



Australian Government
International Air Services Commission

DETERMINATION

Determination:	[2016] IASC 103
The Route:	Philippines
The Applicant:	Qantas Airways Limited (Qantas) ABN 16 009 661 901
Public Register:	IASC/APP/201604

The Commission makes a new determination allocating 1,927 seats per week to Qantas on the Philippines route subject to the condition that the capacity be fully utilised by no later than 30 April 2017 or such other date approved by the Commission. 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 1,927 seats per week on the Philippines route. The capacity requested is equivalent to the total number of seats it currently holds under the following Determinations:

- [2011] IASC 124;
- [2012] IASC 101;
- [2013] IASC 102;
- [2014] IASC 101; and
- [2014] IASC 115.

1.2 The new Determination is intended to replace the above-mentioned determinations which Qantas will seek to revoke within 10 working days of the new Determination being issued.

1.3 Qantas applied for 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; and
- 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.

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 Qantas is available on the Commission's website (www.iasc.gov.au).

2 Air services arrangements

2.1 According to the Register of Available Capacity, Australian designated carriers may operate 7,373 seats per week in each direction to and from Manila and Clark. There is unrestricted capacity and frequency of services with any aircraft type to and from other international airports in the Philippines.

2.2 The designated airlines of Australia may exercise full fifth freedom traffic rights between the Philippines and points beyond the Philippines in Hong Kong, Japan, India, Bahrain, Iran, Greece, Austria, France, the United Kingdom plus two other additional points to be nominated, provided that those points are not the United States, Canada or China. Capacity of services operating beyond the Philippines to Japan may not exceed 2,500 seats each way each week.

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 the capacity for which Qantas has applied; 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 Philippines 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 Philippines 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 The Philippines route is growing consistently over the last five years, with an average increase in traffic of over 11% per annum. Philippine Airlines has the largest share of the Australia-Philippines traffic with 26% market share. Cebu Pacific, which commenced operating on the route in 2014, has captured 18.5% of the traffic. Qantas has 15.4% followed closely by Singapore Airlines with 14.4%. Cathay Pacific, Malaysia Airlines, Jetstar Asia, Air Asia X, Royal Brunei Airlines and Scoot also offer services via their home ports.

3.8 Although at this time, Qantas is not fully utilising its capacity allocations, the Commission has decided to permit Qantas to continue to hold all of the capacity allocations to give the airline flexibility in its future operations.

4 Determination allocating capacity on the Philippines route to Qantas ([2016] IASC 103)

4.1 The Commission makes, under section 7 of the Act, a determination in favour of Qantas, allocating 1,927 seats per week in each direction on the Philippines route in accordance with the terms of the Australia-Philippines 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 without the approval of 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;
- where the capacity is used to provide joint 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 an Australian carrier under the Australia-Philippines 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 the following Determinations:

- [2011] IASC 124;
- [2012] IASC 101;
- [2013] IASC 102;
- [2014] IASC 101; and
- [2014] IASC 115.

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

Dated: 9 May 2016


IAN DOUGLAS
Chairperson


JOHN KING
Commissioner