



Australian Government

International Air Services Commission

RENEWAL DETERMINATION

Determination: [2011] IASC 123
Renewal of: [2006] IASC 110
The Route: Thailand
The Applicant: Qantas Airways Ltd
(ACN 009 661 901) (Qantas)
Public Register File: IASC/APP/201124

1 The application for renewal

1.1 On 26 October 2006, the delegate of the Commission issued Determination [2006] IASC 110, allocating to Qantas the equivalent of seven B747 weekly services in each direction between Australia and Thailand. The Determination was subsequently varied by Decision [2009] IASC 209 and Decision [2010] IASC 209 which permit code sharing between Qantas and Iberia Airways and Kenya Airways respectively.

1.2 Under the *International Air Services Commission Act 1992* (the Act) the Commission must start its consideration of the renewal of a determination at least 12 months before the expiry of the Determination. The Determination expires on 30 June 2012.

1.3 Qantas applied to the Commission on 11 October 2011 for a renewal of the Determination. In its application, Qantas sought a variation to add conditions enabling capacity to be used by any wholly-owned subsidiary of Qantas and to be used by Qantas to provide services jointly with any wholly-owned subsidiary of Qantas.

1.4 The Commission published a notice on 20 October 2011 inviting submissions about the application. One submission was received from the Australian and International Pilots Association. The Association raised concerns that the Commission's approval of the variation may ultimately provide a vehicle for Qantas management to avoid the intent of the *Qantas Sale Act 1992* and to shrink Qantas in favour of Jetstar. The Association also expressed a concern about consumer awareness aspects of code sharing between full service and low cost carriers.

1.5 All material supplied by the applicant is filed on the Register of Public Documents.

2 Commission's consideration

2.1 Under the Minister's Policy Statement (No. 5) of 19 May 2004, there is a rebuttable presumption in favour of the carrier seeking the renewal.

2.2 The Commission notes that:

- Qantas has been servicing the route effectively; and
- there are no other applicants seeking capacity on the route.

2.3 In these circumstances, the Commission concludes that the renewal of Determination [2006] IASC 110 would be of benefit to the public.

2.4 In relation to the variation sought by Qantas for authority for its wholly-owned subsidiaries to use the capacity allocated to it, the Commission will authorise the use of the capacity by Qantas' wholly-owned subsidiaries on the Thailand route, including in joint services with Qantas.

2.5 The Commission notes that it has previously allocated capacity to Qantas to be used by its wholly-owned subsidiaries in the interests of providing commercial and operational flexibility, consistent with amendments to the Act made in 1994. The Commission considers that approval of this variation is consistent with the object of the Act and the Minister's policy statement, both of which make it clear that the Commission should have regard to the need for Australian airlines to be able to compete effectively with one another and with foreign airlines. Moreover, the policy statement states that the use of entitlements by Australian carriers under a bilateral arrangement is of benefit to the public.

2.6 In relation to joint services, the Commission will include a condition which requires Qantas and any wholly owned subsidiary to comply with the Australian Consumer Law and to take all reasonable steps to ensure that passengers are informed of the carrier that is actually operating the flight.

3 Determination for renewal of Determination [2006] IASC 110 allocating capacity on the Thailand route to Qantas ([2011] IASC 123)

3.1 The Commission makes a determination in favour of Qantas, allocating the equivalent of seven B747 weekly services in each direction between Australia and Thailand under the Australia – Thailand air services arrangements.

3.2 The determination is for five years from 1 July 2012.

3.3 The determination is subject to the following conditions:

- Qantas is required to fully utilise the capacity;
- only Qantas or another Australian carrier which is a wholly owned subsidiary of Qantas is permitted to utilise the capacity;
- neither Qantas nor another Australian carrier which is a wholly owned subsidiary of Qantas is 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 any wholly-owned subsidiary of Qantas;

- the capacity may be used by Qantas to provide services jointly with British Airways in accordance with:
 - the code share agreement dated 5 October 1997, as amended;
 - or any new code share agreement, whether or not it replaces the existing agreement, with the prior approval of the Commission;
- under the arrangements with British Airways, Qantas may only price and market its services, or share or pool revenues/profits on the route, jointly with British Airways as long as such practices are authorised under the *Competition and Consumer Act 2010* or otherwise authorised by the Australian Competition Tribunal, in the event of review by that Tribunal;
- the capacity may be used by Qantas to provide services jointly with Finnair in accordance with:
 - the code share agreement dated 30 May 2000, as amended;
 - or any subsequent code share agreement between Qantas and Finnair for operations on the Australia - Thailand route with the prior approval of the Commission; and
- under any code share agreement with Finnair:
 - Qantas must price and sell its services on the route independently of Finnair;
 - Qantas must not share or pool revenues on the route with Finnair; and
- the capacity may be used by Qantas to provide services jointly with Air Malta in accordance with:
 - the code share agreement dated 1 March 2005, as amended;
 - or any subsequent code share agreement between Qantas and Air Malta for operations on the Australia - Thailand route with the prior approval of the Commission; and
- under any code share agreement with Air Malta:
 - Qantas must price and sell its services on the route independently of Air Malta; and
 - Qantas must not share or pool revenues on the route with Air Malta;
- the capacity may be used by Qantas to provide services jointly with Iberia in accordance with:
 - the code share agreement dated 5 June 2009 as amended; or

- any subsequent code share agreement between Qantas and Iberia for operations on the Australia - Thailand route with the prior approval of the Commission;
- under any code share agreement with Iberia:
 - Qantas must price and sell its services on the route independently of Iberia; and
 - Qantas must not share or pool revenues on the route with Iberia.
- the capacity may be used by Qantas to provide services jointly with Kenya Airways in accordance with:
 - the code share agreement dated 14 October 2010 as amended; 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;
- where the capacity is used to provide joint services on the route, nothing in this determination exempts Qantas and any wholly owned subsidiary from complying with the Australian Consumer Law. The airlines are required to take all reasonable steps to ensure that passengers are informed, at the time of booking, 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 - 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: 19 December 2011



Jill Walker
Chairperson



Stephen Bartos
Member

