



Australian Government

International Air Services Commission

DECISION

Decision:	[2006] IASC 222
Variation of:	[2005] IASC 128 and [2006] IASC 101
The Route:	Thailand
The Applicant:	Qantas Airways Limited (Qantas) (ACN 009 661 901)
Public Register:	IASC/APP/200614

1 The application

1.1 On 17 August 2006, Qantas applied for a variation to Determinations [2005] IASC 128 and [2006] IASC 101 to permit the 4.2 B747 units of capacity allocated on the Thailand route to be used to provide joint services with Qantas or any wholly-owned subsidiary of Qantas. The determinations already enable the capacity to be used for passenger services by Qantas or another Australian carrier which is a wholly-owned subsidiary of Qantas.

1.2 Jetstar is planning to commence services between Melbourne and Bangkok and between Sydney and Phuket from November 2006. Qantas noted that when it had applied earlier in the year for the capacity, the Australia – Thailand air services arrangements did not provide for code sharing between carriers of the same country. Accordingly, approval to enable code sharing between airlines of the Qantas group had not been sought at that time. However, subsequently, the Department of Transport and Regional Services (DOTARS) had proposed to the Thai authorities amendments to the arrangements to provide for such code sharing. The Thai authorities had granted approval to Qantas to code share with Jetstar on an interim basis, pending consideration by the Cabinet of Thailand.

1.3 The Commission published a notice on 25 August 2006, inviting submissions about the application. No submissions were received. 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 airlines of each party may enter into code share arrangements with any other airline. The arrangements provide specific authority for arrangements for bilateral or third-country airline code sharing, but do not specifically provide for code sharing between airlines of the same

country. DOTARS has proposed amendments to the Thai authorities to make provision for this.

3 Commission's consideration

3.1 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 an Australian carrier that is reasonably capable of obtaining the necessary approvals and of implementing its proposals is of benefit to the public.

3.2 Under 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. Qantas is seeking flexibility for Qantas and Jetstar to code share freely on each other's services on the route. The Commission has previously authorised the capacity to be used by Qantas and its wholly-owned subsidiaries.

3.3 The Commission understands that DOTARS wrote to Thailand's Department of Civil Aviation proposing formal amendments to the arrangements to enable code sharing and requesting the Thai authorities to give positive consideration to Qantas' application to code share, pending consideration of Australia's proposal to amend the air services arrangements. The Commission understands that the Thai authorities subsequently gave interim approval to Qantas to conduct code share services with Jetstar. The Commission is therefore satisfied that there are sufficiently formal understandings in place between the aeronautical authorities to for it to authorise code share operations by Qantas and Jetstar.

3.4 The Commission's approach to code sharing between Qantas and wholly-owned subsidiary companies is well established through a number of determinations and decisions on a number of routes. The Commission's position is that there can generally be expected to be no lessening of public benefit from authorising code sharing between a parent airline and a wholly-owned subsidiary airline. The Commission will authorise code sharing in this case also and will therefore vary the determination as requested by Qantas. In concluding, the Commission notes that, should the Thai authorities in due course decide not to agree to permanent arrangements for code sharing, it may be necessary for the Commission to revisit its authorisation.

4 Decision [2006] IASC 222

4.1 In accordance with section 24 of the Act, the Commission varies Determinations [2005] IASC 128 and [2006] IASC 101, which allocates capacity on the Thailand route, as requested by Qantas, by:

adding the following conditions to the determinations:

- “the capacity may be used by any wholly-owned subsidiary of Qantas to provide joint services with Qantas;
- to the extent that the capacity is used to provide joint services on the route, Qantas and any wholly-owned subsidiary of Qantas must take all reasonable steps to ensure that passengers are informed of the carrier actually operating the flight at the time of booking;”

Dated: 1 September 2006

John Martin
Chairman

Michael Lawriwsky
Member

Vanessa Fanning
Member