



Australian Government

International Air Services Commission

DETERMINATION

Determination: [2010] IASC 124
The Route: Thailand
The Applicant: Qantas Airways Limited (Qantas)
(ACN 009 661 901)
Public Register: IASC/APP/201022

1 The application

1.1 On 18 October 2010, advised that it planned to commence a new code share arrangement with Kenya Airways as soon as necessary approvals have been received. Under the arrangements, Kenya Airways would code share on Qantas' services between Bangkok and Sydney, with Qantas code sharing on Kenya Airways' services between Bangkok and Nairobi.

1.2 Accordingly, Qantas applied for an allocation of seven frequencies per week of capacity to be used in third-country code share services with Kenya Airways on the Thailand route. This allocation would facilitate Qantas code sharing on Kenya Airways services between Bangkok and Nairobi. Qantas sought a five year determination. The capacity is proposed to be fully used by 31 December 2010. All material supplied by the applicant is filed on the Register of Public Documents.

1.3 The Commission published a notice on 19 October 2010, inviting other applications for the capacity sought by Qantas. No applications were received.

1.4 Qantas also sought a variation to Determination [2006] IASC 110 to permit Kenya Airways to code share on Qantas-operated services between Sydney and Bangkok. That part of the application is dealt with in Decision [2010] IASC 209.

2 Provisions of relevant air services arrangements

2.1 Under the Australia – Thailand air services arrangements, the designated airlines of Australia may enter into code share arrangements with any other airlines provided the appropriate route and traffic rights are available. The Register of Available Capacity shows that there are 26 services per week of third party code share capacity available to Australian carriers to engage in code share services with third party airlines.

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 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 Australian entitlements by a carrier that is reasonably capable of obtaining the necessary approvals (4(b)(i)) and of implementing its proposals (4(b)(ii)) is of benefit to the public. In addition, Section 15(2)(e) of the *International Air Services Commission Act 1992* (the Act) specifies that the Commission must include a condition in determinations stating the extent to which the carrier may use allocated capacity in joint services with another carrier.

3.3 Qantas is an established international carrier which is clearly capable of obtaining the necessary approvals and of implementing the proposed operations. The code share arrangement provides a means for Qantas to offer services to Kenya, which it does not currently serve in its own right. The delegate concludes that there is public benefit arising from the use of the entitlements. The delegate, on behalf of the Commission, will allocate to Qantas the capacity it has sought. The approval to code share is subject to Qantas providing the finalised code share agreement to the Commission before the commencement of services. The delegate will issue a five year determination.

4 Determination allocating capacity on the Thailand route to Qantas ([2010] IASC 124)

4.1 The delegate, on behalf of the Commission, makes a determination in favour of Qantas, allocating seven weekly third party code share services 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:

- Qantas is required to fully utilise the capacity from no later than 31 December 2010, or from such other date approved by the Commission;
- only 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 Qantas to provide services jointly with Kenya Airways in accordance with:
 - the signed code share agreement between Qantas and Kenya Airways 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 Kenya Airways, whether or not it replaces the existing agreement, with the prior approval of the Commission;
- under any code share agreement with Kenya Airways:
 - Qantas must price and sell its services on the route independently of Kenya Airways; and
 - Qantas must not share or pool revenues on the route with Kenya Airways;
- to the extent that the capacity is used to provide joint services on the route, 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:
 - results in the designation of the airline as an Australian carrier under the Australia – Thailand 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 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: 27 October 2010

Michael Bird
Executive Director
Delegate of the IASC Commissioners