



Australian Government
International Air Services Commission

RENEWAL DETERMINATION

Determination:	[2013] IASC 135
Renewal of:	[2009] IASC 115
The Route:	Indonesia
The Applicant:	Qantas Airways Ltd (ACN 009 661 901) (Qantas)
Public Register File:	IASC/APP/201329

The Commission's delegate makes a fresh determination allocating to Qantas unlimited passenger capacity on the Indonesia route between points in Australia, except Sydney, Melbourne, Brisbane and Perth and points in Indonesia for ten years.

1 The application for renewal

1.1 On 5 August 2009, the Commission issued Determination [2009] IASC 115 (the Determination) allocating unrestricted passenger capacity on the Indonesia route between points in Australia, except Sydney, Melbourne, Brisbane and Perth, and points in Indonesia in accordance with the terms of the Australia – Indonesia air services arrangements.

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 4 August 2014. In view of this, the Commission sent, on 12 August 2013, a letter to Qantas inviting it to apply if it wished to renew the Determination.

1.3 Qantas applied to the Commission on 19 August 2013 for a renewal of the Determination. As part of the renewal, Qantas has requested continued permission for the capacity to be used by any wholly-owned subsidiary of Qantas and for Qantas to be able to use the capacity in joint services with its wholly-owned subsidiary.

1.4 The Commission published a notice on 19 August 2013, 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).

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 Furthermore, under paragraph 8.1 of the Policy Statement, there is a presumption in favour of the carrier seeking the renewal which may be rebutted by applying the following criteria, where the start-up phase has concluded:

- whether the carrier seeking renewal has failed to service the route effectively; and
- whether the use of the capacity in whole or in part by another Australian carrier that has applied for the capacity would better serve the public having regard to the criteria set out in paragraphs 4 and 5.

2.5 The Commission notes that:

- there are no other applicants seeking capacity on the route;
- 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 proposed services; and
- there is no evidence that Qantas has failed to service the route effectively.

2.6 In these circumstances, the Commission concludes that the renewal of Determination [2009] IASC 115 would be of benefit to the public.

2.7 In relation to Qantas' request to provide joint services on the route with its wholly-owned subsidiary, paragraph 3.6 of the Policy Statement provides that 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).

2.8 Under the air services arrangements between Australia and Indonesia, a designated airline of Australia is permitted to enter into code share, blocked space or other cooperative marketing arrangements with another Australian airline (or airlines), with an Indonesian airline (or airlines), or with an airline (or airlines) of a third country.

2.9 The Commission does not consider that joint services between an airline and its wholly owned subsidiary raises competition or consumer issues, provided that in relation to the latter all reasonable steps are taken to inform passengers of the carrier operating the flight. Accordingly, the Commission does not have serious concerns about the application and does not propose to subject it to more detailed assessment under paragraph 5 of the Policy Statement.

2.10 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.

2.11 Consistent with paragraph 3.7 of the Policy Statement, in relation to joint services, the Commission will include a condition requiring Qantas to take all reasonable steps to ensure that passengers are informed, at the time of booking, of the carrier that is actually operating the flight.

2.12 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 [2009] IASC 115 allocating capacity on the Indonesia route to Qantas ([2013] IASC 135)

3.1 The delegate of the Commission makes, under section 8 of the Act, a determination in favour of Qantas, allocating unrestricted passenger capacity to and from all points in Australia, except Sydney, Melbourne, Brisbane and Perth, and points in Indonesia under the Australia – Indonesia air services arrangements.

- 3.2 The determination is for ten years from 5 August 2014.
- 3.3 The determination is subject to the following conditions, which apply to Qantas or another Australian carrier which is a wholly-owned subsidiary of Qantas:
- only Qantas or another Australian carrier which is a wholly-owned subsidiary of Qantas is permitted to utilise 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 any wholly-owned subsidiary of Qantas to provide joint services with Qantas;
 - 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: 4 September 2013



Marlene Tucker
Executive Director
Delegate of the IASC Commissioners