



## Australian Government

### International Air Services Commission

#### DECISION

<b>Decision:</b>	<b>[2010] IASC 209</b>
<b>Variation of:</b>	<b>[2006] IASC 110</b>
<b>The Route:</b>	<b>Thailand</b>
<b>The Applicant</b>	<b>Qantas Airways Limited (ACN 009 661 901) (Qantas)</b>
<b>Public Register File:</b>	<b>IASC/APP/201022</b>

#### 1 The application

1.1 On 18 October 2010, advised of plans to enter 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, while Qantas would code share on Kenya Airways' services between Bangkok and Nairobi.

1.2 Qantas sought a variation to Determination [2006] IASC 110, to permit Kenya Airways to code share on Qantas-operated services between Sydney and Bangkok. Qantas sought a five year determination. 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 submissions about the application. No submissions were received.

1.4 Qantas also 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 capacity would facilitate Qantas code sharing on Kenya Airways services between Bangkok and Nairobi. That part of the application is dealt with in Determination [2010] IASC 124.

#### 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.

#### 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. The Commission has previously authorised code sharing by Qantas with other airlines on the Thailand route. The proposed arrangements do not raise competition concerns. The Thailand route is competitive and the scale of the Qantas/Kenya Airways arrangements is modest, applying to only seven Qantas services per week.

3.4 The delegate will authorise the use of the capacity in joint services with Kenya Airways 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 determination as requested by Qantas.

#### **4 Decision [2010] 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 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.”

Dated: 27 October 2010

Michael Bird  
Executive Director  
Delegate of the IASC Commissioners