



Australian Government

International Air Services Commission

RENEWAL DETERMINATION

Determination:	[2016] IASC 113
Renewal of:	[2012] IASC 107
The Route:	United Arab Emirates
The Applicant:	Qantas Airways Limited (ABN 16 009 661 901) (Qantas)
Public Register File:	IASC/APP/201641

The Commission makes a fresh determination allocating to Qantas 14 frequencies of capacity per week on the United Arab Emirates route. The determination permits the capacity to be utilised: (1) by Qantas and another Australian carrier which is a wholly-owned subsidiary of Qantas; and (2) for code share services between Qantas and its wholly-owned subsidiary and Emirates. The determination is valid for five years from 13 November 2017.

1 The application for renewal

1.1 On 13 November 2012, the delegate of the International Air Services Commission (the Commission) issued Determination [2012] IASC 107 (the Determination) allocating in favour of Qantas 14 frequencies of capacity per week in each direction on the United Arab Emirates route. The Determination is subject to certain conditions including the permission for another Australian carrier which is a wholly-owned subsidiary of Qantas to use the capacity and for joint services between Qantas and its wholly-owned subsidiary. The Determination is valid for five years from 13 November 2012. It was subsequently varied by [2013] IASC 204 permitting the capacity to be used by Qantas to provide code share services 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 12 November 2017. In view of this, the Commission sent, on 8 November 2016, 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 22 November 2016 for a renewal of the Determination for five years from 13 November 2017 and sought to retain the existing conditions in the original determination.

1.4 As required by sections 12 and 17 of the Act, the Commission published a notice on 22 November 2016 inviting other applications for the capacity. No applications were received.

1.5 In subsequent communications between the Commission and Qantas, it was confirmed that Jetstar Airways Pty Limited (Jetstar) is the wholly-owned subsidiary proposed to utilise the capacity in addition to Qantas.

1.6 All non-confidential material supplied by the applicant is available on the Commission's website (www.iasc.gov.au).

2 Relevant provisions of the air services arrangements

2.1 According to the Register of Available Capacity, there are 151 frequencies per week in each direction, to and from Sydney, Melbourne (including Avalon), Brisbane and Perth, which are available for immediate allocation to Australian carriers using any aircraft type. A total of 21 additional weekly services may be operated between points in the United Arab Emirates and Sydney, Melbourne (including Avalon), Brisbane and Perth provided that such services operate via or beyond to a point in Australia other than Sydney, Melbourne (including Avalon), Brisbane and Perth. Australian-designated airlines may determine the frequency of service, capacity and aircraft type to be operated to or from points in Australia other than Sydney, Melbourne (including Avalon), Brisbane and Perth.

2.2 In operating or offering the agreed services on any segment(s) of the specified routes, the designated airline(s) of Australia may enter into code sharing arrangements, as marketing and/or operating airline, with any other airline(s).

3 Commission's consideration

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 8 of the Minister's Policy Statement (No. 5) of 19 May 2004 (the Policy Statement), there is a presumption in favour of the carrier seeking a renewal which may be rebutted, after the start-up phase on the route, by the following criteria:

- whether the carrier seeking renewal has failed to service the route effectively;

and

- whether 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.

3.3 The Commission has no information that Qantas has not serviced the route effectively and notes that no other Australian carrier has applied for capacity on the route.

3.4 Under paragraph 6.2 of 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.

3.5 The Commission notes that there are no other applicants seeking capacity on the route, and Qantas and Jetstar are established international carriers and are therefore reasonably capable of obtaining the necessary approvals to operate on the route and of implementing their application

3.6 Qantas has also requested to retain the conditions permitting the:

- use of the capacity by another Australian carrier which is a wholly-owned subsidiary of Qantas which in this case is Jetstar; and
- joint services on the route between Qantas and its wholly-owned subsidiary; and
- use of the capacity to provide code share services with Emirates.

3.7 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).

3.8 The Commission notes there are a number of major carriers offering services between Australia and the United Arab Emirates either as operating carriers or as marketing carriers under code share arrangements. The Commission further notes that the ACCC, in March 2013, has authorised, subject to certain conditions, the alliance between Qantas and Emirates until 31 March 2018. In light of this, the Commission does not have serious concerns about the retention of the code share arrangements between Qantas and its Australian wholly-owned subsidiary and with Emirates on the route. For this reason, it did not consult the ACCC and did not see the need to apply the

additional criteria under paragraph 5 of the Minister's Policy Statement.

3.9 The Commission is satisfied that the renewal of 14 frequencies per week in each direction in favour of Qantas for the use of either Qantas or its wholly-owned subsidiary would be of benefit to the public. The Commission is also satisfied that the provision of code share services by Qantas on the route with a Qantas wholly-owned subsidiary and Emirates would not impact on competition on the route and has decided to retain the conditions authorising the code share arrangements.

3.10 Nothing in this decision should be taken as indicating either approval or disapproval by the ACCC. This decision is made without prejudicing, in any way, possible future consideration of code share operations by the ACCC.

4 Determination for renewal of Determination [2012] IASC 107 allocating capacity on the United Arab Emirates route to Qantas ([2016] IASC 113)

4.1 In accordance with section 8 of the Act, the Commission makes a determination in favour of Qantas, allocating 14 frequencies per week in each direction on the United Arab Emirates route under the Australia - United Arab Emirates air services arrangements.

4.2 The determination is valid for five years from 13 November 2017.


4.3 The determination is subject to the following conditions:

- Qantas is required to fully utilise the capacity from the date the determination comes into effect or such other date approved by the Commission;
- 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 of Qantas and by any wholly owned subsidiary of Qantas to provide joint services with Qantas;
- the capacity may be used by Qantas to provide code share services with Emirates in accordance with the code share agreement between Qantas and Emirates dated 21 January 2013, as amended;
- Qantas must apply to the Commission for approval of the use of the capacity if there are variations to the code share arrangement with Emirates which would change the relevant commercial aspects of the code share arrangement 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;

- to the extent that the capacity is used to provide joint or code share 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 the 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 the airlines authorised to use the capacity are permitted except to the extent that any change:
 - results in the designation of the airline as an Australian carrier under the Australia – United Arab Emirates 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 Qantas' wholly-owned subsidiary) or be in a position to exercise effective control of Qantas (or Qantas' wholly-owned subsidiary), without the prior consent of the Commission.

Dated: 19 December 2016



IAN DOUGLAS
Chairperson



JOHN KING
Commissioner



JAN HARRIS
Commissioner