



Australian Government

International Air Services Commission

DETERMINATION

Determination: [2019] IASC 103
The Route: Korea
The Applicant: Qantas Airways Limited
(ABN 16 009 661 901) (Qantas)
Public Register File: IASC/APP/201901

The Commission makes a determination allocating to Qantas 400 seats per week in each direction on the Korea route. The capacity may be used by Qantas to provide code share services with Cathay Pacific Airways and Hong Kong Dragon Airlines. The determination is valid for five years from 5 February 2019.

1 The application

1.1 On 8 January 2019, the International Air Services Commission (the Commission) received an application from Qantas seeking an allocation of 400 seats per week in each direction of passenger capacity on the Korea route. Qantas intends to use the capacity to offer code share services on flights operated by Cathay Pacific Airways (Cathay Pacific) and Hong Kong Dragon Airlines Limited (Cathay Dragon) between Hong Kong and Korea. Qantas sought the capacity 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 27 October 2019; and
- the capacity may be used by Qantas.

1.2 In accordance with section 12 of the *International Air Services Commission Act 1992* (the Act), on 8 January 2019, the Commission published Qantas' application on the Commission's website inviting other applications on the Korea route. No other applications were received.

1.3 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). Any variation made to an existing allocation of capacity should also not be contrary to any restrictions on capacity contained in a bilateral arrangement(s).

2.2 According to the Register of Available Capacity, there are 7,000 seats per week of capacity in each direction available for allocation to Australian carriers to operate services to and from Sydney, Melbourne, Brisbane and Perth and any point in Korea.

2.3 Under the Australia-Korea air services arrangements, Australian designated airline(s) of Australia may, subject to certain conditions, enter into cooperative marketing arrangements such as blocked space, code sharing, or leasing arrangements, whether as the operating airline(s) or the marketing airline(s), in respect of passenger, combination and/or cargo air services with airline(s) of Australia; (an) airline(s) of Korea; and (an) airline(s) of any third country or countries.

2.4 Under the Australia-Korea air services arrangements, capacity offered by the designated carrier(s) as the marketing carrier(s) on services operated by the other airlines, including airlines of a third country or countries, shall be counted against any capacity entitlements of the contracting party designating the marketing carrier(s).¹

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 Qantas is seeking the allocation of 400 seats per week in each direction on the Korea route. The 400 seats are intended to be used by Qantas to offer through tickets from points in Australia to points in Korea via Hong Kong on services operated by either Cathay Pacific or Cathay Dragon between Hong Kong and Korea (vice-versa). The new capacity sought is in addition to Qantas' current capacity allocation of 500 seats² per week in each direction which it currently uses to provide code share services on flights operated by Asiana Airlines between Incheon and Sydney.³

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

¹ Should an Australian carrier wish to code share, as marketing carrier, on flights offered by another carrier (including a carrier of a third country or economy), the Australian carrier would use Australian capacity entitlements.

² Determination [2016] IASC 109

³ Northern Winter 2018-2019 Timetable Summary (28 October 2018 – 30 March 2019)

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 Section 12 of the 2018 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 section 8 of the 2018 Policy Statement, the Commission is 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.

3.7 The Commission notes there are no other applicants seeking capacity on the route and no opposition to the application. The Commission further notes that Qantas is an established international carrier and, as such, is reasonably capable of obtaining any licences, permits or other approvals required to operate on and service the route or to market, as code share partner, services operated by Cathay Pacific and Cathay Dragon. Qantas is also reasonably capable of using the capacity proposed to be allocated under the determination. Accordingly, the Commission has concluded that Qantas fulfils the criteria under section 8 and has decided to allocate the capacity in favour of Qantas, as requested.

3.8 Subsection 15(1) of the Act empowers the Commission to include such terms and conditions as it thinks fit. Paragraph 15(2)(e) of the Act requires the inclusion of a condition stating the extent to which the carrier may use that capacity in joint services with another carrier. As required by section 23 of the 2018 Policy Statement, where the Commission authorises a carrier to utilise the allocated capacity to provide joint or code share services with another carrier, the Commission will include a condition requiring the airlines concerned to take all reasonable steps to ensure that passengers are informed of the carrier that is actually operating the flight.

3.9 The Commission notes that Qantas has a pending application before the Commission seeking approval for the use of its capacity allocation on the Hong Kong route for code sharing with Cathay Pacific. Nothing in this decision should be taken as indicating approval or disapproval of the other Qantas application relating to code sharing between Qantas and Cathay Pacific on the Hong Kong route.

3.10 Additionally, nothing in this decision should be taken as indicating either approval or disapproval by the Australian Competition and Consumer Commission (ACCC). This decision is made without prejudicing, in any way, possible future consideration of code share operations by the ACCC.

4 Determination allocating capacity on the Korea route to Qantas ([2019] IASC 103)

4.1 In accordance with section 7 of the Act, the Commission makes a determination in favour of Qantas, allocating 400 seats of capacity per week in each direction on the Korea route in accordance with the Australia – Korea air services arrangements.

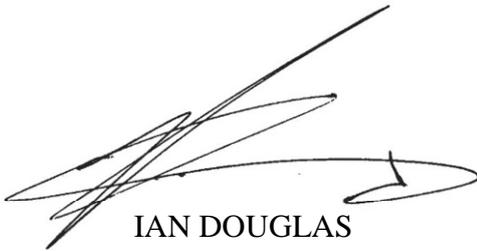
4.2 The determination is valid for five years from 5 February 2019.

4.3 The determination is subject to the following conditions:

- (a) the capacity is required to be fully utilised from no later than 27 October 2019 or such other date approved by the Commission;
- (b) the capacity may be utilised by Qantas:
- (c) Qantas is permitted to utilise the capacity to offer code share services on flights operated by Cathay Pacific between Hong Kong and Korea, in accordance with the code share agreement between the airlines dated 29 August 2018, as amended;
- (d) Qantas is permitted to utilise the capacity to offer code share services on flights operated by Cathay Dragon between Hong Kong and Korea, in accordance with the code share agreement between the airlines dated 29 August 2018, as amended;
- (e) Qantas must apply to the Commission for approval of the use of the capacity if there are variations to Qantas' code share arrangements with Cathay Pacific and/or Cathay Dragon which would change the relevant commercial aspects of the code share arrangement(s) from a free sale code share arrangement to a block space, or vice versa, or if Qantas proposes to add third country routes on which the airlines will code share where Australian capacity will be used for services on that route;
- (f) to the extent that the capacity is used to provide code share or 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 the Australian Consumer Law; and
- (g) 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 – Korea 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: 5 February 2019



IAN DOUGLAS
Chairperson



JAN HARRIS
Commissioner



KAREN GOSLING
Commissioner