



Australian Government

International Air Services Commission

DETERMINATION

Determination: [2012] IASC 107
The Route: United Arab Emirates (UAE)
The Applicant: Qantas Airways Limited (Qantas)
(ACN 009 661 901)
Public Register: IASC/APP/201219

1 The application

1.1 On 4 October 2012, Qantas applied for an allocation of 14 frequencies per week of capacity on the UAE route. Qantas proposes to operate daily services from both Sydney and Melbourne to London, via Dubai. The service is to be carried out using A380 aircraft.

1.2 On 4 October 2012, the Commission published a notice, in accordance with section 12 of the *International Air Services Commission Act 1992* (the Act), inviting applications and submissions from interested parties about the allocation of capacity on the route. No applications or submissions were received. All material supplied by the applicant is filed on the Commission's website, www.iasc.gov.au.

2 Provisions of relevant air services arrangements

2.1 The proposed operation of the capacity involved in the application is consistent with the provisions of the Australia - UAE air services arrangements. According to the Register of Available Capacity, 123 services per week are available for allocation.

3 Delegate's consideration

3.1 In accordance with section 27AB of the Act and regulation 3A of the *International Air Services Commission Regulations 1992*, the delegate of the Commission considers the application. (For purposes of this determination, references to the Commission include the delegate of the Commission).

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

- not contrary to any restrictions on capacity contained in bilateral arrangements, or combination of bilateral arrangements; and
- if more than one application is made, the allocation would be of greatest benefit to the public.

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 For purposes of the Qantas application, paragraph 6.2 of the Minister's policy statement (No. 5), made on 19 May 2004, requires the Commission to apply the criteria in paragraph 4 of the policy statement.

3.5 Paragraph 4.1 of the policy statement provides that the use of entitlements, under a bilateral arrangement, by Australian carriers that are reasonably capable of obtaining the necessary approvals and of implementing their application is of benefit to the public.

3.6 The delegate of the Commission considers that Qantas is an established carrier which is clearly capable of obtaining the necessary approvals and of implementing the proposed operations. This means that the use of the entitlements by Qantas is of benefit to the public. Accordingly, the delegate will allocate the capacity sought to Qantas. The Commission has authorised use of allocated capacity by Qantas or its wholly-owned subsidiaries on a number of routes, and the delegate will do so in this case.

4 Determination allocating capacity on the UAE route to Qantas ([2012] IASC 107)

4.1 The delegate of the Commission makes, under section 7 of the Act, a determination in favour of Qantas, allocating 14 frequencies per week of capacity on the UAE route subject to the conditions set out below.

4.2 The determination is for five years from the date of this determination.

4.3 The determination is subject to the following conditions:

- Qantas is required to utilise the capacity from no later than 31 October 2013, or from such other date approved by the Commission;
- the capacity may be utilised by Qantas or another Australian carrier which is a wholly-owned subsidiary of Qantas;
- the capacity may be used to provide joint services with any wholly-owned subsidiary of the Qantas group;
- Qantas is not permitted to utilise the capacity to provide services jointly with another Australian carrier or any other person without the approval of the Commission;

- 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 – United Arab Emirates 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: 13 November 2012



Marlene Tucker
Executive Director
Delegate of the IASC Commissioners

