



Australian Government

International Air Services Commission

RENEWAL DETERMINATION

Determination:	[2016] IASC 110
Renewal of:	[2011] IASC 132
The Route:	Papua New Guinea (PNG)
The Applicant:	Qantas Airways Limited (ABN 16 009 661 901) (Qantas)
Public Register File:	IASC/APP/201631

The Commission's delegate makes a fresh determination allocating 1,000 seats per week in each direction on the Papua New Guinea route. The determination is valid for five years from 1 July 2017.

1 The application for renewal

1.1 On 19 December 2011, the Commission's delegate issued Determination [2011] IASC 132 (the Determination) allocating 1000 seats per week in each direction on the PNG route in favour of Qantas. The Determination was for five years. The capacity may be utilised by Qantas or another Australian carrier which is a wholly-owned subsidiary of Qantas. The Determination was subsequently amended on 28 June 2012 under Decision [2012] IASC 215 to permit the use of the capacity for joint services with Air Niugini.

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 30 June 2017. In view of this, the Commission sent, on 6 June 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 27 July 2016 for a renewal of the allocation of 1000 seats per week in each direction for a further period of five years from 1 July 2017. For flexibility, Qantas also sought to allow the capacity to be used by another Australian carrier which is a wholly-owned subsidiary of Qantas such as Jetstar Airways Pty Ltd (Jetstar). Additionally, Qantas sought the inclusion of a condition allowing the use of the capacity 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.

1.4 As required by sections 12 and 17 of the Act, the Commission published a notice on 27 July 2016 inviting other applications for the capacity. No applications were received.

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

2 Delegate's consideration

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

2.2 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.

2.3 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.

2.4 The Commission's delegate 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.

2.5 Under paragraph 8.1 of the Policy Statement, there is a presumption in favour of the carrier seeking the renewal which may be rebutted only in the following circumstances: (1) that the carrier seeking renewal has failed to service the route effectively; and (2) that 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 in paragraphs 4 and 5 of the Policy Statement.

2.6 The Commission's delegate has no information that Qantas has failed to service the route effectively or that another carrier is interested to apply for the capacity sought to be renewed.

2.7 In relation to Qantas' request to allow the use of the capacity 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 Commission's delegate considers there are no competition issues on the request and has decided to include this condition as requested.

3 Relevant provisions of the air services arrangements

3.1 Under the Australia-PNG air services arrangements, any Australian designated airlines, when operating or holding out agreed services on the specified routes, are entitled to perform any of their agreed services through code sharing, blocked space and/or any other cooperative service arrangements with any designated airlines of either Australia or PNG, over the whole of any part of the specified routes in the Route Schedule.

3.2 According to the Register of Available Capacity, there are 400 seats per week in each direction of passenger capacity available for immediate allocation.

4 Determination for Renewal of Determination [2011] IASC 132 allocating capacity on the PNG route to Qantas ([2016] IASC 110)

4.1 Pursuant to section 8 of the Act, the Commission's delegate makes a determination in favour of Qantas, allocating 1,000 seats per week in each direction on the PNG route in accordance with the Australia - PNG air services arrangements.

4.2 The determination is for five years from 1 July 2017.

4.3 The determination is subject to the following conditions:

- Qantas is required to fully utilise the capacity from no later than 1 August 2017 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;
- Qantas is not permitted to utilise the capacity to provide services jointly with another Australian carrier or any other person unless approved by the Commission;
- the capacity may be used by Qantas to provide joint services with any wholly-owned subsidiary of the Qantas Group and by any wholly owned subsidiary of the Qantas Group to provide joint services with Qantas;
- to the extent that the capacity is used to provide joint services on the route, Qantas and any wholly-owned subsidiary of Qantas 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 Qantas and any wholly owned subsidiary from complying with the Australian Consumer Law; and

- changes in relation to the ownership and control of Qantas and/or Qantas' wholly-owned subsidiary are permitted except to the extent that any change:
 - results in the designation of the airline as an Australian carrier under the Australia – PNG 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 and/or Qantas' wholly-owned subsidiary or be in a position to exercise effective control of Qantas and/or Qantas' wholly-owned subsidiary, without the prior consent of the Commission.

Dated: 12 August 2016



Marlene Tucker
Executive Director
Delegate of the IASC Commissioners