



Australian Government

International Air Services Commission

DETERMINATION

Determination: [2014] IASC 120
The Route: Japan
The Applicant: Qantas Airways Limited (Qantas)
ACN 009 661 901
Public Register: IASC/APP/201475

The Commission makes a determination allocating seven frequencies per week on the Japan route to serve Haneda Airport for five years, in accordance with the terms of the Australia-Japan air services arrangements.

1 The application

1.1 On 28 November 2014, Qantas applied to the Commission for an allocation of seven frequencies per week on the Japan route to serve Haneda Airport. Qantas plans to operate the services from August 2015. Qantas has requested the allocation for five years from the date of the determination and stated that the allocation will be fully used by 31 December 2015. Qantas also requested for the capacity to be utilised by another Australian carrier which is a wholly-owned subsidiary of Qantas and for the capacity to be used in joint services with any wholly-owned subsidiary of the Qantas Group.

1.2 As required by section 12 of the *International Air Services Commission Act 1992* (the Act), the Commission published a notice on 1 December 2014 inviting other applications for capacity. No applications were received.

1.3 All non-confidential material supplied by Qantas is available on the Commission's website (www.iasc.gov.au).

2 Relevant provisions of the air services arrangements

2.1 According to the Register of Available Capacity, there are currently seven frequencies per week available for immediate allocation to Australian airlines to operate services between Australia and Japan to serve Haneda Airport.

3 Commission's assessment

3.1 In considering an application for allocating available capacity, section 7 of the Act requires that the Commission must not allocate available capacity unless the Commission is satisfied that the allocation would be of benefit to the public. Section 7 further provides that the determination must not allocate available capacity contrary to

any restrictions on capacity contained in a bilateral arrangement, or a combination of bilateral arrangements, permitting the carriage to which the capacity relates. In assessing the benefit to the public of an allocation of capacity, the Commission must apply the criteria set out for that purpose in the policy statement made by the Minister under section 11 of the Act.

3.2 Under paragraph 6.2 of the Minister's Policy Statement (No. 5) of 19 May 2004 (the Policy Statement), in circumstances where there is only one applicant for allocation of capacity on a route, only the criteria in paragraph 4 are applicable. Paragraph 4 provides that the use of entitlements by Australian carriers under a bilateral arrangement is of benefit to the public unless such carriers are not reasonably capable of obtaining the necessary approvals to operate on the route and are not reasonably capable of implementing their applications.

3.3 The Commission notes that:

- there are no other applicants seeking capacity on the route; and
- Qantas is an established international carrier, and is therefore reasonably capable of obtaining the necessary approvals and of implementing its application.

3.4 The Commission further notes there are currently no Australian or Japanese airlines providing own aircraft-operated services on the Japan route to/from Haneda Airport. Qantas and Japan Airlines operate daily services between Sydney and Narita Airport. Virgin Australia International offers code share services on services operated by Singapore Airlines between Singapore and Japan. Jetstar International operates flights to Narita Airport out of Melbourne, Cairns and the Gold Coast and flights to Osaka out of Melbourne and Cairns.

3.5 Qantas has sought the allocation of seven frequencies per week to operate services between Australia and Haneda Airport. This represents the total amount of capacity available to any Australian designated airline (to serve Haneda Airport) under the Australia-Japan air services arrangements. As no other Australian carrier applied for capacity on the route and Qantas fulfils the public benefit criteria provided under paragraph 4 of the Policy Statement, the Commission has decided to allocate the capacity as requested by Qantas.

3.6 Qantas has also requested the determination allow the capacity to be used by either Qantas or another Australian carrier which is a wholly-owned subsidiary of Qantas, including for joint services, and for any wholly-owned subsidiary of the Qantas Group to provide joint services with Qantas. The Commission considers there are no competition issues with this, and has decided to include the conditions requested by Qantas.

3.7 Subsection 15(1) of the Act empowers the Commission to include such terms and conditions as it thinks fit. Paragraph 15(2)(e) requires the inclusion of a condition stating the extent to which the carrier may use that capacity in joint services with another carrier. As is normal practice, the Commission will also include a condition which requires Qantas to comply with the Australian Consumer Law.

4 Determination allocating capacity to Qantas on the Japan route ([2014] IASC 120)

4.1 The Commission allocates, under section 7 of the Act, seven frequencies per week to Qantas on the Japan route to serve Haneda Airport in accordance with the terms of the Australia-Japan air services arrangements.

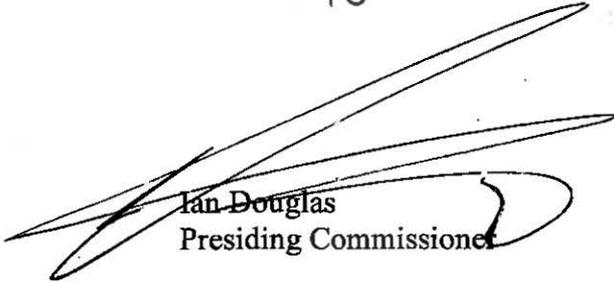
4.2 The determination is for five years from the date of the determination.

4.3 The determination is subject to the following conditions:

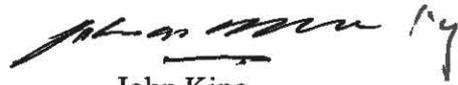
- Qantas is required to fully utilise the capacity by no later than 31 December 2015, or from such other date approved by the Commission;
- only Qantas or another Australian carrier which is a wholly-owned subsidiary of Qantas is permitted to use the capacity;
- neither Qantas nor another Australian carrier which is a wholly owned subsidiary of Qantas is permitted to utilise the capacity to provide services jointly with another Australian carrier or any other person without the approval of the Commission;
- 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;
- where the capacity is used to provide joint services on the route, the airlines are required to take all reasonable steps to ensure that passengers are informed, at the time of booking, of the carrier actually operating the flight. Nothing in this determination exempts the airlines from complying with the Australian Consumer Law; and
- 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-Japan 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: 16 December 2014



Ian Douglas
Presiding Commissioner



John King
Commissioner