



Australian Government

International Air Services Commission

DECISION

Decisions: [2009] IASC 209 and [2009] IASC 210
Variation of: [2006] IASC 110 and [2006] IASC 105
The Routes: Thailand and United Kingdom
The Applicant: Qantas Airways Limited
(ACN 009 661 901) (Qantas)
Public Register File: IASC/APP/200914

1 The application

1.1 On 15 June 2009, Qantas applied for variations of Determinations [2006] IASC 110 and [2006] IASC 105 to permit the Spanish airline Iberia to code share on daily Qantas services between Australia and the United Kingdom via Thailand. The new arrangements are proposed to commence from 15 July 2009.

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

1.3 The Commission published a notice on 16 June 2009 inviting submissions about the application. A submission was received on 19 June 2009 from Tourism Queensland, supporting the Qantas application. While noting that the proposal involved Qantas services to Sydney, Tourism Queensland considered there would be flow-on benefits for Queensland. Tourism Queensland said that air access from Spain to Australia had been limited and this had inhibited growth of this visitor market. Only about 3,500 Spanish passengers arrived in Queensland in the year ended March 2009. There was potential for the visitor market to grow with improved air access.

1.4 Tourism Queensland suggested that the code share agreement would enable Qantas to extend its brand into the Spanish market. Iberia's code share on Qantas' UK and Thailand flights would provide Spanish travellers with seamless ticketing, making the Australian and Queensland markets more accessible. The arrangements would also improve the marketability of Australia and Queensland in the Spanish market.

2 Provisions of the relevant air services arrangements

2.1 The Australia - Thailand air services arrangements allow the designated airlines of each country to enter into code-sharing arrangements as the operating airline with any airline(s) of a third country on any number of frequencies per week within its entitlements.

2.2 The Australia - United Kingdom air services arrangements include a liberal policy, based on market demand, for the approval of free sale code share arrangements with third-country carriers.

3 Delegate's assessment

3.1 In accordance with section 27AB of the *International Air Services Commission Act 1992* (the Act) and regulation 3A of the *International Air Services Commission Amendment Regulations 2003 (No.1)*, the delegate of the Commission considers the Qantas application.

3.2 When considering applications to vary determinations, the Commission (or its delegate) must decide whether the determinations, as varied, would be of benefit to the public. Under section 6.3 of the Minister's policy statement, where a carrier requests a variation of a determination to allow it flexibility in operating its capacity and no submission is received about the application, only the criteria in paragraph 4 of the policy statement are applicable. Under paragraph 4, the use of entitlements by Australian carriers under a bilateral arrangement is of benefit to the public. Qantas is an established international carrier which is clearly capable of obtaining the necessary approvals and of implementing its proposal. This means that there is public benefit arising from the use of the entitlements.

3.3 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 advised subsequent to its application that the code share agreement between Qantas and Iberia is a free sale agreement. The airlines also advised that a copy of the agreement will be provided to the Commission prior to services commencing.

3.4 The Commission has previously authorised code sharing by Qantas with other airlines on the United Kingdom and Thailand routes, and between Qantas and Iberia on the Singapore route. The proposed arrangements do not raise competition concerns. Both the United Kingdom and Thailand routes are competitive ones and the scale of the Qantas/Iberia arrangements is modest, applying to only seven Qantas services per week. Indeed, as Tourism Queensland argued in its supportive submission, there are likely to be aspects of the arrangements which contribute positively to public benefits, such as increased tourism from Spain.

3.5 The delegate will authorise the use of the capacity in joint services with Iberia but will require the signed code share agreement to be received and approved by the Commission prior to services commencing. The delegate, on behalf of the Commission, will vary the determinations as requested by Qantas.

4 Decision [2009] IASC 209

4.1 In accordance with section 24 of the Act, the delegate, on behalf of the Commission, varies Determination [2006] IASC 110, 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 Iberia in accordance with:

- the signed code share agreement between Qantas and Iberia for operations on the Australia - Thailand route, subject to the agreement being received and approved by the Commission prior to services commencing; or
- any subsequent code share agreement between Qantas and Iberia for operations on the Australia - Thailand route with the prior approval of the Commission;
- under any code share agreement with Iberia:
 - Qantas must price and sell its services on the route independently of Iberia; and
 - Qantas must not share or pool revenues on the route with Iberia.

5 Decision [2009] IASC 210

5.1 In accordance with section 24 of the Act, the delegate, on behalf of the Commission, varies Determination [2006] IASC 105, which allocates capacity on the United Kingdom route, by:

adding the following conditions to the Determination:

- the capacity may be used by Qantas to provide services jointly with Iberia in accordance with:
 - the signed code share agreement between Qantas and Iberia for operations on the Australia - United Kingdom route, subject to the agreement being received and approved by the Commission prior to services commencing; or
 - any subsequent code share agreement between Qantas and Iberia for operations on the Australia - United Kingdom route with the prior approval of the Commission;
- under any code share agreement with Iberia:
 - Qantas must price and sell its services on the route independently of Iberia;
 - Qantas must not share or pool revenues on the route with Iberia.

Dated: 24 June 2009

Michael Bird
 Executive Director
 Delegate of the IASC Commissioners