



Australian Government

International Air Services Commission

RENEWAL DETERMINATION

Determination: [2015] IASC 108
Renewal of: [2006] IASC 105
The Route: United Kingdom
The Applicant: Qantas Airways Ltd (Qantas)
ABN 16 009 661 901
Public Register File: IASC/APP/201513

The Commission makes a fresh determination allocating to Qantas unlimited capacity and frequency on the United Kingdom route in accordance with the terms of the Australia-United Kingdom air services arrangements.

1 The application

1.1 On 1 September 2006, the Commission issued in favour of Qantas Determination [2006] IASC 105 (the Determination) allocating unlimited capacity and frequency on the United Kingdom route. The Determination is valid for 10 years.

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 31 August 2016. In view of this, the Commission sent, on 11 August 2015, a letter to Qantas inviting it to apply for renewal if it wished to renew the Determination. Qantas subsequently applied for a renewal of the Determination for a further 10 years and sought permission to permit the following:

- the capacity may be used 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 services jointly with Emirates in accordance with the code share agreement dated 21 January 2013

1.3 As required by sections 12 and 17 of the Act, the Commission published a notice on 18 August 2015 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).

2 Relevant provisions of the air services arrangements

2.1 Under the Australia-United Kingdom air services arrangements, Australian designated carriers may operate passenger and cargo services using any aircraft type without limitation on capacity and frequencies in each direction on the routes specified in the arrangements.

3 Commission's assessment

3.1 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.

3.2 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.

3.3 The Commission notes that:

- there are no other applicants seeking capacity on the route; and
- Qantas and its wholly-owned subsidiary, Jetstar, 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.

3.4 Under paragraph 8.1 of the Policy Statement, there is a presumption in favour of the carrier seeking the renewal.

3.5 Qantas has also requested to allow the capacity to be used by either Qantas or another Australian carrier which is a wholly-owned subsidiary of Qantas, including for joint services, and for any wholly-owned subsidiary of the Qantas Group to provide joint services with Qantas. Qantas also requested permission for the use of the capacity in joint services with Emirates.

3.6 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).

3.7 The Commission does not have serious concerns about the proposed use of the capacity in joint services with a wholly-owned subsidiary of Qantas and with Emirates. The Commission notes that, on 27 March 2013, the ACCC gave authorisation to the alliance between Qantas and Emirates (ACCC authorisation numbers A91332 and A91333). The authorisation covers the conduct of Qantas and those of its related bodies corporate in which Qantas holds more than 50% (such as Jetstar) and Emirates and its subsidiaries. In granting authorisation, the ACCC considered the effect on competition on routes between Australia and the UK/Europe region. The ACCC considered that the Qantas-Emirates' services to the UK/Europe via Dubai will compete with services from other carriers via alternative hubs such as Singapore, Hong Kong and Abu Dhabi. The ACCC further considered that the Qantas-Emirates alliance faces competition from a large number of established carriers on the Australia-UK/Europe route, such as Singapore Airlines, Etihad Airways, Qatar Airways, China Southern Airlines, China Eastern Airlines and Air China. In light of this, the ACCC concluded that the Qantas-Emirates alliance is likely to result in minimal, if any, public detriment through its effect on competition on international air passenger transport services between Australia and the UK/Europe.

3.8 In view of the above, the Commission did not consult the ACCC and decided to include the conditions requested by Qantas.

3.9 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.

4 Determination allocating unlimited capacity on the United Kingdom route to Qantas ([2015] IASC 108)

4.1 The Commission makes, under section 8 of the Act, a determination in favour of Qantas, allocating unlimited capacity and frequency on the United Kingdom route in accordance with the Australia – United Kingdom air services arrangements.

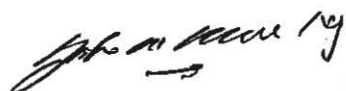
4.2 The determination is for ten years from 1 September 2016.

4.3 The determination is subject to the following conditions, which apply to Qantas or another Australian carrier which is a wholly-owned subsidiary of Qantas:

- the capacity is required to be utilised from no later than 30 September 2016 or from such other date approved by the Commission;

- 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 unless approved by the Commission;
- subject to the preceding condition, 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;
- additionally, 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;
- Qantas must apply to the Commission for approval of any proposed variations to the code share arrangement with Emirates which would change the relevant commercial aspects of the respective code share arrangements from a free sale code share arrangement to a block space, or vice versa, or if Qantas proposes to add third country routes on which the airlines will code share where Australian capacity will be used for services on that route;
- 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–UK 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 2015



JOHN KING
Presiding Commissioner



IAN DOUGLAS
Commissioner