



Australian Government

International Air Services Commission

DETERMINATION

Determination: [2022] IASC 124
The Route: Tonga
The Applicant: Qantas Airways Limited
(Qantas)
(ABN 16 009 661 901)
Public Register File: IASC/APP/202243

The Commission makes a determination allocating to Qantas 348 seats of capacity per week to operate passenger services on the Tonga route. The determination is valid for five years from 18 November 2022.

1 The application

1.1 On 31 October 2022, Qantas applied to the International Air Services Commission (the Commission) for an allocation of 348 seats of capacity per week to operate passenger services on the Tonga route. Qantas stated in its application that the capacity will be utilised to operate twice weekly services between Sydney and Nuku'alofa, using B737 aircraft configured with 174 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; and
- the capacity will be fully utilised by 30 December 2022.

1.3 In accordance with section 12 of the *International Air Services Commission Act 1992* (the Act), on 1 November 2022, the Commission published Qantas' application on the Commission's website inviting other applications for capacity on the Tonga 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-Tonga air services arrangements, Australian designated airlines may operate up to 1,600 seats of capacity per week in each direction between Tonga and the following points in Australia: Sydney, Melbourne, Brisbane and/or Perth. Australian designated airlines may determine the frequency of service, capacity and aircraft type to be operated on the specified routes to or from points in Australia other than Sydney, Melbourne, Brisbane and/or Perth.

2.3 Virgin Australia has been allocated a total of 540 seats of capacity per week to operate services on the Tonga route.

2.4 According to the Register of Available Capacity, there are 1,060 seats of capacity per week in each direction available for allocation to Australian designated airlines to operate passenger services to and from Sydney, Melbourne, Brisbane and/or Perth.

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. Qantas is seeking the allocation of 348 seats of capacity per week in each direction on the Tonga route to operate twice weekly passenger 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 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 2018 Policy Statement and need not have regard to any other matter.

3.6 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.

3.7 Pursuant to section 28 of the Act, the Commission wrote to the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (the Department) requesting advice about whether Qantas satisfies the Section 8 reasonably capable criteria on the Tonga route.

3.8 On 9 November 2022, the Department advised the Commission that based on current information, it considers that Qantas “is reasonably capable of obtaining the relevant licences, permits and other approvals required to operate on and service the Australia-Tonga route and using the capacity that Qantas has sought in its application”.

3.9 Qantas is an established airline which holds an International Airline Licence issued by the Department. Qantas has also been designated as an Australian international airline under the Australia-Tonga air services arrangements.

3.10 The Commission notes that Qantas operates non-scheduled services between Australia and Tonga.

3.11 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.

3.12 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.

3.13 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 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.

3.14 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.

4 Determination allocating capacity on the Tonga route to Qantas ([2022] IASC 124)

4.1 In accordance with section 7 of the Act, the Commission makes a determination in favour of Qantas, allocating 348 seats of capacity per week to operate passenger services on the Tonga route in accordance with the Australia - Tonga air services arrangements.

4.2 The determination is valid for five years from 18 November 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 December 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 – Tonga 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: 18 November 2022


GENEVIEVE BUTLER
Chairperson


JANE MCKEON
Commissioner