



## Australian Government

### International Air Services Commission

#### DETERMINATION

**Determination:** [2020] IASC 101  
**The Route:** Indonesia  
**The Applicant:** Qantas Airways Limited  
(Qantas) ABN 16 009 661 901  
**Public Register File:** IASC/APP/201941

**The Commission makes a determination allocating to Qantas Airways Limited (Qantas) 670 seats per week of capacity in each direction on the Indonesia route. The capacity may be utilised by Qantas or Jetstar Airways Pty Limited. The determination is valid for five years from 21 January 2020.**

#### 1 The application

On 23 December 2019, the International Air Services Commission (the Commission) received an application from Qantas Airways Limited (Qantas) seeking an allocation of 670 seats per week in each direction of passenger capacity on the Indonesia route. Qantas' wholly-owned subsidiary, Jetstar Airways Pty Limited (Jetstar) intends to operate two additional services per week between Australia and Indonesia using a B787 aircraft. Qantas sought the capacity 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 June 2020;
- 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 accordance with section 12 of the *International Air Services Commission Act 1992* (the Act), on 23 December 2019, the Commission published Qantas' application on the Commission's website inviting other applications on the Indonesia route. No other applications were received.

1.3 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 842 seats per week in each direction to and from Sydney, Melbourne (including Avalon), Brisbane and Perth (the major gateways) available for allocation to Australian carriers.

## **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 Under section 11 of the Act, the Minister made 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 Section 12 of the Policy Statement provides, in part, that in circumstances where: (a) there is only one applicant for allocation of capacity on a route; (b) there is sufficient available capacity on the route for the Commission to make a determination sought in the application; and (c) 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.

3.6 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 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.

3.7 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 that currently operate services between Australia and Indonesia. As such, the Commission finds that Qantas and Jetstar 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 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.

3.11 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 ([2020] IASC 101)**

4.1 In accordance with section 7 of the Act, the Commission makes a determination in favour of Qantas, allocating 670 seats of capacity per week in each direction on the Indonesia route in accordance with the Australia - Indonesia air services arrangements.

4.2 The determination is valid for five years from 21 January 2020.

4.3 The determination is subject to the following conditions:

- Qantas is required to fully utilise the capacity from no later than 30 June 2020 or such other date approved by the Commission;

- the capacity may be utilised by:
  - Qantas;
  - 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;
- 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: 21 January 2020

  
 IAN DOUGLAS  
 Chairperson

  
 KAREN GOSLING  
 Commissioner