



Australian Government

International Air Services Commission

DETERMINATION

Determination: [2017] IASC 118
The Route: Italy
The Applicant: Qantas Airways Limited
(Qantas) ABN 16 009 661 901
Public Register: IASC/APP/201735

The Commission makes a determination allocating to Qantas 300 third country code share seats per week on the Italy route for code share services with Emirates. The capacity may also be used by another Australian carrier which is a wholly-owned subsidiary of Qantas. The determination is valid for five years from 31 August 2017.

1 The application

1.1 On 12 July 2017, the International Air Services Commission (the Commission) received an application from Qantas seeking an allocation of 300 third country code share seats per week on the Italy route. The requested capacity is in addition to 700 third country code share seats currently allocated to Qantas. Qantas intends to use the capacity for code share services on flights operated by Emirates on the Australia-Dubai-Italy route and has sought the capacity on the following basis, that:

- the allocation is requested for a period of five years from the date of the determination;
- the capacity will be fully utilised by 31 July 2018;
- the capacity may be utilised by Qantas or another Australian carrier which is a wholly-owned subsidiary of Qantas;
- that the capacity may be utilised to provide joint services with any wholly-owned subsidiary and by any wholly-owned subsidiary of the Qantas Group to provide joint services with Qantas¹; and
- the capacity may be used by Qantas to provide services jointly with Emirates.

1.2 In a subsequent communication on 11 August 2017, Qantas nominated Jetstar Airways Pty Ltd (Jetstar) as the wholly-owned subsidiary to be permitted to use the capacity for code share services.

¹ In a subsequent communication, Qantas withdrew its request to include a condition permitting the capacity to be utilised 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.

1.3 In accordance with section 12 of the *International Air Services Commission Act 1992* (the Act), the Commission published on 12 July 2017 the Qantas application on the Commission's website, inviting other applications on the Italy route. No other competing applications were received.

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

2 Relevant provisions of the air services arrangements

2.1 Under the Australia - Italy air services arrangements, designated airlines of Australia (Australian airlines) may operate seven frequencies per week with any aircraft type. None of this capacity is currently allocated. Australian airlines are entitled to perform their services with wet lease, code sharing, blocked space and/or other cooperative service arrangements with any airline.

2.2 Australian airlines may enter into arrangements with an airline or airlines of a third country to carry out services through code share arrangements. These code share arrangements may constitute up to 1700 seats per week in total in each direction. Qantas currently holds a total capacity of 700 third country code share seats while 600 third country code share seats have been allocated to Virgin Australia.

2.3 According to the Register of Available Capacity, there are currently 400 seats per week in each direction available for immediate allocation to Australian airlines for code share with third country airlines.

3 Commission's consideration

3.1 Subsection 12(3) of the Act allows any person to apply to the Commission for a determination allocating capacity to enable an Australian carrier to operate international air services.

3.2 Subsection 7(1) of the Act empowers the Commission to make a determination allocating available capacity. Subsection 7(2) requires, in part, that the Commission's determination must not allocate capacity unless the Commission is satisfied that the allocation would be of benefit to the public and would not be contrary to any restrictions on capacity contained in bilateral arrangements, or combination of bilateral arrangements.

3.3 Further, subsection 7(3) of the Act provides that in assessing the benefit to the public of an allocation of capacity, the Commission must apply the criteria set out in the policy statement made by the Minister pursuant to section 11 of the Act.

3.4 Pursuant to section 11 of the Act, then Minister for Transport and Regional Services, the Hon. John Anderson MP issued Policy Statement No. 5 (hereinafter referred to as the Policy Statement) dated 19 May 2004. The Policy Statement sets out the range of criteria which the Commission is required to apply in assessing the benefit to the public of allocations of capacity. It also provides other guidance to the Commission in performing its functions.

3.5 Paragraph 6.2 of the Policy Statement provides, in part, that 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.

3.6 The Commission notes that there are no other applicants seeking capacity on the route. The Commission further notes that Qantas is an established international carrier and, as such, is reasonably capable of obtaining the necessary approvals to operate on the route and of implementing its proposed code share services.

3.7 In relation to the request to permit Qantas's wholly-owned subsidiary Jetstar to use the capacity, the Commission is required to assess whether Jetstar is reasonably capable of obtaining the necessary approvals to operate on the route and of implementing its proposed services. Jetstar is an established international carrier operating its own scheduled passenger services in various destinations around the Asia-Pacific region. The Commission considers that Jetstar is reasonably capable of obtaining the necessary approvals such as getting designated as an Australian airline for purposes of the Australia-Italy air services agreement. The Commission also considers that Jetstar would be reasonably capable of implementing code share services with a third country airline. Accordingly, the Commission considers that the use of the entitlements by Qantas or its wholly-owned subsidiary would be of benefit to the public and has decided to allocate the capacity sought to Qantas and permit the capacity to be used by Qantas or its wholly-owned subsidiary.

3.8 In relation to the request to use the capacity for code sharing with Emirates, under paragraph 3.6 of the Minister's 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).

3.9 The Commission notes that Qantas and Jetstar do not operate their own services between points in Australia and Italy. The Commission considers it is unlikely for Qantas and Jetstar compete with Emirates providing services between Australia and Italy. Additionally, the Commission notes that the ACCC has granted until 31 March 2018 authorisation to the alliance between Qantas and Emirates enabling them to coordinate their passenger and freight transport operations and other related services. In making its decision, the ACCC considered that the authorised alliance would likely result in public benefits through enhanced products and service offerings by the airlines and improved operating efficiency. The ACCC also considered that the alliance would likely provide Qantas and Emirates customers increased access to a large number of existing frequencies and destinations under a single airline code, improved

connectivity and scheduling and access to each partner's frequent flyer programs.

3.10 The Commission, having considered the foregoing circumstances, did not consider it necessary to assess the application against the additional criteria in paragraph 5 of the Minister's Policy Statement and did not specifically consult the ACCC.

3.11 In view of the above, the Commission has decided to permit the use of the capacity for Qantas and its wholly-owned subsidiary to code share on services operated by Emirates. Nothing in this determination in relation to code sharing should be taken as indicating either approval or disapproval by the ACCC. This determination is made without prejudicing, in any way, possible future consideration of code share operations by the ACCC.

3.12 Section 15 of the Act provides that the Commission may include such terms and conditions as the Commission thinks fit. In light of this, the Commission decided to include certain conditions set out below.

4 Determination allocating capacity on the Italy route to Qantas ([2017] IASC 118)

4.1 The Commission allocates to Qantas, pursuant to section 7 of the Act, 300 third country code share seats per week in each direction on the Italy route in accordance with the terms of the Australia – Italy air services arrangements.

4.2 The determination is valid for five years from 31 August 2017.

4.3 The determination is subject to the following conditions:

- the capacity may be utilised by Qantas and another Australian carrier which is a wholly-owned subsidiary of Qantas to provide code share services with a third country airline;
- Qantas and its wholly-owned subsidiary are required to fully utilise the capacity for code share services with Emirates by no later than 31 July 2018, or from such other date approved by the Commission;
- Qantas and its wholly-owned subsidiary are not permitted to utilise the capacity to provide code share or joint services with another Australian carrier or any other person unless approved by the Commission;
- the capacity may be used by Qantas and its wholly-owned subsidiary to code share on services operated by Emirates in accordance with the code share agreement between Qantas and Emirates dated 21 January 2013, as amended;
- Qantas must apply to the Commission for approval of the use of the capacity if there are variations to the code share arrangement(s) which would change the relevant commercial aspects of the code share arrangement(s) 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 where Australian capacity will be used for services on that route;

- to the extent that the capacity is used to provide code share or joint services, the airlines must take all reasonable steps to ensure that passengers are informed of the carrier actually operating the flight at the time of booking. Nothing in this determination exempts the airlines from complying with the Australian Consumer Law;
- changes in relation to the ownership and control of Qantas or its wholly-owned subsidiary are permitted except to the extent that any change:
 - results in the designation of the airline as an Australian carrier under the Australia – Italy 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 its wholly-owned subsidiary or be in a position to exercise effective control of Qantas or its wholly-owned subsidiary, without the prior consent of the Commission.

Dated: 31 August 2017



IAN DOUGLAS
Chairperson



JAN HARRIS
Commissioner