



Australian Government

International Air Services Commission

RENEWAL DETERMINATION

Determination:	[2021] IASC 109
Renewal of:	[2016] IASC 110
The Route:	Papua New Guinea (PNG)
The Applicant:	Qantas Airways Limited (Qantas) (Qantas) (ABN 16 009 661 901)
Public Register File:	IASC/APP/202118

The Commission's delegate makes a fresh determination allocating to Qantas 1,000 seats per week in each direction on the Papua New Guinea route, subject to certain conditions. The determination is valid for five years from 1 July 2022.

1 The application for renewal

1.1 On 12 August 2016, the International Air Services Commission (the Commission) issued Determination [2016] IASC 110 (the Determination) allocating 1,000 seats per week in each direction on the Papua New Guinea (PNG) route in favour of Qantas. The Determination was valid for five years and permitted the capacity to be utilised by Qantas or another Australian carrier which is a wholly-owned subsidiary of Qantas and for the provision of joint services by the Qantas Group and any of its wholly-owned subsidiary. The Determination was subsequently amended on 16 November 2016 under Decision [2016] IASC 222 permitting the capacity to be used for code share by Qantas and Air Niugini on the Brisbane-Port Moresby and Sydney-Port Moresby sectors. The permission to code share was valid only until 30 June 2018 and was not extended.

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 Determination is due to expire on 30 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.

1.3 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.

1.4 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 submissions about the application. No submissions 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-PNG air services arrangements, Australian designated airlines may operate up to 3,520 seats per week in each direction between points in Australia and PNG. Qantas has been allocated a total of 1,888 seats of capacity (and it is now seeking to renew 1000 seats out of its total capacity allocation). There remains 1,632 seats of passenger capacity available for allocation.

2.2 When operating or holding out agreed services, any Australian designated airline(s) is entitled to perform any of their agreed services through code sharing, blocked space and/or any other cooperative service arrangements with any designated airlines of either Australia or PNG, over the whole of any part of the specified routes in the Route Schedule.

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 1,000 seats per week in each direction of passenger capacity on the PNG 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 PNG:

Carriers	Frequencies/city-pairs/aircraft used
Qantas	6-7 services per week/ Brisbane-Port Moresby/737-800 6-7 services per week/ Cairns-Port Moresby/Dash Q400

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

3.12 The Commission considers that the current temporary suspension of Qantas flights between Australia and PNG 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 will be able to resume operating regular flights between Australia and PNG. 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-PNG 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 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 PNG route to Qantas ([2021] IASC 109)

4.1 In accordance with section 8 of the Act, the Commission’s delegate makes a determination in favour of Qantas, allocating 1,000 seats per week in each direction on the PNG route in accordance with the Australia - PNG air services arrangements.

4.2 The determination is valid for five years from 1 July 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-subsiary that is permitted to utilise the capacity is authorised to utilise the capacity to provide services jointly with another Australian 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, 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
- (f) changes in relation to the ownership and control of Qantas and/or Qantas' 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 — PNG 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 Qantas' wholly-owned subsidiary or be in a position to exercise effective control of Qantas and/or Qantas' wholly-owned subsidiary, without the prior consent of the Commission.

Dated: 23 July 2021



Marlene Tucker
Executive Director