



Australian Government

International Air Services Commission

DETERMINATION

Determination: [2022] IASC 113
The Route: Korea
The Applicant: Qantas Airways Limited
(Qantas)
(ABN 16 009 661 901 / ACN 009 661 901)
Public Register: IASC/APP/202214

The Commission makes a determination allocating to Qantas 2,193 seats per week of passenger capacity in each direction to operate services between points in Australia and Korea. The determination is valid for five years from 10 May 2022.

1 The application for capacity

1.1 On 14 April 2022, Qantas applied to the International Air Services Commission (the Commission) for 2,193 seats per week in each direction to operate passenger services between points in Australia and Korea. In its application, Qantas stated that the capacity will be utilised by both Qantas and its wholly-owned subsidiary Jetstar Airways Pty Limited (Jetstar) to provide both full service and low-cost service options to the market. Qantas indicated that Jetstar will operate, from 2 November 2022, three frequencies per week in each direction on the Sydney-Seoul (Incheon) route using Boeing 787-8 aircraft configured with 335 seats. Qantas further indicated that from 10 December 2022, Qantas will operate four frequencies per week in each direction on the Sydney-Seoul (Incheon) route using an Airbus 330-300 aircraft configured with 297 seats.

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

- the capacity may be utilised by Qantas and its wholly-owned subsidiary Jetstar;
- 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 its wholly-owned subsidiary Jetstar on a reciprocal basis; and
- the capacity will be fully utilised from 25 March 2023 (end of the Northern Winter 2022/23 scheduling period).

1.3 In accordance with section 12 of the *International Air Services Commission Act 1992* (the Act), the Commission published, on 19 April 2022, Qantas' application on the

Commission's website inviting other applications for capacity on the Korea 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-Korea air services arrangements, the designated airline(s) of each contracting party may operate up to 8,500 seats each way per week to and from Sydney, Melbourne, Brisbane and Perth. Twelve months after the date on which the designated airline(s) fully utilise the capacity entitlements of 8,500 seats, the capacity entitlement for the airlines of both contracting parties will increase by a further 1,000 seats to a total of 9,500 seats each way per week.

2.3 Qantas has been allocated 900 seats of passenger capacity in two separate determinations¹, which the airline uses for code sharing with Asiana Airlines and Cathay Pacific. Virgin Australia has been allocated 1,000 seats per week in each direction for the provision of code share services with Singapore Airlines².

2.4 Under the Register of Available Capacity, there are currently 6,600 seats of capacity per week in each direction to and from Sydney, Melbourne, Brisbane and Perth that are available for allocation to Australian airlines.

2.5 There is unrestricted capacity, frequency and aircraft type to/from all points in Australia, other than Sydney, Melbourne, Brisbane and Perth. Qantas has been allocated unrestricted capacity to operate to/from all points in Australia, other than Sydney, Melbourne, Brisbane and Perth and points in Korea³. Qantas has also been allocated unrestricted capacity to operate all-cargo services between Australia and Korea⁴.

2.6 The Australia-Korea air services arrangements also allow designated airlines of Australia to enter into cooperative marketing arrangements such as blocked space, code sharing or leasing arrangements, whether as the operating airline or the marketing airline, in respect of passenger, combination and/or cargo air services with airline(s) of Australia, any airline of Korea and any airline of any third country or countries.

¹ Determinations [2019] IASC 103 and [2016] IASC 109, which has been renewed by [2021] IASC 108

² Determination [2018] IASC 107

³ Determination [2019] IASC 111

⁴ Determination [2020] IASC 106

2.7 The capacity offered by a designated airline, as the marketing airline, on services operated by other airlines, including airlines of third country or countries, shall be counted against any capacity entitlements of the contracting party designating the marketing airline. This means that the code share seats offered by an Australian designated airline, as the marketing carrier, are counted against Australian capacity entitlements.

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 2,193 seats per week in each direction to enable Qantas and Jetstar to operate passenger services between points in Australia and Korea.

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 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 and its wholly-owned subsidiary Jetstar are established carriers operating scheduled international services. Furthermore, the Department of Infrastructure, Transport, Regional Development and Communications confirmed that both Qantas and Jetstar are designated Australian carriers under the

Australia-Korea air services arrangements.

3.8 The Commission further notes that Qantas published on 8 April 2022 a media release informing of the launch of Qantas and Jetstar direct flights to Seoul’s Incheon International Airport later in the year. The media release states that Jetstar will “fly direct to South Korea from Sydney, with Boeing 787-8 Dreamliner flights operating from 2 November 2022 three times per week”. It further informs that “Qantas will begin direct flights between Sydney and Seoul from 10 December 2022 with its A330 aircraft, marking the first scheduled service to Seoul since January 2008”.⁵

3.9 In light of the above, the Commission considers that Qantas and Jetstar are reasonably capable of obtaining the necessary approvals to operate on the Korea route and of implementing their proposed services. The Commission therefore finds that allocating 2,193 seats of capacity in favour of the Qantas Group would be of benefit to the public.

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 five 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 five years as requested by Qantas.

4 Determination allocating capacity on the Korea route to Qantas ([2022] IASC 113)

4.1 In accordance with section 7 of the Act, the Commission makes a determination in favour of Qantas allocating 2,193 seats per week in each direction of capacity to operate passenger services between Sydney, Melbourne, Brisbane and Perth and points in Korea in accordance with the Australia – Korea air services arrangements.

⁵ <https://www.qantasnewsroom.com.au/media-releases/qantas-and-jetstar-expand-sydney-gateway-with-new-direct-flights-to-india-and-korea/>

- 4.2 The determination is valid for five years from 10 May 2022.
- 4.3 The determination is subject to the following conditions:
- (a) Qantas is required to fully utilise the capacity from no later than 25 March 2023 or such other date approved by the Commission.
 - (b) The capacity may be utilised by:
 - Qantas; or
 - Jetstar Airways Pty Ltd, 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) 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) As approved by the Commission, the capacity may be used by Qantas to provide code share or joint services with any wholly-owned subsidiary of the Qantas Group and by any wholly-owned subsidiary of the Qantas Group to provide code share or joint services with Qantas.
 - (e) Changes in relation to the ownership and control of Qantas and 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(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 and be in a position to exercise effective control of the airline, without the prior consent of the Commission.

Dated: 10 May 2022


GENEVIEVE BUTLER
Chairperson


JANE MCKEON
Commissioner