



## Australian Government

### International Air Services Commission

#### RENEWAL DETERMINATION

<b>Determination:</b>	[2019] IASC 121
<b>Renewal of:</b>	[2015] IASC 111
<b>The Route:</b>	Singapore
<b>The Applicant:</b>	Qantas Airways Limited (ABN 16 009 661 901) (Qantas)
<b>Public Register:</b>	IASC/APP/201927

The Commission makes a fresh determination allocating to Qantas 300 seats per week of capacity on the Australia-Singapore route to be used to exercise own stop-over rights between Singapore and Colombo. The fresh determination permits the capacity to be used by either Qantas or its wholly-owned subsidiary, Jetstar Airways Pty Limited. The determination is valid for five years from 22 October 2020.

#### 1 The application for renewal

1.1 On 22 October 2015, the International Air Services Commission (the Commission) issued Determination [2015] IASC 111 (the Determination) allocating, in favour of Qantas, 300 seats per week of capacity in each direction on the Australia-Singapore route to be used to exercise own stop-over rights between Singapore and Colombo. The capacity may be utilised by Qantas or another Australian carrier which is a wholly-owned subsidiary of Qantas (which in this case is Jetstar Airways Pty Limited). The Determination also permits the use of the capacity for code sharing between Qantas and the following foreign carriers: Emirates and SriLankan Airlines.

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 is due to expire on 21 October 2020. In view of this, the Commission sent, on 11 October 2019, 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 23 October 2019 for a renewal of the Determination on the following basis:

- The allocation is requested for a period of five years from 22 October 2020.
- The capacity may be utilised by Qantas or Jetstar Airways Pty Limited, as long as it remains a wholly-owned subsidiary of Qantas or such other wholly-owned subsidiary of Qantas that the Commission approves in writing, as long as it remains a wholly-owned subsidiary of Qantas; and

- The capacity may be used by Qantas to provide services jointly with SriLankan Airlines.

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

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

## **2 Relevant provisions of the air services arrangements**

2.1 Paragraph 7(2)(aa) of the Act provides that the Commission must not allocate available capacity contrary to any restrictions on capacity contained in a bilateral arrangement(s). Any variation made to an existing allocation of capacity should also not be contrary to any restrictions on capacity contained in a bilateral arrangement(s).

2.2 The Australia-Singapore air services arrangements permit the designation of multiple carriers to operate international air transport services between Australia and Singapore. The air services arrangements permit designated Australian carriers to determine the frequency and capacity they wish to operate between Australia and Singapore.

2.3 The air service arrangements further provide that the designated airlines of Australia may operate and exercise full beyond fifth freedom traffic rights between Singapore and any points beyond Singapore subject to certain restrictions. One these restrictions concerns the exercise by Australian carriers of traffic rights between Singapore and Colombo. When exercising traffic rights beyond Singapore to Colombo in either direction, Australian carriers are restricted to 1,200 seats per week in each direction. As discussed below, 600 seats have been allocated to Qantas in two separate determinations and 400 seats to Virgin Australia. According to the register of available capacity, there are 200 seats per week in each direction available for allocation to Australian carriers for the exercise of own stop-over rights between Singapore and Colombo.

2.4 Additionally, a designated carrier of Australia may enter into unrestricted code share, blocked space or other cooperative marketing arrangements with any other airline, including airlines of third countries.

## **3 Commission's consideration**

3.1 Section 8 of the Act provides that the Commission may, at any time while a determination is in force, make a fresh determination allocating the capacity to which the original determination relates. The fresh determination 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 In accordance with section 11 of the Act, the Minister issued the International Air Services Commission Policy Statement 2018 (the Policy Statement), which came into effect on 28 March 2018.

3.3 Section 7 of the Policy Statement explains that, in assessing the benefit to the public of an allocation of capacity when deciding to make, renew or vary a determination, the Commission is to have regard to the 'reasonable capability criterion' in section 8 and the additional criteria in section 9, when circumstances so warrant under Division 3 of Part 3 of the Policy Statement.

3.4 Under section 14 of the Policy Statement, there is a presumption in favour of the carrier seeking a renewal which may be rebutted only if:

- (a) the carrier has failed to service the route effectively; and
- (b) there are other applications for some or all of the capacity; and
- (c) the Commission, having regard to the reasonable capability criterion and any of the additional criteria that it considers relevant, is satisfied that a different allocation of capacity would be of greater benefit to the public.

3.5 Under the 'reasonable capability criterion' in section 8 of the Policy Statement, in assessing the public benefit of an application, the Commission is to have regard to the extent to which all Australian carriers that are, or would be, permitted to use the capacity allocated under a determination are reasonably capable of: (a) obtaining any licences, permits or other approvals required to operate on and service the route to which the determination relates; and (b) using the capacity allocated under the determination.

3.6 As previously mentioned, the Commission notes that out of the total capacity entitlements of 1,200 weekly seats available to Australian carriers, 600 seats have been allocated to Qantas in two separate determinations and 400 seats to Virgin Australia. Qantas utilises its capacity allocation by code sharing, as marketing carrier, on flights operated by SriLankan Airlines between Singapore and Colombo while SriLankan Airlines code shares on flights operated by Qantas between Singapore and various points in Australia. While the original Determination also permitted Qantas to use the capacity for the provision of code share services Emirates, the airlines' code share arrangement between Singapore and Colombo ceased on 28 October 2018 when Emirates stopped operating its service on the route.

3.7 The Commission 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. For this reason, the Commission decided to only apply the reasonable capability criterion under section 8 of the Policy Statement and did not consider it necessary to assess the application against the additional criteria in section 9 of the Policy Statement.

3.8 The Commission notes that Qantas and its wholly-owned subsidiary, Jetstar, are established carriers operating scheduled international services on various routes and

finds that the carriers are reasonably capable of obtaining the necessary regulatory approvals and of using the capacity allocated on the Singapore route. In light of this, the Commission is satisfied that renewing the capacity allocation in favour of Qantas and permitting the capacity to be used by Qantas and/ or Jetstar would be of benefit to the public.

3.9 Qantas has further requested authorisation for the use of the capacity for code sharing with SriLankan Airlines.

3.10 The Commission notes that there are no Australian carriers providing direct services between Australia and Sri Lanka. Sri Lankan Airlines is the only carrier operating direct daily flights between Colombo and Melbourne. Qantas offers services, as marketing carrier, on flights operated by SriLankan Airlines between Singapore and Colombo for a total of 600 seats per week and between Bangkok and Colombo.<sup>1</sup> Qantas also offers seats on flights operated by Cathay Pacific between Hong Kong and Colombo.<sup>2</sup> Virgin Australia code shares as marketing carrier on flights operated by Singapore Airlines between Singapore and Colombo.<sup>3</sup>

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

3.12 Subsection 15(1) of the Act allows a determination to include such terms and conditions as the Commission thinks fit. Under paragraph 15(2)(e), the determination issued by the Commission “must include a condition stating the extent (if any) to which such carrier may use that capacity by providing joint international air services with another Australian carrier or any other person”. 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 SriLankan Airlines on the Australia-Singapore-Colombo route.

3.13 Subsection 19(3) of the Act provides that “[i]ncluding terms and conditions in the determination, the Commission may make such changes (if any) to the terms and conditions included in the original determination (including adding or deleting terms and conditions) as it is satisfied are warranted because of changes in circumstances since the original determination was made”. In light of this, the Commission has decided to issue this fresh determination with the conditions set out below.

#### **4 Determination for renewal of [2015] IASC 111 allocating capacity on the Singapore route to Qantas ([2019] IASC 121)**

4.1 The Commission allocates to Qantas Airways Limited, pursuant to section 8 of the Act, 300 seats per week of capacity in each direction on the Australia-Singapore

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<sup>1</sup> Northern Summer 2019 International Airlines Timetable Summary

<sup>2</sup> Ibid.

<sup>3</sup> Ibid.

route to exercise own stop-over rights between Singapore and Colombo. This renewal determination is issued in accordance with the terms of the Australia – Singapore air services arrangements.

4.2 The determination is valid for five years from 22 October 2020.

4.3 The determination is subject to the following conditions:

- (a) Qantas is required to fully utilise the capacity from no later than 31 December 2020 or such other date approved by the Commission;
- (b) The capacity may be utilised by:
  - Qantas; or
  - Jetstar Airways Pty Limited, as long as it remains a wholly-owned subsidiary of Qantas or
  - such other wholly-owned subsidiary of Qantas that the Commission approves in writing, as long as it remains a wholly-owned subsidiary of Qantas.
- (c) 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, except to the extent permitted by condition (d).
- (d) Qantas is permitted to use the capacity to provide code share services with SriLankan Airlines in accordance with the code share agreement between the airlines dated 16 September 2014, as amended.
- (e) Qantas must obtain the Commission's written approval before implementing any variation to the code share arrangement between the airlines which would change the relevant commercial aspects of the code share arrangement 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.
- (f) 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.
- (g) Changes in relation to the ownership and control of the airlines authorised to use the capacity are permitted except to the extent that any change:
  - results in the designation of the airline(s) 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 the airline(s) or be in a position to exercise effective control of the airline(s), without the prior consent of the Commission.

Dated: 28 November 2019



IAN DOUGLAS  
Chairperson



KAREN GOSLING  
Commissioner