



Australian Government

International Air Services Commission

DETERMINATION

Determination: [2018] IASC 115
The Route: Cook Islands
The Applicant: Qantas Airways Limited (Qantas)
(ABN 16 009 661 901)
Public Register File: IASC/APP/201837

The Commission's delegate makes a determination allocating to Qantas 204 seats per week in each direction of passenger capacity on the Cook Islands 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 17 August 2018.

1 The application

1.1 On 31 July 2018, Qantas applied to the International Air Services Commission (the Commission) for an allocation of 204 seats per week in each direction of passenger capacity on the Cook Islands 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 January 2019;
- 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 Qantas indicated its wholly-owned subsidiary, Jetstar Airways Pty Limited (Jetstar), plans to add another frequency to its current passenger services between Sydney and Cook Islands via Auckland from 28 October 2018. Qantas further indicated that the capacity will be fully utilised by 31 January 2019.

1.3 In accordance with section 12 of the *International Air Services Commission Act 1992* (the Act), the Commission published on 1 August 2018 Qantas' application on the Commission's website inviting other applications on the Cook Islands 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 1,404 seats per week in each direction available for allocation to Australian carriers.

2.3 Under the Australia-Cook Islands air services arrangements, Australian designated airlines may enter into code sharing, blocked space and/or any other cooperative services arrangement with an airline(s) of Australia, Cook Islands, with an airline of the Association of South Pacific Airlines as at 1 January 1999 or with a regional airline.

3 Delegate's consideration

3.1 In accordance with section 27AB of the Act and regulation 3A of the International Air Services Commission Regulations 1992, the delegate of the Commission may consider the Qantas application. (For purposes of this determination, references to the Commission include the delegate of the Commission).

3.2 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.

3.3 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.

3.4 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.

3.5 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).

3.6 Qantas is seeking the allocation of 204 seats per week in each direction on the Cook Islands route. Section 12 of the 2018 Policy Statement provides, in part, that in circumstances where there is only one applicant for allocation of capacity on a route, and there is no opposition to the application, the Commission is to have regard to the 'reasonable capability criterion' in section 8 of the 2018 Policy Statement and need not have regard to any other matter.

3.7 Under section 8 of the 2018 Policy Statement, the Commission is to assess the extent to which all Australian carriers that are, or would be, permitted to use the capacity allocated under a determination are reasonably capable of: (a) obtaining any licences, permits or other approvals required to operate on and service the route to which the determination relates; and (b) using the capacity allocated under the determination.

3.8 The Commission's delegate notes there are no other applicants seeking capacity on the route and no opposition to the application. The delegate further notes that Qantas and its wholly-owned subsidiary Jetstar are established international carriers and, as such, are reasonably capable of obtaining any licences, permits or other approvals required to operate on and service the route and of using the capacity allocated under the determination.

3.9 Accordingly, the Commission's delegate has concluded that Qantas and its wholly-owned subsidiary, Jetstar, fulfil the criteria under section 8 and has decided to allocate the capacity requested.

3.10 The Commission's delegate notes that in addition to Jetstar, Virgin Australia operates up to six weekly services between Australia and Cook Islands, via Auckland. Air New Zealand operates one weekly service connecting Auckland, Rarotonga and Sydney. With the additional capacity allocation, Jetstar plans to operate up to four services between Sydney and Cook Islands via Auckland from October 2018.¹

3.11 Qantas also 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's delegate considers that the proposed joint services on the Cook Islands route between Qantas and a wholly-owned subsidiary of the Qantas Group would have minimal impact on competition. For this reason, the Commission's delegate has decided to include such condition, as requested by Qantas.

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) of the Act 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 section 23 of the 2018 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

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

carrier that is actually operating the flight.

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.

4 Determination allocating capacity on the Cook Islands route to Qantas ([2018] IASC 115)

4.1 In accordance with section 7 of the Act, the Commission's delegate makes a determination in favour of Qantas, allocating 204 seats of capacity per week in each direction on the Cook Islands route in accordance with the Australia – Cook Islands air services arrangements.

4.2 The determination is valid for five years from 17 August 2018.

4.3 The determination is subject to the following conditions:

- Qantas is required to fully utilise the capacity from no later than 31 January 2019 or such other date approved by the Commission;
- the capacity may be utilised by:
 - Qantas; or
 - Jetstar Airways Pty Limited, as long as it remains a wholly-owned subsidiary of Qantas; or
 - such other wholly-owned subsidiary of Qantas that the Commission approves in writing, as long as it remains a wholly-owned subsidiary of Qantas;
- neither Qantas nor its wholly-owned subsidiary that is permitted to use the capacity is authorised to provide code share or joint services with any other carrier or person unless approved by the Commission;
- 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 – Cook Islands 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: 17 August 2018



Marlene Tucker
Executive Director
Delegate of the IASC Commissioners