



Australian Government

International Air Services Commission

DETERMINATION

Determination: [2019] IASC 111
The Route: Korea
The Applicant: Qantas Airways Limited
(ABN 16 009 661 901) (Qantas)
Public Register File: IASC/APP/201912

The Commission makes a determination allocating to Qantas unrestricted capacity on the Korea route. The capacity may be used by Qantas and its wholly-owned subsidiary, Jetstar Airways Pty Limited. Jetstar is permitted to provide code share services with Jeju Air subject to certain conditions. The determination is valid for 99 years from 11 June 2019.

1 The application

1.1 On 3 May 2019, the International Air Services Commission (the Commission) received an application from Qantas seeking an allocation of unrestricted passenger capacity on the Korea route. It is proposed that Qantas' wholly-owned subsidiary Jetstar Airways Pty Limited (Jetstar) will operate services between the Gold Coast and Seoul, and Jeju Air will codeshare on these services from 8 December 2019. Qantas sought the capacity on the following basis:

- the allocation is requested for a period of 99 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;
- 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 to provide services jointly with Jeju Air.

1.2 In accordance with section 12 of the *International Air Services Commission Act 1992* (the Act), the Commission published, on 6 May 2019, the Qantas application

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

1.3 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 is unrestricted capacity, frequency and aircraft type to/from all points in Australia other than Sydney, Melbourne, Brisbane and Perth and any point in Korea.

2.3 Under the Australia-Korea air services arrangements, Australian designated airline(s) of Australia may, subject to certain conditions, enter into cooperative marketing arrangements such as blocked space, code sharing, or leasing arrangements, whether as the operating airline(s) or the marketing airline(s), in respect of passenger, combination and/or cargo air services with airline(s) of Australia; (an) airline(s) of Korea; and (an) airline(s) of any third country or countries.

2.4 Under the Australia-Korea air services arrangements, capacity offered by the designated carrier(s) as the marketing carrier(s) on services operated by the other airlines, including airlines of a third country or countries, shall be counted against any capacity entitlements of the contracting party designating the marketing carrier(s).¹

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 Qantas is seeking the allocation of unrestricted capacity on the Korea route. The unrestricted capacity is intended to be used by Jetstar to offer services between the Gold Coast to Korea (vice-versa) using B787 aircraft. It is planned that Jeju Air will code share, as marketing carrier, on the Jetstar 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

¹ Should an Australian carrier wish to code share, as marketing carrier, on flights offered by another carrier (including a carrier of a third country or economy), the Australian carrier would use Australian capacity entitlements.

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 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.

3.6 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 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 As previously indicated, the Commission did not receive any competing applications or opposition to Qantas’ application. The Commission further notes that Qantas and 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. In light of this, the Commission has decided that allocating unrestricted capacity for the use of Qantas and its wholly-owned subsidiary, Jetstar, would be of benefit to the public.

3.9 In relation to Qantas’ request to permit the capacity to 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, the Commission considers this will have minimal impact on competition and has decided to include such condition as requested.

3.10 In relation to the request to permit the use of the capacity for the provision of code share services between Jetstar and Jeju Air, the Commission notes that Jetstar and Jeju Air are not competitors on the route as Jeju Air does not operate services between Australia and Korea. The Commission further notes that the proposed code share between Jetstar and Jeju Air is hard-block. The Commission considers that a hard-block code share is preferable to a free-sale as it maintains a greater degree of competitive tension between the airlines. Under a hard-block arrangement, full commercial responsibility is placed on the marketing carrier (in this case, Jeju Air) for a fixed

number of seats so that both the operating and marketing carrier would have the incentive to sell their seats independently of each other including offering discounted prices. In this regard, the Commission has decided to include a condition permitting the capacity to be used for the provision of code services between Jetstar and Jeju Air under a hard-block arrangement.

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) 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 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 Korea route to Qantas ([2019] IASC 111)

4.1 In accordance with section 7 of the Act, the Commission makes a determination in favour of Qantas, allocating unrestricted capacity to operate passenger services between points in Australia other than Sydney, Melbourne, Brisbane and Perth and Korea in accordance with the Australia – Korea air services arrangements.

4.2 The determination is valid for 99 years from 11 June 2019.

4.3 The determination is subject to the following conditions:

- (a) the capacity is required to be fully utilised from no later than 31 March 2020 or such other date approved by the Commission;
- (b) 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;
- (c) 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;

- (d) Qantas wholly-owned subsidiary, Jetstar is permitted to utilise the capacity to offer code share services with Jeju Air under a hard-block arrangement in accordance with the code share agreement between the airlines dated 2 May 2019;
- (e) 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 hard-block to a free-sale and/ or if Qantas or Jetstar proposes to add third country routes on which the airlines will code share using Australian capacity;
- (f) 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
- (g) changes in relation to the ownership and control of Qantas and its wholly-owned subsidiary are permitted except to the extent that any change:
- results in the designation of the airline(s) as an Australian carrier under the Australia – Korea 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 or its wholly-owned subsidiary or be in a position to exercise effective control of the airline(s), without the prior consent of the Commission.

Dated: 11 June 2019


IAN DOUGLAS
Chairperson


JAN HARRIS
Commissioner


KAREN GOSLING
Commissioner