



## Australian Government

### International Air Services Commission

#### RENEWAL DETERMINATION

**Determination:** [2013] IASC 139  
**Renewal of:** [2009] IASC 120  
**The Route:** Thailand  
**The Applicant:** Qantas Airways Ltd  
(ACN 009 661 901) (Qantas)  
**Public Register File:** IASC/APP/201336

The Commission makes a fresh determination allocating Qantas 1.4 B747 equivalent units of capacity per week and allowing any wholly-owned subsidiary of Qantas to provide joint services with Qantas on the Thailand route.

#### 1 The application for renewal

1.1 On 20 October 2009, the Commission issued Determination [2009] IASC 120 (the Determination), allocating to Qantas the equivalent of 1.4 B747 equivalent units of capacity per week in each direction on the Thailand route. The capacity may be used by Qantas or a wholly owned subsidiary of Qantas and may be used for joint services between Qantas and a wholly owned subsidiary.

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 19 October 2014. In view of this, the Commission sent, on 14 October 2013, a letter to Qantas inviting it to apply to the Commission if it wished to renew the Determination. On 29 October 2013, Qantas applied for a renewal of the Determination.

1.3 The Commission published a notice on 31 October 2013, in accordance with sections 12 and 17 of the Act, inviting other applications about the application. No other applications were received.

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

#### 2 Relevant provisions of the air services arrangements

2.1 The Australia – Thailand air services arrangements allow the designated airlines of Australia to enter into code sharing arrangements as the non-operating airline with any airline(s) of third countries, which has appropriate authorisation from both Contracting Parties, with up to 40 weekly services in each direction. In addition, the designated airlines of Australia may use any unused own operated passenger frequency entitlements for third country code share services.

2.2 Currently, there are the equivalent of 6.25 B747 own operated weekly services available for allocation (which may be converted into additional third country code share services on the basis of one unused B747 equivalent service equals one third country code share frequency weekly).

### **3 Delegate's assessment**

3.1 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 Qantas' application. (For purposes of this determination, all references to the Commission include the delegate of the Commission).

3.2 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.

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 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.

3.5 The Commission notes that:

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

3.6 In these circumstances, the Commission concludes that the renewal of Determination [2009] IASC 120 would be of benefit to the public.

3.7 Further, as part of the renewal, Qantas has requested the 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.

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 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.

3.9 The Commission notes that it has previously allocated capacity to Qantas to be used by and in joint services with 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.

3.10 In the interests of providing commercial and operational flexibility, consistent with requirements of the Act, the Commission authorises the use of the capacity by and in joint services with a wholly-owned subsidiary of Qantas.

3.11 Consistent with paragraph 3.7 of the Policy Statement, in relation to joint services, the Commission includes 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.

#### **4 Determination for renewal of Determination [2009] IASC 120 allocating capacity on the Thailand route to Qantas ([2013] IASC 139)**

4.1 The Commission's delegate makes, in accordance with section 8 of the Act, a determination in favour of Qantas, allocating 1.4 B747 equivalent services per week in each direction between Australia and Thailand under the Australia – Thailand air services arrangements.

4.2 The determination is for five years from 19 October 2014.

4.3 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 Qantas to provide services jointly with any wholly-owned subsidiary of 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 – Thailand 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: 27 November 2013



Marlene Tucker  
Executive Director  
Delegate of the IASC Commissioners