



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

**DETERMINATION**

<b>Determination:</b>	<b>[2014] IASC 115</b>
<b>Renewal of:</b>	<b>[2010] IASC 123</b>
<b>The Route:</b>	<b>Philippines</b>
<b>The Applicant:</b>	<b>Qantas Airways Ltd (Qantas) ACN 009 661 901</b>
<b>Public Register:</b>	<b>IASC/APP/201469</b>

**The Commission makes a fresh determination allocating 531 seats per week to Qantas on the Philippines route valid for five years on the condition that the capacity be fully utilised from no later than 15 April 2016 or such other date approved by the Commission.**

## **1 The application**

1.1 On 25 October 2010, the Commission issued Determination [2010] IASC 123 (the Determination) allocating 531 seats per week on the Philippines route to Qantas. The Determination is valid for five years from 25 October 2010.

1.2 The Determination expires on 24 October 2015. 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 its expiry. In view of this, on 2 October 2014, the Commission sent a letter to Qantas inviting it to apply for renewal if it wished to renew the Determination.

1.3 Qantas applied to the Commission on 23 October 2014 for a renewal of the Determination for another five-year period from 25 October 2015. As required by sections 12 and 17 of the Act, the Commission published a notice on 23 October 2014 inviting other applications for capacity. No applications were received.

1.4 All non-confidential material supplied by Qantas is available on the Commission's website ([www.iasc.gov.au](http://www.iasc.gov.au)).

## **2 Commission's assessment**

2.1 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 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. 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.

2.3 The Commission notes that:

- there are no other applicants seeking the capacity for which Qantas has applied; and
- Qantas is an established international carrier incumbent on the route and is therefore reasonably capable of obtaining the necessary approvals to operate on the route and of implementing its application.

2.4 Under paragraph 8.1 of the Policy Statement, there is a presumption in favour of the carrier seeking the renewal unless the carrier seeking the renewal has failed to service the route effectively and the use of the capacity in whole or part by another carrier that has applied for the capacity would better serve the public having regard to the criteria set out in paragraphs 4 and 5. Since no other Australian carrier applied for the capacity, the criteria in paragraph 5 have not been applied.

2.5 The Commission notes the capacity sought to be renewed is not currently being utilised by Qantas. Qantas has a total allocation of 1,927 seats of passenger capacity per week in each direction on the Philippines route contained in five separate determinations. Qantas operates four weekly services between Australia and the Philippines utilising 1,188 seats a week.

2.6 In its application, Qantas has sought to renew 531 seats of capacity on the Philippines route in order to retain operational flexibility.

2.7 At the Commission meeting on 16 December 2014, Qantas representatives provided a confidential briefing to the Commission on the position of the company's international business unit.

2.8 The Commission notes that no applications were received from other Australian carriers seeking capacity on the Philippines route, and there are over 4,000 seats per week of capacity available for designated Australian airlines into Manila and Clark for immediate allocation. In the Commission's view, there is sufficient available capacity should other Australian airlines wish to enter the market, and there are no competition issues with allowing Qantas to retain the capacity provided in the Determination.

2.9 In light of the above, the Commission has decided to renew 531 seats of capacity in favour of Qantas but subject to the condition that Qantas will be required to fully utilise the capacity from no later than 15 April 2016 (or such other date approved by the Commission). Qantas will be required to report to the Commission its capacity

utilisation on the Philippines route within one week after 15 April 2016. Should Qantas fail to comply with the condition to fully utilise the allocated capacity on the Philippines route by 15 April 2016 (or such other date approved by the Commission), the Commission may decide to review this determination pursuant to section 10 of the Act.

### **3 Determination for renewal of Determination [2010] IASC 123 allocating capacity on the Philippines route to Qantas ([2014] IASC 115)**

3.1 In accordance with section 8 of the Act, the Commission makes a fresh determination in favour of Qantas, allocating 531 seats per week in each direction on the Philippines route in accordance with the terms of the Australia-Philippines air services arrangements.

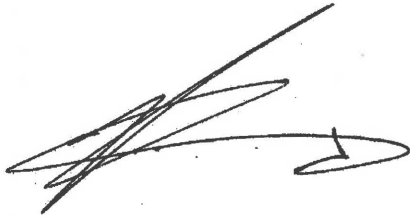
3.2 The determination is for five years from 25 October 2015.

3.3 The determination is subject to the following conditions:

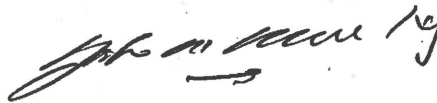
- Qantas is required to fully utilise the capacity from no later than 15 April 2016 or such other date approved by the Commission;
- Qantas is required to report to the Commission its capacity utilisation on the Philippines route within one week from 15 April 2016;
- only Qantas or another Australian 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 joint services with any wholly-owned subsidiary and by any wholly-owned subsidiary of the Qantas Group to provide joint services with Qantas;
- where the capacity is used to provide joint services on the route, 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. 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-Philippines 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: 22 December 2014

A stylized handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

IAN DOUGLAS  
Presiding Commissioner

A handwritten signature in black ink, appearing to read 'John King' with a stylized flourish at the end.

JOHN KING  
Commissioner