



Australian Government
International Air Services Commission

DETERMINATION

Determination: [2015] IASC 113
The Route: Cook Islands
The Applicant: Qantas Airways Limited (Qantas)
ABN 16 009 661 901
Public Register: IASC/APP/201528

The Commission allocates 540 seats of capacity per week to Qantas on the Cook Islands route and allows the capacity to be used by a wholly owned subsidiary and for joint services between Qantas and a wholly owned subsidiary.

1 The application

1.1 On 7 October 2015, Qantas applied to the Commission for an allocation of 540 seats per week on the Cook Islands route and for the capacity to be used by its wholly owned subsidiary, Jetstar Airways Pty Ltd (Jetstar). Qantas states that Jetstar plans to operate services between Australia and the Cook Islands via New Zealand from March 2016 using A320 aircraft configured with 180 seats.

1.2 In accordance with section 12 of the *International Air Services Commission Act 1992* (the Act), the Commission published a notice on 8 October 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 According to the Register of Available Capacity, there are currently 2,100 seats of passenger capacity per week available for allocation to Australian airlines on the Cook Islands route.

3 Commission's consideration

3.1 In considering an application for allocating available capacity, section 7 of the Act states 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. Section 26

requires that 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 Australian entitlements by a carrier that is reasonably capable of obtaining the necessary approvals and of implementing its applications is of benefit to the public.

3.3 The Commission notes that:

- there are no other applicants seeking capacity on the route; and
- Qantas and Jetstar are established international carriers and are therefore reasonably capable of obtaining the necessary approvals and of implementing their application.

3.4 Accordingly, the Commission concludes that Qantas and Jetstar satisfy the criteria in paragraph 4 of the Policy Statement.

3.5 Currently, only Air New Zealand and Virgin Australia (SE Asia) Pty Ltd operate flights to and from Rarotonga. Singapore Airlines codes shares on Air New Zealand flights. The entry of Jetstar on the route would provide additional option to passengers.

4 Determination allocating capacity to Qantas on the Cook Islands route ([2015] IASC 113)

4.1 The Commission allocates under section 7 of the Act, 540 seats per week to Qantas on the Cook Islands route in accordance with the terms of the Australia-Cook Islands 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:

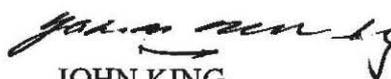
- the capacity must be fully utilised by no later than 29 October 2016, or from such other date approved by the Commission;
- the capacity may be utilised by Qantas or another Australian carrier which is a wholly-owned subsidiary of Qantas;
- neither Qantas nor another Australian carrier which is a wholly-owned 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;
- 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 the airlines from complying with the Australian Consumer Law; and
- changes in relation to the ownership and control of the airlines authorised to utilise the capacity are permitted except to the extent that any change:
 - results in the designation of the airline as an Australian carrier under the Australia-Cook Islands 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 the airline or be in a position to exercise effective control of the airline, without the prior consent of the Commission.

Dated: 22 October 2015



IAN DOUGLAS
Presiding Commissioner



JOHN KING
Commissioner