



Australian Government

International Air Services Commission

RENEWAL DETERMINATION

Determination: [2018] IASC 101
Renewal of: [2013] IASC 119
The Route: Italy
The Applicant: Qantas Airways Limited
(Qantas) ABN 16 009 661 901
Public Register: IASC/APP/201742

The Commission's delegate makes a fresh determination allocating to Qantas 300 third country code share seats per week on the Italy route for code share services with Emirates and British Airways. The determination is valid for five years from 8 August 2018.

1 The application

1.1 On 25 March 2013, the International Air Services Commission (the Commission) issued Determination [2013] IASC 119 (the Determination) allocating 300 third country code share seats in favour of Qantas which enables the airline to offer code share services operated by Emirates on the Italy route.

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 7 August 2018. In view of this, the Commission sent, on 21 August 2017, a letter to Qantas inviting it to apply for renewal if it wished to renew the Determination. Qantas subsequently applied on 20 October 2017 for a renewal of the Determination for a further period of five years from 8 August 2018 and requested to retain the existing conditions.

1.3 As required by sections 12 and 17 of the Act, the Commission published a notice on 23 October 2017 inviting other applications for capacity. No applications were received. All non-confidential material supplied by the applicant is available on the Commission's website (www.iasc.gov.au).

1.4 In November 2017, Qantas requested the Commission to defer its decision on its renewal application until the airline has finalised its code share agreement with British Airways to include the Italy route.

1.5 On 2 March 2018, the Commission's delegate issued Decisions [2018] IASC 202, 203 and 204 varying Qantas' multiple determinations on the Italy route to permit Qantas to use the capacity on the Italy route for code share services with British Airways.

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 Under the Australia - Italy air services arrangements, designated airline(s) of Australia (Australian airlines) may operate seven frequencies per week with any aircraft type. None of this capacity is currently allocated and no Australian carrier operates its own services on the Italy route. Australian airlines are entitled to perform their services with wet lease, code sharing, blocked space and/or other cooperative service arrangements with any airline.

2.3 Under the air services arrangements, Australian airlines may enter into arrangements with an airline or airlines of a third country to carry out services through code share arrangements. These code share arrangements may constitute up to 1700 seats per week in total in each direction on an annual average basis. Qantas currently holds a total capacity of 1000 third country code share seats while 600 third country code share seats have been allocated to Virgin Australia.

2.4 According to the Register of Available Capacity, there are currently 100 seats per week in each direction available for immediate allocation to Australian airlines for code share with third country airlines.

2.5 In June 2017, the Australia – Italy air services arrangements were updated to include an explicit reference that the weekly capacity entitlements allocated for code share services are to be averaged over 12 months. Under the averaging methodology, a carrier may exceed its weekly capacity allocation for code share services from time to time so long as the total amount of capacity utilised during the year does not exceed the total annual capacity allocation (weekly capacity allocated multiplied by 52 weeks).

3 Delegate's consideration

3.1 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 renewal application. (For purposes of this decision, references to the Commission include the delegate of the Commission.)

3.2 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.

3.3 Pursuant to section 11 of the Act, then Minister for Transport and Regional Services, the Hon. John Anderson MP issued Policy Statement No. 5 (hereinafter referred to as the Policy Statement) dated 19 May 2004. 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.

3.4 Under paragraph 8 of the Policy Statement, there is a presumption in favour of the carrier seeking the renewal which may only be rebutted, after the start-up phase, under the following circumstances: (a) the carrier seeking renewal has failed to service the route effectively; and (b) the use of the capacity, in whole or in part, by another Australian carrier that has applied for capacity, would better serve the public after applying the criteria in paragraphs 4 and 5 of the Policy Statement.

3.5 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. The delegate notes that Qantas is an established international carrier and is reasonably capable of obtaining the necessary approvals to operate on the route and of implementing its proposed code share services.

3.6 The delegate further notes that there are no other applicants seeking capacity on the route and there is no information to suggest that Qantas has failed to service the route effectively. The delegate, having considered the foregoing circumstances, did not consider it necessary to assess the application against the additional criteria in paragraph 5 of the Policy Statement and did not specifically consult the ACCC.

3.7 For the above reasons, the delegate is satisfied that renewing the capacity allocation would be of benefit to the public. The third country code share capacity sought to be renewed will be used to enable Qantas to continue offering, as marketing carrier, services operated by Emirates and British Airways in accordance with the air services arrangements between Australia and Italy.

3.8 Section 15 of the Act provides that the Commission may include such terms and conditions as the Commission thinks fit. In light of this, the delegate decided to include certain conditions set out below.

4 Determination for renewal of [2013] IASC 119 allocating capacity on the Italy route to Qantas ([2018] IASC 101)

4.1 Pursuant to section 8 of the Act, the delegate allocates to Qantas 300 third country code share seats per week in each direction on the Italy route, averaged over 12 months, in accordance with the terms of the Australia – Italy air services arrangements.

4.2 The determination is valid for five years from 8 August 2018.

4.3 The determination is subject to the following conditions:

- Qantas is required to fully utilise the capacity by no later than 31 August 2018 or such other date as may be approved by the Commission.
- Only Qantas is permitted to use the capacity.
- Qantas is not permitted to utilise the capacity to provide code share or joint services with another carrier or any other person unless approved by the Commission.

- The capacity may be used by Qantas to code share on services operated by 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 code share on services operated by British Airways in accordance with the code share agreement between Qantas and British Airways dated 19 November 2013 and amended on 16 February 2018.
- Qantas must apply to the Commission for approval of the use of the capacity if there are variations to the code share arrangement(s) which would change the relevant commercial aspects of the code share arrangement(s) 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.
- Changes in relation to the ownership and control of Qantas is permitted except to the extent that any change:
 - results in the designation of the airline as an Australian carrier under the Australia – Italy 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: 02 March 2018



MARLENE TUCKER
Executive Director