



Australian Government

International Air Services Commission

DETERMINATION

Determination: [2012] IASC 102
The Route: Japan
The Applicant: Qantas Airways Limited (Qantas)
(ACN 009 661 901)
Public Register: IASC/APP/201202

1 The application

1.1 On 10 February 2012, Qantas applied for an allocation of unlimited passenger capacity between points in Australia and points in Japan other than Narita Airport and Haneda Airport to permit Jetstar, Qantas' wholly owned subsidiary to continue current services between Australia and Japan. The application follows the recent conclusion of revised air services arrangements between Australia and Japan, which removed restrictions on capacity and frequency for services other than to Narita and Haneda airports. Qantas asked that the new determination be made for a period of ten years.

1.2 On 13 February 2012, the Commission published a notice inviting other applications for an allocation of the capacity sought by Qantas. No applications were received.

1.3 All public material supplied by the applicant is filed on the Commission's Register of Public Documents.

2 Provisions of relevant air services arrangements

2.1 The air services arrangements between Australia and Japan permit the designation of multiple Australian airlines. According to the Register of Available Capacity, there is unlimited capacity for designated Australian carriers to operate scheduled passenger services between Australia and points in Japan except for Narita Airport and Haneda Airport. Australian airlines may enter into co-operative marketing arrangements with airlines of either Party or airlines of a third country.

3 Delegate's consideration

3.1 In accordance with section 27AB of the *International Air Services Commission Act 1992* and regulation 3A of the *International Air Services Commission Regulations 1992*, the delegate of the Commission may consider Qantas' application.

3.2 Qantas is the only applicant for capacity. Under paragraph 6.2 of the Minister's Policy Statement (No.5) of 19 May 2004 the Commission is required only to apply the criteria in paragraph 4 of the policy statement. Under paragraph 4, the use of entitlements by an Australian carrier that is reasonably capable of obtaining the necessary approvals and of implementing its proposals is of benefit to the public.

3.3 Qantas is an established airline which is capable of obtaining the necessary approvals and of implementing the proposed operations. In terms of paragraph 4, this means that there is public benefit arising from the use of the entitlements on each of the routes concerned.

3.4 Qantas has sought the ability for its wholly owned subsidiaries to use the allocated capacity, in the interests of commercial and operational flexibility. The Commission has previously allocated capacity to Qantas to be used by wholly-owned subsidiaries of Qantas on this and a number of other routes. The delegate notes that a Qantas subsidiary, Jetstar, currently utilises capacity on this route. The delegate will authorise the use of the capacity by Qantas' wholly-owned subsidiaries on the Japan route.

3.5 Under paragraph 11.1(b) of the Minister's policy statement, where capacity and routes are unrestricted, Commission determinations are to be for a period of ten years.

4 Determination allocating capacity on the Japan route to Qantas ([2012] IASC 102)

4.1 The delegate, on behalf of the Commission, makes a determination in favour of Qantas, allocating unlimited passenger capacity on the Japan route in accordance with the terms of the Australia – Japan air transport arrangements.

4.2 The determination is for ten years from the date of the determination.

4.3 The determination is subject to the following conditions:

- Qantas is required to utilise the capacity;
- 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 without the approval of the Commission;

- the capacity may be used by any wholly-owned subsidiary of Qantas to provide joint services with Qantas;
- where the capacity is used to provide joint services on the route, nothing in this determination exempts Qantas and any wholly owned subsidiary from complying with the Australian Consumer Law. 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;
- 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 - Japan air transport 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; and
- changes in relation to the management, status or location of operations and Head Office of Qantas are permitted except to the extent that any change would result in the airline ceasing to be an airline designated by the Australian Government for the purposes of the Australia - Japan air transport arrangements.

Dated: 23 February 2012

Sue McIntosh

Sue McIntosh
Executive Director
Delegate of the IASC Commissioners

