



Australian Government

International Air Services Commission

RENEWAL DETERMINATION

Determination: [2019] IASC 102
Renewal of: [2014] IASC 120
The Route: Japan
The Applicant: Qantas Airways Limited
(ABN 16 009 661 901) (Qantas)
Public Register: IASC/APP/201880

The Commission makes a fresh determination allocating to Qantas seven frequencies per week of capacity in each direction on the Japan route. The fresh determination permits the capacity to be used by either Qantas or its wholly-owned subsidiary, Jetstar Airways Pty Limited, and for Qantas to provide services jointly with LATAM Airlines Group S.A. (LATAM). The determination is valid for five years from 16 December 2019.

1 The application for renewal

1.1 On 16 December 2014, the Commission issued Determination [2014] IASC 120 (the Determination) allocating, in favour of Qantas, seven frequencies per week of capacity on the Japan route to serve Haneda Airport. On 1 November 2018, the delegate of the Commission varied the Determination, upon Qantas' request, to permit the capacity to be used for code sharing between Qantas and LATAM.

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 15 December 2019. In view of this, the Commission sent, on 3 December 2018, 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 19 December 2018 for a renewal of the Determination for a further five-year period from 16 December 2019.

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).

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-Japan air services arrangements provide for unrestricted capacity to operate international air services between the two countries, except to or from Haneda Airport. According to the register of available capacity there is no available capacity to operate to/from Haneda Airport.

2.3 Additionally, designated carriers of Australia may enter into code share services on the specified routes with a designated airline(s) of Australia, with a designated airline(s) of Japan or with an airline(s) of third countries, subject to approvals of the aeronautical authorities of both 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 On 20 March 2018, the Hon. Michael McCormack MP, Deputy Prime Minister and Minister for Infrastructure and Transport, issued in accordance with section 11 of the Act, 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 renew 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 the carrier has failed to service the route effectively; and there are other applications for some or all of the capacity; and the Commission is satisfied that a different allocation of capacity would be of greater benefit to the public, having regard to the criteria set out in sections 8 and 9 of the Policy Statement.

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 The Commission 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.

3.7 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 Japan 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 either Qantas or Jetstar would be of benefit to the public.

3.8 Further, Qantas sought authority to continue utilising the capacity for code sharing with LATAM Airlines. The Commission has approved utilisation of the capacity allocation by Qantas for code sharing with LATAM and has no reason to believe that there has been a material change in circumstances that would warrant making a different allocation of capacity by changing the existing condition which permits the use of the capacity for code sharing with LATAM. In view of this, the Commission considers it is not necessary to apply section 15 of the Policy Statement to the current application.¹

3.9 Subsection 15(1) of the Act allows a determination to include such terms and conditions as the Commission thinks fit. Subsection 15(2) provides, in part, that the determination must include a condition stating the extent (if any) to which any such carrier may use that capacity by providing joint international air services with another Australian carrier or any other person.

3.10 The Commission has decided to include the existing condition to permit the use of the capacity for the provision of code share services between Qantas and LATAM, as requested. Nothing in this determination in relation to code sharing should be taken as indicating either approval or disapproval by the ACCC. This determination is made without prejudicing, in any way, possible future consideration of code share operations by the ACCC.

¹ Section 15 of the Policy Statement is to be applied if the Commission is considering making a different allocation as the original determination. Under section 15, the Commission is to have regard to the reasonable capable criterion in section 8 and any of the additional criteria in section 9 which the Commission considers to be relevant.

4 Determination for renewal of [2014] IASC 120 allocating capacity on the Japan route to Qantas ([2019] IASC 102)

4.1 The Commission allocates to Qantas Airways Limited, pursuant to section 8 of the Act, seven frequencies per week of capacity on the Japan route to serve Haneda Airport in accordance with the terms of the Australia – Japan air services arrangements.

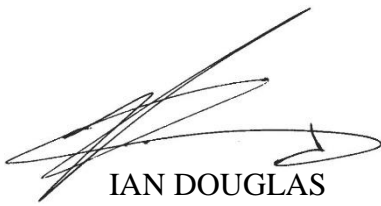
4.2 The determination is valid for five years from 16 December 2019.

4.3 The determination is subject to the following conditions:

- Qantas is required to fully utilise the capacity from no later than 31 July 2020 or such other date approved by the Commission;
- 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.
- 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 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 by Qantas to provide code share services with LATAM in accordance with the code share agreement between the airlines made on 01 August 2014, as amended from time to time.
- 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 – Japan 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: 15 January 2019



IAN DOUGLAS
Chairperson



IAN HARRIS
Commissioner



KAREN GOSLING
Commissioner