



**Australian Government**  
**International Air Services Commission**

**DETERMINATION**

<b>Determination:</b>	<b>[2015] IASC 111</b>
<b>The Route:</b>	<b>Singapore</b>
<b>The Applicant:</b>	<b>Qantas Airways Limited (Qantas)</b> <b>(ABN 16 009 661 901)</b>
<b>Public Register:</b>	<b>IASC/APP/201525</b>

**The Commission allocates to Qantas 300 seats per week on the Singapore route to be used to exercise own stopover rights between Singapore and Colombo.**

## **1 The application**

1.1 On 15 September 2013, Qantas applied for an allocation of 300 seats per week on the Singapore route to exercise own stopover rights between Singapore and Colombo. The proposed capacity allocation will support Qantas' code share services to Colombo via Singapore. Qantas requested the capacity allocation on the following basis:

- the allocation is for a period of five years;
- the capacity will be fully utilised by 31 October 2016;
- the capacity may be utilised by either Qantas or another Australian carrier which is a wholly-owned subsidiary of Qantas; and
- the capacity may be used in joint services with a wholly-owned subsidiary and with Emirates and SriLankan Airlines.

1.2 In accordance with section 12 of the *International Air Services Commission Act 1992* (the Act), the Commission published a notice on 16 September 2015 inviting other applications for the capacity. No applications or submissions 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 Relevant provisions of the air services arrangements**

2.1 Under the Australia-Singapore air services arrangements, Australian carriers

may enter into unrestricted codeshare, blocked space or other cooperative marketing arrangements with any other airline, including airlines of third parties. When exercising traffic rights between Singapore and Colombo in either direction, Australian carriers are restricted to 1,200 seats per week in each direction on an own-stopover basis only. According to the Register of Available Capacity, there are currently 500 seats available for allocation between Singapore and Colombo on an own-stopover basis.

### **3 Commission's consideration**

3.1 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.

3.2 Section 26 requires that 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 that are reasonably capable of obtaining the necessary approvals and of implementing their applications is of benefit to the public.

3.4 It is proposed that the capacity may be used by either Qantas or another Australian carrier which is a wholly-owned subsidiary of Qantas, which at this time is Jetstar Airways Pty Ltd (Jetstar).

3.5 The Commission notes that:

- there are no other applicants seeking capacity on the route; and
- Qantas and Jetstar are established international carriers and are therefore reasonably capable of obtaining the necessary approvals and of implementing the application.

3.6 Accordingly, the Commission concludes that Qantas and Jetstar satisfy the criteria in paragraph 4 of the Policy Statement.

3.7 Qantas has requested that the determination permit the capacity to be used by Qantas under code share arrangements with any wholly-owned subsidiary of Qantas and with Emirates and SriLankan Airlines.

3.8 Paragraph 3.6 of the Policy Statement provides that, where capacity that can be used for code share operations is available under air services arrangements, including where foreign airlines have rights to code share on services operated by Australian

carriers, 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 (or other joint service proposal) may not be of benefit to the public, it may subject the application to more detailed assessment using the additional criteria set out in paragraph 5 (whether the application is contested or not). Before doing so, the Commission will consult with the Australian Competition and Consumer Commission (the ACCC).

3.9 The Commission notes that, while there are no direct services between Australia and Sri Lanka, there is a range of alternative hubs and other airlines available for passengers wishing to travel between Australia and Colombo. The Commission does not have concerns that expansion of Qantas' code share capacity to Colombo via Singapore may not be of benefit to the public. In light of this, the Commission has decided to permit the use of the capacity in joint services with a wholly-owned subsidiary and with Emirates and SriLankan Airlines as requested by Qantas.

3.10 Nothing in this determination should be taken as indicating either approval or disapproval by the ACCC. This determination is made without prejudicing, in any way, possible future consideration of code share operations by the ACCC.

#### **4 Determination allocating capacity on the Singapore route to Qantas ([2015] IASC 111)**

4.1 The Commission makes, under section 7 of the Act, a determination in favour of Qantas, allocating 300 seats per week of capacity on the Singapore route to be used to exercise own stopover rights between Singapore and Colombo in accordance with the Australia-Singapore air services arrangements, subject to the conditions set out below.

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

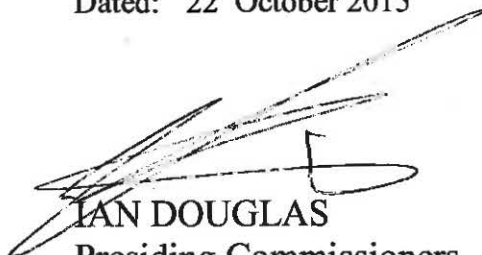
4.3 The determination is subject to the following conditions:

- Qantas is required to fully utilise the capacity from no later than 31 October 2016, or from such other date approved by the Commission;
- the capacity may be utilised by Qantas or another Australian carrier which is a wholly-owned subsidiary of Qantas;
- 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 unless approved by the Commission;
- subject to the preceding condition, 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;



- additionally, the capacity may be used by Qantas to provide services jointly with Emirates in accordance with the code share agreement between Qantas and Emirates dated 21 January 2013, amended;
- the capacity may be used by Qantas to provide services jointly with SriLankan Airlines in accordance with the code share agreement between Qantas and SriLankan Airlines dated 16 September 2014, amended;
- Qantas must apply to the Commission if it proposes to amend any of the above agreements, or enter into new agreements, that would result in a change in the nature of the code share agreement from a free sale to a block space arrangement, or vice versa, or add third country routes involving the use of Australian capacity;
- 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 of the carrier actually operating the flight at the time of booking. Nothing in this determination exempts the airlines from complying with the Australian Consumer Law;
- Qantas may only price and market its services, or share or pool revenues/profits on the route jointly with Emirates or SriLankan Airlines, as long as such practices are authorised under the *Competition and Consumer Act 2012* or otherwise authorised by the Australian Competition Tribunal, in the event of review by that Tribunal; and
- changes in relation to the ownership and control of the airlines authorised to utilise the capacity are permitted except to the extent that any change:
  - results in the designation of the airline as an Australian carrier under the relevant 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 the airline or be in a position to exercise effective control of the airline, without the prior consent of the Commission.

Dated: 22 October 2015

  
 IAN DOUGLAS  
 Presiding Commissioners

  
 JOHN KING  
 Commissioner