



Australian Government

International Air Services Commission

DETERMINATION

Determination: [2022] IASC 101
The Route: Italy
The Applicant: Qantas Airways Limited (Qantas)
(ABN 16 009 661 901/ ACN 009 661 901)
Public Register File: IASC/APP/202141

The Commission makes a determination allocating to Qantas three frequencies per week in each direction of passenger capacity on the Italy route. The determination is valid for five years from 13 January 2022.

1 The application

1.1 On 15 December 2021, Qantas applied to the International Air Services Commission (the Commission) for an allocation of three frequencies per week in each direction of passenger capacity on the Italy route. Qantas stated in its application that it plans to expand its international operations to include three weekly scheduled services on a seasonal basis between Australia and Italy. Qantas plans to operate during the northern summer scheduling period the following route: Sydney-Perth-Rome vice versa. These flights will be operated in addition to Qantas' existing code share services to Italy.

1.2 Qantas has sought the capacity 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 30 June 2022.

1.3 In accordance with section 12 of the International Air Services Commission Act 1992 (the Act), the Commission published, on 16 December 2021, Qantas' application on the Commission's website inviting other applications for capacity on the Italy route. A notification was likewise sent by email to various stakeholders inviting other applications for capacity on the 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 - Italy air services arrangements, designated airlines of Australia (Australian airlines) may operate seven frequencies per week with any aircraft type. While none of this capacity is currently allocated, Qantas has now applied for three of the seven weekly frequencies to operate its own services between Australia and Italy. Australian airlines are entitled to perform their services with wet lease, code sharing, blocked space and/or other cooperative service arrangements with any airline.

2.3 Additionally, Australian airlines may enter into arrangements with an airline or airlines of a third country to carry out services through code share arrangements ('third country code share'). These third country code share arrangements may constitute up to 1700 seats per week in total in each direction. Qantas currently holds a total capacity of 1000 third country code share seats while 600 third country code share seats have been allocated to Virgin Australia. There are currently 100 seats per week in each direction available for immediate allocation to Australian airlines for code share with third country airlines.

2.4 In June 2017, the Australia – Italy air services arrangements were updated to include an explicit reference that the weekly capacity entitlements allocated for code share services are to be averaged over 12 months. Under the averaging methodology, a carrier may exceed its weekly capacity allocation for code share services from time to time so long as the total amount of capacity utilised during the year does not exceed the total annual capacity allocation (weekly capacity allocated multiplied by 52 weeks).

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. As mentioned above, Qantas is seeking the allocation of three frequencies of capacity per week in each direction on the Italy route to operate Sydney-Perth-Rome return services commencing on 22 June 2022.

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 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.

3.5 The Commission notes there are no other applicants seeking capacity on the route and no opposition to the Qantas 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.

3.6 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 that Qantas is an established international carrier and, as such, is reasonably capable of obtaining the necessary approvals to operate on the route and of implementing its proposed services. Accordingly, the Commission has concluded that Qantas fulfils the criteria under section 8 and has decided to allocate the capacity requested.

3.8 Section 15 provides that the Commission may include in a determination 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.

3.9 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.

3.10 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 Italy route to Qantas ([2022] IASC 1011)

4.1 In accordance with section 7 of the Act, the Commission makes a determination in favour of Qantas, allocating three frequencies of capacity per week in

each direction on the Italy route in accordance with the Australia - Italy air services arrangements.

4.2 The determination is valid for five years from 13 January 2022.

4.3 The determination is subject to the following conditions:

- (a) Qantas is required to fully utilise the capacity from no later than 30 June 2022 or such other date approved by the Commission
- (b) only Qantas is permitted to utilise the capacity;
- (c) Qantas 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; and
- (d) changes in relation to the ownership and control of Qantas are permitted except to the extent that any change:
 - results in the designation of the airline as an Australian carrier under the Australia – Italy 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 or be in a position to exercise effective control of, without the prior consent of the Commission.

Dated: 13 January 2022



GENEVIEVE BUTLER
Chairperson



JANE MCKEON
Commissioner