



Australian Government

International Air Services Commission

DETERMINATION

Determination: [2009] IASC 115
The Route: Indonesia
The Applicant: Qantas Airways Ltd
(ACN 097 892 389) (Qantas)
Public Register File: IASC/APP/200924

1 The application

1.1 On 24 July 2009 Qantas applied for an allocation of unlimited capacity on the Indonesia route to permit the airline to operate between points in Australia other than Sydney, Melbourne, Brisbane and Perth, and authorised points in Indonesia. Qantas advised that the capacity would be utilised by 31 December 2009. Authority was also sought for the capacity to be used by Qantas or its wholly-owned subsidiaries and for the carriers to use the capacity in joint services.

1.2 The Commission published a notice on 27 July 2009 inviting other applications for an allocation of the capacity. No other applications were received.

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 air services arrangements between Australia and Indonesia permit the designation of multiple Australian airlines. According to the Register of Available Capacity, there is unrestricted capacity for designated Australian carriers to operate scheduled passenger services between authorised points in Indonesia and points in Australia except Sydney, Melbourne, Brisbane and Perth.

3 Delegate's assessment

3.1 In accordance with section 27AB of the *International Air Services Commission Act 1992* (the Act) and regulation 3A of the *International Air Services Commission Regulations 1992*, the delegate of the Commission considers the Qantas application.

3.2 Under the Minister's Policy Statement (No.5) of 19 May 2004 (the Policy Statement), where capacity is not limited under a bilateral arrangement, the criteria in

paragraph 4 of the Policy Statement apply. Under paragraph 4, the use of Australian entitlements by a carrier that is reasonably capable of obtaining the necessary approvals and of implementing its proposals is of benefit to the public. Qantas is an established international carrier which is clearly capable of obtaining the necessary approvals and of implementing its proposals. This means that there is public benefit arising from the use of the entitlements.

3.3 The delegate, on behalf of the Commission, will allocate to Qantas the capacity sought, with conditions as requested by the airline.

4 Determination allocating capacity on the Indonesia route to Qantas ([2009] IASC 115)

4.1 The delegate, on behalf of the Commission, makes a determination in favour of Qantas, allocating unrestricted passenger capacity in each direction on the Indonesia route between points in Australia, except Sydney, Melbourne, Brisbane and Perth, and authorised points in Indonesia in accordance with the terms of 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:

- Qantas is required to utilise the capacity from no later than 31 December 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: 5 August 2009

Michael Bird
Executive Director
Delegate of the IASC Commissioners