



Australian Government
International Air Services Commission

DETERMINATION

Determination: [2014] IASC 113
The Route: Canada
The Applicant: Qantas Airways Limited (Qantas)
ACN 009 661 901
Public Register: IASC/APP/201466

The Commission's delegate makes a determination allocating 1092 seats per week to Qantas on the Canada route for five years.

1 The application

1.1 On 17 September 2014, Qantas applied to the Commission for an allocation of 1092 seats per week on the Canada route. Qantas intends to operate B747 services between Sydney and Vancouver 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 17 September 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 3000 seats each way per week available for Australian airlines for services between Australia and Canada.

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, 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 either Qantas or another Australian carrier which is a wholly-owned subsidiary of Qantas, including for joint services, and for any wholly-owned subsidiary of the Qantas Group to provide joint services with Qantas. The Commission considers there are no competition issues with this, and has decided to include the conditions requested by Qantas.

3.6 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. As is normal practice, the Commission will also include a condition which requires Qantas to comply with the Australian Consumer Law.

3.7 The commencement of services by Qantas on the Canada route will increase competition and provide more travel choices for consumers. In these circumstances, the Commission is satisfied that allocating 1092 seats per week of capacity to Qantas on the Canada route is of benefit to the public.

4 Determination allocating capacity to Qantas on the Canada route ([2014] IASC 113)

4.1 The Commission's delegate allocates, under section 7 of the Act, 1092 seats per week to Qantas on the Canada route in accordance with the terms of the Australia-Canada 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;
- nothing in this determination exempts the airlines 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-Canada 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: 25 September 2014



Marlene Tucker
Executive Director
Delegate of the IASC Commissioners