



**Australian Government**  

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**International Air Services Commission**

**DETERMINATION**

**Determination:** [2015] IASC 107  
**The Route:** Chile  
**The Applicant:** Qantas Airways Limited (Qantas)  
ABN 16 009 661 901  
**Public Register:** IASC/APP/201510

**The Commission's delegate makes a determination allocating 1,847 seats of capacity per week in each direction in favour of Qantas on the Chile route. The determination is valid for five years.**

## **1 The application**

1.1 On 23 June 2015, Qantas applied to the Commission to consolidate its multiple determinations on the Chile route and seek an additional capacity of 364 seats per week which would effectively increase Qantas' total capacity allocation to 1,847 seats per week in each direction on the Chile route.

1.2 Qantas further sought the inclusion of the following conditions in the consolidated determination:

- permit the use of the capacity by Qantas or another Australian carrier which is a wholly-owned subsidiary of Qantas;
- permit the use of the capacity by Qantas in joint services with any wholly-owned subsidiary and by any wholly-owned subsidiary of Qantas to provide joint services with Qantas; and
- permit the use of the capacity by Qantas in joint services with the LATAM Airlines Group (LATAM) in accordance with the code share agreement between Qantas and LATAM.

1.3 As required by the *International Air Services Commission Act 1992* (the Act), the Commission published a notice on 24 June 2015 inviting other applications for capacity. The Commission also invited submissions about the proposed consolidation of multiple determinations. No applications or submissions were received.

1.4 All non-confidential material supplied by Qantas is available on the Commission's website ([www.iasc.gov.au](http://www.iasc.gov.au)).

## **2 Relevant provisions of the air services arrangements**

2.1 According to the Register of Available Capacity, there are currently 2,517 seats of passenger capacity per week in each direction available for allocation to Australian airlines for services between Australia and Chile.

## **3 Delegate's consideration**

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 decision, all references to the Commission include the delegate of the Commission).

3.2 Qantas currently holds Determinations [2011] IASC 114, as varied by Decision [2011] IASC 220 and [2014] IASC 111. The two determinations allocate a combined total of 1,483 seats per week of passenger capacity and permit code sharing by Qantas with any wholly-owned subsidiary of the Qantas Group. Additionally, Determination [2014] IASC 111 allows code sharing by Qantas with LATAM.

3.3 Qantas has sought to consolidate the two determinations and increase the total capacity allocation to 1,847 seats per week. Qantas also stated in its application that within 10 working days of the consolidated determination being issued, the airline would seek to revoke Determinations [2011] IASC 114 and [2014] IASC 111.

3.4 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.

3.5 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.

3.6 The Commission's delegate notes that:

- there are no other applicants seeking capacity on the route; and
- Qantas is an established international carrier incumbent on the Chile route, and is therefore reasonably capable of obtaining the necessary approvals and of implementing its application.

3.7 The Commission's delegate considers that Qantas fulfils the paragraph 4 criteria as discussed above. The delegate further notes that for the year ended May 2015, Chile was ranked 43<sup>rd</sup> for Origin/Destination passenger traffic to and from Australia (up from its 44<sup>th</sup> ranking in the previous year). The Australia-Chile route has grown at an average of 8.3 per cent per year for the past five years. The Commission's delegate considers that allocating the additional 364 seats of capacity to Qantas (in addition to the airline's existing total capacity allocation of 1,483 seats per week) would enable Qantas to expand its services on the Chile route when necessary. In light of this, the delegate is satisfied that allocating a total of 1,847 seats per week of capacity on the Chile route to Qantas is of benefit to the public.

3.8 Qantas has requested that the determination permit the capacity to be used by Qantas under code share arrangements with any wholly-owned subsidiary of the Qantas Group and with LATAM. Paragraph 3.6 of the Policy Statement provides that where capacity can be used for code share operations under the relevant air services arrangements, the Commission would generally be expected to authorise applications for use of capacity to code share. However, if the Commission has serious concerns that a code share application may not be of benefit to the public, it may subject to application to more detailed assessment using the additional criteria set out in paragraph 5 of the Policy Statement. Before doing so, the Commission will consult the Australian Competition and Consumer Commission.

3.9 The Commission has no serious concerns about the proposed code share arrangements by Qantas. Currently, Qantas is the only (Australian) carrier that operates direct services between Australia and Chile. LATAM code shares on Qantas' direct services as per previous approval from the Commission. Qantas code shares with the LATAM Group's operations between Santiago and Sydney via Auckland and on various routes within Chile. The Commission considers the ongoing Qantas-LATAM code share arrangements could help support the viability of the Qantas services. In light of this, the Commission's delegate has decided to include the conditions requested by Qantas.

#### **4 Determination allocating capacity to Qantas on the Chile route ([2015] IASC 107)**

4.1 The delegate, on behalf of the Commission, allocates under section 7 of the Act, 1,847 seats per week in each direction in favour of Qantas on the Chile route in accordance with the terms of the Australia-Chile air services arrangements.

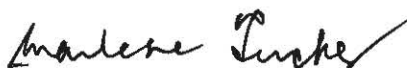
4.2 The determination is for five years from the date of the determination.

4.3 The determination is subject to the following conditions:

- Qantas is required to fully utilise the capacity by no later than 31 December 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 use the capacity;

- 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;
- the capacity may be used by Qantas to provide joint services with LATAM in accordance with both the code share agreement between Qantas and LAN Chile dated 2 April 2003 (as amended) and the code share agreement between Qantas and LATAM provided to the Commission on 14 June 2014 as appropriate;
- Qantas must apply to the Commission for approval of any proposed variations to the code share arrangement which would change the relevant commercial aspects of the respective code share arrangements 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;
- to the extent that the capacity is used to provide joint services on the route, the airlines must 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
- Qantas is required to seek a revocation of Determinations [2011] IASC 114 and [2014] IASC 111 within 10 working days from the date this determination comes into effect;
- 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-Chile 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: 15 July 2015



Marlene Tucker  
 Executive Director  
 Delegate of the IASC Commissioners