



**Australian Government**  

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**International Air Services Commission**

**DETERMINATION**

**Determinations:** [2011] IASC 112  
**The Routes:** Thailand  
**The Applicant:** Qantas Airways Limited (Qantas)  
(ACN 009 661 901)  
**Public Register:** IASC/APP/201122

**1 The application**

1.1 On 18 August 2011 Qantas applied for an allocation of fourteen frequencies per week to be used for third country code share services between Singapore and Thailand. Under the code share agreement, Qantas plans to place its code on additional Jetstar Asia services. Qantas has requested the period of the determination be five years.

1.2 The Commission published a notice on 18 August 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.

**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 no services per week available to Australian carriers to engage in code share services with third country airlines. However 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 16.05 B747 equivalent services 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 Jetstar Asia on the Thailand route.

3.5 The Commission's view is that the Thailand route is strongly competitive with multiple carriers participating in services on those routes. In particular, there is competition from Thai Airways, Emirates, Pacific Blue Australia, and Strategic Airlines.

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 route.

#### **4 Determination allocating capacity on the Thailand route to Qantas ([2011] IASC 112)**

4.1 The delegate, on behalf of the Commission, makes a determination in favour of Qantas allocating 14 units of B747 equivalent services of capacity per week in each direction on the Thailand route under the Australia – Thailand air services arrangements.

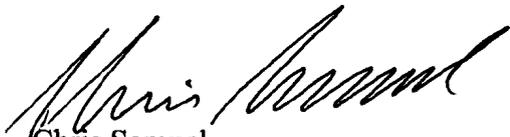
4.2 The determination is for five years from the date of the determination.

4.3 The determination is subject to the following conditions:

- Qantas is required to fully utilise the capacity from no later than 30 September 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.

Dated: 29 August 2011



Chris Samuel  
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Delegate of the IASC Commissioners