



**Australian Government**  

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**International Air Services Commission**

**DETERMINATION**

**Determination:** [2016] IASC 104  
**The Route:** France – Route 3 (New Caledonia)  
**The Applicant:** Qantas Airways Limited  
(ABN 16 009 661 901)  
**Public Register File:** IASC/APP/201605

**The Commission makes a determination allocating to Qantas 788 seats of capacity per week on the New Caledonia route subject to the condition that the capacity has to be fully utilised by no later than 30 April 2017. The determination may be used by Qantas for code share services with Aircalin.**

## **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 788 seats per week on the New Caledonia route. The capacity requested is equivalent to the total number of seats it currently holds under the following Determinations:

- [2010] IASC 112;
- [2010] IASC 113; and
- [2011] IASC 120.

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; and
- the capacity may be used by Qantas to provide services jointly with Aircalin.

1.4 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.

1.5 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.

1.6 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 Australia and New Caledonia entered into a Memorandum of Understanding (MOU) in November 2011 pursuant to the Agreement between Australia and France relating to Air Transport signed on 13 April 1965. These arrangements allow for the operation of international air services between Australia and France Route 3/ New Caledonia and the multiple designation of Australian carriers. Further, under these arrangements, the designated airlines of each party are able to, over all or any part of their respective routes, enter into code share, blocked space, or other cooperative marketing arrangements, as either the operating or the marketing airline, with any other airline or airlines (with the exception of third country airlines) including airlines of the same party.

2.2 According to the Register of Available Capacity, there are currently 1,612 seats of capacity per week in each direction available for allocation to Australian carriers for passenger services between Australia and New Caledonia.

## **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. 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 New Caledonia 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 New Caledonia 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 for code share services with Air Caledonie International (Aircalin). The Commission notes that the existing determinations sought to be consolidated permit the use of the capacity for code share services between Qantas and Aircalin in accordance with their code share agreement of 4 June 2004, as amended.

3.8 Qantas operates one weekly service between Brisbane and Noumea and three weekly services between Sydney and Noumea. Qantas and Aircalin code share on each other's services on both the Brisbane-Noumea and Sydney-Noumea routes.<sup>1</sup>

3.9 Qantas' market share on the Australia-New Caledonia route is nearly 27 per cent while the biggest share is still held by Aircalin with nearly 63 per cent as per

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<sup>1</sup> 2016 Northern Summer International Airlines Timetable Summary

aviation data from March 2015 to February 2016. In terms of uplift/discharge, 87% of the total number of passengers travel directly between Australia and New Caledonia.<sup>2</sup>

3.10 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 the application for use of the capacity to code share. However, if the Commission has serious concerns that a code share application 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).

3.11 The Commission has no serious concerns about the proposed continuation of the code share arrangements between Qantas and Aircalin on the route. For this reason, the Commission did not consult the ACCC and did not see the need to apply the paragraph 5 criteria.

3.12 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.

3.13 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.

3.14 As requested, the Commission has decided to consolidate the capacity allocations of Qantas on the New Caledonia route and would require Qantas to seek revocation of its existing determinations including the (renewal) determinations issued in 2015 and 2016 which are not yet in effect.

#### **4 Determination allocating capacity on the New Caledonia route to Qantas ([2016] IASC 104)**

4.1 In accordance with section 7 of the Act, the Commission makes a determination in favour of Qantas, allocating 788 seats per week in each direction on the New Caledonia route under the Australia - New Caledonia air services arrangements.

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

4.3 The determination is subject to the following conditions:

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<sup>2</sup> Source: Bureau of Infrastructure, Transport and Regional Economics (BITRE)

- Qantas is required to fully utilise the capacity by no later than 30 April 2017 or 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 of the Qantas Group 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 code share services with Aircalin in accordance with the code share agreement between the airlines dated 4 June 2004, as amended;
- 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 entitlements 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 of the carrier actually operating the flight at the time of the booking. Nothing in this determination exempts Qantas and any wholly owned subsidiary 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 – New Caledonia 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:

- [2010] IASC 112;
- [2010] IASC 113;
- [2011] IASC 120;
- [2015] IASC 105; and
- [2016] IASC 101.

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

Dated: 9 May 2016



IAN DOUGLAS  
Chairperson



JOHN KING  
Commissioner