



## Australian Government

### International Air Services Commission

#### DETERMINATION

**Determination:** [2022] IASC 1144  
**The Route:** South Africa  
**The Applicant:** Qantas Airways Limited  
(Qantas) ABN 16 009 661 901  
**Public Register File:** IASC/APP/202218

**The Commission makes a determination allocating to Qantas three frequencies per week to operate services between Perth, Australia and Johannesburg, South Africa. The determination is valid for five years from 22 July 2022.**

#### 1 The application for capacity

1.1 On 24 June 2022, Qantas applied to the International Air Services Commission (the Commission) for an allocation of three weekly frequencies in each direction of passenger capacity on the South Africa route. Qantas stated in its application that it will launch the three weekly return Perth, Australia-Johannesburg, South Africa services from 1 November 2022.

1.2 Qantas sought the capacity on the following basis:

- the allocation is requested for a period of five years from the date of the determination; and that
- the capacity will be utilised by 25 March 2023.

1.3 In accordance with Section 12 of the *International Air Services Commission Act 1992* (the Act), the Commission published, on 27 June 2022, Qantas' application on the Commission's website inviting other applications. 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](http://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 Under the Australia-South Africa air services arrangements, Australian designated carriers may operate up to 21 services each way per week with any aircraft type to and from Johannesburg, Cape Town and/or Durban.

2.3 To and from points other than Johannesburg, Cape Town and/or Durban, any designated Australian carriers may determine the frequency or service, capacity and aircraft type in operating a combination of passenger and cargo services.

2.4 Under the Register of Available Capacity, there are currently 14 weekly frequencies per week in each direction to and from Johannesburg, Cape Town and/or Durban that are available for allocation to Australian designated carriers.

### **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 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 Qantas is seeking the allocation of three frequencies per week in each direction to enable Qantas to operate passenger services between Perth, Australia and Johannesburg, South Africa. Qantas has been allocated seven frequencies per week in each direction on the South Africa route in one separate determination<sup>1</sup>.

3.6 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.

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<sup>1</sup> Determination [2017] IASC 102, as renewed by Determination [2022] IASC 107

3.7 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.

3.8 The Commission notes that Qantas is an established international carrier that currently operates services between Australia and South Africa.

3.9 Accordingly, the Commission has concluded that Qantas satisfies the criteria under Section 8. The Commission, therefore, has decided to allocate the capacity as requested by Qantas.

3.10 Subsection 15(1) of the Act empowers the Commission to include 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 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(4) and has decided that this determination is to be in force for a period of five years.

#### **4 Determination allocating capacity on the South Africa route to Qantas ([2022] IASC 1144)**

4.1 In accordance with Section 7 of the Act, the Commission makes a determination in favour of Qantas, allocating three (3) frequencies per week in each direction of passenger capacity on the South Africa route in accordance with the Australia – South Africa air services arrangements.

4.2 The determination is valid for five years from 22 July 2022.

4.3 The determination is subject to the following conditions:

- (a) Only Qantas is permitted to utilise the capacity.
- (b) Qantas is required to fully utilise the capacity from no later than 25 March 2023 or such other date approved by the Commission.

- (c) Qantas is not permitted to use 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 and/or its wholly-owned subsidiary are permitted except to the extent that any change:
- results in the designation of the airline as an Australian carrier under the Australia – South Africa 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: 22 July 2022



Genevieve Butler  
Chairperson



Jane McKeon  
Commissioner