



## Australian Government

### International Air Services Commission

#### DETERMINATION

**Determination:** [2019] IASC 106  
**The Route:** Indonesia  
**The Applicant:** Qantas Airways Limited  
(ABN 16 009 661 901) (Qantas)  
**Public Register File:** IASC/APP/201905

**The Commission's delegate makes a determination allocating to Qantas 284 seats per week of capacity in each direction on the Indonesia route. The capacity may be used by either Qantas or its wholly-owned subsidiary, Jetstar Airways Pty Limited, and may be used by Qantas to provide joint services with any wholly-owned subsidiary of the Qantas Group. The determination is valid for five years from 25 March 2019.**

#### 1 The application

1.1 On 5 March 2019, the International Air Services Commission (the Commission) received an application from Qantas seeking an allocation of 284 seats per week in each direction of passenger capacity on the Indonesia route. Qantas intends to operate one additional weekly service between Australia and Indonesia during peak periods of demand. 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 31 October 2019;
- the capacity may be used by Qantas 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.

1.2 In accordance with section 12 of the *International Air Services Commission Act 1992* (the Act), on 7 March 2019, the Commission published Qantas' application on the Commission's website inviting other applications on the Indonesia 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](http://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 2750 seats available per week in each direction to and from Sydney, Melbourne (including Avalon), Brisbane and Perth.

2.3 Under the Australia-Indonesia air services arrangements, a designated airline of Australia may enter into code-share, blocked space or other cooperativemarketing arrangements, as the marketing and/or operating airline with another Australian airline orairlines, with an Indonesian airline or airlines, or with an airline or airlines of a third country.

## **3 Delegate'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 In accordance with section 27AB of the Act and regulation 10 of the International Air Services Commission Regulations 2018, the delegate of the Commission may consider Qantas' application. (For the purposes of this determination, all references to the Commission include the delegate of the Commission)

3.5 Qantas is seeking the allocation of 284 seats per week of capacity in each direction on the Indonesia route. Additionally, for flexibility, Qantas requested permission for the capacity to be used as well by another Australian carrier which is a wholly-owned subsidiary of Qantas, such as Jetstar Airways Pty Limited (Jetstar). The

new capacity sought is in addition to Qantas' current capacity allocation, and will be used to operate an additional weekly service during periods of peak demand using an A330-300 aircraft.

3.6 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.

3.7 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 licenses, 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's delegate notes there are no other applicants seeking capacity on the route and no opposition to the application. The delegate further notes that Qantas and its wholly-owned subsidiary Jetstar are established international carriers and, as such, are reasonably capable of obtaining any licenses, permits or other approvals required to operate on and service the route and of using the capacity allocated under the determination. Accordingly, the delegate has concluded that Qantas fulfils the criteria under section 8 and has decided to allocate the capacity in favour of Qantas, as requested.

3.9 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.

3.10 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 Indonesia route to Qantas ([2019] IASC 106)**

4.1 In accordance with section 7 of the Act, the Commission's delegate makes a determination in favour of Qantas, allocating 284 seats of capacity per week in each direction on the Indonesia route in accordance with the Australia – Indonesia air services arrangements.

4.2 The determination is valid for five years from 25 March 2019.

- the capacity may be utilised by:
  - Qantas; or
  - Jetstar Airways Pty Limited, as long as it remains a wholly-owned subsidiary of Qantas; or
  - such other wholly-owned subsidiary of Qantas that the Commission approves in writing, as long as it remains a wholly-owned subsidiary of Qantas;
- the capacity must be fully utilised by 31 October 2019, or such other date approved by the Commission;
- neither Qantas nor its wholly-owned subsidiary that is permitted to use the capacity is authorised to provide code share or joint services with any other carrier or person unless approved by the Commission;
- 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;
- 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
- changes in relation to the ownership and control of Qantas and/or its 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 – Indonesia 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 its wholly-owned subsidiary or be in a position to exercise effective control of Qantas and/or its wholly-owned subsidiary, without the prior consent of the Commission.

Dated: 25 March 2019

A handwritten signature in black ink that reads "Marlene Tucker". The signature is written in a cursive style with a large initial 'M' and 'T'.

Marlene Tucker  
Executive Director  
Delegate of the IASC Commissioners