



Australian Government

International Air Services Commission

DETERMINATION

Determination: [2017] IASC 112
The Route: Indonesia
The Applicant: Qantas Airways Limited
(ABN 16 009 661 901) (Qantas)
Public Register File: IASC/APP/201726

The Commission makes a determination allocating to Qantas 100 seats per week in each direction of passenger capacity on the Indonesia route. The capacity may be used by Jetstar Airways Pty Limited to provide services jointly with Emirates. The determination is valid for five years from 26 June 2017.

1 The application

1.1 On 7 June 2017, the International Air Services Commission (the Commission) received an application from Qantas seeking an allocation of 100 seats per week in each direction of passenger capacity on the Indonesia route on the following basis:

- the allocation is requested for a period of five years from the date of the determination;
- the capacity will be fully utilised by 31 March 2018;
- 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 Jetstar Airways Pty Limited (Jetstar) to provide services jointly with Emirates.

1.2 In its application, Qantas indicated that its wholly-owned subsidiary Jetstar plans to upgauge the aircraft operating between Perth and Denpasar to A321 aircraft configured with 230 seats.

1.3 In accordance with section 12 of the *International Air Services Commission Act 1992* (the Act), on 7 June 2017, the Commission published Qantas' application on

the Commission's website inviting other applications on the Indonesia route. No other applications were received.

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

2 Air services arrangements

2.1 According to the Register of Available Capacity, there are 4,492 seats per week in each direction available for allocation to Australian carriers to operate services to and from Sydney, Melbourne (including Avalon), Brisbane and Perth.

2.2 Under the Australia-Indonesia air services arrangements, Australian designated carriers may enter into code sharing, blocked space or other cooperative marketing arrangements, as the marketing and/or operating airline, with another Australian airline(s), with a Indonesian airline(s) or with airline(s) of a third country. There are, however, a number of conditions which apply to cooperative marketing operations.

3 Commission's consideration

3.1 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.

3.2 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.

3.3 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.

3.4 Pursuant to section 11 of the Act, then Minister for Transport and Regional Services, the Hon. John Anderson MP issued Policy Statement No. 5 (hereinafter referred to as the Policy Statement) dated 19 May 2004. 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.

3.5 Paragraph 6.2 of the Policy Statement provides, in part, that 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.

3.6 The Commission notes there are no other applicants seeking capacity on the route. The Commission further notes that Qantas and its wholly-owned subsidiary Jetstar are established international carriers and, as such, are reasonably capable of obtaining the necessary approvals to operate on the route and of implementing their proposed services. Accordingly, the Commission considers that the use of the entitlements by Qantas or its wholly-owned subsidiary would be of benefit to the public and has decided to allocate the capacity sought to Qantas. The Commission has also decided to permit the capacity to be used by Qantas or another Australian carrier which is a wholly-owned subsidiary of Qantas.

3.7 In relation to the request for the capacity to be used 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 Commission does not find any competition issues on this proposed arrangement. For this reason, the Commission has decided to include a condition permitting the use of the capacity for joint services between Qantas and its wholly-owned subsidiary.

3.8 Qantas also requested the Commission to permit the capacity to be used by Jetstar to provide services jointly with Emirates.

3.9 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).

3.10 The Commission notes that the alliance between Qantas (and its related entities including Jetstar) and Emirates (and its subsidiaries) has been granted conditional authorisation by the ACCC in March 2013 for five years. Under the authorised alliance, the airlines and their subsidiaries are able to coordinate their passenger and cargo air transport operations and other related services. In its decision, the ACCC identified competitive constraints which would likely minimise public detriment resulting from the alliance. The one exception was on the trans-Tasman route in which Qantas and Emirates compete on four routes where they operate overlapping services. To address this concern, the ACCC imposed a condition requiring the airlines to maintain at least their pre-alliance aggregate capacity on the four overlapping trans-Tasman routes.¹

3.11 In relation to Indonesia, the Commission notes that Emirates does not operate services between Australia and Indonesia. Jetstar, on the other hand, operates from 43

¹ ACCC Determination / Authorisation Numbers A91332 and A91333 dated 27 March 2013.

to 60 services per week depending on the season². In the year ended March 2017, in terms of 'single flight number' passenger services, Jetstar captured 38.9% of the market; followed by Garuda Indonesia at 21.0%; the Virgin Australia Group (Virgin Australia and Tigerair) had 17.5%; Indonesia AirAsia with 13.7%; and Indonesia AirAsia Extra with 4.7%. In terms of passenger traffic share, Jetstar has 41.5% market share; followed by Garuda Indonesia with 20.7%; the Virgin Australia Group with 17.2%; and Indonesia AirAsia with 13.1% market share.³

3.12 The Commission considers it is unlikely that Emirates would operate its own services between Australia and Indonesia in competition to services operated by Jetstar. In light of this, the Commission has no serious concerns that the proposed joint services between Jetstar and Emirates would impact on competition on the Australia-Indonesia route. For this reason, the Commission did not specifically consult the ACCC and did not consider it necessary to apply the additional criteria in paragraph 5 of the Minister's Policy Statement.

3.13 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. As is its normal practice, the Commission will also include a condition which requires the airlines using the capacity to comply with the Australian Consumer Law and to take all reasonable steps to ensure that passengers are informed of the carrier that is actually operating the flight.

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 allocating capacity on the Indonesia route to Qantas ([2017] IASC 112)

4.1 In accordance with section 7 of the Act, the Commission makes a determination in favour of Qantas, allocating 100 seats of capacity per week in each direction on the Indonesia route in accordance with the Australia - Indonesia air services arrangements.

4.2 The determination is valid for five years from 26 June 2017.

4.3 The determination is subject to the following conditions:

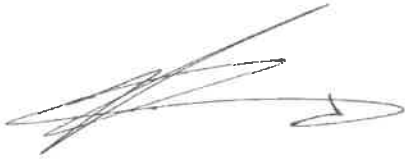
- Qantas is required to fully utilise the capacity from no later than 30 June 2018 or such other date approved by the Commission;

² International airlines timetable summary, 2017 Northern Summer (26 March - 28 October 2017), www.infrastructure.gov.au

³ Year ended March 2017, Bureau of Infrastructure, Transport and Regional Development (BITRE)

- the capacity may be utilised by Qantas or another Australian carrier which is a wholly-owned subsidiary of Qantas;
- neither Qantas nor its wholly-owned subsidiary is permitted to use 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 Jetstar to provide services jointly with Emirates in accordance with the code share agreement between Jetstar and Emirates made on 11 February 2014, as amended;
- Qantas must apply to the Commission for approval of the use of the capacity if there are variations to the code share arrangement which would change the relevant commercial aspects of the code share arrangement from a free sale code share arrangement to a block space, or vice versa, or if Qantas (or Jetstar) 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 code share or joint 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 the airlines from complying with the Australian Consumer Law; and
- changes in relation to the ownership and control of Qantas and/or its wholly-owned subsidiary 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 Qantas and/or its wholly-owned subsidiary or be in a position to exercise effective control of Qantas and/or its wholly-owned subsidiary, without the prior consent of the Commission.

Dated: 26 June 2017

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IAN DOUGLAS
Chairperson

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JAN HARRIS
Commissioner