



Australian Government

International Air Services Commission

DETERMINATION

Determination: [2018] IASC 104
The Route: Indonesia
The Applicant: Qantas Airways Limited
(ABN 16 009 661 901) (Qantas)
Public Register File: IASC/APP/201815

The Commission makes a determination allocating to Qantas 1, 260 seats per week in each direction of passenger capacity on the Indonesia route. The capacity may be used by Qantas or another Australian carrier which is a wholly-owned subsidiary of Qantas. The determination is valid for five years from 22 February 2018.

1 The application

1.1 On 7 February 2018, Qantas applied to the International Air Services Commission (the Commission) seeking an allocation of 1, 260 seats per week in each direction of passenger capacity 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 1 August 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.

1.2 In its application, Qantas indicated that it plans to commence daily services between Melbourne and Denpasar (Bali) from 23 June 2018. The services will be operated by a two-class Boeing 737 aircraft.

1.3 In accordance with section 12 of the International Air Services Commission Act 1992 (the Act), on 7 February 2018, the Commission published Qantas' application on the Commission's website 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 According to the Register of Available Capacity, there are 4,380 seats per week in each direction available for allocation to Australian carriers to operate services to and from Sydney, Melbourne (including Avalon), Brisbane and Perth.

2.2 Under the Australia-Indonesia air services arrangements, Australian designated carriers may enter into code sharing, 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. There are, however, a number of conditions which apply to cooperative marketing operations.

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.

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 there are no other applicants seeking capacity on the route. The Commission further notes that Qantas and its wholly-owned subsidiary

Jetstar Airways Pty Ltd (Jetstar) are established international carriers and are reasonably capable of obtaining the necessary approvals to operate on the route and of implementing their proposed services. Accordingly, the Commission considers that the use of the entitlements by Qantas or Jetstar would be of benefit to the public and has decided to allocate the capacity as requested by Qantas.

3.7 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.

3.8 Qantas also requested authorisation for the capacity to be used for the provision of joint services by Qantas or another Australian carrier which is a wholly-owned subsidiary of Qantas. The Commission considers the proposed joint services between Qantas and Jetstar, its wholly-owned subsidiary, on the Indonesia route will have minimal impact on competition. For this reason, the Commission decided to include a condition permitting the capacity to be used for joint services between Qantas and its wholly-owned subsidiary.

3.9 As required in paragraph 3.7 of the Policy Statement, the Commission has also decided to include a condition which requires the airlines using the capacity for joint services to ensure that passengers are informed of the carrier that is actually operating the flight.

3.10 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 allocating capacity on the Indonesia route to Qantas ([2018] IASC 104)

4.1 In accordance with section 7 of the Act, the Commission makes a determination in favour of Qantas, allocating 1,260 seats of 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 22 February 2018.

4.3 The determination is subject to the following conditions:

- Qantas is required to fully utilise the capacity from no later than 1 August 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;

- neither Qantas nor its wholly-owned subsidiary is permitted to use the capacity to provide services jointly with another Australian carrier or any other person unless approved by the Commission;
- subject to the preceding condition, 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 code share or 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 February 2017



IAN DOUGLAS
Chairperson



JAN HARRIS
Commissioner



KAREN GOSLING
Commissioner