



## Australian Government

### International Air Services Commission

#### DETERMINATION

<b>Determination:</b>	<b>[2024] IASC 117</b>
<b>The Route:</b>	<b>Vanuatu</b>
<b>The Applicant:</b>	<b>Qantas Airways Limited (Qantas) (ABN 16 009 661 901)</b>
<b>Public Register File:</b>	<b>IASC/APP/202421</b>

**The Commission makes a determination allocating to Qantas Airways Limited 1,798 seats of capacity per week to operate passenger services on the Vanuatu route, subject to certain conditions. The determination is valid for five years from 18 June 2024.**

### 1 The application

1.1 On 21 May 2024, Qantas applied to the International Air Services Commission (the Commission) for an allocation of 1,798 seats of capacity per week to operate passenger services on the Vanuatu route. Qantas stated in its application that from August 2024, it plans to operate services utilising a combination of Boeing 737 aircraft configured with 174 seats and Embraer E190 aircraft configured with 97 seats under a wet-lease arrangement with Alliance Airlines. During periods of peak demand, Qantas plans to operate up to five weekly services using the Boeing 737.

1.2 In its application, Qantas also indicated that from October 2024, its wholly-owned subsidiary Jetstar plans to operate up to four weekly services using Airbus A321 NEO aircraft configured with 232 seats.

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

- the allocation is requested for a period of five years from the date of the determination;
- the capacity will be fully utilised by 31 December 2024;
- the capacity may be utilised by Qantas, Jetstar or another Australian carrier which is a wholly-owned subsidiary of the Qantas Group; and
- the capacity may be used by Qantas to provide joint services with any wholly-owned subsidiary and by any wholly-owned subsidiary of the Qantas Group to provide joint services with Qantas.

1.4 In a subsequent communication received on 5 June 2024, Qantas advised the Commission that due to operational assessments undertaken since its original application,

it intends to commence its services to Vanuatu from 10 September 2024 (change from August 2024), operating up to three (3) services per week between Brisbane and Port Vila using Boeing 737 aircraft configured with 174 seats, with plans to increase up to five services during periods of peak demand in Northern Winter 2024 (December/January). From Northern Summer 2025, Qantas plans to increase up to daily services using the Embraer E190 configured with 97 seats under a wet-lease arrangement with Alliance Airlines.

1.5 Qantas also advised that from 12 December 2024 (change from October 2024), Jetstar plans to operate four (4) services per week between Sydney and Port Vila using the Airbus A321 NEO configured with 232 seats.

1.6 Following a request for further information from the Commission on 11 June 2024, the Commission received advice from Qantas on 15 June 2024 that due to operational requirements, the proposed utilisation date for the capacity is 31 January 2025.

1.7 In accordance with section 12 of the *International Air Services Commission Act 1992* (the Act), on 22 May 2024, the Commission published Qantas' application on the Commission's website inviting other applications for capacity on the Vanuatu route. No other applications were received.

1.8 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-Vanuatu air services arrangements, Australian designated carriers may operate up to 4,000 seats per week of passenger capacity in each direction between Vanuatu and the following points in Australia: Sydney, Melbourne (including Avalon), Brisbane and/or Perth.

2.3 According to the Register of Available Capacity, there are 1,816 seats of capacity per week available for allocation to Australian designated airlines to operate passenger services between Vanuatu and the following points in Australia: Sydney, Melbourne (including Avalon), Brisbane and/or Perth.

2.4 Virgin Australia has been allocated a total of 2,184 seats of passenger capacity per week to operate services on the Vanuatu route.

2.5 Under the Australia-Vanuatu air services arrangements, Australian designated airlines have the right, over all or any part of their route, to enter into code share, blocked space or other cooperative marketing arrangements as the marketing and/or operating airline, with another designated airline(s) of Australia, with the designated airline(s) of Vanuatu, and/or the designated airline(s) of third parties.

### **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 1,798 seats of capacity per week in each direction on the Vanuatu route.

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 Pursuant to section 11 of the Act, the Minister issued 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 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-subsidiary are established international carriers which currently operate scheduled international services between Australia and several international destinations. On 11 June 2024, the Commission received confirmation from the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (the Department) that Qantas has been designated as an Australian international airline under the Australia – Vanuatu Air Services Agreement and holds an International Airline Licence issued by the Department.

3.8 The Commission therefore finds that Qantas is reasonably capable of obtaining the necessary regulatory approvals to operate on the route and of using the proposed capacity allocation.

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. 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.

3.11 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.

3.13 Nothing in this decision should be taken as indicating either approval or disapproval by the Australian Competition and Consumer Commission (ACCC). This decision is made without prejudicing, in any way, possible future consideration of code share operations by the ACCC.

#### **4 Determination allocating capacity on the Vanuatu route to Qantas Airways Limited ([2024] IASC 117)**

4.1 In accordance with section 7 of the Act, the Commission makes a Determination in favour of Qantas Airways Limited, allocating 1,798 seats of capacity per week to operate passenger services on the Vanuatu route in accordance with the Australia – Vanuatu air services arrangements.

4.2 The Determination is valid for five years from 18 June 2024.

4.3 The Determination is subject to the following conditions:

- (a) Qantas Airways Limited is required to fully utilise the capacity no later than 31 January 2025 or such other date approved by the Commission.
- (b) The capacity may be utilised by:
  - Qantas Airways Limited; or

- Jetstar Airways Pty Limited, as long as it remains a wholly-owned subsidiary of the Qantas Group; or
  - such other wholly-owned subsidiary of the Qantas Group the Commission approves in writing, as long as it remains a wholly-owned subsidiary of the Qantas Group.
- (c) Neither Qantas Airways Limited nor its wholly-owned subsidiary (Jetstar Airways Pty Limited) are permitted to use the capacity to provide services jointly with another Australian carrier or any other person unless approved by the Commission
- (d) The capacity may be used by Qantas Airways Limited 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 Airways Limited.
- (e) To the extent that the capacity is used to provide code share or 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 Australian Consumer Law.
- (f) Changes in relation to the ownership and control of Qantas Airways Limited 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 – Vanuatu 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 and/or its wholly-owned subsidiary or be in a position to exercise effective control of Qantas Airways Limited and/or its wholly-owned subsidiary, without the prior consent of the Commission.

Dated: 18 June 2024



Genevieve Butler  
Chairperson



Jane McKeon  
Commissioner