



Australian Government

International Air Services Commission

DETERMINATION

Determination:	[2009] IASC 121
The Route:	Vietnam
The Applicant:	Qantas Airways Limited (Qantas) (ACN 009 661 901)
Public Register:	IASC/APP/200932

1 The application

1.1 On 8 October 2009, Qantas applied for an allocation of unlimited capacity between points in Australia, other than Sydney, Melbourne, Brisbane and Perth, and authorised points in Vietnam, to enable Jetstar, a wholly-owned subsidiary of Qantas, to operate additional services on the Vietnam route. Jetstar plans to operate two additional weekly services between Darwin and Ho Chi Minh City in periods of peak demand throughout the year. The services are proposed to be operated with one-class A330 aircraft. Qantas requested that the capacity be able to be utilised by Qantas or its wholly-owned subsidiaries, including in joint services between these carriers.

1.2 The Commission published a notice on 8 October 2009, inviting other applications for the capacity sought by Qantas. No 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 Register of Available Capacity shows that there is unrestricted capacity, frequency and aircraft type available for allocation to and from all points in Australia other than Sydney, Melbourne, Brisbane and Perth.

3 Commission's consideration

3.1 The *International Air Services Commission Act 1992* (the Act) allows for allocated capacity to be used by a wholly owned subsidiary of another Australian carrier. Section 15(2)(ea) of the Act states that determinations may include a condition that, to the extent that any of the capacity is allocated to a particular Australian carrier, it may be used in whole or in part by any one or more of the following:

- (i) the carrier;
- (ii) a wholly-owned subsidiary of the carrier; and,

(iii) if the carrier is a wholly-owned subsidiary of another Australian carrier - that other carrier.

3.2 Qantas is the only applicant for capacity. 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. Under paragraph 4, the use of entitlements by an Australian carrier that is reasonably capable of obtaining the necessary approvals and of implementing its proposals is of benefit to the public. The Commission has previously allocated capacity to Qantas to be used by Jetstar, a wholly-owned subsidiary of Qantas, on a number of routes, including the Vietnam route. Jetstar is an established international carrier. This means that there is public benefit arising from Jetstar using the entitlements on the Vietnam route.

3.3 The Commission will allocate the capacity sought by Qantas. Section 15(2A) states that if a determination includes a condition of a kind mentioned in paragraph 15(2)(ea), the determination may include conditions that are applicable to all, or some only, of the persons who are permitted to use the capacity concerned. The conditions of the determination will apply to both Qantas or another Australian carrier which is a wholly-owned subsidiary of Qantas.

3.4 Under Section 15(2)(e) of the Act, the Commission must include a condition in determinations stating the extent to which the carrier may use that capacity in joint services with another carrier. Qantas has sought authority to code share on Jetstar-operated services. The Commission has previously authorised use of capacity in joint services between Qantas and its wholly-owned subsidiaries on the Vietnam route, to enable Qantas to code share with Jetstar, and will do so in this case.

3.5 Qantas has sought a ten year determination. However, under the Minister's policy statement, both routes and capacity must be unrestricted in order for the Commission to make a determination for a ten year period. In this case, although capacity is unrestricted for the part of the Vietnam route, routes are not unrestricted. Accordingly, the determination will be for a period of five years.

4 Determination allocating capacity on the Vietnam route to Qantas ([2009] IASC 121)

4.1 The Commission makes a determination in favour of Qantas, allocating unlimited capacity, frequency and aircraft type in each direction on the Vietnam route between points in Australia other than Sydney, Melbourne, Brisbane and Perth, and authorised points in Vietnam, under the Australia – Vietnam 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 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 booking;
- changes in relation to the ownership and control of Qantas are permitted except to the extent that any change:
 - 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 – Vietnam air services arrangements.

Dated: 20 October 2009

John Martin
Chairman

Philippa Stone
Member

Ian Smith
Member