



## Australian Government

### International Air Services Commission

#### DETERMINATION

**Determination:** [2018] IASC 122  
**The Route:** Fiji  
**The Applicant:** Qantas Airways Limited (Qantas)  
(ABN 16 009 661 901)  
**Public Register File:** IASC/APP/201871

**The Commission makes a determination allocating to Qantas 696 seats per week in each direction of passenger capacity on the Fiji 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 14 December 2018.**

#### 1 The application

1.1 On 27 November 2018, Qantas applied to the International Air Services Commission (the Commission) for an allocation of 696 seats per week in each direction of passenger capacity on the Fiji 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 requested that, for flexibility, another Australian carrier which is a wholly-owned subsidiary, such as Jetstar Airways Pty Limited (Jetstar), be permitted to utilise the capacity as well. Qantas further indicated that the capacity will be fully used by 26 October 2019.

1.3 In accordance with section 12 of the *International Air Services Commission Act 1992* (the Act), the Commission published, on 27 November 2018, Qantas' application on the Commission's website inviting other applications on the Fiji 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](http://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 701 seats of capacity per week in each direction available for allocation to Australian carriers to operate services to and from Sydney, Melbourne (including Avalon), Brisbane and Perth. Once 696 seats are allocated to Qantas, there will only be five seats per week available for allocation but from 31 March 2019, the capacity entitlements will increase by 700 weekly seats which will make a total of 705 weekly seats available for allocation from 31 March 2019.

2.3 Under the Australia-Fiji air services arrangements, Australian designated airlines may enter into cooperative marketing arrangements such as blocked space, code sharing or leasing, whether as the operating or marketing airline, with another Australian airline(s) or with a designated airline(s) of Fiji. The Commission notes that Qantas did not seek authority to use the capacity to provide services for code sharing with airlines outside the Qantas group.

## **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. The Policy Statement sets out

the criteria which the Commission is required to apply in assessing the benefit to the public of allocations of capacity.

3.5 Under Division 3 of Part 3 of the Policy Statement, the Commission is to have regard to the ‘reasonable capability criterion’ in section 8 and the additional criteria in section 9, when circumstances so warrant. Section 7 of the Policy Statement explains this.

3.6 Qantas is seeking the allocation of 696 seats out of 701 seats available for allocation on the route. Additionally, for flexibility, Qantas requested permission for the capacity to be used 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 1,110 seats per week in each direction on the Fiji route.

3.7 The Commission notes there are no other applicants seeking capacity on the route. Section 12 of the 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.

3.8 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.

3.9 The Commission 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 to which the determination relates and using the capacity allocated under the determination. Accordingly, the Commission has concluded that Qantas and its wholly-owned subsidiary Jetstar fulfil the ‘reasonable capability criterion’ under section 8 of the Policy Statement and has decided to allocate the capacity, as requested, for the use of either Qantas or its wholly-owned subsidiary, Jetstar, to operate international air services between Australia and Fiji.

3.10 The Commission notes that there are three international airlines operating direct services between Australia and Fiji. Fiji Airways operates up to 37 weekly services with Qantas offering code share services, as marketing carrier. Virgin Australia operates up to 23 weekly services between Brisbane/Melbourne/Sydney and Nadi. Jetstar operates up to six services per week between Sydney and Nadi with Qantas code sharing as marketing carrier on these flights.<sup>1</sup>

3.11 Qantas 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

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<sup>1</sup> Northern Winter 2018-2019 Timetable Summary (28 October 2018 - 30 March 2019)

group. The Commission considers that the proposed joint services on the Fiji route between Qantas and a wholly-owned subsidiary of the Qantas Group would have minimal impact on competition. For this reason, the Commission has decided to include such condition, as requested by Qantas.

3.12 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 required by section 23 of the 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.

3.13 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 Fiji route to Qantas ([2018] IASC 122)**

4.1 In accordance with section 7 of the Act, the Commission makes a determination in favour of Qantas, allocating 696 seats of capacity per week in each direction on the Fiji route in accordance with the Australia - Fiji air services arrangements.

4.2 The determination is valid for five years from 14 December 2018.

4.3 The determination is subject to the following conditions:

- Qantas is required to fully utilise the capacity from no later than 26 October 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 code share or joint services with any other carrier or 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 authorised to utilise the capacity are permitted except to the extent that any change:
  - results in the designation of the airline(s) as an Australian carrier under the Australia – Fiji 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: 14 December 2018



IAN DOUGLAS  
Chairperson



JAN HARRIS  
Commissioner



KAREN GOSLING  
Commissioner