



Australian Government
International Air Services Commission

DETERMINATION

Determination: [2015] IASC 115
The Route: Hong Kong
The Applicant: Qantas Airways Ltd
(ABN 16 009 661 901) (Qantas)
Public Register File: IASC/APP/201531

The Commission's delegate makes a new determination allocating 28 frequencies of capacity per week in each direction in favour of Qantas on the Hong Kong route. The determination takes effect when Determination [2014] IASC 103 is revoked. The capacity may be used by Qantas or another Australian carrier which is a wholly-owned subsidiary of Qantas. The determination also allows the capacity to be used by Qantas in joint services with any Qantas' wholly-owned subsidiary and code share services with British Airways, Jet Airways and Finnair.

1 The application

1.1 On 6 November 2015, Qantas applied to the Commission for an increase in its current allocation by three additional services per week on the Hong Kong route. Qantas is seeking to consolidate into one determination its existing capacity allocation of 25 frequencies per week issued under Determination [2014] IASC 103 and the additional three frequencies per week. Qantas's application for the issue of a new determination is on the following basis:

- the determination will be valid for five years;
- the capacity will be fully utilised by 1 April 2017;
- the capacity would be utilised by Qantas or another Australian carrier which is a wholly-owned subsidiary of Qantas;
- the capacity may be used in joint services by Qantas and any wholly-owned subsidiary of the Qantas Group; and
- the capacity may be used under code share arrangements between Qantas and British Airways, Jet Airways and Finnair.

1.2 Qantas states in its application that within 10 working days of the new determination being issued, it will seek revocation of Determination [2014] IASC 103.

1.3 In accordance with section 12 of *International Air Services Commission Act* 1992 (the Act), the Commission published a notice on 6 November 2015, inviting other applications for an allocation of capacity on the route. No other application was received.

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

1.5 The Qantas application is in accordance with the Commission's Procedures for Applications for Consolidation of Determinations which are, in turn, consistent with the Act and the International Air Services Policy Statement No 5 dated 19 May 2004.

2 Relevant provisions of the air services arrangements

2.1 According to the Register of Available Capacity, there are currently 45 frequencies per week available for allocation to Australian carriers for passenger services between Sydney, Melbourne, Brisbane and Perth and Hong Kong. There are no limits on capacity that may be operated between Hong Kong and points in Australia other than Sydney, Melbourne, Brisbane and Perth.

2.2 Under the Australia-Hong Kong air services arrangements, a designated airline may enter into code share arrangements, as the marketing or operating airline, with airlines of Australia, Hong Kong or third countries.

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 Qantas application. (For purposes of this determination, references to the Commission include the delegate of the Commission.)

3.2 Subsection 12(3) of the Act allows any person to apply to the Commission for a determination allocating capacity to enable an Australian carrier to operate international air services.

3.3 Subsection 7(1) of the Act empowers the Commission to make a determination allocating available capacity. Subsection 7(2) requires, in part, that the Commission's determination must not allocate capacity unless the Commission is satisfied that the allocation would be of benefit to the public and would not be contrary to any restrictions on capacity contained in bilateral arrangements, or combination of bilateral arrangements.

3.4 Further, subsection 7(3) of the Act provides that in assessing the benefit to the public of an allocation of capacity, the Commission must apply the criteria set out in the policy statement made by the Minister pursuant to section 11 of the Act.

3.5 Pursuant to section 11 of the Act, the Minister issued Policy Statement No. 5 dated 19 May 2004 (the policy statement). The policy statement sets out the range of

criteria which the Commission is required to apply in assessing the benefit to the public of allocations of capacity. It also provides other guidance to the Commission in performing its functions.

3.6 Paragraph 6.2 of the policy statement provides that where there is only one applicant for an allocation of capacity, as in this case, only the criteria in paragraph 4 of the policy statement are applicable.

3.7 Paragraph 4.1 of the policy statement provides that the use of entitlements, under a bilateral arrangement, by Australian carriers that are reasonably capable of obtaining the necessary approvals and of implementing their application is of benefit to the public.

3.8 The Commission notes that Qantas and its wholly-owned subsidiary, Jetstar Airways Pty Ltd (Jetstar), are established carriers which are reasonably capable of obtaining the necessary approvals and of implementing the proposed operations. This means that the use of the entitlements by Qantas or its wholly-owned subsidiary is of benefit to the public. Accordingly, the Commission's delegate will allocate the capacity sought to Qantas and permit the capacity to be used by Qantas or its wholly-owned subsidiary.

3.9 The Commission notes that as per the International Airlines Timetable for Northern Winter October 2015 to March 2016 (published by the Department of Infrastructure and Regional Development), Qantas is utilising 25 to 26 frequencies per week on the Hong Kong route. Qantas' media release of 6 November 2015 indicates that Qantas will operate additional services between Australia and Hong Kong from December 2015.

3.10 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 in a determination stating the extent to which the carrier may use that capacity in joint services with another carrier.

3.11 Qantas has also sought the inclusion of conditions to allow the capacity to be used for joint services between Qantas and any wholly owned subsidiary of the Qantas Group. Qantas already has approval in its current determination to provide joint services with its wholly owned subsidiary and the Commission has decided to continue to permit such arrangement in this determination.

3.12 With regard to Qantas' request to permit the use of the capacity under code share arrangements with British Airways, Jet Airways and Finnair, 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).

3.13 The Commission did not identify any serious concerns that the proposed code share arrangements between Qantas and British Airways, Jet Airways and Finnair may not be of benefit to the public. The Commission notes that Determination [2014] IASC 103 which allocates 25 frequencies of capacity per week to Qantas contains conditions which permit code sharing between Qantas and British Airways, Jet Airways and Finnair. The Commission's delegate will include conditions in the new determination permitting the code share arrangements as requested.

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

4 Determination ([2015] IASC 115) allocating capacity on the Hong Kong route to Qantas

4.1 In accordance with section 7 of the Act, the Commission makes a determination in favour of Qantas allocating 28 frequencies per week on the Hong Kong route, in accordance with the Australia-Hong Kong air services arrangements.

4.2 The determination is for five years from the date that Determination [2014] IASC 103 is revoked.

4.3 In accordance with section 15 of the Act, the determination is subject to the following conditions:

- Qantas is required to apply to have Determination [2014] IASC 103 revoked within 10 working days of the date of this determination;
- Qantas is required to fully utilise the capacity from 1 April 2017;
- 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 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;
- the capacity may be used by Qantas to provide services under code share arrangements with Jet Airways in accordance with the code share agreement between Qantas and Jet Airways dated 6 September 2006, as amended;
- the capacity may be used by Qantas to provide services under code share arrangements with British Airways in accordance with the code share

agreement between Qantas and British Airways dated 19 November 2013, as amended;

- the capacity may be used by Qantas to provide services under code share arrangements with Finnair in accordance with the code share agreement between Qantas and Finnair dated 23 December 2010, as amended;
- Qantas must apply to the Commission for approval of any proposed variations to the code share arrangements with British Airways, Jet Airways and Finnair 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 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 – Hong Kong 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 (authorised to use the capacity) or be in a position to exercise effective control of the airline (authorised to use the capacity), without the prior consent of the Commission.

Dated: 23 November 2015



Marlene Tucker
Executive Director