



Australian Government

International Air Services Commission

DETERMINATION

Determination: [2018] IASC 113
The Route: New Caledonia
The Applicant: Qantas Airways Limited (Qantas)
(ABN 16 009 661 901)
Public Register File: IASC/APP/201836

The Commission makes a determination allocating to Qantas 100 seats per week in each direction of passenger capacity on the New Caledonia route. The capacity may be used by either Qantas or its wholly-owned subsidiary, Jetstar Airways Pty Limited. The determination is valid for five years from 2 August 2018.

1 The application

1.1 On 6 July 2018, Qantas applied to the International Air Services Commission (the Commission) for an allocation of 100 seats per week in each direction of passenger capacity on the New Caledonia 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 January 2019;
- the capacity may be utilised by Qantas or another Australian carrier which is a wholly-owned subsidiary of Qantas;
- 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 Qantas to provide services jointly with Aircalin.

1.2 Qantas indicated it plans to add another weekly service from 12 December 2018, in addition to its current four weekly services between Australia and New Caledonia. Qantas further indicated that the capacity will be fully utilised by 30 January 2019.

1.3 In accordance with section 12 of the *International Air Services Commission Act 1992* (the Act), the Commission published, on 9 July 2018, Qantas' application on the Commission's website inviting other applications on the New Caledonia 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 Paragraph 7(2)(aa) of the Act provides that the Commission must not allocate available capacity contrary to any restrictions on capacity contained in a bilateral arrangement(s). Any variation made to an existing allocation of capacity should also not be contrary to any restrictions on capacity contained in a bilateral arrangement(s)

2.2 According to the Register of Available Capacity, there are 1,612 seats per week in each direction available for allocation to Australian carriers to operate services to and from any point in Australia and any point in New Caledonia.

2.3 Under the Australia-New Caledonia air services arrangements, Australian designated airlines may enter into arrangements with other airlines, including airlines of third countries, to undertake services through code share, blocked space or other joint venture arrangements, whether as the operating or marketing airline, with another Australian airline(s) or with a designated airline(s) of the New Caledonia or of a third country.

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 On 20 March 2018, the Hon. Michael McCormack MP, Deputy Prime Minister and Minister for Infrastructure and Transport, issued, in accordance with section 11 of the Act, the International Air Services Commission Policy Statement 2018 (the 2018 Policy Statement), which came into effect on 28 March 2018. The 2018 Policy Statement replaces and repeals the International Air Services Policy Statement No. 5 made in 2004 (the 2004 Policy Statement).

3.5 Qantas is seeking the allocation of 100 seats per week in each direction on the

New Caledonia route. Additionally, for flexibility, Qantas requested permission for the capacity to be used as well by another Australian carrier which is a wholly-owned subsidiary of Qantas, such as Jetstar Airways Pty Limited (Jetstar). The new capacity sought is in addition to Qantas' current capacity allocation of 788 seats per week in each direction which it currently uses to operate one weekly service between Brisbane and Noumea and three weekly services between Sydney and Noumea using a B737-800 aircraft.¹

3.6 Section 12 of the 2018 Policy Statement provides, in part, that in circumstances where there is only one applicant for allocation of capacity on a route, and there is no opposition to the application, the Commission is to have regard to the 'reasonable capability criterion' in section 8 of the 2018 Policy Statement and need not have regard to any other matter.

3.7 Under section 8 of the 2018 Policy Statement, the Commission is to assess the extent to which all Australian carriers that are, or would be, permitted to use the capacity allocated under a determination are reasonably capable of: (a) obtaining any licences, permits or other approvals required to operate on and service the route to which the determination relates; and (b) using the capacity allocated under the determination.

3.8 The Commission notes there are no other applicants seeking capacity on the route and no opposition to the application. The Commission further notes that Qantas and its wholly-owned subsidiary Jetstar are established international carriers and, as such, are reasonably capable of obtaining any licences, permits or other approvals required to operate on and service the route and of using the capacity allocated under the determination.

3.9 Accordingly, the Commission has concluded that Qantas and Jetstar fulfil the criteria under section 8 and has decided to allocate the capacity in favour of Qantas including a condition permitting the capacity to be used by Qantas and Jetstar, as requested.

3.10 Qantas also requested the Commission to permit the capacity to be used for the provision of joint services by Qantas and any wholly-owned subsidiary of the Qantas group. The Commission considers that the proposed joint services between Qantas and a wholly-owned subsidiary of the Qantas Group on the New Caledonia route would have minimal impact on competition and has decided to include such condition, as requested by Qantas.

3.11 Further, Qantas also sought authorisation to use the additional 100 weekly seats of capacity for the provision of code share services with Aircalin. The Commission has authorised Qantas to code share with Aircalin in respect of the 788 weekly seats currently allocated to Qantas.

3.12 The New Caledonia route is a relatively small market and there are only two airlines providing direct services on this route, Qantas and Aircalin. Aircalin operates

¹ Northern Summer 2018 Timetable Summary (24 March 2018 - 27 October 2018)

up to nine weekly services between points in Australia and Noumea while Qantas currently operates four weekly services.² The Commission considers that the proposed code share on 100 weekly seats of capacity between Qantas and Aircalin has minimal impact on competition on the route.

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) of the Act requires the inclusion of a condition stating the extent to which the carrier may use that capacity in joint services with another carrier. As required by section 23 of the 2018 Policy Statement, where the Commission authorises a carrier to utilise the allocated capacity to provide joint services with another carrier, the Commission will include a condition requiring the airlines concerned to take all reasonable steps to ensure that passengers are informed of the carrier that is actually operating the flight.

3.14 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 New Caledonia route to Qantas ([2018] IASC 113)

4.1 In accordance with section 7 of the Act, the Commission makes a determination in favour of Qantas, allocating 100 seats of capacity per week in each direction on the New Caledonia route in accordance with the Australia - New Caledonia air services arrangements.

4.2 The determination is valid for five years from 2 August 2018.

4.3 The determination is subject to the following conditions:

- Qantas is required to fully utilise the capacity from no later than 30 January 2019 or such other date approved by the Commission;
- the capacity may be utilised by:
 - Qantas; or
 - Jetstar Airways Pty Limited, as long as it remains a wholly-owned subsidiary of Qantas; or
 - such other wholly-owned subsidiary of Qantas that the Commission approves in writing, as long as it remains a wholly-owned subsidiary of Qantas;

² Ibid.

- neither Qantas nor its wholly-owned subsidiary that is permitted to use the capacity is authorised to provide code share or joint services with any other carrier or 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;
- Qantas is permitted to utilise the capacity to provide code share services with Aircalin in accordance with the code share agreement between the airlines made on 4 June 2004, 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 between Qantas and Aircalin 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 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 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 – New Caledonia 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: 2 August 2018



IAN DOUGLAS
Chairperson



JAN HARRIS
Commissioner



KAREN GOSLING
Commissioner