



Australian Government

International Air Services Commission

DETERMINATION

Determination: [2024] IASC 104
The Route: Samoa
The Applicant: Qantas Airways Limited (Qantas)
(ABN 16 009 661 901)
Public Register File: IASC/APP/202407

The Commission makes a determination allocating to Qantas an additional 450 seats of capacity per week to operate passenger services on the Samoa route. The determination is valid for five years from 21 February 2024.

1 The application

1.1 On 22 January 2024, Qantas applied to the International Air Services Commission (the Commission) requesting an allocation of 450 seats of capacity per week to operate passenger services on the Samoa route. Qantas stated in its application that the capacity will be utilised by Qantas to operate an additional three services per week between Brisbane and Apia, using Boeing 737 aircraft configured with 174 seats. From 10 December 2024, Qantas plans to increase services during periods of peak demands.

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; and
- the capacity will be fully utilised by 4 January 2025.

1.3 In accordance with section 12 of the *International Air Services Commission Act 1992* (the Act), on 24 January 2024, the Commission published Qantas' application on the Commission's website inviting other applications for capacity on the Samoa 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).

2.2 Under the Australia-Samoa air services arrangements, Australian designated airlines may operate up to 2,000 seats of capacity per week in each direction between Samoa and Australia.

2.3 Qantas has been allocated 594 seats of passenger capacity per week to operate services on the Australia-Samoa route. Virgin Australia has been allocated a total of 880 seats of passenger capacity per week to operate services on the Australia-Samoa route.

2.4 According to the Register of Available Capacity, there are 526 seats of capacity per week available for allocation to Australian designated airlines to operate passenger services between Australia and Samoa.

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 an additional 450 seats of capacity per week on the route to operate an additional three services per week between Brisbane and Apia during periods of peak demand.

3.3 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.

3.4 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.

3.5 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.

3.6 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.

3.7 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 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 that Qantas is an established international carrier which currently operates scheduled international services between Australia and Samoa. The Commission therefore finds that Qantas is reasonably capable of obtaining the necessary regulatory approvals to operate on the route and of using the proposed capacity allocation.

3.9 Accordingly, the Commission has concluded that Qantas satisfies the criteria under section 8. The Commission, therefore, has decided to allocate the capacity as requested by Qantas.

3.10 Subsection 15(1) of the Act empowers the Commission to include such terms and conditions as it thinks fit. Section 15 also provides for certain conditions to be included in a determination. In light of this, the Commission has decided to issue this determination subject to the conditions set out in Item 4 below.

3.11 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 Minister’s 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.

3.12 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.

4 Determination allocating capacity on the Samoa route to Qantas Airways Limited ([2024] IASC 104)

4.1 In accordance with section 7 of the Act, the Commission makes a determination in favour of Qantas Airways Limited, allocating 450 seats of capacity per week in each direction on the Samoa route in accordance with the Australia - Samoa air services arrangements.

4.2 The determination is valid for five years from 21 February 2024.

4.3 The determination is subject to the following conditions:

- (a) Only Qantas Airways Limited is permitted to utilise the capacity.
- (b) Qantas Airways Limited is required to fully utilise the capacity no later than 4 January 2025 or such other date approved by the Commission.
- (c) Qantas Airways Limited is not permitted to utilise the capacity to provide code share or joint services with another Australian carrier or any other person unless approved by the Commission.
- (d) Changes in relation to the ownership and control of Qantas Airways Limited are permitted except to the extent that any change:
 - results in the designation of the airline as an Australian carrier under the Australia – Samoa 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 or be in a position to exercise effective control of Qantas Airways Limited, without the prior consent of the Commission.

Dated: 21 February 2024.


GENEVIEVE BUTLER
Chairperson


JANE MCKEON
Commissioner