



Australian Government

International Air Services Commission

DETERMINATION

Determination: [2017] IASC 103
The Route: Vietnam
The Applicant: Qantas Airways Limited
(ABN 16 009 661 901) (Qantas)
Public Register File: IASC/APP/201704

The Commission's delegate makes a determination allocating to Qantas seven frequencies of capacity per week in each direction on the Vietnam route. The determination is valid for five years from 21 March 2017.

1 The application

1.1 On 3 March 2017, the International Air Services Commission (the Commission) received an application from Qantas seeking an allocation of capacity of seven frequencies on per week on the Vietnam route on the following basis:

- the allocation is requested for a period of five years from the date of the determination;
- 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.

1.2 In its application, Qantas indicated that its wholly-owned subsidiary Jetstar Airways Pty Limited (Jetstar) plans to commence services from Sydney and Melbourne to Ho Chi Minh City from 10 May 2017.

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 3 March 2017, inviting other applications on the Vietnam 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 According to the Register of Available Capacity, Australian designated carriers may operate 28 frequencies each way per week with any aircraft type to and from Sydney, Melbourne, Brisbane and Perth. In addition to the capacity entitlements (of 28 frequencies), seven frequencies per week may be operated between points in Vietnam and Sydney, Melbourne, Brisbane and Perth, provided that such services operate via or beyond to a point in Australia that is not Sydney, Melbourne, Brisbane and Perth. To and from all points in Australia other than Sydney, Melbourne, Brisbane and Perth, there is unrestricted capacity, frequency and aircraft type.

2.2 Under the Australia-Vietnam air services arrangements, Australian designated carriers may enter into code sharing arrangements, as the marketing and/or operating airline, with another Australian airline(s), with a Vietnamese 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, 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 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 delegate decided to include certain conditions set out below.

4 Determination allocating capacity on the Vietnam route to Qantas ([2017] IASC 103)

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

4.2 The determination is valid for five years from 21 March 2017.

4.3 The determination is subject to the following conditions:

- Qantas is required to fully utilise the capacity from no later than 31 December 2017 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 is not permitted to utilise the capacity to provide services jointly with another Australian carrier or any other person unless approved by 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;
- to the extent that the capacity is used to provide joint services on the route, Qantas and any wholly-owned subsidiary of Qantas 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 Qantas and any wholly owned subsidiary 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 – Vietnam 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: 21 March 2017



MARLENE TUCKER
Executive Director
Delegate of the IASC Commissioners