



INTERNATIONAL AIR SERVICES COMMISSION

DETERMINATION

DETERMINATION NO: [2003] IASC 118
THE ROUTE: THAILAND
THE APPLICANT: QANTAS AIRWAYS LIMITED
(ACN 009 661 901)
PUBLIC REGISTER FILE: IASC/APP/200321

1 The application

1.1 On 9 October 2003, Qantas applied for an allocation of seven third party code share services per week under the Australia – Thailand air services arrangements.

1.2 Qantas proposes to code share with Swiss International on daily services between Zurich and Sydney via Bangkok from 26 October 2003. Qantas plans to code share on daily Swiss International services between Zurich and Bangkok and Swiss International plans to code share on daily Qantas services between Bangkok and Sydney.

1.3 On 15 October 2003, the Commission published a notice inviting applications for capacity on the Thailand route or submissions about the Qantas application. No submissions or other applications were received.

1.4 All material supplied by the applicant and submitter 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 Australia to market a total 28 third party code share services weekly in each direction. According to the Register of Available Capacity there are 14 third party code share services available for immediate allocation.

2.2 Under the Australia – Switzerland air services arrangements, there is no capacity or frequency limitation for code sharing between carriers of Switzerland and Australia.

3 Commission's consideration

3.1 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 party code share services per week in each direction on the Thailand route would be of benefit to the public.

3.2 Section 15(2)(e) 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 Swiss International. The Commission will allocate the capacity on the condition that the code share agreement is consistent with the draft code share agreement provided by Qantas and that the Commission approves the final code share agreement as soon as possible.

4 Determination allocating capacity on the Thailand route to Qantas ([2003] IASC 118)

4.1 The Commission makes a determination in favour of Qantas, allocating seven third party code share services per week in each direction on the Thailand route.

4.2 The Determination is for five years from the date of this Determination and is subject to the following conditions:

- Qantas is required to fully utilise the capacity from 30 November 2003;
- only Qantas is permitted to utilise the capacity;
- the capacity may be used by Qantas to provide joint services with Swiss International in accordance with:
 - the draft code share agreement as provided to the Commission prior to the commencement of services and the finalised code share agreement which must be provided to the Commission as soon as practicable thereafter including such additional conditions (if any) as the Commission may require;
 - any subsequent code share agreement between Qantas with Swiss International for operations on the Australia - Switzerland route, whether or not it replaces the existing agreement, with the prior approval of the Commission; and
- under any code share agreement with Swiss International:
 - Qantas must price and sell its services on the route independently of Swiss International;
 - Qantas must not share or pool revenues under any such agreement;

- 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: 24 October 2003

Stephen Lonergan
Member Presiding

Michael Lawriwsky
Member