



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

**RENEWAL DETERMINATION**

**Decisions:** [2014] IASC 109  
**Renewal of:** [2010] IASC 104  
**The Routes:** Italy  
**The Applicant:** Qantas Airways Ltd  
(ACN 009 661 901) (Qantas)  
**Public Register File:** IASC/APP/201460

**The Commission makes a fresh determination allocating in favour of Qantas 400 seats of third country code share capacity per week on the Italy route.**

## **1 The application for renewal**

1.1 On 8 June 2010, the Commission's delegate issued Determination [2010] IASC 104 (the Determination) allocating 400 seats of third country code share capacity per week to Qantas Airways Limited (Qantas), consistent with the terms of the Australia-Italy air services arrangements. The Determination allowed Qantas to code share with British Airways and, on 8 March 2013, it was varied to allow code sharing with Emirates.

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 7 June 2015. In view of this, the Commission sent a letter to Qantas on 2 June 2014, inviting it to apply for renewal if it wished to renew the Determination.

1.3 On 6 June 2014, Qantas applied to the Commission for the renewal of the Determination for five years from 8 June 2015. Qantas sought to renew the Determination on the following basis:

- the capacity may be utilised by Qantas or another Australian carrier which is a wholly-owned subsidiary of Qantas;
- the capacity may be used by Qantas to provide joint services with any wholly-owned subsidiary and by any wholly-owned subsidiary of the Qantas Group to provide joint services with Qantas; and
- the capacity may be used by Qantas to provide joint services with Emirates.

1.4 As required by sections 12 and 17 of the Act, the Commission published a notice on 6 June 2014 inviting other applications for the capacity. No applications were received. All material supplied by the applicant is available on the Commission's website ([www.iasc.gov.au](http://www.iasc.gov.au)).

## 2 Commission's consideration

2.1 Under section 8 of the Act, the Commission may make a fresh determination allocating the capacity to which the original determination relates. In considering an application for renewal, 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.

2.2 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.

2.3 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 incumbent on the Italy route, and is therefore reasonably capable of obtaining the necessary approvals and of implementing its proposed service.

2.5 Under paragraph 8.1 of the Policy Statement, there is a presumption in favour of the carrier seeking the renewal which may only be rebutted, after the start-up phase, by applying the following criteria:

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

2.6 The Commission has no information that Qantas has failed to service the route effectively and since no other application was received, the Commission did not apply the paragraph 5 criteria.

2.7 In relation to Qantas' request to use the capacity in joint services with a wholly-owned subsidiary of the Qantas Group and with Emirates, paragraph 3.6 of the Policy Statement provides that where capacity that can be used for code share services is available under air services arrangements, 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 The code share arrangements between Qantas and Emirates form part of the broader Qantas-Emirates alliance which was granted authorisation by the ACCC on 27 March 2013. In authorising the Qantas-Emirates alliance, the ACCC considered the alliance is likely to provide customers with increased access to a large number of existing frequencies and destinations under a single airline code, improved connectivity and scheduling and access to each other's frequent flyer programs. The ACCC considered the alliance faces 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.

2.9 In relation to the Qantas-Emirates joint services between Australia and Europe (Italy), the ACCC considered these services will compete with services from many other airlines via their respective alternative hubs, such as Singapore Airlines, Cathay Pacific and Etihad Airways. The ACCC further noted that both Singapore Airlines and Etihad Airways have alliances with Virgin Australia, and both have demonstrated a commitment to provide and expand their respective service offerings to both Australia and Europe.

2.10 In Decisions [2013] IASC 213 and [2013] IASC 214, the Commission granted approval for Qantas to code share with Emirates on the Italy route. As the Commission noted in these decisions, there are several significant carriers operating one stop services between Australia and Italy via their home countries. Further, in Determination [2013] IASC 122, the Commission granted a capacity allocation to Virgin Australia to offer code share services on the Italy route, on services operated by both Singapore Airlines and Etihad Airways.

2.11 For the reasons stated above, the Commission has decided to permit Qantas to use the capacity in joint services with Emirates and with any Qantas' wholly-owned subsidiary and by any wholly-owned subsidiary of the Qantas Group to provide joint services with Qantas.

2.12 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 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.

2.13 Nothing in this determination 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 [2010] IASC 104 allocating capacity to Qantas on the Italy route ([2014] IASC 109)**

3.1 In accordance with section 8 of the Act, the Commission makes a fresh determination in favour of Qantas, allocating 400 seats per week of third country code share capacity on the Italy route in accordance with the Australia-Italy air services arrangements.

3.2 The determination is valid for five years from 8 June 2015.

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 use 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 prior approval of the Commission;
- the capacity may be used by Qantas to provide joint services with any wholly-owned subsidiary and by any wholly-owned subsidiary of the Qantas Group to provide joint services with Qantas;
- the capacity may be used by Qantas to provide services jointly with Emirates in accordance with the code share agreement between Qantas and Emirates dated 21 January 2013;
- only free sale code sharing is permitted between Qantas and Emirates on the route;
- Qantas must apply to the Commission for approval of any proposed variations to the code share arrangement which would change the code share arrangement (from a free sale to a block space code share arrangement, or vice versa), or if Qantas proposes to add third country routes on which the airlines will code share;
- under the code share 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 ACCC under the *Competition and Consumer Act 2010*, or otherwise authorised by the Australian Competition Tribunal, in the event of review by that Tribunal;
- to the extent that the capacity is used to provide joint services on the route, the airlines 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 the airlines from complying with the Australian Consumer Law; 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-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.

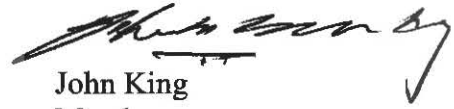
Dated: 17 June 2014



Jill Walker  
Chairwoman



Ian Douglas  
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