



## Australian Government

### International Air Services Commission

#### DECISION

**Determination:** [2016] IASC 102  
**The Route:** China  
**The Applicant:** Qantas Airways Limited  
(ABN 16 009 661 901)  
**Public Register File:** IASC/APP/201603

The Commission makes a fresh determination allocating to Qantas Airways Limited 4,471 seats of capacity per week on the China route subject to the condition that the capacity has to be fully utilised by no later than 30 April 2017. The determination is valid for five years.

#### 1 The application

1.1 On 11 April 2016, Qantas Airways Limited (Qantas) applied to the International Air Services Commission (the Commission) for a new determination allocating 4,471 seats per week on the China route. The capacity requested is equivalent to the total number of seats it currently holds under Determinations [2011] IASC 113 and [2013] IASC 125. The new Determination is intended to replace the 2011 and 2013 determinations which Qantas will seek to revoke within 10 working days of the new Determination being issued.

1.2 Qantas requested the new Determination on the following basis:

- the allocation is requested for a period of five years from the date of the new Determination;
- the capacity will be fully utilised by 30 April 2017;
- the capacity may be utilised by Qantas or another Australian carrier which is a wholly-owned subsidiary of Qantas;
- 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; and
- the capacity may be used by Qantas to provide services jointly with China Eastern.

1.3 As the conditions of the determinations being consolidated are not identical, the Commission has also considered the application to seek a variation to those determinations.

1.4 On 12 April 2016, the Commission, by public notice, invited other applications and submissions in accordance with sections 12 and 22 of the *International Air Services Commission Act 1992* (the Act). No other applications or submissions were received.

1.5 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 Air services arrangements**

2.1 According to the Register of Available Capacity, Australian designated carriers may operate:

- a total of 26,029 seats each way per week between Beijing, Shanghai, Guangzhou and Sydney, Melbourne (including Avalon), Brisbane and Perth;
- a total of 26,500 seats each way each week between all points in China other than Beijing, Shanghai, Guangzhou and Sydney, Melbourne (including Avalon), Brisbane and Perth;
- unrestricted capacity, frequency and aircraft type to and from all points in Australia other than Sydney, Melbourne (including Avalon), Brisbane and Perth.

2.2 In addition to the capacity set out above, an additional 2,500 weekly seats may be operated in any direction provided such services operate via or beyond to a point in Australia other than Sydney, Melbourne (including Avalon), Brisbane and Perth.

2.3 Under the Australia-China air services arrangements, any designated airline of the contracting parties may enter into cooperative marketing arrangements such as blocked space, code sharing or other joint venture arrangements, whether as the operating or marketing airline with an airline(s) of the same contracting party; airline(s) of the other contracting party; and airline(s) of a third country. The airlines participating in such arrangements must hold the appropriate authority, including route and traffic rights, and must meet the requirements normally applied to such arrangements.

## **3 Commission's assessment**

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. 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.

3.2 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.

3.3 Qantas has also requested authority for the capacity to be used by either Qantas or another Australian carrier which is a wholly-owned subsidiary of Qantas such as Jetstar Airways Pty Limited.

3.4 The Commission notes that:

- there are no other applicants seeking capacity on the route; and

- Qantas and its wholly-owned subsidiary, Jetstar Airways Pty Limited, 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 is not seeking additional capacity but merely seeking to consolidate its total capacity allocations on the China route. The application of Qantas is consistent with the Commission's procedures for consolidation of determinations. The Commission considers there is public benefit in granting Qantas' request to consolidate its capacity allocations on the China route.

3.6 Qantas has also requested authority for the capacity to be used by Qantas to provide joint services with any wholly-owned subsidiary 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 request and has decided to include the condition as requested.

3.7 Furthermore, Qantas has requested authority to utilise the capacity under code share arrangements with China Eastern.

3.8 Under paragraph 3.6 of the Policy Statement, 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 China route has grown rapidly, both in terms of new frequencies and new routes, over the last five years, averaging over 12% growth per annum. It is a highly competitive route, with China Southern having the largest share of the passenger traffic with 22.4% market share. Other carriers with a substantial share of the traffic are Cathay Pacific (16.7%), China Eastern (13.3%), followed by Qantas (12.4%) and Air China (8.9%)<sup>1</sup>.

3.10 Qantas operates seven services per week between Australia and China while its wholly-owned subsidiary Jetstar operates two services between the Gold Coast and Wuhan. Qantas' code share partner, China Eastern, operates between 23 and 26 frequencies per week depending on demand. Together, Qantas and China Eastern have nearly 26% share of the traffic<sup>2</sup>. Qantas code shares on China Eastern-operated Beijing-Nanjing-Sydney service; flights between Shanghai and Sydney/Melbourne/Singapore; and flights within China. China Eastern, on the other hand, code shares on Qantas-operated flights between Melbourne and Auckland/Wellington; Sydney and Auckland/Christchurch/Wellington; Singapore and Brisbane/Melbourne/Perth/Sydney and flights within Australia.<sup>3</sup>

3.11 China Southern operates 42 frequencies per week while Air China decreased its services to 15 frequencies. Cathay Pacific and Singapore Airlines also capture substantial sixth freedom market share via their home ports.

<sup>1</sup> Source: Bureau of Infrastructure and Regional Economics, data from February 2015 to January 2016.

<sup>2</sup> Source: Bureau of Infrastructure and Regional Economics

<sup>3</sup> Source: 2016 Northern Summer International Airlines Timetable Summary

3.12 The Commission further notes that, on 21 August 2015, the ACCC granted conditional authorisation to Qantas and China Eastern to coordinate their operations pursuant to a Joint Coordination Agreement. The authorisation is subject to conditions which include requiring the airlines to maintain at least an aggregate base level of capacity across routes between Shanghai and Australia and also maintain at least their current level of capacity on the Sydney-Shanghai route.<sup>4</sup>

3.13 The Commission is satisfied there is sufficient competitive pressure on Qantas and China Eastern to constrain the airlines from increasing their prices on the route. The Commission also considers the continuation of the code share will assist in improving Qantas' competitiveness on the route.

3.14 In light of the above, the Commission does not have concerns that the code share application may not be of benefit to the public.

3.15 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.

3.16 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 allocating capacity to Qantas on the China route ([2016] IASC 102)**

4.1 The Commission makes, under section 7 of the Act, a determination in favour of Qantas, allocating 4,471 seats per week of passenger capacity on the route China in accordance with the Australia – China air services arrangements.

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

4.3 The determination is subject to the following conditions:

- the capacity is required to be fully utilised by no later than 30 April 2017 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 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;

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<sup>4</sup> Australian Competition and Consumer Commission Determination, Authorisation Numbers A91470 & A91471 dated 21 August 2015





- the capacity may be used by Qantas to provide code share services with China Eastern in accordance with the code share agreement between Qantas and China Eastern dated 9 July 2008, as amended;
- in relation to the code share arrangement with China Eastern, 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;
- under any code share agreement with China Eastern, Qantas must price and sell its services on the route independently of China Eastern and must not share or pool revenues on the route with China Eastern unless such practices are authorised under the *Competition and Consumer Act 2010*;
- where the capacity is used to provide joint or code share 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 the airlines authorised to use the capacity are permitted except to the extent that any change:
  - results in the designation of the airline(s) as Australian carriers under the Australia–China 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(s) authorised to use the capacity or be in a position to exercise effective control of the airline(s), without the prior consent of the Commission.

4.4 Within 10 working days from the date this Determination is issued, Qantas is required to seek revocation of Determinations [2011] IASC 113 and [2013] IASC 125.

4.5 This Determination takes effect from the date of this instrument.

Dated: 9 May 2016

  
 IAN DOUGLAS  
 Chairperson

  
 JOHN KING  
 Commissioner