



Australian Government

International Air Services Commission

DETERMINATION

Determination: [2014] IASC 111
The Route: Chile
The Applicant: Qantas Airways Limited (Qantas)
ACN 009 661 901
Public Register: IASC/APP/201463

The Commission's delegate makes a determination allocating 364 seats per week to Qantas on the Chile route for five years.

1 The application

1.1 On 29 July 2014, Qantas applied to the Commission for an allocation of 364 seats per week on the Chile route. Qantas intends to operate an additional weekly B747 service between Sydney and Santiago during periods of peak demand. Qantas has requested the allocation for five years from the date of the determination and stated that the allocation will be fully used by 31 March 2015.

1.2 As required by section 12 of the *International Air Services Commission Act 1992* (the Act), the Commission published a notice on 30 July 2014 inviting other applications for capacity. No applications were received.

1.3 All non-confidential material supplied by Qantas is available on the Commission's website (www.iasc.gov.au).

2 Relevant provisions of the air services arrangements

2.1 According to the Register of Available Capacity, there are currently 881 seats each way per week available for Australian airlines for services between Australia and Chile.

3 Delegate's assessment

3.1 In accordance with section 27AB of the Act and regulation 3A of the *International Air Services Commission Regulations 1992*, the delegate of the Commission may consider the application for allocation of capacity. (For purposes of this decision, all references to the Commission include the delegate of the Commission).

3.2 In considering an application for allocating available capacity, section 7 of the Act requires that the Commission must not allocate available capacity unless the

Commission is satisfied that the allocation would be of benefit to the public. Section 7 further provides that the determination must not allocate available capacity contrary to any restrictions on capacity contained in a bilateral arrangement, or a combination of bilateral arrangements, permitting the carriage to which the capacity relates. 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 Under paragraph 6.2 of the Minister's Policy Statement (No. 5) of 19 May 2004 (the Policy Statement), in circumstances where there is only one applicant for allocation of capacity on a route, 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 applications.

3.4 The Commission notes that:

- there are no other applicants seeking capacity on the route; and
- Qantas is an established international carrier incumbent on the Chile route, and is therefore reasonably capable of obtaining the necessary approvals and of implementing its application.

3.5 Qantas has requested the determination allow the capacity to be used by Qantas to provide services jointly with LATAM Airlines Group (LATAM), as well as by Qantas or another Australian carrier which is a wholly-owned subsidiary of Qantas and for any wholly-owned subsidiary of the Qantas Group to provide joint services with Qantas. Paragraph 3.6 of the Policy Statement provides that where capacity can be used for code share operations under the relevant air services arrangements, 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 may not be of benefit to the public, it may subject to application to more detailed assessment using the additional criteria set out in paragraph 5 of the Policy Statement. Before doing so, the Commission will consult the Australian Competition and Consumer Commission.

3.6 The Commission notes that Qantas' other determinations on the Chile route already provides for code share services with LATAM and with any wholly-owned subsidiary, and does not have any serious concerns a continuation of the existing code share arrangements would not be of benefit to the public. While the Australia-Chile route has grown at an average of 7.8 per cent per year for the past five years, the market is Australia's 44th largest overall. Aerolineas Argentinas recently ended its Buenos Aires-Sydney services citing, inter alia, challenging economics on the route, and the ongoing Qantas-LATAM code share could help support the viability of the Qantas services. Chilean carriers are effectively operating at their capacity limit, and are unable to increase capacity on the route without further liberalisation of the air services arrangements to increase capacity entitlements. Absent the code share, it is extremely unlikely LATAM would be able to increase its services to Australia in the short to

medium term. In light of this, the Commission has decided to include the conditions requested by Qantas.

3.7 The proposed capacity increase by Qantas on the Chile route will increase competition and provide more travel choices for consumers. In these circumstances, the Commission is satisfied that allocating 364 seats per week of capacity on the Chile route to Qantas is of benefit to the public.

4 Determination allocating capacity to Qantas on the Chile route ([2014] IASC 111)

4.1 The Commission allocates, under section 7 of the Act, 364 seats per week to Qantas on the Chile route in accordance with the terms of the Australia-Chile 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 by no later than 31 March 2015, 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 use the capacity;
- the capacity may be used by Qantas to provide joint services with any wholly-owned subsidiary and by any wholly-owned subsidiary of the Qantas Group to provide joint services with Qantas;
- the capacity may be used by Qantas to provide joint services with LATAM in accordance with both the code share agreement between Qantas and LAN Chile dated 2 April 2003 (as amended), and the code share agreement between Qantas and LATAM provided to the Commission on 14 June 2014 as appropriate;
- Qantas must apply to the Commission for approval of any proposed variations to the code share arrangement which would change the relevant commercial aspects of the respective code share arrangements from a free sale code share arrangement to a block space, or vice versa, or if Qantas proposes to add third country routes on which the airlines will code share;
- 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, at the time of booking, of the carrier actually operating the flight. Nothing in this determination exempts Qantas from complying with the Australian Consumer Law; and
- 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-Chile 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: 14 August 2014



Marlene Tucker
Executive Director
Delegate of the IASC Commissioners