



## Australian Government

### International Air Services Commission

#### DETERMINATION

<b>Determination:</b>	<b>[2009] IASC 114</b>
<b>The Route:</b>	<b>Indonesia</b>
<b>The Applicant:</b>	<b>Qantas Airways Limited (Qantas)</b> <b>(ACN 009 661 901)</b>
<b>Public Register:</b>	<b>IASC/APP/200921</b>

#### 1 The application

1.1 On 15 July 2009, Qantas applied to the Commission for an allocation of 125 seats per week of capacity on the Indonesia route. The capacity is intended to be used by Jetstar to upgrade from A320 to A321 aircraft on selected services. The extra capacity would be fully utilised by 31 August 2009. In line with earlier authorisations, Qantas sought the flexibility for the capacity to be used by Qantas or a wholly-owned subsidiary, and for the capacity to be used in joint services between such carriers. Subsequently, on 11 August 2009, Qantas amended its application to seek 48 seats per week, following the concurrent application for 720 seats per week by Pacific Blue Australia (see Determination [2009] IASC 113). The Qantas application was submitted on the basis that Qantas still required a total of 125 seats per week, and that the remaining 77 seats per week were available as excess capacity under the air services arrangements and would be approved by the Department of Infrastructure, Transport, Regional Development and Local Government.

1.2 The Commission published a notice on 16 July 2009 inviting other applications for the original amount of capacity sought by Qantas. No applications were received. As the amended application was for a smaller number of seats than originally sought, there was no need for further advertising of the application.

1.3 All material supplied by the applicant is filed on the Register of Public Documents.

#### 2 Provisions of relevant air services arrangements

2.1 The Australia – Indonesia air services arrangements permit the multiple designation of Australian airlines. The Register of Available Capacity shows that there are 768 seats weekly available for allocation between Sydney, Melbourne, Brisbane and Perth and authorised points in Indonesia. However, on the same date as this determination was made, the Commission issued a determination allocating 720 seats of capacity per week to Pacific Blue Australia on the same route. This means that there are only 48 seats available for allocation. However, under the air services arrangements between Australia and Indonesia, in the event that an Australian airline or airlines wish to operate capacity which would result in the total capacity available being exceeded by an amount of 150 seats or less, the aeronautical authorities will approve such minor variation.

### **3 Commission's consideration**

3.1 Under paragraph 6.2 of the Minister's policy statement (No. 5), of 19 May 2004, the Commission is required only to apply the criteria in paragraph 4 of the policy statement in this case. Under paragraph 4, the use of Australian entitlements by a carrier that is reasonably capable of obtaining the necessary approvals (4(b)(i)) and of implementing its proposals (4(b)(ii)) is of benefit to the public.

3.2 The initial application from Qantas was received just after the Commission received an application from Pacific Blue Australia for 720 seats on the Indonesia route and before that application was advertised. The combined requests totalled 845 seats with 768 seats available for allocation. In light of the Pacific Blue Australia application, Qantas amended its application to seek the 48 seats per week that would remain after an allocation of 720 seats per week to Pacific Blue Australia. The Commission notes that the bilateral arrangements include a flexibility provision enabling aeronautical authorities to approve up to another 150 seats per week in excess of agreed capacity entitlements. These additional seats provide sufficient capacity for Qantas to implement its plans. The Commission notes that neither airline subsequently sought to lodge a competing application for any capacity sought by the other.

3.3 The Commission will make the allocation of capacity sought by Qantas. The Commission strongly supports the use of the extra-bilateral capacity by Qantas in order for it to implement its proposal. The Commission anticipates that the aeronautical authorities will authorise Qantas to draw from the additional 150 seats per week of capacity available in line with the flexibility provisions of the air services arrangements. This would give Qantas sufficient capacity to meet its requirements for an additional 125 seats per week. Arrangements of this nature are consistent with the provisions of the *International Air Services Commission Act 1992*.

3.4 Qantas is an established international carrier which is clearly capable of obtaining the necessary approvals and of implementing the proposed operations. This means that there is public benefit arising from the use of the entitlements. The Commission will authorise the use of capacity by wholly-owned subsidiaries and use of the capacity in joint services as requested.

### **4 Determination allocating capacity on the Indonesia route to Qantas ([2009] IASC 114)**

4.1 The Commission, makes a determination in favour of Qantas, allocating 48 seats per week in each direction on the Indonesia route in accordance with the Australia - Indonesia air services arrangements.

4.2 The determination is for five years from the date of the determination.

4.3 The determination is subject to the following conditions, which apply to Qantas or another Australian carrier which is a wholly-owned subsidiary of Qantas:

- Qantas is required to fully utilise the capacity from no later than 31 August 2009, or from such other date approved by the Commission;
- only Qantas or another Australian carrier which is a wholly-owned subsidiary of Qantas is permitted to utilise the capacity;

- Qantas is not permitted to utilise the capacity to provide services jointly with another Australian carrier or any other person without the approval of the Commission;
- the capacity may be used by any wholly-owned subsidiary of Qantas to provide joint services with Qantas;
- 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;
- changes in relation to the ownership and control of Qantas 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 or be in a position to exercise effective control of Qantas, without the prior consent of the Commission, and
- changes in relation to the management, status or location of operations and Head Office of Qantas are permitted except to the extent that any change would result in the airline ceasing to be an airline designated by the Australian Government for the purposes of the Australia – Indonesia air services arrangements.

Dated: 11 August 2009

John Martin  
Chairman

Philippa Stone  
Member

Ian Smith  
Member