



## Australian Government

### International Air Services Commission

#### DETERMINATION

<b>Determination:</b>	<b>[2023] IASC 108</b>
<b>The Route:</b>	<b>Cook Islands</b>
<b>The Applicant:</b>	<b>Qantas Airways Limited (Qantas) (ABN 16 009 661 901)</b>
<b>Public Register File:</b>	<b>IASC/APP/202310</b>

**The Commission makes a determination allocating to Qantas 232 seats of capacity per week to operate passenger services on the Cook Islands 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 07 March 2023.**

## 1 The application

1.1 On 10 February 2023, Qantas applied to the International Air Services Commission (the Commission) for an allocation of 232 seats of capacity per week to operate passenger services on the Cook Islands route. Qantas stated in its application that the capacity will be utilised by Qantas' wholly-owned subsidiary Jetstar Airways Pty Limited (Jetstar). It is planned that Jetstar will operate an additional frequency per week between Sydney and Rarotonga from 4 July 2023, using Airbus A321neo LR aircraft configured with 232 seats.

1.2 Qantas has requested the capacity allocation 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 July 2023;
- the capacity may be utilised by Qantas, or Jetstar 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 of the Qantas Group and by any wholly-owned subsidiary of the Qantas Group to provide joint services with Qantas.

1.3 In accordance with section 12 of the *International Air Services Commission Act 1992* (the Act), on 13 February 2023, the Commission published Qantas' application on the Commission's website inviting other applications for capacity on the Cook Islands 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).

2.2 According to the Register of Available Capacity, there are 1,420 seats of capacity per week available for allocation to Australian designated airlines to operate passenger services between Australia and the Cook Islands.

2.3 Under the Australia-Cook Islands air services arrangements, Australian designated airlines may enter into cooperative marketing arrangements such as code sharing, blocked space and aircraft leasing, whether as the operating or marketing airline, with an airline(s) of the same party, an airline(s) of the Cook Islands, or with an airline(s) of a third country. Capacity offered by a designated airline, as the marketing airline on services operated by another airline(s), will not be counted against any capacity entitlements of the party designating the marketing airline.

## **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 Qantas is seeking the allocation of 232 seats of capacity per week in each direction on the Cook Islands route. As part of its application, Qantas requested permission for the capacity to be used by either Qantas, its wholly-owned subsidiary, Jetstar or another Australian carrier which is a wholly-owned subsidiary of the Qantas Group.

3.3 Currently, Qantas has a total capacity allocation on this route of 1,580 seats being utilised by Jetstar which operates three frequencies per week for services from Australia to Cook Islands via Auckland (New Zealand) and plans to operate two frequencies per week for services between Sydney and Rarotonga from June 2023. The additional capacity is intended to be used by Jetstar to enable the airline to operate an additional frequency between Sydney and Rarotonga from 4 July 2023, using Airbus A321neo LR aircraft configured with 232 seats.

3.4 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.

3.5 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.

3.6 Pursuant to section 11 of the Act, the Minister issued 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.

3.7 The Commission notes that there are no other applicants seeking capacity on the route and no opposition to the application. 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 Policy Statement and need not have regard to any other matter.

3.8 Under the reasonable capability criterion in section 8 of the Policy Statement, the Commission is required 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 licenses, 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 the necessary approvals to operate on the route and of implementing their proposed services.

3.10 Accordingly, the Commission has concluded that Qantas and Jetstar satisfy the criteria under section 8. The Commission, therefore, has decided to allocate the capacity as requested by Qantas and to permit the capacity to be used by either Qantas or its wholly-owned subsidiary, Jetstar.

3.11 Qantas requested the Commission to permit the capacity to 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. The Commission considers that the proposed joint services on the Cook Islands route between Qantas and a wholly-owned subsidiary of the Qantas Group would have minimal impact on competition. The Commission, therefore, 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 or code share 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. In light of this, the Commission has decided to issue this determination subject to the conditions set out in Item 4 below.

3.13 Paragraph 15(2)(a) of the Act requires a determination to specify the period during which it is to be in force. Subsection 15(3) of the Act effectively provides that if the Policy Statement sets out how the period of validity of the determination is to be fixed, then the period of validity is as so fixed. In any other case, an interim determination is to be in

force for three years while a determination that is not an interim determination is to be in force for five years.

3.14 Section 20 of the Policy Statement sets out how the Commission is to fix the period during which a determination is to be in force. The Commission considers that this application is within the scope of subsection 20(4) and has decided that this determination is to be in force for a period of five years.

3.15 Nothing in this decision should be taken as indicating either approval or disapproval by the Australian Competition and Consumer Commission (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 Cook Islands route to Qantas Airways Limited ([2023] IASC 108)**

4.1 In accordance with section 7 of the Act, the Commission makes a determination in favour of Qantas Airways Limited, allocating 232 seats of capacity per week to operate passenger services on the Cook Islands route in accordance with the Australia – Cook Islands air services arrangements.

4.2 The determination is valid for five years from 07 March 2023.

4.3 The determination is subject to the following conditions:

- (a) Qantas Airways Limited is required to fully utilise the capacity no later than 31 July 2023 or such other date approved by the Commission.
- (b) The capacity may be utilised by:
  - Qantas Airways Limited; or
  - Jetstar Airways Pty Limited, as long as it remains a wholly-owned subsidiary of the Qantas Group; or
  - such other wholly-owned subsidiary of the Qantas Group that the Commission approves in writing, as long as it remains a wholly-owned subsidiary of the Qantas Group.
- (c) Neither Qantas Airways Limited nor another Australian carrier which is a wholly-owned subsidiary of the Qantas Group is permitted to utilise the capacity to provide services jointly with another Australian carrier or any other person unless approved by the Commission.
- (d) Subject to the preceding condition, the capacity may be used by Qantas Airways Limited 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 Airways Limited.
- (e) To the extent that the capacity is used to provide 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.

- (f) Changes in relation to the ownership and control of Qantas Airways Limited 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 as an Australian carrier under the Australia – Cook Islands 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 Airways Limited and/or its wholly-owned subsidiary or be in a position to exercise effective control of Qantas Airways Limited and/or its wholly-owned subsidiary, without the prior consent of the Commission.

Dated: 07 March 2023



Genevieve Butler  
Chairperson



Jane McKeon  
Commissioner