



Australian Government

International Air Services Commission

DETERMINATION

Determination: [2024] IASC 118
The Route: Philippines
The Applicant: Qantas Airways Limited
(Qantas) (ABN 16 009 661 901)
Public Register File: IASC/APP/202419

The Commission makes a determination allocating to Qantas Airways Limited 1,188 seats of capacity per week to operate passenger services on the Philippines route. The capacity may be used by either Qantas or its wholly-owned subsidiary, Jetstar Airways Pty Limited. The determination is valid for five years from 26 June 2024.

1 The application

1.1 On 16 May 2024, Qantas applied to the International Air Services Commission (the Commission) for an allocation of 1,188 seats of capacity per week to operate passenger services on the Philippines route. Qantas stated in its application that it will utilise the capacity to operate four services per week between Brisbane and Manila from 28 October 2024, using Airbus A330 aircraft configured with 297 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;
- the capacity will be fully utilised by 31 November 2024;
- the capacity may be utilised by Qantas, Jetstar 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.

1.3 In accordance with section 12 of the *International Air Services Commission Act 1992* (the Act), on 22 May 2024, the Commission published Qantas' application on the Commission's website inviting other applications for capacity on the Philippines 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 According to the Register of Available Capacity, there are 8,621 seats of capacity per week available for allocation to Australian designated airlines to operate passenger services between Australia and the following points in the Philippines: Manila and Clark.

2.3 Australian designated airlines may determine the frequency of service, capacity and aircraft type to be operated to or from points in the Philippines other than Manila and Clark.

2.4 Under the Australia-Philippines air services arrangements, Australian designated airlines may enter into code sharing, blocked space and other cooperative marketing arrangements, whether as the operating or marketing airline, with any airline(s), including other Australian designated airlines or with an airline(s) of a third country.

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 Currently, Qantas has a total capacity allocation on the Philippines route of 2,079 seats of passenger capacity allocated under Determinations [2023] IASC 106 and [2020] IASC 103. Qantas is seeking the allocation of 1,188 seats of capacity per week to operate an additional four services on the Australia-Philippines route.

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 the Philippines. 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. 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 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 Philippines route to Qantas Airways Limited ([2024] IASC 118)

4.1 In accordance with section 7 of the Act, the Commission makes a Determination in favour of Qantas Airways Limited, allocating 1,188 seats of capacity per week to operate passenger services on the Philippines route in accordance with the Australia – Philippines air services arrangements.

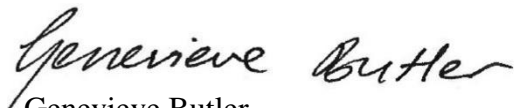
4.2 The Determination is valid for five years from 26 June 2024.

4.3 The Determination is subject to the following conditions:

- (a) Qantas Airways Limited is required to fully utilise the capacity no later than 30 November 2024 or such other date approved by the Commission.
- (b) The capacity may be utilised by:
 - Qantas Airways Limited; or
 - Jetstar Airways Pty Limited, as long as it remains a wholly-owned subsidiary of the Qantas Group; or
 - such other wholly-owned subsidiary of the Qantas Group the Commission approves in writing, as long as it remains a wholly-owned subsidiary of the Qantas Group.
- (c) Neither Qantas Airways Limited nor its wholly-owned subsidiary (Jetstar Airways Pty Limited) are permitted to use the capacity to provide services jointly with another Australian carrier or any other person unless approved by the Commission
- (d) The capacity may be used by Qantas Airways Limited to provide code share or joint services with any wholly-owned subsidiary of the Qantas Group and by any wholly owned subsidiary of the Qantas Group to provide code share or joint services with Qantas Airways Limited.
- (e) To the extent that the capacity is used to provide 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 Australian Consumer Law.
- (f) Changes in relation to the ownership and control of Qantas Airways Limited and/or its wholly-owned subsidiary are permitted except to the extent that any change:
 - results in the designation of the airline(s) as an Australian carrier under the Australia – Philippines 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 the wholly-owned subsidiary) or be in a position to exercise effective control of Qantas Airways Limited (or the wholly-owned subsidiary), without the prior consent of the Commission.

Dated: 26 June 2024



Genevieve Butler
Chairperson



Jane McKeon
Commissioner