



Australian Government

International Air Services Commission

DECISION

Decisions: [2005] IASC 201 and [2005] IASC 202
Variation of: [2001] IASC 123 and [2001] IASC 124
The Routes: Thailand and United Kingdom
The Applicant: Qantas Airways Limited
(ACN 009 661 901) (Qantas)
Public Register File: IASC/APP/200505

1 The application

1.1 On 9 March 2005, Qantas applied to permit Air Malta to code share on daily Qantas services between Australia and Thailand and between Australia and the United Kingdom. The proposed code share services will connect with services operated by Air Malta between London and Malta. The code share agreement between Qantas and Air Malta is a free sale agreement for passenger traffic only.

1.2 The Commission published a notice on 14 March 2005 inviting submissions about the application. No submissions were received. All public material supplied by the applicant is filed on the Register of Public Documents.

2 Provisions of the relevant air services arrangements

2.1 The Australia - Thailand air services arrangements allow the designated airlines of each country to enter into code-sharing arrangements as the operating airline with any airline(s) of a third country on any number of frequencies per week within its entitlements.

2.2 The Australia – United Kingdom air services arrangements include the adoption of a liberal policy, based on market demand, for the approval of free sale code share arrangements with third country carriers.

3 Delegate's assessment

3.1 In accordance with section 27AB of the *International Air Services Commission Act 1992* (the Act) and regulation 3A of the *International Air Services Commission Amendment Regulations 2003 (No.1)*, the delegate of the Commission considers the Qantas application.

3.2 When considering applications to vary determinations, the Commission (or its

delegate) 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. For an established international carrier such as Qantas, this means that there is public benefit arising from the use of the entitlements.

3.3 According to Origin Destination data from the Australian Bureau of Statistics traffic between Australia and Malta averages 200 passengers each way each week with a strong seasonal flow to and from the Northern Summer. Over 70% of the traffic on the route originates in Australia. The Commission has previously approved code sharing on routes serving similar markets recognising that the market could not sustain direct services by a single carrier let alone competing carriers.

3.4 Section 15(2)(e) of the Act, 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. The delegate has been provided with a copy of the code share agreement between Qantas and Air Malta which is a free sale type agreement. The delegate will authorise the use of the capacity in joint services with Air Malta.

3.5 The delegate, on behalf of the Commission, will vary the determinations as requested by Qantas.

4 Decision [2005] IASC 201

4.1 In accordance with section 24 of the Act, the delegate, on behalf of the Commission, varies Determination [2001] IASC 123 by:

adding the following conditions to the Determination:

- the capacity may be used by Qantas to provide services jointly with Air Malta in accordance with:
 - the code share agreement dated 1 March 2005;
 - or any subsequent code share agreement between Qantas and Air Malta for operations on the Australia-Thailand route with the prior approval of the Commission;
- under any code share agreement with Air Malta:
 - Qantas must price and sell its services on the route independently of Air Malta;
 - Qantas must not share or pool revenues on the route with Air Malta.

5 Decision [2005] IASC 202

5.1 In accordance with section 24 of the Act, the delegate, on behalf of the Commission, varies Determination [2001] IASC 124 by:

adding the following conditions to the Determination:

- the capacity may be used by Qantas to provide services jointly with Air Malta in accordance with:
 - the code share agreement dated 1 March 2005;
 - or any subsequent code share agreement between Qantas and Air Malta for operations on the Australia-United Kingdom route with the prior approval of the Commission;
- under any code share agreement with Air Malta:
 - Qantas must price and sell its services on the route independently of Air Malta;
 - Qantas must not share or pool revenues on the route with Air Malta.

Dated: 4 April 2005

Michael Bird
Executive Director
Delegate of the IASC Commissioners