



Australian Government

International Air Services Commission

DETERMINATION

Determination: [2008] IASC 108
The Route: Vietnam
The Applicant: Qantas Airways Limited (Qantas)
(ACN 009 661 901)
Public Register: IASC/APP/200812

1 The application

1.1 On 6 June 2008, Qantas applied for an allocation of two frequencies per week of capacity on the Vietnam route to enable Jetstar, a wholly-owned subsidiary of Qantas, to operate additional services on the Vietnam route. From 1 September 2008, Jetstar plans to operate five A320 one-class services per week on a Sydney – Darwin – Ho Chi Minh City routing. These services would replace Jetstar's existing three times per week A330-200 two-class flights between Sydney and Ho Chi Minh City. Qantas proposes to code share on Jetstar's new services, as it currently does on the existing flights. Qantas sought a five year determination and indicated that the capacity would be fully utilised by 30 September 2008.

1.2 The Commission published a notice on 11 June 2008, inviting other applications for the capacity. No other applications were received.

1.3 All material supplied by the applicant is filed on the Register of Public Documents.

2 Provisions of relevant air services arrangements

2.1 Under the Australia – Vietnam air services arrangements, the designated airlines of Australia may operate services with any type of aircraft between points in Australia and points in Vietnam. The Register of Available Capacity shows that there are seven frequencies per week with any aircraft type available for allocation for services to and from Sydney, Melbourne, Brisbane and Perth. Unlimited capacity is available for allocation for services to and from other points in Australia.

2.2 The designated airlines of Australia may enter into code sharing arrangements with other Australian airlines.

3 Delegate's consideration

3.1 In accordance with section 27AB of the Act and regulation 3A of the

International Air Services Commission Amendment Regulations 2003 (No.1), the delegate of the Commission considers the Ozjet application.

3.2 The *International Air Services Commission Act 1992* (the Act) allows for allocated capacity to be used by a wholly owned subsidiary of another Australian carrier. Section 15(2)(ea) of the Act states that determinations may include a condition that, to the extent that any of the capacity is allocated to a particular Australian carrier, it may be used in whole or in part by any one or more of the following:

- (i) the carrier;
- (ii) a wholly-owned subsidiary of the carrier; and,
- (iii) if the carrier is a wholly-owned subsidiary of another Australian carrier - that other carrier.

3.3 Qantas is the only applicant for capacity. Under paragraph 6.2 of the Minister's Policy Statement (No.5) of 19 May 2004, the Commission is required only to apply the criteria in paragraph 4 of the policy statement. Under paragraph 4, the use of entitlements by an Australian carrier that is reasonably capable of obtaining the necessary approvals and of implementing its proposals is of benefit to the public. The Commission has previously permitted capacity allocated to Qantas to be used by Jetstar, a wholly-owned subsidiary of Qantas, on number of routes including the Vietnam route. Jetstar is an established international carrier. This means that there is public benefit arising from Jetstar using the entitlements on the Vietnam route. The delegate will allocate the capacity sought by Qantas.

3.4 Section 15(2A) states that if a determination includes a condition of a kind mentioned in paragraph 15(2)(ea), the determination may include conditions that are applicable to all, or some only, of the persons who are permitted to use the capacity concerned. The conditions of the determination will apply to both Qantas or another Australian carrier which is a wholly-owned subsidiary of Qantas.

3.5 Under Section 15(2)(e) of the Act, the Commission must include a condition in determinations stating the extent to which the carrier may use that capacity in joint services with another carrier. Qantas is proposing to code share on Jetstar-operated services. The Commission has previously authorised code sharing between Qantas and its wholly-owned subsidiaries on the Vietnam route, to enable Qantas to code share with Jetstar. The delegate will authorise code sharing between Qantas in relation to the additional frequencies sought in this application.

4 Determination allocating capacity on the Vietnam route to Qantas ([2008] IASC 108)

4.1 The delegate, on behalf of the Commission, makes a determination in favour of Qantas, allocating two frequencies per week in each direction to and from Sydney, Melbourne, Brisbane and Perth on the Vietnam route under the Australia – Vietnam 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, which apply to Qantas or another Australian carrier which is a wholly owned subsidiary of Qantas:

- Qantas is required to fully utilise the capacity from no later than 30 September 2008, 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 utilise the capacity;
- 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;
- the capacity may be used by any wholly-owned subsidiary of Qantas to provide joint services with Qantas;
- to the extent that the capacity is used to provide joint services on the route, Qantas and any wholly-owned subsidiary of Qantas must take all reasonable steps to ensure that passengers are informed of the carrier actually operating the flight at the time of booking;
- changes in relation to the ownership and control of Qantas are permitted except to the extent that any change:
 - 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, and
- changes in relation to the management, status or location of operations and Head Office of Qantas are permitted except to the extent that any change would result in the airline ceasing to be an airline designated by the Australian Government for the purposes of the Australia – Vietnam air services arrangements.

Dated: 18 June 2008

Michael Bird
Executive Director
Delegate of the IASC Commissioners