



**Australian Government**  

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**International Air Services Commission**

**DETERMINATIONS**

**Determinations:** [2011] IASC 105, [2011] IASC 106  
**The Routes:** Thailand and Taiwan  
**The Applicant:** Qantas Airways Limited (Qantas)  
(ACN 009 661 901)  
**Public Register:** IASC/APP/201110

**1 The application**

1.1 On 5 May 2011 Qantas applied for allocations of capacity on a number of routes and for authorisation to utilise capacity in joint services with Jetstar Asia. Under the proposed arrangements, Qantas plans to place its code on Jetstar Asia's services between Singapore and the following points:

- Kuala Lumpur;
- Penang;
- Hong Kong;
- Bangkok;
- Phuket;
- Taipei;
- Ho Chi Minh City; and
- New Zealand.

1.2 The application involves multiple routes and, on many of these routes, capacity utilised by a marketing carrier is not considered to be a use of capacity entitlements under the air services arrangements. Accordingly, on those routes, Qantas does not need an allocation of capacity from the Commission to participate in code sharing or an authorisation from the Commission.

1.3 However capacity allocations are required on the Thailand and the Taiwan routes in order for Qantas to participate as a marketing carrier with Jetstar Asia. Qantas has sought allocations of 14 frequencies per week on the Thailand route, and 2,121 weekly seats on the Taiwan route. Qantas has requested the period of the determinations be five-years.

1.4 The Commission published a notice on 6 May 2011 inviting other applications for capacity. No applications were received. All public material supplied by the applicant is filed on the Register of Public Documents. Confidential supporting information supplied by Qantas is filed on the Commission's Confidential Register.

## **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 5 services per week available to Australian carriers to engage in code share services with third country airlines. The arrangements provide that, when this capacity is exhausted, carriers can convert available capacity which is not code share capacity into available additional code share services on the basis that one unused B747 equivalent service equals one third country code share frequency. In this instance there are currently 25.05 B747 equivalent services available for allocation.

2.2 Under the Australia – Taiwan air services arrangements the designated airlines of Australia are entitled to perform any of their agreed services, with code sharing, blocked space and other cooperative services arrangements, with an airline or airlines of the same side, of the other side, or of a third country. The Register of Available Capacity shows there are 6000 seats per week in each direction available for allocation.

## **3 Delegate's consideration**

3.1 In accordance with section 27AB of the *International Air Services Commission Act 1992* and regulation 3A of the *International Air Services Commission Regulations 1992*, the delegate of the Commission may consider 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 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.

3.3 Qantas is an established airline which is capable of obtaining the necessary approvals and of implementing the proposed operations. In terms of paragraph 4, this means that there is public benefit arising from the use of the entitlements on each of the routes concerned.

3.4 Paragraph 15(2)(e) of 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. The Commission has previously authorised code sharing by Qantas with other airlines on both the Thailand and Taiwan routes.

3.5 The Commission's view is that the Thailand and Taiwan routes are all strongly competitive with multiple carriers participating in services on those routes. In particular, on the Thailand route, there is competition from Thai Airways, Emirates, Pacific Blue Australia, and Strategic Airlines. China Airlines and Eva Air provide services on the Taiwan route. Qantas does not operate its own services to Taiwan and currently code shares on services provided by Eva Air.

3.6 The delegate, on behalf of the Commission, will allocate the capacity as sought by Qantas to be used for third country code share services on the Thailand and Taiwan

routes.

#### **4 Determination allocating capacity on the Thailand route to Qantas ([2011] IASC 105)**

4.1 The delegate, on behalf of the Commission, makes a determination in favour of Qantas allocating 5 weekly third party code share services, and 9 units of B747 equivalent services 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:

- Qantas is required to fully utilise the capacity from no later than 31 December 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 Jetstar Asia in accordance with:
  - the code share agreement between Qantas and Jetstar Asia dated 25 March 2011; or
  - any subsequent code share agreement between Qantas and Jetstar Asia, whether or not it replaces the existing agreement, with the prior approval of the Commission;
- under any code share agreement with Jetstar Asia:
  - Qantas must not share or pool revenues on the route with Jetstar Asia;
- 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.

## **5 Determination allocating capacity on the Taiwan route to Qantas ([2011] IASC 106)**

5.1 The delegate, on behalf of the Commission, makes a determination in favour of Qantas allocating 2,121 weekly seats of capacity in each direction on the Taiwan route under the Australia – Taiwan 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 December 2011, or 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 Jetstar Asia in accordance with:
  - the code share agreement between Qantas and Jetstar Asia dated 25 March 2011; or
  - any subsequent code share agreement between Qantas and Jetstar Asia, whether or not it replaces the existing agreement, with the prior approval of the Commission;
- under any code share agreement with Jetstar Asia:
  - Qantas must not share or pool revenues on the route with Jetstar Asia;
- to the extent that the capacity is used to provide joint services on the route, at the time of booking, Qantas must take all reasonable steps to ensure that passengers are informed of the carrier actually operating the flight;
- 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 – Taiwan 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 – Taiwan air services arrangements.

Dated: 6 June 2011



Sue McIntosh  
Executive Director  
Delegate of the IASC Commissioners