



Australian Government
International Air Services Commission

DETERMINATION

Determination: [2015] IASC 101
The Route: Fiji
The Applicant: Qantas Airways Ltd (Qantas)
ABN 16 009 661 901
Public Register File: IASC/APP/201476

The Commission's delegate makes a determination allocating to Qantas unlimited passenger capacity on the Fiji route between points in Australia other than Sydney, Melbourne, Brisbane and Perth, and points in Fiji for ten years, in accordance with the terms of the Australia-Fiji air services arrangements.

1 The application

1.1 On 23 December 2014, Qantas applied to the Commission for an allocation of unlimited passenger capacity on the Fiji route between points in Australia other than Sydney, Melbourne, Brisbane and Perth, and points in Fiji in accordance with the terms of the Australia – Fiji air services arrangements. The capacity is intended to be used by Qantas' wholly-owned subsidiary, Jetstar Airways Pty Limited (Jetstar), to operate services between the Gold Coast and Fiji from March 2015.

1.2 As required by section 12 of the *International Air Services Commission Act 1992* (the Act), the Commission published a notice on 23 December 2014 inviting other applications for capacity. No applications were received.

1.3 All non-confidential material supplied by Qantas is available on the Commission's website (www.iasc.gov.au).

2 Relevant provisions of the 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 on the specified routes to or from points in Australia other than Sydney, Melbourne, Brisbane and Perth.

3 Delegate's assessment

3.1 In accordance with section 27AB of the Act and regulation 3A of the *International Air Services Commission Regulations 1992*, the delegate of the Commission may consider the application for allocation of capacity. (For purposes of this determination, references to the Commission include the delegate of the Commission).

3.2 In considering an application for allocating available capacity, section 7 of the Act requires that the Commission must not allocate available capacity unless the Commission is satisfied that the allocation would be of benefit to the public. Section 7 further provides that the determination must not allocate available capacity contrary to any restrictions on capacity contained in a bilateral arrangement, or a combination of bilateral arrangements, permitting the carriage to which the capacity relates. In assessing the benefit to the public of an allocation of capacity, the Commission must apply the criteria set out for that purpose in the policy statement made by the Minister under section 11 of the Act.

3.3 Under paragraph 6.2 of the Minister's Policy Statement (No. 5) of 19 May 2004 (the Policy Statement), in circumstances where there is only one applicant for allocation of capacity on a 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.

3.4 The Commission notes that:

- there are no other applicants seeking capacity on the route; and
- Qantas and its wholly-owned subsidiary, Jetstar, are established international carriers and are therefore reasonably capable of obtaining the necessary approvals to operate on the route and of implementing their proposed services.

3.5 Qantas has sought the allocation of unlimited capacity to enable its wholly-owned subsidiary, Jetstar, to operate services between the Gold Coast and Fiji. There are currently no Australian or Fijian airlines providing own aircraft-operated services between the Gold Coast and Fiji. Jetstar operates flights between Sydney and Fiji. Fiji Airways operates services between Fiji and Sydney, Melbourne and Brisbane. Qantas offers code share services on flights operated by Fiji Airways. Virgin Australia (South East Asia) operates flights to Nadi out of Sydney, Melbourne and Brisbane.

3.6 As capacity between points in Australia other than Sydney, Brisbane, Melbourne and Perth, and Fiji is not limited under the Australia – Fiji air services arrangements, and Qantas and its wholly-owned subsidiary fulfil the public benefit criteria provided under paragraph 4 of the Policy Statement, the Commission's delegate has decided to allocate the capacity as requested by Qantas.

3.7 Qantas has also requested the determination allow the capacity to be used by either Qantas or another Australian carrier which is a wholly-owned subsidiary of Qantas, including for joint services, and for any wholly-owned subsidiary of the Qantas

Group to provide joint services with Qantas. The Commission considers there are no competition issues with this, and has decided to include the conditions requested by Qantas.

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) requires the inclusion of a condition stating the extent to which the carrier may use that capacity in joint services with another carrier. As is normal practice, the Commission will also include a condition which requires Qantas to comply with the Australian Consumer Law.

4 Determination allocating capacity on the Fiji route to Qantas ([2015] IASC 101)

4.1 The delegate of the Commission makes, under section 7 of the Act, a determination in favour of Qantas, allocating unlimited passenger capacity to and from all points in Australia, other than Sydney, Melbourne, Brisbane and Perth, and points in Fiji under the Australia – Fiji air services arrangements.

4.2 The determination is for ten years from the date of issue of this 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 by no later than 30 June 2015, 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;
- neither Qantas nor another Australian carrier which is a wholly owned subsidiary of Qantas is 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 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;
- where the capacity is used to provide joint services on the route, the airlines are required to take all reasonable steps to ensure that passengers are informed, at the time of booking, of the carrier actually operating the flight. 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 are permitted except to the extent that any change:

- results in the designation of the airline as an Australian carrier under the Australia–Fiji 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: 6 January 2015



Edouard Pokalioukhine
Senior Adviser
Delegate of the IASC Commissioners