



Australian Government

International Air Services Commission

RENEWAL DETERMINATION

Determination: [2019] IASC 114
Renewal of: [2014] IASC 110
The Route: Hong Kong
The Applicant: Qantas Airways Limited
(Qantas) ABN 16 009 661 901
Public Register: IASC/APP/201917

The Commission makes a fresh determination allocating to Qantas one all-cargo frequency per week on the Hong Kong route. The determination is valid for five years from 14 July 2020.

1 The application

1.1 On 1 August 2014, the International Air Services Commission (the Commission) issued Determination [2014] IASC 110 (the Determination) allocating one all-cargo frequency per week on the Hong Kong 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 13 July 2020. In view of this, the Commission sent, on 16 July 2019, a letter to Qantas inviting it to apply for renewal if it wished to renew the Determination. Qantas subsequently applied on 31 July 2019 for a renewal of the Determination for a further period of five years from 14 July 2020 and requested to retain the following existing conditions:

- permit the capacity to be used by Qantas or another Australian carrier which is a wholly-owned subsidiary of Qantas, which in this case is Jetstar Airways Pty Limited (Jetstar);
- permit the capacity to 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; and

1.3 As required by sections 12 and 17 of the Act, the Commission published a notice on 31 July 2019 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).

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 – Hong Kong air services arrangements, there is one frequency per week available for all-cargo services between Sydney, Melbourne, Brisbane and Perth and Hong Kong, and 28 passenger frequencies per week for services between Sydney, Melbourne, Brisbane and Perth and Hong Kong. There is no limit on the number of frequencies to operate all-cargo services between Hong Kong and all points in Australia other than Sydney, Melbourne, Brisbane and Perth.

2.3 Designated airline(s) of Australia (Australian airlines) may at their discretion freely convert and reconvert capacity for the operation of passenger services and all-cargo services between Hong Kong and Sydney, Melbourne, Brisbane and Perth on the basis of one passenger frequency for one all –cargo frequency or vice versa.

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 Pursuant to section 11 of the Act, the Minister issued the International Air Services Policy Statement 2018 (Policy Statement) which came into effect on 28 March 2018. 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 section 14 of the Policy Statement, there is a presumption in favour of making the same allocation of capacity to the carrier seeking the renewal. However, if the Commission is considering whether the capacity allocation is no longer of benefit to the public, the Commission may have regard to the following matters:

- (a) the carrier seeking renewal 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 the capacity would be of greater benefit to the public.

3.4 Under the reasonable capability criterion in section 8 of the Policy Statement, the Commission is to assess the extent to which all Australian carriers that are, or would be, permitted to use the capacity are reasonably capable of (a) obtaining any licences, permits or other approvals required to operate on and service the route to which the determination relate; and (b) using the capacity allocated under the determination. The Commission notes that Qantas and its wholly-owned subsidiary, Jetstar, are established international carriers and are reasonably capable of obtaining the necessary approvals to use the capacity

to operate on the route and of using the capacity to be allocated.

3.5 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. The Commission, having considered the foregoing circumstances, did not consider it necessary to assess the application against the additional criteria in section 9 of the Policy Statement.

3.6 For the above reasons, the Commission is satisfied that renewing the capacity allocation would be of benefit to the public.

3.7 Subsection 15(1) of the Act allows a determination to include such terms and conditions as the Commission thinks fit. Subsection 19(3) of the Act provides that, in including terms and conditions in the fresh determination, the Commission may make such changes to the terms and conditions included in the original determination sought to be renewed, including adding or deleting terms and conditions, where warranted by changes in circumstances since the original determination was made. The wording of the fresh determination below reflects the view of the Commission that determinations which renew original determinations should contain updated terms and conditions consistent with the legislative requirements and current air services arrangements.

3.8 Nothing in this decision should be taken as indicating either approval or disapproval by the Australian Competition and Consumer Commission (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 [2014] IASC 110 allocating capacity on the Hong Kong route to Qantas ([2019] IASC 114)

4.1 Pursuant to section 8 of the Act, the Commission allocates to Qantas one all-cargo frequency per week on the Hong Kong route, in accordance with the terms of the Australia – Hong Kong air services arrangements.

4.2 The determination is valid for five years from 14 July 2020.

4.3 The determination is subject to the following conditions:

(a) Qantas is required to fully utilise the capacity by no later than 31 October 2020 or such other date as may be 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) 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;
- (d) Changes in relation to the ownership and control of Qantas and/or its wholly-owned subsidiary are permitted except to the extent that any change:
- results in the designation of the airline as an Australian carrier under the Australia – Hong Kong 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 its wholly-owned subsidiary or be in a position to exercise effective control of Qantas and/or its wholly-owned subsidiary, without the prior consent of the Commission.

Dated: 16 August 2019



IAN DOUGLAS
Chairperson



JAN HARRIS
Commissioner



KAREN GOSLING
Commissioner