



Australian Government

International Air Services Commission

DECISION

Decision: [2022] IASC 201
Variation Of: [2022] IASC 102
The Route: Vietnam
The Applicant: Qantas Airways Limited
(Qantas)
(ABN 16 009 661 901 / ACN 009 661 901)
Public Register: IASC/APP/202201

The Commission varies Determination [2022] IASC 102 to permit Jetstar Airways Pty Limited, in addition to Qantas, to use the capacity allocation to operate dedicated freight services between points in Australia and Vietnam.

1 The application

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 from 18 January 2022 using an Airbus 330/200/300 type passenger aircraft with the purpose of commercial freight uplift only.

1.2 On 11 January 2022, Qantas wrote to the Commission seeking to vary its original application for capacity to include its wholly-owned subsidiary, Jetstar Airways Pty Limited (Jetstar). In its application, Qantas stated that the freight services to and from Vietnam will initially be operated by Qantas but will transition to a Jetstar operation in mid-February 2022 using a Boeing 787-8 aircraft (to operate freight-only services).

1.3 In accordance with section 12 of the *International Air Services Commission Act 1992* (the Act), the Commission published, on 14 December 2021, Qantas' original application inviting other applications for capacity on the route. The variation application was likewise published on 11 January 2022, in accordance with section 22 of the Act, inviting submissions about the proposed variation. A notification was likewise sent by email to various stakeholders inviting other applications or submissions. No other applications or submissions were received.

1.4 Pending completion of the consultation period on the variation application (concerning Jetstar), the Commission dealt with the original application and issued on

13 January 2022 Determination [2022] IASC 102 allocating three weekly frequencies in favour of Qantas.

1.5 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). Any variation made to an existing allocation of capacity should also not be contrary to any restrictions on capacity contained in a bilateral arrangement(s).

2.2 The Australia-Vietnam air services arrangements allow for multiple designation of airlines. Both Qantas and Jetstar are designated Australian carriers for purposes of the bilateral air services arrangements.

2.3 Under the Australia-Vietnam air services arrangements, Australian carriers may operate dedicated freight services up to seven frequencies per week in each direction using any aircraft type. One weekly frequency has been allocated to Qantas.¹

2.4 In relation to passenger services, 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 Qantas². 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 As indicated above, Qantas has sought to vary its capacity allocation on the Vietnam route to enable its wholly-owned subsidiary Jetstar to utilise the capacity, in addition to Qantas. The Qantas application seeks to vary the Determination to include a condition of a kind referred to in paragraph 15(2)(d) of the Act. In view of this, the application is a transfer application as so defined in subsection 4(1) of the Act and has been assessed in accordance with section 25 of the Act.

3.2 Subsection 25(1) provides that the Commission must make a decision varying the determination in a way that gives effect to the variation requested, subject to subsection 25(2). Subsection 25(2) states that the Commission must not make a decision varying the determination in a way that varies, or has the effect of varying an allocation of capacity if the Commission is satisfied that the allocation, as so varied, would not be of benefit to the public.

¹ Determination [2022] IASC 102

² Determination [2017] IASC 103 as renewed by Determination [2021] IASC 105.

3.3 Under section 26 of the Act, in assessing the benefit to the public of a variation of an allocation of capacity, the Commission is required to apply the criteria set out in any policy statement issued by the Minister under section 11.

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 18 of the Policy Statement specifically deals with ‘transfer applications’ such as this one. It provides that, in assessing whether the variation requested would not be of benefit to the public for the purpose of subsection 25(2) of the Act, the Commission is to have regard to the reasonable capability criterion, and may have regard to any of the additional criteria that it considers to be relevant. The Commission is also to have regard to the matters specified in paragraph 18(2)(b) of the Policy Statement to the extent that they are relevant to the variation under consideration.

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. The ‘additional criteria’ to which the Commission may have regard are set out in section 9 of the Policy Statement.

3.7 The Commission considered the application of the reasonable capability criterion to the circumstances of this application. The Commission notes that Qantas and its wholly-owned subsidiary, Jetstar, are established international carriers and that both carriers currently operate passenger services between Australia and Vietnam. Accordingly, the Commission considers that Jetstar (like Qantas) would be reasonably capable of obtaining the necessary regulatory approvals and of using the freight capacity allocated under the determination.

3.8 The Commission did not have regard to the additional criteria in section 9 of the Policy Statement. The Commission notes that it received no adverse submissions opposing the variation sought in the Qantas transfer application. This means that the variation sought by Qantas has not been contested, and would not limit the ability of other carriers to apply for or utilise capacity on the route. In these circumstances, there is nothing before the Commission to indicate that its assessment of benefit to the public for the purpose of subsection 25(2) of the Act would be assisted by having regard to the additional criteria.

3.9 Having considered the criteria set out in section 18 of the Policy Statement, the Commission is satisfied that the allocation, as proposed to be varied permitting Jetstar to use the freight capacity to and from Vietnam would be of benefit to the public. Therefore, in accordance with section 25 of the Act, the Commission must make a decision varying the determination in a way that gives effect to the variation requested in the transfer application.

3.10 Subsection 15(1) of the Act empowers the Commission to include such terms

and conditions in a determination as it thinks fit. The conditions in Determination [2022] IASC 102 are varied to permit both Qantas and its wholly-owned subsidiary Jetstar to utilise the capacity.

4 Decision varying Determination [2022] IASC 102 allocating capacity on the Vietnam route to Qantas ([2022] IASC 201)

4.1 In accordance with section 25 of the Act, the Commission varies Determination [2022] IASC 102 (the Determination) which allocates capacity to Qantas Airways Limited on the Vietnam route, by deleting the conditions set out in items 4.3(b), (c) and (d) of the Determination and replacing them with the following:

(b) the capacity may be utilised by:

- Qantas; or
- Jetstar Airways Pty Limited, 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) neither Qantas nor its wholly-owned subsidiary that is permitted to use the capacity is authorised to provide code share or joint services with any other carrier or person unless approved by the Commission;

(d) changes in relation to the ownership and control of Qantas and/or its wholly-owned subsidiary permitted to use 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 – 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 and/or the wholly-owned subsidiary or be in a position to exercise effective control of the airline, without the prior consent of the Commission.

Dated: 2 February 2022



GENEVIEVE BUTLER
Chairperson



JANE MCKEON
Commissioner