



Australian Government
International Air Services Commission

RENEWAL DETERMINATION

Determination: [2017] IASC 131
Renewal of: [2007] IASC 116
The Route: Singapore
The Applicant: Qantas Airways Limited (Qantas)
(ABN 16 009 661 901)
Public Register File: IASC/APP/201761

The Commission makes a fresh determination allocating unlimited capacity and frequency on the Singapore route for services other than all-cargo services. The new determination is valid for 10 years from 31 October 2018.

1 The application for renewal

1.1 On 11 October 2007, the Commission's delegate issued Determination [2007] IASC 116 (the Determination) allocating unlimited capacity and frequency on the Singapore route for services other than all-cargo services under the Australia - Singapore air services arrangements. The Determination is valid for 10 years from 31 October 2008. The Determination permits the capacity to be used by either Qantas or another Australian carrier which is a wholly-owned subsidiary of Qantas and for Qantas and its wholly-owned subsidiary to provide joint services on the route. The Determination and its multiple variations permit code sharing between Qantas and the following airlines: British Airways, Air France, Air Malta, Jet Airways, Iberia Airlines, Japan Airlines, China Eastern Airlines, Finnair, Emirates, Bangkok Airways, SriLankan Airlines and Fiji Airways. Additionally, the Commission has also permitted the capacity to be used by Jetstar to provide code share services with Emirates and Finnair.

1.2 Under 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 is due to expire on 30 October 2018. In view of this, the Commission sent, on 16 October 2017, 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 8 November 2017 for a renewal of the Determination for a further 10-year period from 31 October 2018. Additionally, Qantas requested the inclusion of the following conditions, that:

- 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 and by any wholly-owned subsidiary of the Qantas Group to provide joint services with Qantas
- the capacity may be used to provide services jointly with Emirates, Finnair, British Airways, China Eastern, Japan Airlines, Jet Airways, Bangkok Airways, Sri Lankan Airlines, Fiji Airways and LATAM
- the capacity may be used by Jetstar to provide services jointly with Emirates and Finnair.

1.4 As required by sections 12 and 17 of the Act, the Commission published a notice on 8 November 2017 inviting other applications for the capacity. No competing applications were received. All 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 Paragraph 7(2)(aa) of the Act requires the Commission not to allocate available capacity contrary to any restrictions on capacity contained in a bilateral arrangement(s).

2.2 The Australia – Singapore air services arrangements allow multiple designation of Australian airlines to operate on the Singapore route. Designated airlines of Australia may determine the frequency and capacity of services on the route. The designated airlines may also enter into unrestricted code share, blocked space or other cooperative marketing arrangements with any other airline, including airlines of third parties.

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 Pursuant to section 11 of the Act, the Minister issued Policy Statement No. 5 dated 19 May 2004 (the Policy Statement). The Policy Statement sets out the range of criteria which the Commission is required to apply in assessing the benefit to the public of allocations of capacity.

3.3 Under paragraph 6.1 of the Policy Statement, in circumstances where capacity is not limited under a bilateral agreement, only the criteria in paragraph 4 are applicable. Paragraph 4 effectively 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.

3.4 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.

3.5 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.

3.6 The Commission has no information that Qantas or Jetstar has failed to service the route effectively or that another carrier is interested to apply for the capacity sought to be renewed. However, even if another carrier were interested to apply for capacity on the route, the Commission notes that the capacity entitlements are unrestricted.

3.7 The Commission further notes that Qantas operates up to 38 weekly frequencies between Brisbane/Melbourne/Perth/Sydney and Singapore while Jetstar operates up to seven weekly services between Melbourne and Singapore and between Perth and Singapore via Denpasar.¹

3.8 Qantas has also requested to include conditions permitting the use of the capacity for the provision of code share services between Qantas and Emirates, Finnair, British Airways, China Eastern, Japan Airlines, Jet Airways, Bangkok Airways, Sri Lankan Airlines, Fiji Airways and LATAM, and for Jetstar to code share with Emirates and Finnair.

3.9 Paragraph 3.6 of the Policy Statement provides that where capacity that can be used for code share operations is available under the relevant 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. Before doing so, the Commission will consult with the Australian Competition and Consumer Commission (the ACCC).

3.10 The Commission considers that there are minimal barriers for an Australian airline to mount either own-operated or code share services on the Australia-Singapore route. In light of this, the Commission considers that the proposed use of capacity for code share services would have minimal impact on competition. For this reason, the Commission did not specifically consult the ACCC and did not find it necessary to apply the additional criteria set out in paragraph 5 of the Policy Statement.

3.11 In light of the above, the Commission has decided to include conditions permitting the capacity to be used for the provision of code share services, as requested by Qantas.

3.12 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.

¹ 2017 Northern Summer International Airlines Timetable Summary (March-October 2017)

3.13 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 [2007] IASC 116 allocating capacity on the Singapore route to Qantas ([2017] IASC 131)

4.1 Pursuant to section 8 of the Act, the Commission makes a determination in favour of Qantas allocating unlimited capacity and frequency on the Singapore route for services other than all-cargo services in accordance with the Australia-Singapore air services arrangements.

4.2 The determination is valid for 10 years from 31 October 2018.

4.3 The determination is subject to the following conditions:


- Qantas is required to utilise the capacity from no later than 30 December 2018 or 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.
- 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.
- Neither Qantas nor the wholly-owned subsidiary is permitted to utilise the capacity under code share or joint services with another carrier or any other person without the approval of the Commission.
- Subject to the preceding condition, the capacity may be used for the provision of code share services between Qantas and:
 - Emirates in accordance with the code share agreement between Qantas and Emirates made on 21 January 2013, as amended
 - Finnair in accordance with the code share agreement between Qantas and Finnair made on 23 December 2010, as amended
 - British Airways in accordance with the code share agreement between Qantas and British Airways made on 19 November 2013, as amended
 - China Eastern in accordance with the code share agreement between Qantas and China Eastern made on 9 July 2013, as amended
 - Japan Airlines in accordance with the code share agreement between Qantas and Japan Airlines made on 27 April 2009, as amended
 - Jet Airways in accordance with the code share agreement between Qantas and Jet Airways made on 6 September 2006, as amended

- Bangkok Airways in accordance with the code share agreement between Qantas and Bangkok Airways made on 3 March 2014, as amended
- SriLankan Airlines in accordance with the code share agreement between Qantas and SriLankan Airlines made on 16 September 2014, as amended
- Fiji Airways in accordance with the code share agreement between Qantas and Fiji Airways made on 26 November 2002, as amended
- LATAM Airlines in accordance with the code share agreement between Qantas and LATAM Airlines made on 1 August 2014, as amended
- Additionally, the capacity may be utilised by Jetstar to provide code share services with:
 - Emirates in accordance with the code share agreement between the airlines which came into effect from 11 February 2014, as amended, and
 - Finnair in accordance with the code share agreement between the airlines which came into effect from 15 May 2017
- Qantas or Jetstar must apply to the Commission for approval of the use of the capacity if there are variations to any of the code share arrangements mentioned above which would change the relevant commercial aspects of the relevant code share arrangement from a free sale code share arrangement to a block space, or vice versa, or if Qantas or Jetstar 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 on the route, the airlines must 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.
- Changes in relation to the ownership and control of Qantas and/or the wholly-owned subsidiary are permitted except to the extent that any change:
 - results in the designation of Qantas and/or the wholly-owned subsidiary 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 and/or the wholly-owned subsidiary without the prior consent of the Commission.


Dated: 7 December 2017



IAN DOUGLAS
Chairperson



IAN HARRIS
Commissioner



KAREN GOSLING
Commissioner