



## **Australian Government**

### **International Air Services Commission**

#### **RENEWAL DETERMINATION**

<b>Determination:</b>	<b>[2017] IASC 102</b>
<b>Renewal of:</b>	<b>[2012] IASC 106</b>
<b>The Route:</b>	<b>South Africa</b>
<b>The Applicant:</b>	<b>Qantas Airways Limited (ABN 16 009 661 901) (Qantas)</b>
<b>Public Register File:</b>	<b>IASC/APP/201644</b>

**The Commission makes a fresh determination allocating to Qantas seven frequencies per week in each direction on the South Africa route. The determination is valid for five years from 17 December 2017.**

#### **1 The application for renewal**

1.1 Determination [2012] IASC 106 (the Determination) issued by the International Air Services Commission (the Commission) on 19 November 2012, allocates seven frequencies per week in each direction on the South Africa route in favour of Qantas. The Determination, as varied by Decision [2012] IASC 223, is valid for five years from 17 December 2012.

1.2 Section 17 of the *International Air Services Commission Act 1992* (the Act) requires the Commission to start its consideration of the renewal of a determination at least 12 months before the expiry of the Determination. The Determination expires on 16 December 2017. In view of this, the Commission wrote to Qantas, on 12 December 2016, inviting it to apply for renewal if it wished to renew the Determination.

1.3 Qantas applied to the Commission on 16 January 2017 for a renewal of the allocation of seven frequencies per week in each direction for a further period of five years from 17 December 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 16 January 2017 inviting other applications for the capacity. No other applications were received.

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

## **2 Air services arrangements**

2.1 According to the Register of Available Capacity, Australian designated carriers may operate 14 services each way per week with any aircraft type to and from Johannesburg, Cape Town and/or Durban. To and from points other than Johannesburg, Cape Town and/or Durban, any designated Australian carriers may determine the frequency or service, capacity and aircraft type in operating a combination of passenger and cargo services.

2.2 Australian designated carriers may enter into cooperative marketing arrangements such as blocked space, code sharing or aircraft leasing, whether as the operating or marketing airline, with a designated airline of south Africa and an airline of a third country.

## **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. On 19 May 2004, then Minister for Transport and Regional Services, the Hon. John Anderson MP issued a Policy Statement (hereinafter referred to as the Minister's Policy Statement), concerning the way the Commission is to perform its functions including the criteria for assessing public benefit.

3.2 Paragraph 6.2 of the Minister's Policy Statement provides in part that, 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 that Qantas is an established international carrier and, as such, is reasonably capable of obtaining the necessary approvals to operate on the route and of implementing its proposed services.

3.4 In relation to the request to effectively amend the original determination to allow Qantas flexibility in operating the capacity by allowing another Australian carrier which is a wholly-owned subsidiary of Qantas to use the capacity, the Commission has assessed the suitability of the wholly-owned subsidiary Jetstar against the general criteria set out in paragraph 4 of the Minister's Policy Statement. The Commission considers that Jetstar is an established international carrier and, as such, would be reasonably capable of obtaining the necessary approvals to operate on the route and of implementing the proposed services.

3.5 Under paragraph 8.1 of the Minister's 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.

3.6 The Commission 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. Qantas operates between five and seven weekly services on the Sydney-Johannesburg route. It is the only Australian carrier which operates its own services on the South Africa route. South African Airways offers own-operated services between Perth and Johannesburg. Virgin Australia offers code share services on those services operated by South African Airways, in addition to services operated by Singapore Airlines via Singapore.<sup>1</sup>

3.7 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 considers there are no competition issues on the request and has decided to include this condition as requested. The Commission notes that the determination sought to be renewed, [2012] IASC 106, contains conditions which permit code sharing between Qantas and South African Airways until 31 December 2014. The Commission notes further that Qantas and South African Airways ceased code sharing on the route from 31 May 2014.

3.8 The wording of the fresh determination below reflects the view of the Commission that determinations which renew original determinations should contain updated terms and conditions consistent with the Commission's current practice and current air services arrangements. Under section 15 of the Act, the Commission may make changes to the terms and conditions included in the original determination where warranted by changes in circumstances since the original determination was made.

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<sup>1</sup> International Airlines Timetable Summary, Northern Winter 2016-2017 (30 October 2016-25 March 2017), <[www.infrastructure.gov.au](http://www.infrastructure.gov.au)>

#### **4 Determination for Renewal of Determination [2012] IASC 106 allocating capacity on the South Africa route to Qantas ([2017] IASC 102)**

4.1 Pursuant to section 8 of the Act, the Commission makes a determination in favour of Qantas, allocating seven frequencies per week in each direction on the South Africa route in accordance with the Australia - South Africa air services arrangements.

4.2 The determination is valid for five years from 17 December 2017.

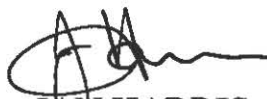
4.3 The determination is subject to the following conditions:

- Qantas is required to fully utilise the capacity from no later than 17 December 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 – South Africa 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: 10 February 2017

A handwritten signature in black ink, appearing to be 'IAN DOUGLAS', written over a light blue horizontal line.

IAN DOUGLAS  
Chairperson

A handwritten signature in black ink, appearing to be 'JAN HARRIS', written over a light blue horizontal line.

JAN HARRIS  
Commissioner