



INTERNATIONAL AIR SERVICES COMMISSION

DETERMINATION

DETERMINATION: [2002] IASC 101
THE ROUTE: THAILAND
THE APPLICANT: QANTAS AIRWAYS LIMITED
(ACN 009 661 901) (QANTAS)
PUBLIC REGISTER: IASC/APP/200130

1 The application

1.1 On 30 October 2001 Qantas applied for an allocation of three units of capacity per week on the Thailand route. Qantas proposes to code share on three weekly services to be operated by Finnair between Bangkok and Helsinki commencing on 15 February 2002. This will bring the total number of code share services to seven per week.

1.2 The Commission published a notice on 7 November 2001 inviting other applications for all or part of the capacity and submissions about the application. No applications or submissions were received.

1.3 Non-confidential material supplied by the applicant is filed on the Register of Public Documents. Confidential material supplied 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 Additional code share services may be operated only by converting unused B747 equivalent capacity entitlements into code share services. Conversion is on the basis of one unused B747 equivalent service weekly in each direction equalling one code share frequency in each direction. There are currently ten weekly B747 services of unused capacity which may be converted to operate code share services.

2.3 Under the Australia - Finland air services arrangements, there is no restriction on code sharing and it does not count against capacity entitlements.

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 Section 15(2)(e) requires the Commission to include a condition stating the extent (if any) to which a carrier may use allocated capacity by providing joint international air services with another entity. Qantas currently code shares with Finnair on this route and has extended its code share agreement to encompass the three additional services sought from the Commission.

3.3 As there is a substantial amount of capacity remaining on the shelf, and no other carriers are interested in operating on the route, the Commission will authorise the use of the capacity on a code share basis. However, the Commission notes that Qantas requires a full three B747 units of capacity to facilitate these code share operations - capacity that could otherwise be used for normal own-use services. This is, in the Commission's view, a very inefficient use of valuable bilateral capacity, particularly as the code share arrangement is likely to generate a small number of additional passengers relative to the amount of capacity required to facilitate the code share services. Accordingly, the Commission has decided to make it a condition of the determination that Qantas must apply to return the capacity to the Commission, if the bilateral arrangements change in future such that the capacity being used on a code share basis ceases to count as an exercise of capacity by Qantas. Such capacity would then be available for reallocation either to Qantas or another Australian carrier which may be interested in operating it. The condition will be as foreshadowed in the Commission's consultation paper of 2 July 2001.

4 Determination allocating capacity on the Thailand route to Qantas [2002] IASC 101

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

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 to fully utilise the capacity from 28 February 2002 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 Finnair in accordance with:
 - the code share agreement between Qantas and Finnair, as amended by the Agreement of Variation of 25 October 2001; 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:
 - Qantas must price its services on the route independently;
 - Qantas must not share or pool revenues on the route; and
 - Qantas must take all reasonable steps to ensure that passengers are informed of the carrier actually operating the flight at the time of booking;
- if the air services arrangements between Australia and Thailand alter with the effect that allocated capacity being used on a code share basis ceases to count as an exercise of capacity by Qantas, then Qantas must make an application or request to the Commission under the *International Air Services Commission Act 1992* to return the affected capacity for reallocation. The application or request must be made within one month of the bilateral change taking effect;
- 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: 23 January 2002

Ross Jones
Chairman

Michael Lawriwsky
Member

Stephen Lonergan
Member