



Australian Government

International Air Services Commission

DETERMINATION

Determination: [2022] IASC 120
The Route: Timor-Leste
The Applicant: Qantas Airways Limited (Qantas)
(ABN 16 009 661 901)
Public Register File: IASC/APP/202239

The Commission makes a determination allocating to Qantas two frequencies per week in each direction of passenger capacity on the Timor-Leste route. The determination is valid for five years from 20 October 2022.

1 The application

1.1 On 28 September 2022, Qantas applied to the International Air Services Commission (the Commission) for an allocation of two frequencies per week in each direction of passenger capacity on the Timor-Leste route. Qantas stated in its application that the capacity will be utilised to increase services on the Darwin-Dili route, using Embraer E190 aircraft.

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 that
- the capacity will be fully utilised by 30 November 2022.

1.3 In accordance with section 12 of the *International Air Services Commission Act 1992* (the Act), the Commission published on 29 September 2022, Qantas' application on the Commission's website inviting other applications for capacity on the Timor-Leste route. No other applications or submissions 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 According to the Register of Available Capacity, there are 16 frequencies per week of passenger capacity in each direction available for allocation to Australian designated airlines to operate services between Australia and Timor-Leste. There is unrestricted capacity for designated airlines of Australia to operate dedicated freight services.

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 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 Qantas is seeking the allocation of an additional two frequencies per week of capacity in each direction on the Timor-Leste route. Qantas has been allocated five frequencies per week in each direction on the Timor-Leste route in one separate determination¹. The Commission notes that no other Australian carrier has been allocated capacity to operate services between Australia and Timor-Leste.

3.6 The Commission further 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

¹ [2022] IASC 112

have regard to the ‘reasonable capability criterion’ in section 8 of the 2018 Policy Statement and need not have regard to any other matter.

3.7 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 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.

3.8 The Commission notes that Qantas is an established international carrier that currently operates services between Australia and Timor-Leste and, as such, is reasonably capable of obtaining the necessary approvals to operate on the route and of using the capacity allocation. 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.

3.9 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.

3.10 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.

3.11 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 Timor-Leste route to Qantas ([2022] IASC 120)

4.1 In accordance with section 7 of the Act, the Commission makes a determination in favour of Qantas, allocating two frequencies per week in each direction of passenger capacity on the Timor-Leste route in accordance with the Australia - Timor-Leste air services arrangements.

4.2 The determination is valid for five years from 20 October 2022.


4.3 The determination is subject to the following conditions:

(a) Only Qantas is permitted to utilise the capacity.

- (b) Qantas is required to fully utilise the capacity no later than 30 November 2022 or such other date approved by the Commission.
- (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.
- (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 – Timor-Leste 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 Qantas, without the prior consent of the Commission.

Dated: 20 October 2022


GENEVIEVE BUTLER
Chairperson


JANE MCKEON
Commissioner