



Australian Government
International Air Services Commission

DETERMINATION

Determination:	[2015] IASC 114
The Route:	Indonesia
The Applicant:	Qantas Airways Limited (Qantas) ABN 16 009 661 901
Public Register:	IASC/APP/201530

The Commission allocates 1,570 seats of capacity per week to Qantas on the Indonesia route and allows the capacity to be used by a wholly owned subsidiary and for joint services with a wholly owned subsidiary. Permission is also granted for Jetstar to use the capacity for code share services with Emirates.

1 The application

1.1 On 9 October 2015, Qantas applied to the Commission for an allocation of 360 seats and 1,210 seats per week on the Indonesia route and for the capacity to be used by its wholly owned subsidiary, Jetstar Airways Pty Ltd (Jetstar). In its original applications, Qantas stated that Jetstar plans to use the additional 360 seats per week to operate additional services between Australia and Indonesia during peak periods from 31 December 2015 and to use the additional 1,210 seats during peak periods from 27 March 2016 using B737 and A320 aircraft configured with 335 and 180 seats, respectively. Qantas also sought permission to be able to use the capacity in joint services with a Qantas' wholly-owned subsidiary and for Jetstar to provide services jointly with Emirates. On 30 October 2015 Qantas varied its applications to consolidate the two applications into one (for a total capacity of 1,570 seats per week) with the information that the capacity will be utilised with effect from 27 March 2016.

1.2 In accordance with section 12 of the *International Air Services Commission Act 1992* (the Act), the Commission published a notice on 13 October 2015 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, there are currently 1,972 seats of passenger capacity per week in each direction to and from Sydney, Melbourne (including Avalon), Brisbane and Perth available for allocation to Australian airlines on the Indonesia route.

2.2 The Australia-Indonesia air services arrangements permit designated airlines of Australia to enter into code-share, blocked space or other cooperative marketing arrangements, as the marketing and/or operating airline with another Australian airline or airlines, with an Indonesia airline or airlines or with an airline or airlines of a third country.

3 Commission's consideration

3.1 In considering an application for allocating available capacity, section 7 of the Act states 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, as in this case, only the criteria in paragraph 4 are applicable. Paragraph 4 effectively provides that the use of Australian entitlements by a carrier that is reasonably capable of obtaining the necessary approvals and of implementing its applications is of benefit to the public.

3.4 Qantas' application for 1,570 seats of capacity on the Indonesia route (in addition to its current allocation of 14,468 seats of capacity for the exercise of third and fourth freedom rights) prompted the Commission to ask Qantas for detailed information on its planned use of the capacity. Qantas then provided, on a confidential basis, information on how the airline and its wholly-owned subsidiary, Jetstar, intend to utilise its capacity allocations on the route.

3.5 Based on the detailed confidential information provided by Qantas and the fact that no other applicants contested the applications, the Commission considers that Qantas and Jetstar are reasonably capable not only of obtaining the necessary regulatory approvals but also of implementing their proposed services. The Commission also notes that Qantas and Jetstar are established international carriers which currently operate services between Australia and Indonesia. Accordingly, the Commission concludes that Qantas and Jetstar satisfy the criteria in paragraph 4 of the Policy Statement.

3.6 Furthermore, Qantas has requested that the determination permit the capacity to be used by Qantas in joint services with any wholly-owned subsidiary of Qantas. Qantas also requested that the capacity may be used by Jetstar in code share services with Emirates in accordance with the code share agreement between Jetstar and Emirates dated 11 February 2014.

3.7 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).

3.8 The Commission notes that the Australia-Indonesia air services arrangements permit code share and other cooperative marketing arrangements. The Commission also notes there are a number of airlines offering services between Australia and Indonesia including code share arrangements with other airlines¹. The Commission therefore has no serious concerns about the proposed use of the capacity under code share arrangements between Qantas and its wholly-owned subsidiary and between Jetstar and Emirates. For this reason, the ACCC had not been consulted and the paragraph 5 criteria had not been applied. In light of this, the Commission has decided to permit code sharing between Qantas and a wholly-owned subsidiary and between Jetstar and Emirates.

3.9 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 to Qantas on the Indonesia route ([2015] IASC 114)

4.1 The Commission allocates under section 7 of the Act, 1,570 seats per week in each direction to Qantas on the Indonesia route in accordance with the terms of the Australia-Indonesia air services arrangements.

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

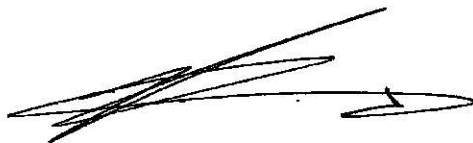
4.3 The determination is subject to the following conditions:

- the capacity must be fully utilised by no later than 30 April 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;

¹ In addition to Qantas and Jetstar, other airlines offering services on the Indonesia route include Garuda (which code shares with KLM), Virgin Australia International (which code shares with Delta, Silkair and Singapore Airlines), Indonesia AirAsia and Indonesia AirAsia Extra. (Source: Northern Summer March-October 2015 International Aviation Timetable Summary, Department of Infrastructure and Regional Development).

- 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 Jetstar to provide code share services with Emirates in accordance with the code share agreement between Jetstar and Emirates dated 11 February 2014, amended;
- Qantas must apply to the Commission if amendments are made to the code share agreement between Jetstar and Emirates, or if they enter into a new agreement, 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 or code share 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
- 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 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 the airline or be in a position to exercise effective control of the airline, without the prior consent of the Commission.

Dated: 4 November 2015



IAN DOUGLAS
Presiding Commissioner



JOHN KING
Commissioner