



Australian Government

International Air Services Commission

DETERMINATION

Determination: [2017] IASC 122
The Route: Indonesia
The Applicant: Qantas Airways Limited
(ABN 16 009 661 901) (Qantas)
Public Register File: IASC/APP/201750

The Commission's delegate makes a determination allocating to Qantas 1,300 seats of passenger capacity per week in each direction on the Indonesia route. The capacity may be used by Jetstar Airways Pty Limited to provide services jointly with Emirates. The determination is valid for five years from the date of issue.

1 The application

1.1 On 7 September 2017, the International Air Services Commission (the Commission) received an application from Qantas seeking an allocation of capacity of 1,300 seats per week in each direction on the Indonesia route on the following basis:

- the allocation is requested for a period of five years from the date of the determination;
- the capacity will be fully utilised by 30 April 2018;
- 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; and
- the capacity may be used by Jetstar to provide services jointly with Emirates.

1.2 In its application, Qantas indicated that its wholly-owned subsidiary Jetstar Airways Pty Limited (Jetstar) plans to increase services between Australia and Indonesia, using B787 aircraft configured with 335 seats and A320 aircraft

configured with 180 seats. The increased services will commence from 1 February 2018.

- 1.3 In accordance with section 12 of the *International Air Services Commission Act 1992* (the Act), the Commission published Qantas' application on the Commission's website, on 7 September 2017, inviting other applications on the Indonesia route. No other 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 Air services arrangements

2.1 The Act requires that the Commission may only allocate capacity entitlements that are available for allocation in accordance with the relevant air services arrangements.

2.2 According to the Register of Available Capacity, there are 4,392 seats of passenger capacity to and from Sydney, Melbourne (including Avalon), Brisbane and Perth which are available for immediate allocation to designated carriers of Australia. In addition, there are 2,500 weekly seats in each direction which may be allocated to Australian carriers provided such services operate via or beyond to a point in Australia other than Sydney, Melbourne (including Avalon), Brisbane and Perth. To and from all points in Australia other than Sydney, Melbourne, Brisbane and Perth, there is unrestricted capacity to operate scheduled international air services on the Indonesia route.

2.3 Under the Australia-Indonesia air services arrangements, a designated carrier of Australia may enter into code share, blocked space or other cooperative marketing arrangements, as the marketing and/or operating airline, with another Australian airline(s), with a Indonesian airline(s) or with airline(s) of a third country.

3 Delegate's consideration

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 Qantas application. (For purposes of this determination, references to the Commission include the delegate of the Commission.)

3.2 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.

3.3 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.

3.4 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.

3.5 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.

3.6 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, such as this case, 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.

3.7 The Commission's delegate notes that there are no other applicants seeking capacity on the route. The delegate further notes that Qantas and its wholly-owned subsidiary, Jetstar, are established international carriers and, as such, are reasonably capable of obtaining the necessary approvals to operate on the route and of implementing their proposed services. Accordingly, the delegate 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 for the capacity to be used 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, the delegate does not find any competition issues on this proposed arrangement. For this reason, the delegate has decided to include a condition permitting the use of the capacity for joint services between Qantas and its wholly-owned subsidiary.

3.9 Qantas also requested the Commission to permit the capacity to be used by Jetstar to provide services jointly with Emirates.

3.10 Under paragraph 3.6 of the 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).

3.11 The delegate notes that Emirates does not operate services between Australia and Indonesia and considers it is unlikely that Emirates would operate its own services between Australia and Indonesia in competition to services operated by Jetstar. The delegate further notes that the alliance between the Qantas Group and Emirates to coordinate their passenger and freight transport operations and other related services has been granted authorisation by the ACCC until 31 March 2018.

3.12 In light of the above, the delegate considers the use of the capacity for code share services by Jetstar and Emirates would have minimal impact on competition on the route and has decided to include a condition permitting the use of the capacity for code share services by Jetstar and Emirates.

3.13 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.

3.14 As per the Commission's normal practice, the delegate has also decided to include a condition requiring the airlines using the capacity to comply with the Australian Consumer Law and to take all reasonable steps to ensure that passengers are informed of the carrier that is actually operating the flight.

3.15 Nothing in this determination 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.

4 Determination allocating capacity on the Indonesia route to Qantas ([2017] IASC 122)

4.1 In accordance with section 7 of the Act, the Commission's delegate makes a determination in favour of Qantas, allocating 1,300 seats of passenger capacity per week in each direction on the Indonesia route in accordance with the Australia - Indonesia air services arrangements.

4.2 The determination is valid for five years from the date of this determination.

4.3 The determination is subject to the following conditions:

- Qantas is required to fully utilise the capacity no later than 30 April 2018 or 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;

- Qantas or its wholly-owned subsidiary is not 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 Qantas to provide joint services with any wholly-owned subsidiary of the Qantas Group and by any wholly owned subsidiary of the Qantas Group to provide joint services with Qantas;
- the capacity may be used by Jetstar to provide services jointly with Emirates in accordance with the code share agreement between Jetstar and Emirates made on 11 February 2014, 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 which would change the relevant commercial aspects of the code share arrangement from a free sale code share arrangement to a block space, or vice versa, or if Qantas (or Jetstar) 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 joint services on the route, the airlines must take all reasonable steps to ensure that passengers are informed of the carrier actually operating the flight at the time of the booking. 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 and/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 – Indonesia 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 and/or its wholly-owned subsidiary or be in a position to exercise effective control of Qantas and/or its wholly-owned subsidiary, without the prior consent of the Commission.

Dated: 22 September 2017



MARLENE TUCKER
 Executive Director
 Delegate of the IASC Commissioners