



Australian Government

International Air Services Commission

RENEWAL DETERMINATION

Determination:	[2021] IASC 107
Renewal of:	[2017] IASC 112
The Route:	Indonesia
The Applicant:	Qantas Airways Limited (Qantas) (Qantas) (ABN 16 009 661 901)
Public Register File:	IASC/APP/202116

The Commission's delegate makes a fresh determination allocating to Qantas 100 seats per week in each direction of passenger capacity on the Indonesia route. The capacity may be used by either Qantas or Jetstar Airways Pty Limited, subject to certain conditions. The determination is valid for five years from 26 June 2022.

1 The application for renewal

1.1 On 26 June 2017, the International Air Services Commission (the Commission) issued Determination [2017] IASC 112 (the Determination) allocating, in favour of Qantas, 100 seats per week in each direction of passenger capacity on the Australia-Indonesia route. The original Determination sets out certain conditions, including the following, that:

- the capacity is valid for a period of five years from 26 June 2017;
- the capacity may be utilised by Qantas or another Australian carrier which is a wholly-owned subsidiary of Qantas;
- 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; and
- the capacity may be used by Jetstar Airways Pty Limited (Jetstar) to provide services jointly with Emirates.

1.2 On 21 January 2020, the Determination was varied by Decision [2020] IASC 205 to permit the use of capacity for code sharing between Jetstar and KLM Royal Dutch Airlines (KLM).

1.3 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 Determination is due to expire on 25 June 2022. In view of this, the Commission sent, on 1 June 2021, a letter to Qantas inviting it to apply for renewal if it wished to renew the Determination.

1.4 On 18 June 2021, Qantas applied to the Commission for a renewal of the Determination and also requested for the retention of all existing conditions.

1.5 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/submissions were received.

1.6 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-Indonesia air services arrangements, Australian designated carriers may operate up to 25,000 seats per week of passenger capacity to and from Sydney, Melbourne (including Avalon), Brisbane and Perth. Most of these capacity entitlements have been allocated to either the Qantas Group or Virgin Australia in various separate determinations. Only 172 seats per week in each direction to and from any of the four major cities (Sydney, Melbourne, Brisbane and Perth) are currently available for allocation.

2.2 There are additional 2,500 seats per week in each direction of passenger capacity to Sydney, Melbourne, Brisbane and Perth available for allocation provided that such services operate via or beyond a point in Australia other than the four major cities. To and from all other points in Australia other than Sydney, Melbourne, Brisbane and Perth, there is unrestricted capacity.

2.3 Under the Australia-Indonesia air services arrangements, Australian designated carriers may enter into code sharing, blocked space or other cooperative marketing arrangements, as the marketing and/or operating airline, with another Australian airline(s), with a Indonesian airline(s) or with airline(s) of a third country. There are, however, a number of conditions which apply to cooperative marketing operations.

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 100 seats per week in each direction of passenger capacity on the Indonesia 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 Indonesia:

Carriers	Frequencies/city-pairs/aircraft used
Jetstar Airways	9-14 services per week/Adelaide-Denpasar/A320 6-7 services per week/Brisbane-Denpasar/B787 4 services per week/Cairns-Denpasar/A320 4-7 services per week/Darwin-Denpasar/A320 14-18 services per week/Melbourne-Denpasar/A320 12-14 services per week/Perth-Denpasar/A320 6-7 services per week/Perth-Denpasar-Singapore/A320 6-7 services per week/Sydney-Denpasar/B787
Qantas	6-7 services per week/Melbourne-Denpasar/B737-800 5-7 services per week/Sydney-Jakarta/A330-300 6-7 services per week/Sydney-Denpasar/A330-300

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

3.12 The Commission considers that the current temporary suspension of Qantas/ Jetstar flights between Australia and Indonesia is in response to the Australian Government COVID-19 restrictions. Moreover, the Commission 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/Jetstar will be able to resume operating regular flights between Australia and Indonesia. For these reasons, the Commission's delegate finds that the temporary suspension of the Qantas Group's 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-Indonesia route.

3.15 There is no other information before the Commission's delegate 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 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 Indonesia route to Qantas ([2021] IASC 107)

4.1 In accordance with section 8 of the Act, the Commission's delegate makes a determination in favour of Qantas, allocating 100 seats of capacity per week in each direction on the Indonesia route in accordance with the Australia - Indonesia air services arrangements.

4.2 The determination is valid for five years from 26 June 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-owned subsidiary is permitted to use the capacity to provide services jointly with another Australian carrier or any other person unless approved by the Commission;
- (d) subject to the preceding condition, 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) additionally, the capacity may be used by Jetstar to provide services jointly with Emirates in accordance with the code share agreement between Jetstar and Emirates made on 11 February 2014;
- (f) capacity may be used by Jetstar to provide code share services with KLM in accordance with the code share agreement between Jetstar and KLM made on 17 December 2019;
- (g) Qantas must apply to the Commission for approval of the use of the capacity if there are variations to the code share arrangements 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 (or Jetstar)

proposes to add third country routes on which the airlines will code share where Australian capacity will be used for services on that route;

- (h) 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 of the carrier actually operating the flight at the time of the booking. Nothing in this determination exempts the airlines from complying with the Australian Consumer Law; and
- (i) 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 — Indonesia 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