

DETERMINATION

DETERMINATION: [2000] IASC 119
THE ROUTE: THAILAND
THE APPLICANT: QANTAS AIRWAYS LIMITED
(QANTAS) (ACN 009 661 901)
PUBLIC REGISTER FILE: IASC/APP/200022

1 The application

1.1 On 23 August 2000, Qantas applied for an allocation of one B747 service weekly on the Thailand route to enable it to add a fourth weekly service between Melbourne and Rome via Bangkok from the start of the Northern Winter 2000 scheduling period (commencing 29 October 2000).

1.2 Qantas is also seeking approval for British Airways (BA) to code share, at some time in the future, on the capacity, in accordance with the Qantas/BA Code Share Agreement of 5 October 1997 and to engage in joint pricing and marketing pursuant to the Restated Joint Services Agreement.

1.3 The Commission published a notice on 30 August 2000 inviting other applications for the capacity and submissions from interested parties about the Qantas application. No applications or submissions were received.

1.4 All non-confidential 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, Australian airlines may enter into code share arrangements as the operating carrier with any airline(s) of a third country on any number of frequencies within the entitlements available to Australian carriers.

2.2 The Register of Available Capacity indicates that there are the equivalent of four B747 services available for immediate allocation and a further seven available from March 2001.

3 Commission's assessment

3.1 Under the Minister's Policy Statement (No 3 of 23 April 1997, as amended on 9 March 1999), the relevant criteria to be applied in deciding whether or not to allocate

capacity, given that there is only one applicant and no other submissions, are whether Qantas is reasonably capable of obtaining the necessary approvals and of implementing its proposals.

3.2 Qantas is an established international carrier, which has the technical and financial resources to implement its proposal. The Commission concludes that Qantas is reasonably capable of obtaining the necessary approvals and of implementing its proposal and that the allocation to Qantas of one B747 unit per week in each direction on the Thailand route would be of benefit to the public.

3.3 Section 15(2)(d) of the Act specifies that 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. Qantas has stated that the capacity would be used in part in a code share arrangement whereby BA would market capacity on Qantas operated services on the route. The Commission has previously approved the operation of capacity by Qantas in joint services with BA pursuant to the Qantas/BA Code Share Agreement of 5 October 1997 and will do so in this case.

4 Other issues

4.1 The Commission normally includes conditions in determinations approving code shares that the Australian carrier must price and sell its services on the route independently and that it must not share or pool revenues. However, in this case it will not do so because the Australian Competition and Consumer Commission (ACCC) has issued an authorisation for a Restated Joint Services Agreement (JSA) between Qantas and British Airways which allows joint pricing and revenue pooling.

5 Determination allocating capacity on the Thailand route to Qantas ([2000] IASC 119)

5.1 The Commission makes a determination in favour of Qantas, allocating one B747 service per week 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 December 2000 or from such other date approved by the Commission;
- only Qantas is permitted to utilise the capacity;
- 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; or
- any new code share agreement, whether or not it replaces the existing agreement, with the prior approval of the Commission;
- 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 *Trade Practices Act 1974* or otherwise authorised by the Australian Competition Tribunal, in the event of review by that Tribunal;
- 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 Agreement 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 Agreement.

Dated: 8 September 2000

Ross Jones
Chairman

Stephen Lonergan
Member

Michael Lawriwsky
Member