



## Australian Government

### International Air Services Commission

#### DETERMINATION

<b>Determination:</b>	<b>[2009] IASC 120</b>
<b>The Route:</b>	<b>Thailand</b>
<b>The Applicant:</b>	<b>Qantas Airways Limited (Qantas)</b> <b>(ACN 009 661 901)</b>
<b>Public Register:</b>	<b>IASC/APP/200932</b>

### 1 The application

1.1 On 29 September 2009, Qantas applied for an allocation of 1.4 B747 equivalent units per week of capacity on the Thailand route to permit Jetstar, a wholly-owned subsidiary of Qantas, to operate additional services on the Thailand route. Jetstar plans to operate two extra weekly services between Sydney and Phuket in periods of peak demand throughout the year. The services are proposed to be operated with one-class A330 aircraft. Qantas requested that the capacity be able to be utilised by Qantas or its wholly-owned subsidiaries, including in joint services between these carriers.

1.2 The Commission published a notice on 1 October 2009, inviting other applications for the capacity sought by Qantas. No applications were received.

1.3 All material supplied by the applicant is filed on the Register of Public Documents.

### 2 Provisions of relevant air services arrangements

2.1 Under the Australia – Thailand air services arrangements, the designated airlines of Australia may operate services with any type of aircraft between points in Australia via intermediate points to points in Thailand.

2.2 The Register of Available Capacity shows that there are the equivalent of 27.5 B747 weekly services of passenger capacity available for allocation. Under the aircraft substitution arrangements, an A330 aircraft is the equivalent of 0.70 of a B747 unit of capacity.

### 3 Commission's consideration

3.1 The *International Air Services Commission Act 1992* (the Act) allows for allocated capacity to be used by a wholly owned subsidiary of another Australian carrier. Section 15(2)(ea) of the Act states that determinations may include a condition that, to the extent that any of the capacity is allocated to a particular Australian carrier, it

may be used in whole or in part by any one or more of the following:

- (i) the carrier;
- (ii) a wholly-owned subsidiary of the carrier; and,
- (iii) if the carrier is a wholly-owned subsidiary of another Australian carrier - that other carrier.

3.2 Qantas is the only applicant for capacity. Under paragraph 6.2 of the Minister's Policy Statement (No.5), of 19 May 2004, the Commission is required only to apply the criteria in paragraph 4 of the policy statement. Under paragraph 4, the use of entitlements by an Australian carrier that is reasonably capable of obtaining the necessary approvals and of implementing its proposals is of benefit to the public. The Commission has previously allocated capacity to Qantas to be used by Jetstar, a wholly-owned subsidiary of Qantas, on a number of routes, including the Thailand route. Jetstar is an established international carrier. This means that there is public benefit arising from Jetstar using the entitlements on the Thailand route.

3.3 The Commission will allocate the capacity sought by Qantas. Section 15(2A) states that if a determination includes a condition of a kind mentioned in paragraph 15(2)(ea), the determination may include conditions that are applicable to all, or some only, of the persons who are permitted to use the capacity concerned. The conditions of the determination will apply to both Qantas or another Australian carrier which is a wholly-owned subsidiary of Qantas.

3.4 Under Section 15(2)(e) of the Act, the Commission must include a condition in determinations stating the extent to which the carrier may use that capacity in joint services with another carrier. Qantas has sought authority to code share on Jetstar-operated services. The Commission has previously authorised use of capacity in joint services between Qantas and its wholly-owned subsidiaries on the Thailand route, to enable Qantas to code share with Jetstar, and will do so in this case.

#### **4 Determination allocating capacity on the Thailand route to Qantas ([2009] IASC 120)**

4.1 The Commission makes a determination in favour of Qantas, allocating 1.4 B747 equivalent units of capacity per week in each direction on the Thailand route under the Australia – Thailand air services arrangements.

4.2 The determination is for five years from the date of the determination.

4.3 The determination is subject to the following conditions, which apply to Qantas or another Australian carrier which is a wholly owned subsidiary of Qantas:

- Qantas is required to fully utilise the capacity from no later than 31 December 2009, or from such other date approved by the Commission;
- only Qantas or another Australian carrier which is a wholly-owned subsidiary of Qantas is permitted to utilise the capacity;

- Qantas is not permitted to utilise the capacity to provide services jointly with another Australian carrier or any other person without the approval of the Commission;
- the capacity may be used by any wholly-owned subsidiary of Qantas to provide joint services with Qantas;
- to the extent that the capacity is used to provide joint services on the route, Qantas and any wholly-owned subsidiary of Qantas must take all reasonable steps to ensure that passengers are informed of the carrier actually operating the flight at the time of booking;
- changes in relation to the ownership and control of Qantas are permitted except to the extent that any change:
  - 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 be in a position to exercise effective control of Qantas, without the prior consent of the Commission, and
- changes in relation to the management, status or location of operations and Head Office of Qantas are permitted except to the extent that any change would result in the airline ceasing to be an airline designated by the Australian Government for the purposes of the Australia – Thailand air services arrangements.

Dated: 20 October 2009

John Martin  
Chairman

Philippa Stone  
Member

Ian Smith  
Member