination) allocating 2,135 seats of capacity per week in each direction on the People's Republic of China (China) route to Qantas. The Determination was for five years and was varied by Decision [2010] IASC 203 to increase the allocation by 166 seats to 2,301 seats. The increase of capacity allowed for an upgrade of Qantas' services from Airbus 330 to B747 aircraft.

1.2 On 4 June 2008, the Commission authorised, under Decision [2008] IASC 210, a free sale code share arrangement between China Eastern Airlines (China Eastern) and Qantas on Qantas-operated services on the China route. On 8 October 2008, the Commission continued to authorise the code sharing arrangement between the airlines under Determination [2008] IASC 121.

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 1 March 2014. In view of this, the Commission sent, on 27 March 2013, a letter to Qantas inviting it to apply for renewal if it wished to renew the Determination.

1.4 Qantas applied to the Commission on 15 April 2013 for a renewal of the Determination for five years from 2 March 2014. Qantas also sought the continued permission for Qantas to provide services on the route jointly with China Eastern. Qantas also invited the Commission's attention to a small amount of unused capacity to allow for aircraft substitution.

1.5 As required by sections 12 and 17 of the Act, the Commission published a notice on 16 April 2013 inviting other applications for the capacity. No applications were received.

1.6 All material supplied by the applicant is available on the Commission's website (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, all 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 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.

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 is satisfied that renewal of Determination [2008] IASC 121 would be of benefit to the public.

2.7 Furthermore, Qantas requested the inclusion of condition permitting Qantas to provide services jointly with China Eastern.

2.8 Under paragraph 3.6, 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).

2.9 The Commission has no serious concerns about the proposed code sharing between Qantas and China Eastern on the route. The China route is growing strongly, averaging 12% growth per annum over the last ten years. It is a highly competitive route, with China Southern Airlines having the largest share of Australia-China traffic (22.2%). Other carriers with a substantial share of the traffic are Cathay Pacific, China Eastern and Air China.

2.10 Qantas and China Eastern together have about 30% of the market. Qantas' share of Australia-China traffic has been declining steadily in the last five years, from 26% in 2009 to 14% in 2013.¹ About 30% of the Australia-China traffic that Qantas carries travels on its Hong Kong services.

2.11 In terms of weekly services on the China route, Qantas operates seven services per week and its code share partner, China Eastern, 22 per week. Their major competitors on the route, China Southern and Air China, operate 31 and 14 services per week, respectively. There is also significant competition from Cathay Pacific and Singapore Airlines carrying Australia-China traffic via their home ports.

2.12 The Commission is satisfied that there is sufficient competitive pressure on Qantas and China Eastern to constrain their fares and that continuation of the code share will assist Qantas in competing on the route.

2.13 In light of the above, the Commission's delegate 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.

2.14 Subsection 15(1) of the Act empowers the Commission to include such terms and conditions as it thinks fit. Paragraph 15(2)(e) requires the inclusion of a condition stating the extent to which the carrier may use that capacity in joint services with another carrier. As is its normal practice, the Commission will also 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.

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

¹ Bureau of Infrastructure, Transport and Regional Economics

3 Determination for renewal of Determination [2008] IASC 121 allocating capacity on the China route to Qantas ([2013] IASC 125)

3.1 The delegate, on behalf of the Commission, makes a determination in favour of Qantas, allocating 2,301 seats per week in each direction on the China route under the Australia - China air services arrangements.

3.2 The determination is for five years from 2 March 2014.

3.3 The determination is subject to the following conditions:

- Qantas is required to utilise the capacity;
- only Qantas is permitted to utilise the capacity;
- the capacity may be used by Qantas to provide services jointly with China Eastern in accordance with:
 - the code share agreement between Qantas and China Eastern dated 9 July 2008, as amended on 26 March 2013; or
 - any subsequent code share agreement between Qantas and China Eastern for operations on the China route with the prior approval of the Commission;
- under any code share agreement with China Eastern:
 - Qantas must price and sell its services on the route independently of China Eastern;
 - Qantas must not share or pool revenues on the route with China Eastern;
- under the code share agreement with China Eastern, 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;
- 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 – China air services arrangements being withdrawn; and
 - 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: 20 May 2013



Marlene Tucker
Executive Director
Delegate of the IASC Commissioners