



Australian Government

International Air Services Commission

DETERMINATION

Determination: [2017] IASC 104
The Route: China
The Applicant: Qantas Airways Limited
(ABN 16 009 661 901) (Qantas)
Public Register File: IASC/APP/201705

The Commission makes a determination allocating in favour of Qantas unlimited capacity and frequency on the China route. The determination is valid for ten years from 23 March 2017.

1 The application

1.1 On 3 March 2017, the International Air Services Commission (the Commission) received an application from Qantas seeking an allocation of unlimited capacity on the China route on the following basis:

- the allocation is requested for a period of ten years from the date of the determination;
- the capacity will be fully utilised by 30 June 2017;
- the capacity may be utilised by Qantas or another Australian carrier which is a wholly-owned subsidiary of Qantas;
- 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; and
- the capacity may be used by Qantas to provide services jointly with China Eastern.

1.2 In its application, Qantas requested that another Australian carrier, which is a wholly-owned subsidiary of Qantas such as Jetstar Airways Pty Limited (Jetstar), be able to utilise the capacity on the route.

1.3 In accordance with section 12 of the *International Air Services Commission Act 1992* (the Act), the Commission published Qantas' application on the Commission's website, on 3 March 2017, inviting other applications on the China 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 According to the Register of Available Capacity, designated airlines of Australia may determine the frequency of service, capacity and aircraft type to be operated between points in Australia and China. Likewise, there are no limitations in relation to frequency, capacity or aircraft type for dedicated cargo services between Australia and China.

2.2 Under the Australia-China air services arrangements, Australian designated carriers may enter into code share, blocked space or other cooperative marketing arrangements with another Australian airline(s), with a Chinese airline(s) or with airline(s) of a third country. The volume of capacity or service frequencies, which may be sold by the marketing carrier under the code share arrangements, are not subject to limitations.

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, then Minister for Transport and Regional Services, the Hon. John Anderson MP issued Policy Statement No. 5 (hereinafter referred to as the Policy Statement) dated 19 May 2004. The Policy Statement sets out the range of criteria which the Commission is required to apply in assessing the benefit to the public of allocations of capacity. It also provides other guidance to the Commission in performing its functions.

3.5 Paragraph 6.1 of the Policy Statement provides, in part, that in circumstances where capacity is not limited under the relevant bilateral agreement, as in the case of the China 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.

3.6 The Commission notes that Qantas and its wholly-owned subsidiary Jetstar are established international carriers and, as such, are reasonably capable of obtaining the necessary approvals to operate on the route and of implementing their proposed services. Accordingly, the Commission considers that the use of the entitlements by Qantas or its wholly-owned subsidiary would be of benefit to the public and has decided to allocate the capacity sought to Qantas and permit the capacity to be used by Qantas or its wholly-owned subsidiary.

3.7 Qantas has also requested for the capacity to be used 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. The Commission does not find any competition issues on this proposed arrangement. For this reason, the Commission has decided to include a condition permitting the use of the capacity for joint services between and Qantas a wholly-owned subsidiary.

3.8 Furthermore, Qantas also requested authority to use the capacity to provide code share services with China Eastern.

3.9 Under paragraph 3.6 of the Policy Statement, where capacity that can be used for code share operations is available under air services arrangements, including where foreign airlines have rights to code share on services operated by Australian carriers, the Commission would generally be expected to authorise applications for use of capacity to code share. However, if the Commission has serious concerns that a code share application (or other joint service proposal) may not be of benefit to the public, it may subject the application to more detailed assessment using the additional criteria set out in paragraph 5 (whether the application is contested or not). Before doing so, the Commission will consult with the Australian Competition and Consumer Commission (the ACCC).

3.10 The Commission notes that Qantas and China Eastern have been given permission by the Commission to use the capacity allocation on the China route for code share services under its existing determination (see [2016] IASC 102). For this reason, the Commission did not see the need to refer the matter to the ACCC and did not apply the additional criteria under paragraph 5 of the Policy Statement.

3.11 The Northern Winter 2016-2017 International Airlines Timetable summary published by the Department of Infrastructure and Regional Development indicates that Qantas operates seven weekly services between Sydney and Shanghai on which China Eastern code shares as a marketing carrier. Qantas' wholly-owned subsidiary, Jetstar, operates two weekly services between the Gold Coast and Wuhan. China Eastern operates between 23 to 26 direct services per week between points in China and

Australia. Qantas code shares on China Eastern-operated flights between Shanghai and Brisbane/Melbourne/Sydney; Kunming-Sydney; Beijing-Hangzhou-Sydney; and Beijing-Nanjing-Sydney.

3.12 The Australia-China route is a highly competitive market. Several major airlines offer either own metal or code share services on a direct basis or via third countries. China Southern operates around 42 weekly return services, mainly from its home base in Guangzhou to Brisbane/ Melbourne/ Perth/ Sydney, with two weekly direct services between Shenzhen and Sydney. Qantas code shares on China Southern-operated flights between Guangzhou and Brisbane/ Melbourne/ Perth/ Sydney.

3.13 Air China, Xiamen Airlines, Sichuan Airlines, Hainan Airlines and Beijing Capital Airlines offer direct services between Australia and China while Cathy Pacific has a strong share of the Australian passenger traffic via Hong Kong. While at the moment, Virgin Australia offers code share services on SilkAir and Singapore Airlines-operated flights via Singapore, Virgin Australia is expected to operate its own metal on the route this year.

3.14 The Commission further notes that the ACCC has granted authorisation to Qantas and China Eastern to coordinate their operations between Australia and China pursuant to a Joint Coordination Agreement, subject to certain conditions. The ACCC authorisation is valid until 31 October 2020.

3.15 In light of the above, the Commission has decided to continue to provide permission for the capacity allocation to be used for code share services between Qantas and China Eastern.

3.16 Section 15 of the Act provides that the Commission may include such terms and conditions as the Commission thinks fit. In light of this, the Commission decided to include certain conditions set out below.

4 Determination allocating capacity on the China route to Qantas ([2017] IASC 104)

4.1 In accordance with section 7 of the Act, the Commission makes a determination in favour of Qantas, allocating unlimited capacity and frequencies to operate services between Australia and China in accordance with the Australia - China air services arrangements.

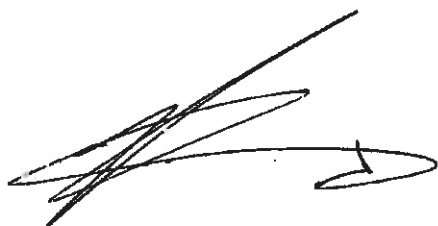
4.2 The determination is valid for ten years from 23 March 2017.

4.3 The determination is subject to the following conditions:

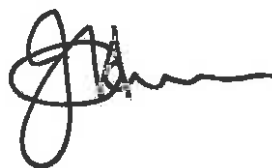
- the capacity may be utilised by Qantas or another Australian carrier which is a wholly-owned subsidiary of Qantas;

- the capacity may be used by Qantas to provide joint services with any wholly-owned subsidiary of the Qantas Group and by any wholly owned subsidiary of the Qantas Group to provide joint services with Qantas;
- the capacity may be used by Qantas to provide code share services with China Eastern in accordance with the code share agreement between Qantas and China Eastern dated 9 July 2008, as amended;
- Qantas is required to apply to the Commission for a variation of the determination should Qantas and China Eastern propose to add third country routes on their code share arrangements where Australian capacity entitlements will be used for services on those routes;
- to the extent that the capacity is used to provide joint or code share 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 the Australian Consumer Law; and
- changes in relation to the ownership and control of Qantas and/or Qantas' wholly-owned subsidiary are permitted except to the extent that any change:
 - results in the designation of the airline as an Australian carrier under the Australia – China 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 and/or Qantas' wholly-owned subsidiary or be in a position to exercise effective control of Qantas and/or Qantas' wholly-owned subsidiary, without the prior consent of the Commission.
- Qantas is required to apply to the Commission to have Determination [2016] IASC 102 revoked within ten working days of the date of this instrument.

Dated: 23 March 2017



IAN DOUGLAS
Chairperson



JAN HARRIS
Commissioner

