



## Australian Government

### International Air Services Commission

#### DETERMINATION AND DECISION

<b>Determination:</b>	<b>[2006] IASC 101</b>
<b>Decision</b>	<b>[2006] IASC 207</b>
<b>Variation of:</b>	<b>[2005] IASC 128</b>
<b>The Route:</b>	<b>Thailand</b>
<b>The Applicant:</b>	<b>Qantas Airways Limited (Qantas)</b> <b>(ACN 009 661 901)</b>
<b>Public Register:</b>	<b>IASC/APP/200602</b>

#### 1 The application

1.1 On 12 April 2006, Qantas applied for an allocation of 2.9 B747 equivalent units per week of capacity on the Thailand route to permit Jetstar, a wholly-owned subsidiary of Qantas, to operate services on the Thailand route. Jetstar plans to operate three services per week between Sydney and Phuket and a further three services per week between Melbourne and Bangkok. The services are proposed to commence in November 2006 and to be operated using A330-200 aircraft with 303 seats in a two-class configuration.

1.2 Qantas advised in its application that a total of 4.2 B747 equivalent units per week of capacity are required to operate the services. Qantas indicated that, in addition to the 2.9 weekly units applied for, 1.3 units would be drawn from an existing allocation of that amount of capacity made in Determination [2005] IASC 128. Qantas sought a variation to this determination to extend, until 31 December 2006, the date by which the capacity must be fully utilised.

1.3 The Commission published a notice on 19 April 2006, inviting other applications for capacity and/or submissions about the variation request. No applications or submissions were received.

1.4 All 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 operate services with any type of aircraft between points in

Australia via intermediate points to points in Thailand. Under the aircraft substitution arrangements, an A330 aircraft is the equivalent of 0.70 of a B747 unit of capacity.

2.2 The Register of Available Capacity shows that there are the equivalent of 16.7 B747 services in each direction plus seven southbound B747 weekly services available for allocation between 1 December and 31 January of the following year. Otherwise, there are the equivalent of 18 B747 services in each direction plus seven southbound B747 weekly services available for allocation.

### **3 Commission's consideration**

#### **The allocation sought**

3.1 The *International Air Services Commission Act 1992* (the Act) allows for allocated capacity to be used by a wholly owned subsidiary of another Australian carrier. Section 15(2)(ea) of the Act states that determinations may include a condition that, to the extent that any of the capacity is allocated to a particular Australian carrier, it may be used in whole or in part by any one or more of the following:

- (i) the carrier;
- (ii) a wholly-owned subsidiary of the carrier; and,
- (iii) if the carrier is a wholly-owned subsidiary of another Australian carrier - that other carrier.

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. The Commission has previously allocated capacity to Qantas to be used by Jetstar, a wholly-owned subsidiary of Qantas, on the New Zealand route (Decision [2005] IASC 2006). Jetstar is now an established international carrier, having operated services on the New Zealand route since December 2005. This means that there is public benefit arising from the use of the entitlements on the Thailand route.

3.3 The Commission will allocate the capacity sought by Qantas. Section 15(2A) states that if a determination includes a condition of a kind mentioned in paragraph 15(2)(ea), the determination may include conditions that are applicable to all, or some only, of the persons who are permitted to use the capacity concerned. The conditions of the determination will apply to both Qantas or another Australian carrier which is a wholly-owned subsidiary of Qantas.

#### **The variation sought**

3.4 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, 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.

3.5 In Determination [2005] IASC 128, the delegate allocated 1.3 B747 equivalent units of capacity to Qantas on a seasonal basis. The capacity was originally intended to be used by Australian Airlines, a wholly-owned subsidiary of Qantas. The conditions of the determination provided flexibility for the Commission to approve changes to both the date by which the capacity was to be fully utilised and the periods of the year during which the capacity could be exercised. The Commission will vary the determination as requested by Qantas to require the capacity to be fully utilised by 31 December 2006. The Commission will also remove the reference to seasonal use, so as to facilitate year-round use of the capacity by Jetstar as proposed by Qantas.

#### **4 Determination allocating capacity on the Thailand route to Qantas ([2006] IASC 101)**

4.1 The Commission makes a determination in favour of Qantas, allocating 2.9 B747 equivalent units of capacity per week in each direction on the Thailand route.

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

4.3 The determination is subject to the following conditions, which apply to Qantas or another Australian carrier which is a wholly owned subsidiary of Qantas:

- Qantas is required to fully utilise the capacity from no later than 31 December 2006, 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;
- changes in relation to the ownership and control of Qantas are permitted except to the extent that any change:
  - 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 Decision [2006] IASC 207**

5.1 In accordance with section 24 of the Act, the Commission varies Determination [2005] IASC 128, which allocates capacity on the Thailand route, as requested by Qantas, by

*removing* the following from paragraph 4.1 of [2005] IASC 128:

“for the period between 1 December and the 31<sup>st</sup> day of the following January, or for such other periods as approved by the Commission, during the period of the determination”

*replacing* the following condition to [2005] IASC 128:

- “Qantas is required to fully utilise the capacity from no later than 3 December 2005, or from such other date approved by the Commission;”

with

- “Qantas is required to fully utilise the capacity from no later than 31 December 2006, or from such other date approved by the Commission;”

Dated: 8 May 2006

John Martin  
Chairman

Michael Lawriwsky  
Member

Vanessa Fanning  
Member