



Australian Government

International Air Services Commission

DETERMINATION

Determination: [2009] IASC 104
The Route: Indonesia
The Applicant: Qantas Airways Limited (Qantas)
(ACN 009 661 901)
Public Register: IASC/APP/200905

1 The application

1.1 On 18 March 2009, Qantas applied for an allocation of 389 seats per week and four frequencies per week of passenger capacity beyond Indonesia under the Australia- Indonesia air services arrangements. The allocation was sought because Qantas' wholly owned subsidiary company, Jetstar Airways (Jetstar) intends to extend its four-weekly Perth-Denpasar and three-weekly Perth-Jakarta return services to Singapore in mid-2009.

1.2 Qantas advised that the services will be operated using one-class Airbus A320 aircraft configured with 177 seats. Qantas sought approval to code share on these services.

1.3 The Commission published a notice on 25 March 2009 inviting other applications for the capacity. No applications were received in response to the advertisement, although Pacific Blue Airlines made a separate application for capacity beyond Indonesia on 20 March 2009.

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

2 Provisions of relevant air services arrangements

2.1 The Register of Available Capacity shows that 20 frequencies per week utilising up to 5,790 seats weekly beyond Jakarta, Denpasar, an additional two points in Indonesia west of Denpasar to Singapore, points in Malaysia and a point in Thailand of passenger capacity are available for allocation. Of the 20 frequencies, four are available for services beyond Denpasar.

Singapore

2.2 Under the Australia- Singapore air services arrangements, Australian carriers are entitled to operate between Australia and Singapore via intermediate points in Indonesia.

3 Delegate's consideration

3.1 In accordance with section 27AB of the *International Air Services Commission Act 1992* and regulation 3A of the *International Air Services Commission Regulations 1992*, the delegate of the Commission considers Qantas' application.

3.2 Under Determination [2007] IASC 109, Qantas currently has an unutilised allocation of 850 seats and three frequencies per week of beyond Indonesia passenger capacity, any or all of which may serve Denpasar. The allocation is unutilised because Qantas withdrew its Perth-Denpasar-Singapore services at the beginning of the Northern Winter 2008 scheduling season. Qantas requires an allocation of 389 seats and four frequencies per week of beyond Indonesia capacity to operate the proposed total of 1,239 seats on seven frequencies per week.

3.3 Under the Australia- Indonesia air services arrangements, no more than seven frequencies per week may be operated beyond Denpasar. The Qantas proposal will result in the utilisation of four of the beyond Denpasar frequencies. As Determination [2007] IASC 109 already enables Qantas to use three frequencies per week beyond Denpasar, it needs an allocation of one beyond Denpasar frequency per week to implement its proposed four-weekly Perth-Denpasar-Singapore services.

3.4 There are no restrictions on beyond Indonesia services similar to those applied at Denpasar at other authorised points in Indonesia, apart from the overall limit on beyond Indonesia services that may be operated by the designated airlines of Australia.

3.5 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 in this case. Under paragraph 4, the use of Australian entitlements by a carrier that is reasonably capable of obtaining the necessary approvals (4(b)(i)) and of implementing its proposals (4(b)(ii)) is of benefit to the public.

3.6 Qantas and its subsidiary company, Jetstar, are established international carriers which are clearly capable of obtaining the necessary approvals and of implementing the proposed operations. This means that there is public benefit arising from the use of the entitlements. The delegate, on behalf of the Commission, will allocate to Qantas the capacity it has sought.

4 Determination allocating capacity on the Indonesia route to Qantas ([2009] IASC 104)

4.1 The delegate, on behalf of the Commission, makes a determination in favour of Qantas, allocating 389 seats per week in each direction and four frequencies per week of passenger capacity beyond Indonesia, one of which may serve Denpasar, under the Australia – Indonesia 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 from no later than 1 August 2009, 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:
 - 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 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 – Indonesia air services arrangements.

Dated: 3 April 2009

Dilip Mathew
 Acting Executive Director
 Delegate of the IASC Commissioners