



## Australian Government

### International Air Services Commission

#### DECISION AND DETERMINATION

<b>Decision:</b>	<b>[2011] IASC 202</b>
<b>Variation of:</b>	<b>[2007] IASC 116</b>
<b>The Route:</b>	<b>Singapore</b>
<b>Determination</b>	<b>[2011] IASC 101</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/201101</b>

#### 1 The application

1.1 On 12 January 2011, Qantas applied for authorisation to code share with Finnair on the Singapore and Thailand routes. There were two parts to the application. First, Qantas sought a variation of Determination [2007] IASC 116 to permit Finnair to code share on Qantas services between Australia and Singapore. Secondly, Qantas requested an allocation of fourteen third-country code share frequencies per week to be used to enable Finnair to code share with Qantas on the Thailand route. As part of the arrangements, Qantas would also place its code on Finnair's services between Singapore and Helsinki and between Thailand and Helsinki. The arrangements are proposed to take effect from 10 February 2011, or as soon as necessary approvals have been obtained.

1.2 The Commission published a notice on 12 January 2011 inviting other allocations for capacity and submissions about the application. No applications or submissions were received.

1.3 All public material supplied by the applicant is filed on the Register of Public Documents. The confidential code share agreement between Qantas and Finnair is filed on the Commission's Confidential Register.

#### 2 Provisions of the relevant air services arrangements

2.1 The Australia – Singapore air services arrangements allow the designated airlines of Australia to enter into unrestricted code share, blocked space or other co-operative marketing arrangements with any other airline, including airlines of third parties, as marketing and/or operating airline, provided that the airlines hold the authority to operate or market the service.

2.2 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 remaining available to Australian carriers to engage in code share services with third party airlines. The Commission has previously allocated to Qantas 14 third-party code share services per week, seven for use with British Airways and seven for code sharing with Kenya Airways. Additionally, the air services arrangements allow regular capacity entitlements for Australian carriers to be converted to third-party code share frequencies.

2.3 Under the Australia – Finland air services arrangements there is no restriction on code sharing and code share operations do not count against capacity entitlements.

### **3 Commission's assessment**

3.1 When considering applications to vary determinations, the Commission must decide whether the determinations, as varied, would be of benefit to the public. Under section 6.3 of the Minister's policy statement (No.5), of 19 May 2004, 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.

3.2 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.

3.3 There is considerable competition on the Singapore route with several airlines offering direct or indirect services. Other airlines market seats under code share arrangements with carriers offering services between Australia and Singapore, including British Airways, Air France and others on Qantas' services under arrangements authorised by the Commission. The Commission considers there will be no lessening of public benefits from the proposed code share arrangements between Qantas and Finnair. The Commission will vary the determination as requested by Qantas.

3.4 Turning to the application for capacity on the Thailand route, the Commission notes that Qantas is the only applicant for capacity. Under paragraph 6.2 of the Minister's Policy Statement, 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.

3.5 Qantas is an established international carrier which is clearly capable of obtaining the necessary approvals and of implementing the proposed operations. For similar reasons to those outlined above in relation to the Singapore route, the

Commission concludes that there is public benefit arising from the use of the entitlements on the Thailand route. The Commission, will allocate to Qantas the capacity it has sought and will authorise its use in code sharing with Finnair. The Commission will issue a five-year determination.

#### **4 Decision [2011] IASC 202**

4.1 In accordance with section 24 of the Act, the Commission varies Determination [2007] IASC 116, which allocates capacity on the Singapore route, by:

*adding* the following conditions to the Determination:

- the capacity may be used by Qantas to provide services jointly with Finnair in accordance with:
  - the code share agreement of 23 December 2010 between Qantas and Finnair for operations on the Australia - Singapore route; or
  - any subsequent code share agreement between Qantas and Finnair for operations on the Australia - Singapore route , whether or not it replaces the existing agreement, with the prior approval of the Commission;
- under any code share agreement with Finnair:
  - Qantas must price and sell its services on the route independently of Finnair; and
  - Qantas must not share or pool revenues on the route with Finnair.

#### **5 Determination allocating capacity on the Thailand route to Qantas ([2011] IASC 101)**

5.1 The Commission makes a determination in favour of Qantas, allocating fourteen weekly third-party code share services in each direction on the Thailand route under the Australia – Thailand air services arrangements.

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

5.3 The determination is subject to the following conditions:

- Qantas is required to fully utilise the capacity from no later than 31 April 2011, 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 Finnair accordance with:
  - the code share agreement of 23 December 2010 between Qantas and Finnair for operations on the Australia – Thailand route; or
  - any subsequent code share agreement between Qantas and Finnair, whether or not it replaces the existing agreement, with the prior approval of the Commission;
- under any code share agreement with Finnair:
  - Qantas must price and sell its services on the route independently of Finnair; and
  - Qantas must not share or pool revenues on the route with Finnair;
- 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

Dated: 24 January 2011

Ian Smith  
Member Presiding

Stephen Bartos  
Member