



Australian Government

International Air Services Commission

DETERMINATION

Determination:	[2005] IASC 113
The Route:	Thailand
The Applicant:	Qantas Airways Limited (Qantas) (ACN 009 661 901)
Public Register:	IASC/APP/200516

1 The application

1.1 On 22 September 2005, Qantas applied for an allocation of code share services on the Thailand route. Qantas plans to code share on Jetstar Asia's services between Singapore and Phuket, and between Singapore and Bangkok. Qantas proposes to code share on all of Jetstar Asia's four weekly Singapore – Phuket – Singapore services. On the Singapore – Bangkok sector, Qantas proposes code sharing on one of Jetstar Asia's daily southbound services, and two of its northbound services per day. All of the flights will offer connections to services operated by Qantas between Singapore and Australia.

1.2 Qantas plans to commence the code share arrangements with effect from 1 December 2005. Qantas advised that there are no plans at this stage for Jetstar Asia to code share on Qantas' Australia – Singapore flights.

1.3 On 27 September 2005, the Commission published a notice inviting applications from interested parties for some or all of the capacity available on the route. No applications were received. All material supplied by the applicant is filed on the Commission's Register of Public Documents.

2 Provisions of relevant air services arrangements

2.1 Operation of the capacity involved in the application is consistent with the provisions of the Australia - Thailand air services arrangements. The arrangements permit Australian carriers to enter into code share arrangements as the non-operating airline with airlines of third countries. According to the Register of Available Capacity, there are eight services per week in each direction of dedicated third-country code share capacity. In addition, unused frequencies from the available primary passenger entitlements may be converted to third-country code share services on a one-for-one basis. There are currently the equivalent of 28 B747 weekly services in each direction unused.

2.2 The air services arrangements between Australia and Singapore place no limitations on code sharing between designated airlines of the two countries. Jetstar Asia is a designated airline of Singapore.

3 Commission's consideration

3.1 Under paragraph 6.2 of the Minister's policy statement (No. 5), of 19 May 2004, the Commission is required only to apply the criteria in paragraph 4 of the policy statement in this case. 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. In addition, Section 15(2)(e) of the *International Air Services Commission Act 1992* (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.

3.2 The circumstances of this case differ from those usually applying to code share applications. In most cases, the Commission considers the allocation of capacity in terms of paragraph 4, then separately assess whether use of that capacity for code sharing should be authorised pursuant to section 15(2)(e) of the Act. In this case, the capacity sought is specifically for use in code share operations. If the Commission was not prepared to allow the use of the capacity for joint services, there would be no value in allocating the capacity, because it would be unusable for own-use operations.

3.3 The Commission considers that the arrangement would provide an additional means for Qantas to offer and market services between Australia and Bangkok and Phuket in Thailand. Qantas already operates its own direct services to Bangkok, as well as offering code share services with Finnair and Swiss International between Singapore and Bangkok. The additional code share services with Jetstar Asia will provide another choice of service for passengers wishing to travel to Bangkok via Singapore and vice versa.

3.4 Qantas does not operate services in its own right to Phuket, although Australian Airlines operates some seasonal services. The additional services will provide improved access for travellers to services between Australia and Phuket. Passengers will be able to take advantage of convenient connections between Qantas' frequent Australia - Singapore services and Jetstar Asia's services to and from Bangkok and Phuket.

3.5 There appears to be little likelihood of a negative impact on the level of competition in services between Australia and Thailand as a result of the code share arrangement. Substantial competition already exists on the route and this is unlikely to be adversely affected by the code share arrangements. Also, the arrangement does not involve Jetstar Asia code sharing on Qantas' services between Australia and Singapore, so there are no potential competition concerns in relation to that part of the overall route.

3.6 The Commission considers that, in terms of paragraph 4 of the Minister's policy, the use of the entitlements by Qantas, as an Australian carrier that is reasonably capable of obtaining the necessary approvals and of implementing its proposals, is of benefit to the public. The Commission will authorise the use of the capacity in joint services with Jetstar Asia, subject to Qantas providing the finalised code share agreement to the Commission before the commencement of the services. The Commission will issue a five year determination.

4 Determination allocating capacity on the Thailand route to Qantas ([2005] IASC 113)

4.1 The Commission makes a determination in favour of Qantas, allocating 18 northbound and 11 southbound third-country carrier 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.

4.3 The determination is subject to the following conditions:

- Qantas is required to fully utilise the capacity from no later than 31 December 2005, 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 Jetstar Asia in accordance with:
 - the finalised code share agreement between Qantas and Jetstar Asia, subject to the finalised code share agreement being approved by the Commission, with such additional conditions (if any) as the Commission may require, prior to the commencement of services;
 - or any subsequent code share agreement between Qantas and Jetstar Asia for operations on the Australia – Thailand route, with the prior approval of the Commission;
- under any code share agreement with Jetstar Asia:
 - Qantas must price and sell its services on the route independently of Jetstar Asia;
 - Qantas must not share or pool revenues on the route with Jetstar Asia.
- 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, at the time of ticket reservation, of the carrier actually operating the flight;

- 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: 17 October 2005

John Martin
Chairman

Vanessa Fanning
Member

Michael Lawriwsky
Member