



Australian Government

International Air Services Commission

DETERMINATION

Determination: [2022] IASC 115
The Route: Fiji
The Applicant: Qantas Airways Limited
(Qantas) ABN 16 009 661 901
Public Register File: IASC/APP/202223

The Commission makes a determination allocating to Qantas 165 seats per week to operate passenger services on the Fiji route. The determination is valid for five years from 19 August 2022.

1 The application for capacity

1.1 On 15 July 2022, Qantas applied to the International Air Services Commission (the Commission) for an allocation of 165 seats per week in each direction to operate passenger services on the Fiji route. In its application, Qantas stated that the capacity will be utilised to increase its wholly-owned subsidiary Jetstar Airways Pty Limited (Jetstar) Sydney-Nadi-Sydney service to a daily operation during peak periods, using A320 aircraft configured with 186 seats.

1.2 Qantas has requested the capacity allocation on the following basis:

- the capacity may be utilised by Qantas, Jetstar or another Australian carrier which is a wholly-owned subsidiary of the Qantas Group;
- the allocation is requested for a period of five years from the date of the determination;
- 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; and
- the capacity will be fully utilised from 15 December 2022.

1.3 In accordance with section 12 of the *International Air Services Commission Act 1992* (the Act), on 18 July 2022, the Commission published Qantas' application on the Commission's website inviting other applications for capacity 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 Under paragraph 7(2)(aa) of the Act, the Commission must not allocate available capacity contrary to any restrictions on capacity contained in a bilateral arrangement(s).

2.2 Under the Australia-Fiji air services arrangements, Australian designated airlines may operate up to 6,900 seats per week of passenger capacity in each direction between Fiji and the following points in Australia: Sydney, Melbourne, Brisbane and/or Perth. Australian designated airlines may determine the frequency of service, capacity and aircraft type to be operated on the specified routes to or from points in Australia other than Sydney, Melbourne, Brisbane and/or Perth.

2.3 Qantas has been allocated 2,334 seats of passenger capacity per week in four separate determinations¹ to operate services to and from Sydney, Melbourne, Brisbane and/or Perth, and unlimited capacity to and from all points in Australia². Virgin Australia has been allocated a total of 4,389 seats of passenger capacity per week in each direction to operate services to and from Sydney, Melbourne, Brisbane and/or Perth and unlimited capacity to and from all points in Australia.

2.4 According to the Register of Available Capacity, there are 177 seats of passenger capacity per week in each direction available for allocation to Australian designated airlines to operate services to and from Sydney, Melbourne, Brisbane and/or Perth.

2.5 The Australia-Fiji air services arrangements allow Australian designated airlines to enter into cooperative marketing arrangements such as blocked space, code sharing or leasing, whether as the operating or marketing airline, with another Australian designated 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. Qantas is seeking the allocation of 165 seats of passenger capacity per week in each direction to enable Qantas and Jetstar to operate passenger services between Sydney and Nadi, Fiji.

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.

¹ Determinations [2019]IASC 112, [2018] IASC 122, [2018]IASC 111, and [2016] IASC 111 as renewed by [2021]IASC 120.

² Determination [2015]IASC 101.

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 Under 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 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 Policy Statement 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 required 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.

3.7 The Commission notes that Qantas and its wholly-owned subsidiary, Jetstar, are established carriers that currently operate services between Australia and Fiji.

3.8 Accordingly, the Commission has concluded that the carriers satisfy the criteria under section 8. The Commission, therefore, has decided to allocate the capacity 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 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. In light of this, the Commission has decided to issue this determination subject to the conditions set out in Item 4 below.

3.10 Paragraph 15(2)(a) of the Act requires a determination to specify the period during which it is to be in force. Subsection 15(3) of the Act effectively provides that if the Minister's Policy Statement sets out how the period of validity of the determination is to be fixed, then the period of validity is as so fixed. In any other case, an interim determination is to be in force for three years while a determination that is not an interim determination is to be in force for five years.

3.11 Section 20 of the Policy Statement sets out how the Commission is to fix the period during which a determination is to be in force. The Commission considers that this

application is within the scope of Subsection 20(4) and has decided that this determination is to be in force for a period of five years.

4 Determination allocating capacity on the Fiji route to Qantas ([2022] IASC 115)

4.1 In accordance with section 7 of the Act, the Commission makes a determination in favour of Qantas, allocating 165 seats of capacity per week in each direction to operate passenger services between Sydney, Australia and Nadi, Fiji in accordance with the Australia – Fiji air services arrangements.

4.2 The determination is valid for five years from 19 August 2022.

4.3 The determination is subject to the following conditions:

- (a) Qantas is required to fully utilise the capacity from no later than 15 December 2022 or such other date approved by the Commission.
- (b) The capacity may be utilised by:
 - Qantas; or
 - Jetstar, as long as it remains a wholly-owned subsidiary of Qantas; or
 - such other wholly-owned subsidiary of the Qantas Group that the Commission approves in writing, as long as it remains a wholly-owned subsidiary of the Qantas Group.
- (c) As 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 Qantas Group to provide joint services with Qantas.
- (d) To the extent that the capacity is used to provide 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.
- (e) Neither Qantas nor another Australian carrier which is a wholly-owned subsidiary of the Qantas Group is permitted to utilise the capacity to provide services jointly with another Australian carrier or any other person unless approved by the Commission.
- (f) Changes in relation to the ownership and control of Qantas and/or its wholly-owned subsidiary authorised to utilise the capacity 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: 19 August 2022



Genevieve Butler
Chairperson



Jane McKeon
Commissioner