



Australian Government

International Air Services Commission

DETERMINATION

Determination: [2015] IASC 109
The Route: China
The Applicant: Qantas Airways Ltd (Qantas)
ABN 16 009 661 901
Public Register File: IASC/APP/201514

The Commission makes a determination allocating to Qantas unlimited passenger capacity between points in Australia other than Sydney, Melbourne, Brisbane and Perth, and points in China in accordance with the terms of the Australia-China air services arrangements. The determination is valid for 10 years,

1 The application

1.1 On 17 August 2015, Qantas applied to the Commission for an allocation of unlimited passenger capacity between points in Australia other than Sydney, Melbourne, Brisbane and Perth, and points in China other than Beijing, Shanghai and Guangzhou. The capacity is intended to be used by Qantas' wholly-owned subsidiary, Jetstar Airways Pty Limited (Jetstar), to operate services between the Gold Coast and Wuhan from 29 September 2015. The application was made on the following basis:

- the capacity may be utilised by Qantas or another Australian carrier which is a wholly-owned subsidiary of Qantas; and
- 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.

1.2 As required by section 12 of the *International Air Services Commission Act 1992* (the Act), the Commission published a notice on 18 August 2015 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 Under the Australia-China air services arrangements, Australian designated carriers may operate passenger and cargo services using any aircraft type without limitation on capacity and frequencies in each direction to and from all points in Australia other than Sydney, Melbourne, Brisbane and Perth and all points in China.

3 Commission's assessment

3.1 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.

3.2 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.

3.3 The Commission notes that:

- there are no other applicants seeking capacity on the route; and
- Qantas and its wholly-owned subsidiary, Jetstar, are established international carriers and are therefore reasonably capable of obtaining the necessary approvals to operate on the route and of implementing their proposed services.

3.4 As capacity between points in Australia other than Sydney, Brisbane, Melbourne and Perth, and China is not limited under the Australia – China air services arrangements, and Qantas and its wholly-owned subsidiary fulfil the public benefit criteria provided under paragraph 4 of the Policy Statement, the Commission has decided to allocate the capacity as requested by Qantas.

3.5 Qantas has also requested authority for 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.

4 Determination allocating capacity on the China route to Qantas ([2015] IASC 109)

4.1 The Commission makes, under section 7 of the Act, a determination in favour of Qantas, allocating unlimited passenger capacity to and from all points in Australia, other than Sydney, Melbourne, Brisbane and Perth, and points in China under the Australia – China air services arrangements.

- 4.2 The determination is for ten years from the date of issue of this 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:
- the capacity is required to be utilised from no later than 31 December 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 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 unless approved by the Commission;
 - subject to the preceding condition, 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;
 - where the capacity is used to provide joint services on the route, the airlines are required to 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 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–China 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: 4 September 2015



JOHN KING
Presiding Commissioner



IAN DOUGLAS
Commissioner