

DETERMINATION

DETERMINATION: [2000] IASC 102
THE ROUTE: THAILAND
THE APPLICANT: QANTAS AIRWAYS LIMITED
(QANTAS) (ACN 009 661 901)

1 The application

1.1 On 6 January 2000 Qantas applied for an allocation of capacity on the Thailand route. Qantas proposes to code share on three weekly B777 services operated by British Airways (BA) between Bangkok and London from 26 March 2000.

1.2 The Commission published a notice inviting other applications for all or part of the capacity and submissions about the application. No applications or submissions were received.

1.3 All non-confidential material supplied by the applicant is filed on the Register of Public Documents. Any confidential material supplied by the applicant is filed on the Commission's confidential register.

2 Provisions of relevant air services arrangements

2.1 The Australia - Thailand air services arrangements allow the designated airlines of each country to code share as the non-operating airline with any airline of a third country. There are limitations on the number of services which may be used in such code shares. Currently, there are third party code share services available inbound only.

2.2 In addition to the code share services, any capacity (not being code share or cargo capacity) which is not being operated may be converted into code share services on the basis of one unused B747 equivalent service weekly in each direction equalling one code share frequency in each direction. There is currently one B747 service of convertible capacity available for immediate utilisation, with a further 10 B747 services becoming available from March 2000.

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, 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. Qantas is an established international carrier and is already operating on this route. The Commission concludes, therefore, that Qantas meets these criteria.

3.2 A carrier cannot use allocated capacity through joint services, including code sharing, with any other carrier without the prior approval of the Commission. Qantas

requested that it be able to use this capacity in joint services with BA pursuant to the Qantas/BA Code Share Agreement of 5 October 1997. Qantas also requested that the Commission recognise that the services will be performed under the Qantas/BA Joint Services Agreement (JSA), which has been authorised to 11 May 2000, and under the “Restated Joint Services Agreement” (Restated JSA) currently before the ACCC for authorisation.

3.3 The Commission has previously assessed and approved the Qantas/BA Code Share Agreement and the Commission will approve the use of the capacity under the JSA. However, with respect to the Restated JSA the Commission notes that if operations thereunder with BA, on this and other routes, constitute “a joint international air service” for the purposes of the Act, the Commission is required to include a relevant condition stating the extent, if any, to which requested capacity can be so utilised. Until the Restated JSA is submitted to, and considered by the Commission for these purposes, the Commission cannot approve use of the capacity pursuant to the Restated JSA.

4 Determination allocating capacity on the Thailand route to Qantas [2000] IASC 101

4.1 The Commission makes a determination in favour of Qantas, allocating 3 B747 equivalent services per week in each direction of passenger capacity on the Thailand route under the air services arrangements between Australia and Thailand. The capacity is available from 1 March 2000.

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 April 2000 or from such other date approved by the Commission;
- only Qantas is permitted to utilise the capacity;
- Qantas is permitted to utilise the capacity to provide services jointly with British Airways in accordance with:
 - the Code Share Agreement dated 5 October 1997 and the Qantas/BA Joint Services Agreement as authorised by the ACCC for so long as that authorisation remains in effect; or
 - any new code share agreement whether or not it replaces the existing agreement with the prior approval of the Commission;
- Qantas may only jointly price and market its services, or share or pool revenues, with British Airways on the route as long as such practices are authorised under the *Trade Practices Act 1974* or otherwise authorised by the Australian Competition and Consumer Commission or 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: 4 February 2000

Michael Lawriwsky
Member

Stephen Lonergan
Member