



DETERMINATION

DETERMINATION: [2002] IASC 106
THE ROUTE: THAILAND
THE APPLICANT: QANTAS AIRWAYS LIMITED
(ACN 009 661 901) (QANTAS)
PUBLIC REGISTER FILE: IASC/APP/200202

1 The application

1.1 On 8 February 2002, Qantas applied for an allocation of capacity on the Thailand route. The application was in response to the Commission's notice of 10 January 2002 that it was conducting a review of all determinations allocating capacity to Ansett International, including on the Thailand route. Qantas is seeking seven weekly round trip code sharing services for use over the entire route, for code sharing with Finnair pursuant to the Qantas/Finnair code share agreement of May 2000.

1.2 Concurrently Qantas sought revocation of its Determinations [2000] IASC 101 and [2002] IASC 101. This request is dealt with in a separate Commission decision.

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

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 on up to 28 weekly services in each direction.

2.2 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 The Commission decided in Decision [2002] IASC 206 to revoke Ansett International's Determinations IASC/DET/9913 and [2001] IASC 108 on the Thailand route. This made available for immediate reallocation 19 services per week inbound and 25 services per week outbound from Australia on the Thailand route.

3.2 Under paragraph 6.2 of the Minister's Policy Statement, in the absence of submissions about or opposing an application, the Commission is required only to apply the criteria in paragraph 4 of the Policy Statement. Under paragraph 4 the use of Australian entitlements by a carrier that is reasonably capable of obtaining the necessary approvals and of implementing its proposals is of benefit to the public. For an established international carrier such as Qantas, this means that there is public benefit arising from the use of the entitlements. Therefore, the Commission concludes that an allocation to Qantas of seven third-country code share frequencies 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 to code share with Finnair. The Commission has previously approved the operation of capacity by Qantas in joint services with Finnair and will do so in this case, subject to its usual conditions relating to this agreement.

4 Determination allocating capacity on the Thailand route to Qantas ([2002] IASC 106)

4.1 The Commission makes a determination in favour of Qantas, allocating seven third-country airline code share frequencies per week in each direction between Australia and Thailand under the Australia – Thailand air services arrangements.

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 1 April 2002;
- 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;
- to the extent that the capacity is used to provide joint services on the route, 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 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 March 2002

Ross Jones
Chairman

Stephen Lonergan
Member

Michael Lawriwsky
Member