



## **Australian Government**

### **International Air Services Commission**

#### **DETERMINATION**

**Determination:** [2019] IASC 109  
**The Route:** Chile  
**The Applicant:** Qantas Airways Limited (Qantas)  
(ABN 16 009 661 901)  
**Public Register File:** IASC/APP/201911

**The Commission makes a determination allocating to Qantas 337 seats per week in each direction of passenger capacity on the Chile route. The capacity may be used by either Qantas or its wholly-owned subsidiary, Jetstar Airways Pty Limited and for the provision of code share services between Qantas and LATAM under a blocked space arrangement. The determination is valid for five years from 14 June 2019.**

## **1 The application**

1.1 On 9 April 2019, Qantas applied to the International Air Services Commission (the Commission) for an allocation of 337 seats per week in each direction of passenger capacity on the Chile route. Qantas requested in its application that its wholly-owned subsidiary, Jetstar Airways Pty Limited (Jetstar), be permitted to operate the capacity for flexibility. Qantas sought the capacity 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 2020;
- 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 Subsequently, on 14 May 2019, Qantas sent a letter amending its original application for an allocation of capacity. Qantas sought the inclusion of conditions permitting the use of the capacity for the provision of code share services between Qantas and LATAM. Qantas further clarified that the code share between the airlines on the Chile route is a blocked space arrangement.

1.3 In accordance with sections 12 and 22 of the *International Air Services Commission Act 1992* (the Act), on 10 April and 14 May 2019, the Commission published Qantas' application and the amendment to its application, respectively, on the Commission's website inviting other applications and submissions. No other applications or submissions were received.

1.4 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 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 2,153 seats per week of passenger capacity in each direction available for allocation to Australian carriers to operate services between Australia and Chile<sup>1</sup>.

2.3 Under the Australia-Chile air services arrangements, Australian designated airlines may enter into cooperative marketing arrangements such as code sharing, blocked space and aircraft leasing, whether as the operating or marketing airline, with an airline(s) of the same party, an airline(s) of the Chile, or with an airline(s) of a third country. Capacity offered by a designated airline, as the marketing airline on services operated by another airline(s), will not be counted against any capacity entitlements of the party designating the marketing airline.

## **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.

---

<sup>1</sup> Register of Available Capacity, <https://www.infrastructure.gov.au/aviation/international/capacity.aspx>

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, the Minister issued the *International Air Services Commission Policy Statement 2018* (the Policy Statement) which came into effect on 28 March 2018. The Policy Statement sets out the criteria which the Commission is required to apply in assessing the benefit to the public of allocations of capacity.

3.5 Qantas is seeking the allocation of 337 seats per week of capacity in each direction on the Chile route. Additionally, for flexibility, Qantas requested permission for the capacity to be used by either Qantas or its wholly-owned subsidiary, Jetstar. Currently, Qantas has a total capacity allocation on this route of 1,847 seats being utilised by Qantas which operates 3 to 4 services per week in each direction between Sydney (Australia) and Santiago (Chile)<sup>2</sup>. The additional capacity is intended to be used to enable Qantas to operate one additional service per week during peak periods of demand using a B747 aircraft.

3.6 The Commission notes that there are no other applicants seeking capacity on the route and no opposition to the application. Section 12 of the 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 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 licenses, 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 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 using the capacity allocation. Accordingly, the Commission has concluded that Qantas and its wholly-owned subsidiary fulfil the criteria under section 8. The Commission, therefore, has decided to allocate the capacity requested and permit the capacity to be used by either Qantas or its wholly-owned subsidiary Jetstar.

3.9 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 Chile route between Qantas and a wholly-owned subsidiary of the Qantas Group would have limited impact on competition. For this reason, the Commission has decided to include such condition, as requested by Qantas.

---

<sup>2</sup> Northern Winter 2018-19 Timetable Summary (28 October 2018-30 March 2019)

3.10 Qantas further requested to use the capacity for code sharing with LATAM. The Commission notes that no submission opposing the proposed code share was received. The Commission further notes that Qantas and LATAM are the only carriers providing direct services between Australia and Chile. As earlier mentioned, Qantas operates 3 to 4 direct services per week in each direction between Sydney and Santiago while LATAM operates 4 to 5 services per week in each direction between Santiago and Melbourne. LATAM also operates a daily service between Santiago and Sydney via Auckland. The carriers do not operate direct parallel services on any city pair. The Commission further notes that the code share is based on a blocked space arrangement. In light of this, the Commission has no competition concerns on the use of the additional capacity of 337 seats per week in each direction on the Chile route for the provision of code share services between Qantas and LATAM. The Commission has therefore decided to permit the use of the capacity for code share services, as requested.

3.11 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 section 23 of the Policy Statement, where the Commission authorises a carrier to utilise the allocated capacity to provide joint or code share 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.

3.12 Nothing in this decision should be taken as indicating either approval or disapproval by the Australian Competition and Consumer Commission (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 Chile route to Qantas ([2019] IASC 109)**

4.1 In accordance with section 7 of the Act, the Commission makes a determination in favour of Qantas, allocating 337 seats of capacity per week in each direction on the Chile route in accordance with the Australia - Chile air services arrangements.

4.2 The determination is valid for five years from 14 June 2019.

4.3 The determination is subject to the following conditions:

(a) the capacity may be utilised by:

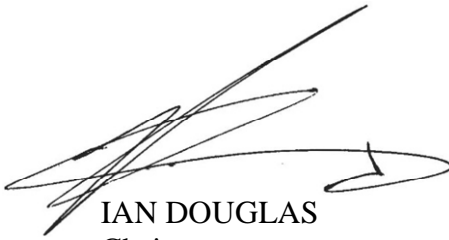
- Qantas; or
- Jetstar Airways Pty Limited, as long as it remains a wholly-owned subsidiary of Qantas; or

- such other wholly-owned subsidiary of Qantas that the Commission approves in writing, as long as it remains a wholly-owned subsidiary of Qantas;
- (b) Qantas is required to fully utilise the capacity from no later than 31 March 2020 or such other date approved by the Commission;
  - (c) 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;
  - (d) 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;
  - (e) the capacity may be used by Qantas to provide code share services with LATAM in accordance with the blocked space code share agreement between the airlines which was made on 2 April 2003;
  - (f) Qantas must apply to the Commission for approval of any proposed variations to the code share agreement between Qantas and LATAM which would change the relevant commercial aspects of the agreement from a blocked space code share arrangement to a free sale, or vice versa, or if Qantas proposes to add third country routes on which the airlines will code share where Australian capacity will be used for services on that route;
  - (g) 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

(h) 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 – Chile 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: 14 June 2019



IAN DOUGLAS  
Chairperson



IAN HARRIS  
Commissioner



KAREN GOSLING  
Commissioner