



Australian Government

International Air Services Commission

DECISION

Decisions: [2014] IASC 226
Variation of: [2011] IASC 123
The Route: Thailand
The Applicant: Qantas Airways Ltd
(ACN 009 661 901) (Qantas)
Public Register File: IASC/APP/201455

The Commission's delegate varies Determination [2011] IASC 123 to permit Bangkok Airways to code share on Qantas services on the Thailand route.

1 The application

1.1 On 1 May 2014, Qantas Airways Limited (Qantas) applied for a variation to Determination [2011] IASC 123 (the Determination) to enable Bangkok Airways Public Company Limited (Bangkok Airways) to code share on selected flights operated by Qantas from 1 June 2014 on the Thailand route.

1.2 The Determination, which was varied by Decision [2014] IASC 211 to consolidate all Qantas' capacity and conditions into the single determination, allocates 35.6 B747 equivalent units of capacity per week for passenger services and 26 third country code share frequencies per week on the Thailand route. Determination [2011] IASC 123, as varied, includes conditions which allow Qantas to code share with its wholly-owned subsidiary, Emirates, Finnair, British Airways and Jetstar Asia.

1.3 On 2 May 2014, the Commission published a notice, in accordance with section 22 of the Act, inviting submissions about the application for variation. No submissions were received. All material supplied by the applicant is available on the Commission's website, www.iasc.gov.au.

2 Delegate's assessment

2.1 In accordance with section 27AB of the *International Air Services Commission Act 1992* (the Act) and regulation 3A of the *International Air Services Commission Regulations 1992*, the delegate of the Commission may consider the application for variation. (For purposes of this decision, all references to the Commission include the delegate of the Commission).

2.2 Qantas' application seeks to vary the Determination to include a condition of a kind referred to in paragraph 15(2)(e) 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.

2.3 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.

2.4 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.

2.5 Paragraph 6.3 of the Minister's Policy Statement (No. 5) of 19 May 2004 (the Policy Statement) provides that, subject to paragraph 6.4, where a carrier requests a variation of a determination to allow it flexibility in operating its capacity, including to use the Australian capacity in a code share arrangement with a foreign carrier, and no submission is received about the application, only the criteria in paragraph 4 of the Policy Statement are applicable.

2.6 Paragraph 6.4 provides, in part, that the Commission may apply the criteria in paragraph 5 in the circumstances set out in paragraph 3.6 of the Policy Statement.

2.7 Under paragraph 3.6, where capacity that can be used for code share operations is available under air services arrangements, including where foreign airlines have rights to code share on services operated by Australian carriers, the Commission would generally be expected to authorise applications for use of capacity to code share. However, if the Commission has serious concerns that a code share application (or other joint service proposal) may not be of benefit to the public, it may subject the application to more detailed assessment using the additional criteria set out in paragraph 5 (whether the application is contested or not). Before doing so, the Commission will consult with the Australian Competition and Consumer Commission (the ACCC).

2.8 The Commission notes that when the ACCC considered the Qantas-Emirates alliance, it raised concerns that the alliance would reduce the number of independent service offerings from three to two on the Thailand route (i.e. the alliance, on one hand, and Thai Airways, on the other). However, for the Sydney-Bangkok route, the ACCC concluded that Qantas' redesign of its Asian network and competition for passengers travelling beyond Bangkok to other points in Asia meant that the alliance would be unlikely to unilaterally reduce or limit capacity growth.

2.9 Bangkok Airways is a regional operator based in Thailand with a fleet of short haul aircraft and with a network focus on regional cultural and tourist destinations. In view of this, the Commission considers it unlikely that Bangkok Airways would commence own aircraft operations to Australia absent the code share, at least in the short to medium term.

2.10 In the Commission's view, allowing Bangkok Airways to code share on Qantas-operated services between Australia and Thailand will add to the number of carriers marketing services on the route and is unlikely to have a detrimental impact on competition. The code share arrangement also opens up opportunities for Qantas to offer services to a wide range of points in the region. It is noted that the Commission has already granted authorisation for Qantas to code share with a number of other carriers on the Thailand route and has also approved code sharing by Air Berlin and Etihad on Virgin Australia on the route.

2.11 In light of the above, the Commission does not have concerns that the code share application may not be of benefit to the public.

2.12 Under paragraph 4, the use of entitlements by Australian carriers under a bilateral arrangement is of benefit to the public unless such carriers are not reasonably capable of obtaining the necessary approvals to operate on the route and of implementing their proposals. The Commission notes that Qantas is an established international carrier which is clearly capable of obtaining the necessary approvals and of implementing its proposals.

2.13 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 is its normal practice, the Commission will also include a condition which requires Qantas to comply with the Australian Consumer Law and to take all reasonable steps to ensure that passengers are informed of the carrier that is actually operating the flight.

2.14 Nothing in this decision should be taken as indicating either approval or disapproval by the ACCC. This decision is made without prejudicing, in any way, possible future consideration of code share operations by the ACCC.

3 Decision varying Determination [2011] IASC 123 allocating capacity on the Thailand route to Qantas ([2014] IASC 226)

3.1 In accordance with section 25 of the Act, the delegate, on behalf of the Commission, varies Determination [2011] IASC 123 which allocates capacity on the Thailand route, by:

adding the following conditions to the Determination:

- the capacity may be used by Qantas to provide services jointly with Bangkok Airways in accordance with the code share agreement between Qantas and Bangkok Airways dated 3 March 2014, as amended;
- Qantas must advise the Commission of any proposed amendment to the code share agreement, or any proposed new code share agreement with Bangkok Airways, that would result in a substantive change in the nature of the code share agreement (including any route changes);
- under any code share agreement with Bangkok Airways, Qantas must price and sell its services on the route independently of Bangkok Airways and must not share or pool revenues on the route with Bangkok Airways; and
- under the code share arrangements, the airlines must take all reasonable steps to ensure that passengers are informed of the carrier actually operating the flight at the time of booking. Nothing in this determination exempts the airlines from complying with the Australian Consumer Law.

Dated: 15 May 2014

A handwritten signature in black ink that reads "Marlene Tucker". The signature is written in a cursive style with a large, stylized initial "M".

Marlene Tucker
Executive Director
Delegate of the IASC Commissioners