



Australian Government

International Air Services Commission

RENEWAL DETERMINATION

Determination: [2017] IASC 106
Renewal of: [2013] IASC 120
The Route: Singapore
The Applicant: Qantas Airways Limited
(Qantas)
(ABN 16 009 661 901)
Public Register: IASC/APP/201711

The Commission makes a fresh determination allocating to Qantas 300 seats per week of capacity on the Singapore route to be used to exercise own stop-over rights between Singapore and Colombo. The determination permits Qantas to code share on services operated by Emirates and SriLankan Airlines to Colombo via Singapore.

1 The application for renewal

1.1 On 28 March 2013, the Commission's delegate issued Determination [2013] IASC 120 (the Determination) allocating to Qantas 300 seats per week of capacity on the Singapore route to be used for exercising own stop-over rights between Singapore and Colombo. The Determination permits Qantas to code share on services operated by Emirates between Singapore and Colombo and was subsequently varied to permit Qantas to code share on services operated by SriLankan Airlines on the route (see Decision [2014] IASC 231).

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 27 March 2018. In view of this, the Commission sent, on 16 March 2017, a letter to Qantas inviting it to apply for renewal if it wished to renew the Determination

1.3 On 31 March 2017, Qantas expressed its interest to renew Determination [2013] IASC 120. The application seeks to retain the following conditions which permit:

- the capacity to be utilised by Qantas or another Australian carrier which is a wholly-owned subsidiary of Qantas;
- the use of the capacity to provide joint services between Qantas and a wholly-owned subsidiary of the Qantas Group; and

- the use of the capacity by Qantas to provide code share services with Emirates and SriLankan Airlines.

1.4 As required by sections 12 and 17 of the *International Air Services Commission Act 1992* (the Act), the Commission published a notice inviting other applications for the capacity. No response was received in relation to the Qantas application. However, it is noted that Virgin Australia has a separate application for renewal of its allocation of 400 seats per week to be able to offer code share services on flights offered by Singapore Airlines between Australia and Colombo via Singapore.

1.5 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 Under the Australia-Singapore air services arrangements, Australian carriers may enter into unrestricted codeshare, blocked space or other cooperative marketing arrangements with any other airline, including airlines of third parties.

2.2 When exercising traffic rights between Singapore and Colombo in either direction, Australian carriers are restricted to 1,200 seats per week in each direction on an own stopover basis.

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 6.2 of the Minister's Policy Statement (No. 5) (the Policy Statement) issued on 19 May 2004, pursuant to section 11 of the Act, 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 contesting the capacity being renewed; 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 the proposed services.

3.4 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.

3.5 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.

3.5 In light of the above, the Commission considers it is of benefit to the public to renew the allocation of 300 seats per week of capacity in favour of Qantas to be used to exercise own stop-over rights between Singapore and Colombo. The Commission notes that it also allocated to Qantas additional 300 seats per week of capacity on the Singapore route to be used for own stop-over traffic rights between Singapore and Colombo (see Determination [2015] IASC 111). This brings Qantas' total allocation on the route to 600 seats per week of capacity.

3.6 In relation to the application to use the capacity for code sharing with Emirates and SriLankan Airlines, the Commission notes that paragraph 3.6 of the Policy Statement empowers the Commission to apply the additional criteria in paragraph 5 if it has serious concerns that the code share may not be of benefit to the public. However, before doing so, the Commission is required to consult the Australian Competition and Consumer Commission (ACCC). The Commission does not have such concerns and therefore has not applied the paragraph 5 criteria and did not specifically consult the ACCC.

3.7 The Commission notes that there are no direct services between Australia and Sri Lanka. However, there are a range of alternative hubs and other airlines available for passengers wishing to travel from points in Australia to Colombo. Both Qantas and Virgin Australia offer code share services between Australia and Colombo via Singapore.

3.8 The Commission further notes that the ACCC has granted, on 27 March 2013, authorisation for a five-year period for Qantas and Emirates to coordinate air passenger and cargo transport operations and other related services. In its decision to grant authorisation, the ACCC considered that there are available alternative airlines providing options for travel between Australia and points in Asia which would constrain Qantas and Emirates from reducing or limiting growth in capacity on routes via Singapore and Bangkok.

3.9 The Commission considers that the continued code share arrangements between Qantas and Emirates and SriLankan Airlines would provide more options to Australian passengers travelling between Australia and Colombo via Singapore. In this regard, the Commission is of the view that it would be of public benefit to permit the continued code share arrangements as requested by Qantas.

3.10 Under paragraph 15(2)(e) of the Act, the Commission must include a condition

in determinations stating the extent to which the carrier may use that capacity in joint services with another carrier. In this regard, the Commission has decided to include a condition permitting the use of the capacity for the provision of code share services between Qantas and Emirates and between Qantas and SriLankan Airlines on the Australia-Singapore-Colombo route. The Commission has been provided copies of the code share agreements between Qantas and Emirates and SriLankan Airlines.

3.11 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 allocating capacity on the Singapore route to Qantas ([2017] IASC 106)

4.1 Pursuant to section 8 of the Act, the Commission makes a determination in favour of Qantas allocating 300 seats per week of capacity on the Singapore route to be used to exercise own stopover rights between Singapore and Colombo in accordance with the Australia-Singapore air services arrangements, subject to the conditions set out below.

4.2 The determination is for five years from 28 March 2018.

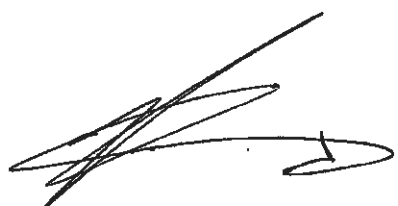
4.3 The determination is subject to the following conditions:

- Qantas is required to fully utilise the capacity from no later than 28 March 2018, or from such other date approved by the Commission;
- Qantas is not 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 code share services with Emirates in accordance with the code share agreement between Qantas and Emirates dated 21 January 2013, as amended;
- the capacity may be used by Qantas to provide code share services with SriLankan Airlines in accordance with the code share agreement between Qantas and SriLankan Airlines dated 16 September 2014, as amended;
- Qantas must apply to the Commission for approval of the use of the capacity if there are variations to the code share arrangements which would change the relevant commercial aspects of the code share arrangements with Emirates and SriLankan Airlines 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 code share (or joint) services, the airlines must take all reasonable steps to ensure that

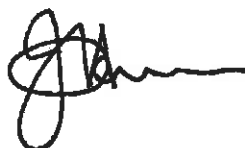
passengers are informed of the carrier actually operating the flight at the time of booking. Nothing in this determination exempts the airlines from complying with the Australian Consumer Law; and

- changes in relation to the ownership and control of Qantas, and its wholly-owned subsidiary permitted 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 – Singapore 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: 27 April 2017



IAN DOUGLAS
Chairperson



JAN HARRIS
Commissioner