



Australian Government

International Air Services Commission

DETERMINATION

Determination: [2021] IASC 1199
The Route: India
The Applicant: Qantas Airways Limited
(ABN 16 009 661 901) (Qantas)
Public Register File: IASC/APP/2021130

The Commission makes a determination allocating to Qantas unlimited capacity for passenger services on a 3rd/4th freedom basis on the India route. The capacity may be used by Qantas. The determination is valid for 99 years from 9 November 2021.

1 The application

1.1 On 22 October 2021, the International Air Services Commission (the Commission) received an application from Qantas seeking an allocation of unlimited seats capacity for scheduled passenger services to exercise 3rd/4th freedom rights on the India route on the following basis:

- the allocation is requested for a period of 99 years from the date of the determination;
- the capacity will be utilised in the Northern Winter 2021/22 schedule.

1.2 In accordance with section 12 of the *International Air Services Commission Act 1992* (the Act), on 25 October 2021, the Commission published Qantas' application on the Commission's website inviting other applications on the India 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).

2.2 According to the Register of Available Capacity on the India route, published by the Department of Infrastructure & Regional Development and Communications (the Department) there is unrestricted capacity to operate services between any points in Australia and Mumbai, New Delhi, Kolkata, Chennai, Bangalore and Hyderabad. There are however certain restrictions in the exercise of fifth freedom traffic rights.

2.3 A designated airline of Australia may exercise fifth freedom traffic rights: (a) via intermediate points in Bangladesh, Myanmar, Sri Lanka, Thailand, Vietnam, Malaysia, Singapore, Brunei, Philippines, Indonesia; and (b) to/from any beyond points. In exercising fifth freedom traffic rights as specified above, the designated airline of Australia will be entitled to operate up to 6500 seats per week in each direction. In the event that an Australian carrier wishes to operate fifth freedom capacity which would result in the total fifth freedom capacity available above being exceeded by an amount of 5% of the total available, the aeronautical authorities may approve such minor variation.

2.4 Under the Australia-India air services arrangements, Australian designated airlines may code share on any airline, including third country airlines, with no restriction on capacity.

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, the Minister made 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 Section 12 of the Policy Statement provides that where the Commission has received an application for capacity and does not receive any submissions opposing the allocation, the Commission is to have regard to the reasonable capability criterion and need not have regard to any other matter.

3.6 Under the reasonable capability criterion in 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 and 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.

3.7 The Commission notes there are no other applicants seeking capacity on the route and no submission opposing Qantas' application. The Commission further notes that Qantas is an established international carrier that (pre-COVID) operated to at least 27 international destinations (www.qantas.com). The airline currently operates non-scheduled services on the India route. As such, the Commission finds that Qantas is reasonably capable of obtaining any licences, permits or other approvals required to operate on and service the India route and of using the capacity allocated under the determination. Accordingly, the Commission considers that the use of the entitlements by Qantas would be of benefit to the public and has decided to allocate the capacity sought to Qantas.

3.8 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 India route to Qantas ([2021] IASC 119)

4.1 In accordance with section 7 of the Act, the Commission makes a determination in favour of Qantas, allocating unlimited capacity between points in Australia and Mumbai, New Delhi, Kolkata, Chennai, Bangalore and Hyderabad in accordance with the Australia – India air services arrangements.

4.2 The determination is valid for 99 years from 9 November 2021.

4.3 The determination is subject to the following conditions:

- (a) Qantas is required to fully utilise the capacity from no later than 27 March 2022 or such date approved by the Commission;
- (b) only Qantas is permitted to utilise the capacity;
- (c) Qantas is not permitted to utilise the capacity to provide services jointly with another Australian carrier or any other person without the approval of the Commission;
- (d) changes in relation to the ownership and control of Qantas are permitted except to the extent that any change:
 - results in the designation of the airline as an Australian carrier under the Australia – India 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 be in a position to exercise effective control of Qantas and/or its wholly-owned subsidiary, without the prior consent of the Commission.

Dated: 9 November 2021



GENEVIEVE BUTLER
Chairperson



JANE MCKEON
Commissioner