



Australian Government

International Air Services Commission

DETERMINATION

Determination: [2018] IASC 111
The Route: Fiji
The Applicant: Qantas Airways Limited (Qantas)
(ABN 16 009 661 901)
Public Register File: IASC/APP/201816

The Commission makes a determination allocating to Qantas 258 seats per week in each direction of passenger capacity on the Fiji route. The capacity may be used by either Qantas or its wholly-owned subsidiary, Jetstar Airways Pty Limited. The determination is valid for five years from 15 June 2018.

1 The application

1.1 On 13 February 2018, Qantas applied to the International Air Services Commission (the Commission) for an allocation of 258 seats per week in each direction of passenger capacity on the Fiji route on the following basis:

- the allocation is requested for a period of five years from the date of the determination;
- 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.

1.2 In subsequent communications with the Commission, Qantas indicated that its wholly-owned subsidiary, Jetstar Airways Pty Limited (Jetstar), plans to introduce additional two services per week in December 2018/January 2019 using A320 or 321 aircraft. Qantas further indicated that the capacity will be fully used by 31 March 2019.

1.3 In accordance with section 12 of the *International Air Services Commission Act 1992* (the Act), on 14 February 2018, the Commission published Qantas' application on the Commission's website inviting other applications on the Fiji 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 Paragraph 7(2)(aa) of the Act provides that the Commission must not allocate available capacity contrary to any restrictions on capacity contained in a bilateral arrangement(s). Any variation made to an existing allocation of capacity should also not be contrary to any restrictions on capacity contained in a bilateral arrangement(s)

2.2 According to the Register of Available Capacity, there are 259 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.

2.3 Under the Australia-Fiji air services arrangements, Australian designated airlines may enter into cooperative marketing arrangements such as blocked space, code sharing or leasing, whether as the operating or marketing airline, with another Australian airline(s) or with a designated airline(s) of Fiji.

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 On 20 March 2018, the Hon. Michael McCormack MP, Deputy Prime Minister and Minister for Infrastructure and Transport, issued, in accordance with section 11 of the Act, the International Air Services Commission Policy Statement 2018 (the 2018 Policy Statement), which came into effect on 28 March 2018. The 2018 Policy Statement replaces and repeals the International Air Services Policy Statement No. 5 made in 2004 (the 2004 Policy Statement). However, section 26, Part 6 of the 2018 Policy Statement provides that that the Commission is to apply the 2004 Policy Statement, despite its repeal, for applications received before the commencement of the 2018 Policy Statement. As the Qantas application was received on 13 February 2018, prior to the commencement of the 2018 Policy Statement on 28 March 2018, the

Commission has applied the requirements of the 2004 Policy Statement in assessing the Qantas application.

3.5 Qantas is seeking the allocation of 258 seats out of 259 seats available for allocation on the route. Paragraph 6.2 of the 2004 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 although. 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 has concluded that Qantas and its wholly-owned subsidiary fulfil the criteria under paragraph 4 and has decided to allocate the capacity requested. The Commission has also decided to permit the capacity to be used by either Qantas or its wholly-owned subsidiary Jetstar.

3.7 The Commission notes that there are three international airlines providing direct services between Australia and Fiji. Fiji Airways operates up to 38 weekly services with Qantas offering code share services, as marketing carrier. Virgin Australia operates up to 22 weekly services between Brisbane/Melbourne/Sydney and Nadi while Jetstar operates four services per week between Sydney and Nadi.¹

3.8 Qantas requested the Commission to permit the capacity to be used for the provision of joint services by Qantas and any wholly-owned subsidiary of the Qantas group. The Commission considers that the proposed joint services on the Fiji route between Qantas and a wholly-owned subsidiary of the Qantas Group would have minimal impact on competition. For this reason, the Commission has decided to include such condition, as requested by Qantas.

3.9 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 required by paragraph 3.7 of the 2004 Policy Statement, where the Commission authorises a carrier to utilise the allocated capacity to provide joint services with another carrier, the Commission will include a condition requiring the airlines concerned to take all reasonable steps to ensure that passengers are informed of the carrier that is actually operating the flight.

3.10 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.

¹ Northern Summer 20018 Timetable Summary (24 March 2018 - 27 October 2018)

4 Determination allocating capacity on the Fiji route to Qantas ([2018] IASC 111)

4.1 In accordance with section 7 of the Act, the Commission makes a determination in favour of Qantas, allocating 258 seats of capacity per week in each direction on the Fiji route in accordance with the Australia - Fiji air services arrangements.

4.2 The determination is valid for five years from 15 June 2018.

4.3 The determination is subject to the following conditions:

- Qantas is required to fully utilise the capacity from no later than 31 March 2019 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 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;
- 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 – Fiji 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: 15 June 2018


IAN DOUGLAS
Chairperson


JAN HARRIS
Commissioner


KAREN GOSLING
Commissioner