



Australian Government

International Air Services Commission

DETERMINATION

Determination: [2013] IASC 123
The Route: Papua New Guinea
The Applicant: Qantas Airways Ltd
(ACN 009 661 901) (Qantas)
Public Register File: IASC/APP/201316

The Commission makes a determination allocating 35 tonnes of freight capacity to Qantas on the Papua New Guinea route.

1 The application

1.1 On 5 April 2013, Qantas applied for 27.5 tonnes of freight capacity on the Papua New Guinea (PNG) route. Qantas subsequently amended its application, on 22 April 2013, to increase the amount of capacity to 35 tonnes per week in each direction. Qantas sought the capacity on the following basis:

- It proposes to operate B737-300 freighter aircraft from the fleet of its wholly-owned subsidiary company, Express Freighters Australia Pty Ltd (EFA).
- The allocation is for five years from the date of issue of the determination.
- The capacity will be fully utilised by 30 April 2014.
- 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.

1.2 In accordance with section 12 of the *International Air Services Commission Act 1992* (the Act), the Commission published a notice on 5 April 2013, inviting other applications. The Commission likewise published, on 22 April 2013 Qantas' amendment to its application.

1.3 By way of background, Pionair Australia Pty Ltd (trading as Skyforce Aviation Pty Ltd) applied to the Commission on 25 March 2013 for an allocation of 18 tonnes of freight capacity on the PNG route. On 28 March 2013, Alltrans Management Pty Ltd (trading as Chapman Freeborn) applied for freight capacity of 38 tonnes on the route and on 18 April 2013, it withdrew its application. The application by Pionair is being assessed separately.

1.4 All material supplied by Qantas has been published on the Commission's website (www.iasc.gov.au).

2 Relevant air services arrangements

The Australia – PNG air services arrangements allow the designation of multiple airlines. According to the Register of Available Capacity, there are 77.5 tonnes of freight capacity per week in each direction available for allocation. When operating or holding out agreed services on the specified routes, any Australian designated airline 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 or any part of the specified routes in the Route Schedule.

3 Commission's consideration

3.1 Currently, Pacific Air Express (PAE) is the only Australian airline holding freight capacity on the PNG route with a total allocation of 52.5 tonnes of capacity per week in each direction.

3.2 Qantas previously held 34 tonnes of freight capacity on this route which was issued under Determination [2007] IASC 123. This was reduced to 17.5 tonnes by Decision [2009] IASC 204 and was revoked altogether by Decision [2009] IASC 220.

3.3 In considering an application for capacity, section 7 of the Act requires the Commission:

- not to allocate available capacity unless the Commission is satisfied that the allocation would be of benefit to the public; and
- not to allocate available capacity contrary to any restrictions on capacity contained in a bilateral arrangement.

3.4 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.

3.5 Under paragraph 6.2 of the Minister's Policy Statement (No. 5) of 19 May 2004 (the Policy Statement), in circumstances where there is more than one applicant for allocation of capacity on a route but the amount of available capacity is equal to or exceeds the total amount of capacity applied for, only the criteria in paragraph 4 are applicable. Paragraph 4 provides that the use of entitlements by Australian carriers under a bilateral arrangement is of benefit to the public unless such carriers are not reasonably capable of obtaining the necessary approvals to operate on the route and are not reasonably capable of implementing their proposals.

3.6 The Commission notes that the total amount of available freight capacity on the route is 77.5 tonnes and that Qantas is seeking the allocation of 35 tonnes while Pionair has applied for 18 tonnes. Because the total amount of capacity applied for by the two applicants is less than the amount of available capacity, the Commission has assessed the application under the paragraph 4 criteria.

3.7 The Commission considers that Qantas satisfies the paragraph 4 criteria. Qantas is an established international carrier and is therefore reasonably capable of obtaining the necessary approvals to operate on the route and of implementing its application.

3.8 Further, Qantas has requested the addition of conditions to permit the capacity to be used by a wholly-owned subsidiary of Qantas and for Qantas to be able to provide services jointly with any of its wholly-owned subsidiaries.

3.9 Under paragraph 3.6 of the Policy Statement, where capacity that can be used for code share operations is available under air services arrangements, including where foreign airlines have rights to code share on services operated by Australian carriers, the Commission would generally be expected to authorise applications for use of capacity to code share. However, if the Commission has serious concerns that a code share application (or other joint service proposal) may not be of benefit to the public, it may subject the application to more detailed assessment using the additional criteria set out in paragraph 5 (whether the application is contested or not). Before doing so, the Commission will consult with the Australian Competition and Consumer Commission (the ACCC).

3.10 The Commission has no serious concerns about the proposed provision of services jointly with a Qantas' wholly-owned subsidiary. The re-entry of Qantas through its wholly owned subsidiary, EFA, will introduce additional competition on the route. The Commission notes that there is currently only one Australian carrier providing all-cargo services on the PNG route.

3.11 The Commission considers that including this condition is consistent with the object of the Act and the Policy Statement, both of which make it clear that the Commission should have regard to the need for Australian airlines to be able to compete effectively with one another and with foreign airlines.

3.12 Subsection 15(1) of the Act empowers the Commission to include such terms and conditions as it thinks fit. Paragraph 15(2)(e) requires the inclusion of a condition stating the extent to which the carrier may use that capacity in joint services with another carrier.

3.13 Nothing in this determination should be taken as indicating either approval or disapproval by the ACCC. This decision is made without prejudicing, in any way, possible future consideration of code share operations by the ACCC.

4 Determination ([2013] IASC 123)

4.1 The Commission makes, in accordance with section 7 of the Act, a determination in favour of Qantas, allocating 35 tonnes of freight capacity per week in each direction between Australia and PNG under the Australia – PNG 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 fully utilise the capacity from no later than 30 April 2014 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;
- neither Qantas nor another Australian carrier which is a wholly-owned subsidiary of Qantas is 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 Qantas to provide services jointly with any wholly-owned subsidiary of Qantas;
- 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 – 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 or be in a position to exercise effective control of Qantas, without the prior consent of the Commission.

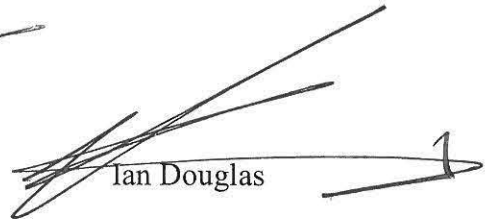
Dated: *20* May 2013



Jill Walker
Chairperson



Stephen Bartos
Member



Ian Douglas
Member