



Australian Government

International Air Services Commission

DETERMINATION

Determination: [2014] IASC 103
The Route: Hong Kong
The Applicant: Qantas Airways Ltd
(ACN 009 661 901) (Qantas)
Public Register File: IASC/APP/201446

The Commission makes a new determination consolidating capacity currently held by Qantas on the Hong Kong route under multiple determinations. The determination takes effect when the current determinations are revoked. The determination also allows the capacity to be used by Qantas to provide joint services with any wholly-owned subsidiary, Jet Airways, British Airways and Finnair.

1 The application

1.1 On 13 February 2014, Qantas applied to the Commission for an allocation of capacity on the Hong Kong route, to enable the consolidation of its multiple determinations on the route. Qantas currently holds the following determinations on the Hong Kong route:

- Determination [2009] IASC 123;
- Determination [2011] IASC 116; and
- Determination [2011] IASC 117.

1.2 Qantas has applied for a new determination allocating it 25 frequencies per week, the same number that it currently holds under the above determinations. Qantas has stated that within 10 working days of the new determination being issued, it will seek revocation of its existing determinations.

1.3 The Commission published a notice on 14 February 2014, in accordance with section 12 of *International Air Services Commission Act 1992* (the Act), inviting other applications for an allocation of capacity on the route. No other application was received.

1.4 Qantas has also requested the inclusion of a new condition allowing it to use the capacity to provide services jointly with British Airways. As Qantas' application is also effectively a variation of its multiple determinations on the route to include a new

condition, the Commission invited submissions about the application in accordance with section 22 of the Act. No submissions were received about the application.

1.5 All 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 According to the Register of Available Capacity, there are currently 45 frequencies per week available for allocation to Australian carriers for passenger services between Sydney, Melbourne, Brisbane and Perth and Hong Kong. There are no limits on capacity that may be operated between Hong Kong and points in Australia other than Sydney, Melbourne, Brisbane and Perth.

2.2 Under the Australia-Hong Kong air services arrangements, a designated airline may enter into code share arrangements, as the marketing or operating airline, with airlines of Australia, Hong Kong or third countries.

3 Commission's consideration

3.1 The Qantas application is in accordance with Procedures for Applications for Consolidation of Determinations issued by the Commission in September 2013 which are, in turn, consistent with the Act and the International Air Services Policy Statement No 5 dated 19 May 2004 (the policy statement).

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;
- the allocation would not be contrary to any restrictions on capacity contained in bilateral arrangements, or combination of bilateral arrangements; and
- if more than one application is made, the allocation would be of greatest benefit to the public.

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, the Minister issued Policy Statement No. 5 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 that where there is only one applicant for an allocation of capacity, as in this case, only the criteria in paragraph 4 of the policy statement are applicable.

3.7 Paragraph 4.1 of the policy statement provides that the use of entitlements, under a bilateral arrangement, by Australian carriers that are reasonably capable of obtaining the necessary approvals and of implementing their application is of benefit to the public.

3.8 The Commission notes that Qantas is an established carrier which is clearly capable of obtaining the necessary approvals and of implementing the proposed operations. This means that the use of the entitlements by Qantas is of benefit to the public. Accordingly, the Commission will allocate the capacity sought to Qantas.

3.9 Under the current determinations the capacity may be utilised by Qantas or an Australian carrier which is a wholly owned subsidiary of Qantas. The Commission has decided to include a similar condition in this determination.

3.10 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 in a determination stating the extent to which the carrier may use that capacity in joint services with another carrier.

3.11 Qantas has also sought the inclusion of conditions to allow the capacity to be used for joint services between Qantas and any wholly owned subsidiary and by Qantas for joint services with Jet Airways, British Airways and Finnair. Qantas already has approval in its current determinations to provide joint services with its wholly owned subsidiary, Jet Airways and Finnair and the Commission has decided to continue to permit such arrangements in this determination.

3.12 With regard to Qantas' request to permit joint services with British Airways, paragraph 3.6 of the policy statement provides that 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).

3.13 The Commission did not identify any serious concerns that the proposed code share arrangement between Qantas and British Airways may not be of benefit to the public. The Commission notes that British Airways has been reducing its services to Australia over a period of time, most recently in 2012 when it cut back from daily B747 services each via Singapore and Thailand, to daily B777 services via Singapore only. British Airways already code shares on Cathay Pacific out of Hong Kong, from where Cathay Pacific serves six Australian cities. The Commission considers it most unlikely that British Airways would operate own aircraft services on the Australia-Hong Kong

route in competition with Qantas and Cathay Pacific if the code share were not approved.

3.14 Virgin Atlantic has announced it will cease its services to Australia via Hong Kong from 5 May 2014. Allowing British Airways to code share on Qantas-operated services will offer Australia-Europe passengers wishing to travel via Hong Kong further options. In light of this, the Commission has decided to authorise joint services between Qantas and British Airways.

3.15 Nothing in this decision should be taken as indicating either approval or disapproval by the ACCC. This decision is made without prejudicing, in any way, possible future consideration of code share operations by the ACCC.

4 Determination ([2014] IASC 103) allocating capacity on the Hong Kong route to Qantas

4.1 In accordance with section 7 of the Act, the Commission makes a determination in favour of Qantas allocating 25 frequencies per week on the Hong Kong route, in accordance with the Australia-Hong Kong air services arrangements.

4.2 The determination is for five years from the date that Qantas' existing determinations on the route are revoked.

4.3 In accordance with section 15 of the Act, the determination is subject to the following conditions:

- Qantas is required to apply to have its existing determinations revoked within 10 working days of the date of this determination;
- Qantas is required to fully utilise the capacity from the date of revocation of the existing determinations;
- 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 prior approval of the Commission;
- 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;
- the capacity may be used to provide services jointly with Jet Airways in accordance with the code share agreement between Qantas and Jet Airways dated 6 September 2006, as amended, or any subsequent code share

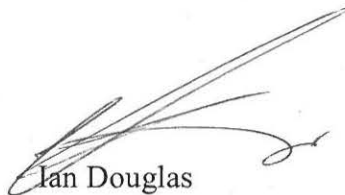
agreement between Qantas and Jet Airways, whether or not it replaces the existing agreement, with the prior approval of the Commission;

- the capacity may be used to provide services jointly with British Airways in accordance with the code share agreement between Qantas and British Airways dated 19 November 2013, as amended, or any subsequent code share agreement between Qantas and British Airways, whether or not it replaces the existing agreement, with the prior approval of the Commission;
- the capacity may be used to provide services jointly with Finnair in accordance with the code share agreement between Qantas and Finnair dated 23 December 2010, as amended, or any subsequent code share agreement between Qantas and Finnair, whether or not it replaces the existing agreement, with the prior approval of the Commission;
- in providing joint services, the airlines may not jointly price and market their services, or share or pool revenues/profits on the route, unless such practices are authorised under the *Competition and Consumer Act 2012* or otherwise authorised by the Australian Competition Tribunal, in the event of review by the Tribunal;
- 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 Qantas are permitted except to the extent that any change:
 - results in the designation of the airline as an Australian carrier under the Australia – Hong Kong 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.

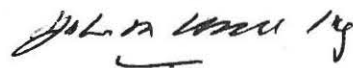
Dated: 14 March 2014



Jill Walker
Chairwoman



Ian Douglas
Member



John King
Member