



Australian Government

International Air Services Commission

RENEWAL DETERMINATION

Determination: [2021] IASC 105
Renewal of: [2017] IASC 103
The Route: Vietnam
The Applicant: Qantas Airways Limited (Qantas)
(Qantas) (ABN 16 009 661 901)
Public Register File: IASC/APP/202114

The Commission's delegate makes a fresh determination allocating to Qantas seven frequencies of capacity per week in each direction on the Vietnam route. The capacity may be used by either Qantas or its wholly-owned subsidiary, Jetstar Airways Pty Limited, subject to certain conditions. The determination is valid for five years from 21 March 2022.

1 The application for renewal

1.1 On 21 March 2017, the International Air Services Commission (the Commission) issued Determination [2017] IASC 103 (the Determination) allocating, in favour of Qantas, seven frequencies per week in each direction on the Vietnam route. The original determination sets out certain conditions, including the following conditions, that:

- the capacity may be utilised by Qantas or another Australian carrier which is a wholly-owned subsidiary of Qantas;
- Qantas is not permitted to utilise the capacity to provide services jointly with another Australian 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 of the Qantas Group and by any wholly owned subsidiary of the Qantas Group to provide joint services with Qantas.

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 original determination. The original determination is due to expire on 20 March 2022. In view of this, the Commission sent,

on 11 May 2021 a letter to Qantas inviting it to apply for renewal if it wished to renew the determination.

1.3 On 18 June 2021, Qantas applied to the Commission for a renewal of the determination for a further five-year period from 21 March 2022, and also requested the retention of all existing conditions.

1.4 As required by sections 12 and 17 of the Act, the Commission published, on 18 June 2021 a notice on its website and subsequently sent a notification by email to stakeholders inviting other applications. No other applications were received.

1.5 All non-confidential material supplied by the applicant is available on the Commission's website (www.iasc.gov.au).

2 Air services arrangements

2.1 Under the Australia-Vietnam air services arrangements, Australian designated carriers may operate 42 frequencies each way per week with any aircraft type to and from Sydney, Melbourne, Brisbane and Perth. In addition, seven frequencies per week may be operated between points in Vietnam and Sydney, Melbourne, Brisbane and Perth, provided that such services operate via or beyond to a point in Australia that is not Sydney, Melbourne, Brisbane and Perth. There is unrestricted capacity, frequency and aircraft type that may be operated by Australian designated carriers to and from all points in Australia other than Sydney, Melbourne, Brisbane and Perth.

2.2 Out of the 42 frequencies available under the air services arrangements, seven frequencies per week have been allocated in 2017 to Qantas, which the airline is now seeking to renew.

2.3 Under the Australia-Vietnam air services arrangements, Australian designated carriers may also enter into code sharing arrangements, as the marketing and/or operating airline, with another Australian airline(s), with a Vietnamese airline(s) or with airline(s) of a third country.

3 Delegate's consideration

3.1 In accordance with section 27AB of the Act and regulation 10 of the International Air Services Commission Regulations 2018, the delegate of the Commission may consider Qantas' application. (For the purposes of this determination, all references to the Commission include the delegate of the Commission.)

3.2 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. Subsection 8(2) provides in part that 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.

3.3 Pursuant to 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.

3.4 Section 14 of the Policy Statement applies where the Commission is proposing to make a fresh determination under section 8 of the Act, and is considering whether the allocation of capacity in the original determination is no longer of benefit to the public for the purpose of section 8(2)(a)(i) of the Act. Section 14(2) of the Policy Statement provides that, without limiting the matters to which the Commission may have regard, an allocation is generally no longer of benefit to the public if:

- the carrier has failed to service the route effectively (s 14(2)(a)); and
- there are other applications for some or all of the capacity (s 14(2)(b)); 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 (s 14(2)(c)).

3.5 The Commission's delegate notes that, under section 14(2) of the Policy Statement, an allocation will generally no longer be of benefit to the public where all of the above conditions are satisfied. There are no other applications for some or all of the capacity to which the determination in question relates, and therefore the condition in section 14(2)(b) of the Policy Statement is not satisfied. The Commission's delegate therefore finds that the proposed allocation does not fall within the class of allocations that are generally no longer of benefit to the public contemplated by section 14(2) of the Policy Statement.

3.6 However, section 14(2) of the Policy Statement operates 'without limiting the matters to which the Commission may have regard'. In view of the circumstances pertaining to the COVID-19 pandemic, the Commission's delegate has proceeded to consider whether the allocation is no longer of benefit to the public in all the circumstances.

3.7 On 11 March 2020, the World Health Organisation declared the outbreak of COVID-19 (coronavirus) a pandemic. In response, the Australian Government introduced a range of health, financial and other measures to minimise the number of people becoming infected or sick with COVID-19.

3.8 In this context, on 24 March 2020 the Prime Minister announced that the Government was introducing a 'do not travel' ban on Australians travelling overseas under the Biosecurity Act 2015. This ban is intended to limit travellers returning to Australia with coronavirus and to reduce the risks of spreading the coronavirus to other countries. The Prime Minister's media statement indicated that the prohibition was

aligned with the Government’s decision to raise the Smartraveller Travel Advice to Level 4 – “Do not go overseas. A travel ban is in place.” At this time, the ban on overseas travel remains in place in Australia.

3.9 With the imposition of travel restrictions in March 2020, the Qantas Group suspended the scheduled international flights of both Qantas and Jetstar. Qantas has announced on its website that the ‘The Federal Government has revised its anticipated timeline for the completion of Australia's vaccine rollout to end-2021 and its timeline for significantly reopening our international borders to mid-2022. In light of these two dates, we’ve adjusted our planned international flights from end-October to late December 2021.’

3.10 In assessing the current Qantas application for the renewal of its capacity allocation of seven frequencies per week of passenger capacity on the Vietnam route, the Commission’s delegate considered whether Qantas has failed to service the route effectively. Until travel restrictions linked to the COVID-19 pandemic were imposed by the Australian Government in March 2020, the Qantas Group operated the following services between Australia and Vietnam:

Carriers	Frequencies/city-pairs/aircraft used
Jetstar Airways	3 services per week/ Melbourne-Ho Chi Minh/B787 3 services per week/ Sydney-Ho Chi Minh/B787

3.11 Prior to March 2020, there was no information to suggest that the Qantas Group has failed to service the Australia-Vietnam route effectively.

3.12 The Commission’s delegate considers that the current temporary suspension of Qantas flights between Australia and Vietnam is in response to the Australian Government COVID-19 restrictions. Moreover, the Commission’s delegate considers that it is highly likely that there will be an ongoing impact on international air services for some time, but that once the Government-imposed travel restrictions are lifted, it is likely that Qantas will be able to resume operating regular flights between Australia and Vietnam. For these reasons, the Commission’s delegate finds that the temporary suspension of Qantas’ services in these circumstances does not mean that it has failed to service the route effectively.

3.13 The Commission’s delegate has also considered the ‘reasonable capability criterion’ in section 8 of the Policy Statement, i.e. 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.

3.14 The Commission’s delegate notes that Qantas and its wholly-owned subsidiary, Jetstar, are established carriers which, under normal circumstances, operate 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 Australia-Vietnam route.

3.15 There is no other information before the Commission that it considers to be relevant or material to its assessment of Qantas’ application. Based on its findings above, the Commission’s delegate is not satisfied that the allocation of capacity in the original determination is no longer of benefit to the public for the purposes of section 8(2)(a)(i) of the Act. Therefore, the Commission’s delegate is required to make the same allocation of capacity as the original determination (see section 8(2)(a) of the Act).

3.16 The Commission will continue to monitor the utilisation of capacity by the Qantas Group on this route.

3.17 Qantas also requested to retain all existing conditions. Under section 19 of the Act, the Commission “must include the same terms and conditions as the original determination to which it relates” (s 19(1)(c)), but “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” (s 19(3)). The Commission’s delegate has decided to permit the use of the capacity for code sharing with the airlines listed in Item 4 below subject to conditions as stated.

3.18 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 allocating capacity on the Vietnam route to Qantas ([2021] IASC 105)

4.1 In accordance with section 8 of the Act, the Commission’s delegate makes a determination in favour of Qantas, allocating seven frequencies of capacity per week in each direction on the Vietnam route in accordance with the Australia - Vietnam air services arrangements, subject to the conditions below.

4.2 The determination is valid for five years from 21 March 2022.

4.3 The determination is subject to the following conditions:

- (a) Qantas is required to fully utilise the capacity from no later than 30 September 2022 or such other date approved by the Commission;
- (b) the capacity may be utilised by:
 - Qantas; or

- Jetstar Airways Pty Ltd, 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) neither Qantas nor its wholly-subsiidiary that is permitted to utilise the capacity is authorised to provide code share or joint services with any other carrier or any other person unless approved by the Commission;
- (d) the capacity may be used by Qantas to provide joint services with any wholly-owned subsidiary of the Qantas Group and by any wholly owned subsidiary of the Qantas Group to provide joint services with Qantas;
- (e) to the extent that the capacity is used to provide joint services on the route, Qantas and any wholly-owned subsidiary of Qantas must take all reasonable steps to ensure that passengers are informed of the carrier actually operating the flight at the time of the booking. Nothing in this determination exempts Qantas and any wholly owned subsidiary from complying with the Australian Consumer Law; and
- (f) 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 – Vietnam 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: 22 July 2021



Marlene Tucker
Executive Director