



Australian Government

International Air Services Commission

DETERMINATION

Determination: [2018] IASC 120
The Route: Indonesia
The Applicant: Qantas Airways Limited
(ABN 16 009 661 901) (Qantas)
Public Register File: IASC/APP/201857

The Commission makes a determination allocating to Qantas 1,250 seats per week in each direction of passenger capacity on the Indonesia route. The capacity may be used by either Qantas or its wholly-owned subsidiary, Jetstar Airways Pty Limited and for the latter to provide services jointly with Emirates. The determination is valid for five years from 15 October 2018.

1 The application

1.1 On 27 September 2018, the International Air Services Commission (the Commission) received an application from Qantas seeking an allocation of 1,250 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 31 January 2019;
- the capacity may be utilised by Qantas or another Australian carrier which is a wholly-owned subsidiary of Qantas, which in this case is Jetstar Airways Pty Ltd (Jetstar);
- 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 it plans to upgrade the aircraft on selected services between Australia and Indonesia, including operating a B737 to A320 aircraft.

1.3 In accordance with section 12 of the *International Air Services Commission Act 1992* (the Act), on 28 September 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 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 4,000 seats per week of capacity in each direction available for allocation to Australian carriers to operate services to and from Sydney, Melbourne (including Avalon), Brisbane and Perth. An additional 2,500 seats per week in each direction to Sydney, Melbourne (including Avalon), Brisbane and Perth, provided such services operate via or beyond to a point in Australia other than Sydney, Melbourne (including Avalon), Brisbane and Perth.

2.3 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 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 Policy Statement), which came into effect on 28 March 2018.

3.5 Where there is an application for available capacity under section 7 of the Act and the capacity is restricted but there is sufficient available capacity on the route, section 12 of the Policy Statement applies. Under section 12, 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 Policy Statement and need not have regard to any other matter.

3.6 Under section 8 of the 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.

3.7 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 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 Indonesia route and of using the capacity allocated under the determination. 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 sought to Qantas.

3.8 The Commission has also decided to permit the capacity to be used by either Qantas or Jetstar, as long as Jetstar remains a wholly-owned subsidiary of Qantas.

3.9 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 Commission does not find any competition issues on this proposed arrangement. For this reason, the Commission has decided to include a condition permitting the use of the capacity for joint services between Qantas and its wholly-owned subsidiary.

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

3.11 The Commission notes that the Australian Competition and Consumer Commission (ACCC) has granted re-authorisation, subject to certain conditions, the alliance between Qantas (and its related entities including Jetstar) and Emirates (and its subsidiaries) for five years, until March 2023. Under the authorised alliance, Qantas and Emirates and their subsidiaries are able to coordinate their passenger and cargo air transport operations and other related services. In its decision, the ACCC considered that the alliance is likely to result in a range of public benefits such as increasing the number of flights and destinations available to Qantas and Emirates customers which

would provide customers with greater choice and flexibility of schedules.¹

3.12 In relation to the Indonesia route, Qantas operates four to five weekly services between Sydney and Jakarta and daily services between Sydney and Denpasar. Jetstar operates up to 67 weekly services to Denpasar from various points in Australia (Adelaide, Brisbane, Cairns, Darwin, Melbourne, Perth and Sydney). The Commission notes that Emirates does not operate services between Australia and Indonesia and considers it unlikely that Emirates would operate its own services between Australia and Indonesia in competition to services operated by Jetstar.

3.13 Other airlines operating direct services between Australia and Indonesia are: Virgin Australia which operates up to 20 direct services per week to Denpasar from various points in Australia (Brisbane, Port Hedland and Sydney) and code shares with SilkAir and Singapore Airlines on their services via Singapore; Batik Air which operates twice daily services between Denpasar and Perth; Garuda Indonesia which operates up to 35 weekly direct services from Jakarta and Denpasar to three points in Australia (Melbourne, Perth and Sydney); and Indonesia AirAsia operating 21 weekly services between Denpasar and Perth and four weekly services between Denpasar and Darwin.²

3.14 As the route is served by a number of carriers from various Australian gateways, the Commission does not find any competition issues on the proposed code share arrangement between Jetstar and Emirates on the Australia-Indonesia route.

3.15 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. As is its normal practice, the Commission will also include a condition which requires 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.

3.16 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 120)

4.1 In accordance with section 7 of the Act, the Commission makes a determination in favour of Qantas, allocating 1,250 seats of capacity per week in each direction on the Indonesia route in accordance with the Australia - Indonesia air services arrangements.

¹ ACCC Final Determination and Interm Authorisation Number AA1000400 dated 23 March 2018.

²Northern Winter 2018 Timetable Summary (October 2017 – March 2018)

4.2 The determination is valid for five years from 15 October 2018.

4.3 The determination is subject to the following conditions:

- Qantas is required to fully utilise the capacity from no later than 31 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;
- 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;
- additionally, 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 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: 15 October 2018



IAN DOUGLAS
Chairperson



JAN HARRIS
Commissioner



KAREN GOSLING
Commissioner