



Australian Government

International Air Services Commission

DETERMINATION

Determination:	[2022] IASC 1022
The Route:	Vietnam
The Applicant:	Qantas Airways Limited (Qantas) (ABN 16 009 661 901 / ACN 009 661 901)
Public Register:	IASC/APP/202140

The Commission makes a determination allocating to Qantas one frequency per week to operate dedicated freight services between points in Australia and Vietnam. The determination is valid for three years from 13 January 2022.

1 The application for capacity

1.1 On 13 December 2021, Qantas applied to the International Air Services Commission (the Commission) for one frequency per week in each direction to operate all-cargo services between points in Australia and Vietnam. In its application, Qantas stated that it plans to serve Vietnam on a scheduled basis with a once a week dedicated service. The freight service will be initially operated by Qantas using an Airbus 330/200/300 type passenger aircraft with the purpose of commercial flight uplift only. The request for capacity is made on the following basis:

- the allocation is requested for a period of three years from the date of the determination; and
- the capacity will be fully utilised from 31 January 2022.

1.2 In accordance with section 12 of the *International Air Services Commission Act 1992* (the Act), the Commission published, on 14 December 2021, Qantas' application on the Commission's website inviting other applications for capacity on the Vietnam route. A notification was likewise sent by email to various stakeholders inviting other applications for capacity on the route. No other applications were received.

1.4 All non-confidential material supplied by Qantas is available on the Commission's website (www.iasc.gov.au).

2 Relevant provisions of the 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 Under the Australia-Vietnam air services arrangements, designated airlines of Australia may operate dedicated freight services up to seven frequencies per week in each direction using any aircraft type. Currently, none of these capacity entitlements has been allocated to any Australian airline.

2.3 The Australia-Vietnam air services arrangements allow designated airlines of Australia to operate passenger services up to 42 frequencies per week in each direction between Sydney, Melbourne, Brisbane and Perth and Vietnam. Seven frequencies have been allocated to Qantas¹. There is unrestricted capacity, frequency and aircraft type to operate passenger services to and from all points in Australia other than Sydney, Melbourne, Brisbane and Perth.

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 one frequency per week of freight capacity on the Vietnam route to commence a weekly dedicated cargo service from 18 January 2022.

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 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 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 does not receive any submissions opposing the allocation, the Commission is to have regard to

¹ Determination [2017] IASC 103 as renewed by Determination [2021] IASC 105.

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 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 that Qantas is an established carrier operating scheduled international services. It currently operates, together with its wholly-owned subsidiary Jetstar Airways Pty Limited (Jetstar), passenger services between Australia and Vietnam. Accordingly, the Commission considers that Qantas is reasonably capable of obtaining the necessary approvals to operate on the route and of implementing its proposed services and that allocating the capacity in favour of Qantas would be of benefit to the public.

Variation to the application

3.8 On 11 January 2022, Qantas sought to vary its original 13 December 2021 application to seek authorisation for its wholly-owned subsidiary Jetstar to also be able to utilise the freight capacity. In its letter of 11 January 2022, Qantas stated that while the weekly dedicated cargo service will be initially operated by Qantas from 18 January 2022, the freight services will transition to a Jetstar operation in mid-February 2022.

3.9 As required under the Act, the Commission published Qantas’ request to permit Jetstar to utilise the capacity on the Vietnam route and invited submissions on the matter. The Commission will make a decision in relation to Jetstar once the consultation period ends. Meanwhile, the Commission has decided to make a decision on the original application in order not to derail Qantas’ plans to commence its dedicated cargo services from 18 January 2022.

Conditions

3.10 Section 15 provides that the Commission may include in a determination such terms and conditions as it thinks fit. Section 15 also provides for certain conditions to be included in a determination. In light of this, the Commission has decided to issue this determination subject to the conditions set out in Item 4 below.

3.11 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.

3.12 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(3) and has decided that this

determination is to be in force for a period of three years as requested by Qantas.

4 Determination allocating capacity on the Vietnam route to Qantas ([2022] IASC 102)

4.1 In accordance with section 7 of the Act, the Commission makes a determination in favour of Qantas allocating one frequency per week in each direction of capacity to operate dedicated freight services between Sydney, Melbourne, Brisbane and Perth and points in Vietnam in accordance with the Australia – Vietnam air services arrangements.

4.2 The determination is valid for three years from 13 January 2022.

4.3 The determination is subject to the following conditions:

- (a) Qantas is required to utilise the capacity from no later than 30 June 2022 or such other 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 code share or joint services with another carrier or any other person unless approved by 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 – Vietnam 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 the airline, without the prior consent of the Commission.

Dated: 13 January 2022


GENEVIEVE BUTLER
Chairperson


JANE MCKEON
Commissioner