



Australian Government

International Air Services Commission

RENEWAL DETERMINATION

Determination: [2013] IASC 103
Renewal of: [2007] IASC 107
The Route: Thailand
The Applicant: Qantas Airways Ltd
(ACN 009 661 901) (Qantas)
Public Register File: IASC/APP/201216

The Commission makes a fresh determination allocating Qantas seven third party code share services per week and allowing joint services with Emirates on the Thailand route.

1 The application for renewal

1.1 On 11 October 2007, the delegate of the Commission issued Determination [2007] IASC 107 (the Determination), allocating to Qantas the equivalent of seven third party code share services per week in each direction on the Thailand route which it may use to provide services jointly with British Airways.

The Determination expires on 22 April 2013 and on 3 September 2012, at the invitation of the Commission, Qantas applied for a renewal of the Determination.

1.2 The Commission published a notice on 4 September 2012, in accordance with sections 12 and 17 of the Act, inviting other applications about the application. No other applications were received.

1.3 On 9 January 2013 Qantas advised the Commission that it no longer required the renewed determination to permit code sharing with British Airways. On 23 January 2013, as part of the renewal, Qantas sought a variation to add conditions enabling the capacity allocated to be utilised to provide services jointly with Emirates. The variation was requested for the duration of the determination.

1.4 All material supplied by the applicant is filed on the Commission's website (www.iasc.gov.au).

2 Relevant air services arrangements

2.1 The Australia – Thailand air services arrangements allow the designated airlines of Australia to enter into code sharing arrangements as the non-operating airline with any airline(s) of third countries, which has appropriate authorisation from both Contracting Parties, with up to 40 weekly services in each direction. In addition, the designated airlines of Australia may use any unused own operated passenger frequency entitlements for third country code share services. Currently, there are the equivalent of 2.05 B747 own operated weekly services available for allocation (which may be converted into additional third country code share services on the basis of one unused B747 equivalent service equals one third country code share frequency weekly).

3 Commission's consideration

3.1 In considering an application for renewal of a determination under section 8 of the Act, the Commission must make the same allocation of capacity as the original determination unless the Commission is satisfied that the allocation is no longer of benefit to the public. In assessing the benefit to the public of an allocation of capacity, the Commission must apply the criteria set out for that purpose in the policy statement made by the Minister under section 11 of the Act.

3.2 Under paragraph 6.2 of the Minister's Policy Statement (No. 5) of 19 May 2004 (the Policy Statement), in circumstances where there is only one applicant for allocation of capacity on a route, only the criteria in paragraph 4 are applicable. Paragraph 4 provides that the use of entitlements by Australian carriers under a bilateral arrangement is of benefit to the public unless such carriers are not reasonably capable of obtaining the necessary approvals to operate on the route and are not reasonably capable of implementing their applications.

3.3 The Commission notes that:

- there are no other applicants seeking capacity on the route; and
- Qantas is an established international carrier and is therefore reasonably capable of obtaining the necessary approvals to operate on the route and of implementing its application.

3.4 Under paragraph 8.1 of the Policy Statement, there is a presumption in favour of the carrier seeking the renewal.

3.5 In these circumstances, the Commission concludes that the renewal of Determination [2007] IASC 107 would be of benefit to the public.

3.6 Further, Qantas has requested the addition of conditions to enable the capacity allocated to be utilised to provide services jointly with Emirates.

3.7 Paragraph 6.3 of the Policy Statement provides that, subject to paragraph 6.4, where a carrier requests a variation of a determination to allow it flexibility in operating its capacity, including to use the Australian capacity in a code share arrangement with a foreign carrier, and no submission is received about the application, only the criteria in paragraph 4 of the Policy Statement are applicable. Paragraph 6.4 states that the Commission may apply the criteria in paragraph 5 where submissions are received, provided those criteria were

considered when the original application for allocation of capacity was made, or in the circumstances set out in paragraph 3.6 of the Policy Statement.

3.8 Under paragraph 3.6, where capacity that can be used for code share operations is available under air services arrangements, including where foreign airlines have rights to code share on services operated by Australian carriers, the Commission would generally be expected to authorise applications for use of capacity to code share. However, if the Commission has serious concerns that a code share application (or other joint service proposal) may not be of benefit to the public, it may subject the application to more detailed assessment using the additional criteria set out in paragraph 5 (whether the application is contested or not). Before doing so, the Commission will consult with the Australian Competition and Consumer Commission (the ACCC).

3.9 Given the current public discussion about the partnership between Qantas and Emirates, the Commission decided to consult the ACCC. In its submission the ACCC referred to its Draft Determination of 20 December 2012 in relation to the Qantas-Emirates alliance, in which it came to the preliminary conclusion that the alliance was unlikely to result in material public detriment through its effect on competition on air services between Australia and Thailand. The ACCC submission, dated 7 March 2013, is available on the IASC website.

3.10 In its submission, the ACCC noted Qantas' publicly stated commitment to increase its weekly dedicated capacity to Bangkok by at least 26%.

3.11 The actual capacity operated by Qantas on the Thailand route has fallen recently, with Qantas replacing B747 with smaller A330 aircraft in June 2012 soon after it ceased operating beyond Bangkok to London. Rather, the increase in dedicated capacity is to be achieved as a result of services that previously carried passengers to and from Europe now terminating in Bangkok, thus increasing the number of seats available for passengers travelling between Australia and Thailand. It is not clear to the Commission how an increase of as much as 26% in weekly dedicated capacity can be achieved simply by displacing connecting traffic on the route, especially as some passengers will continue to connect with flights to and from Europe on other airlines. Notwithstanding this, the Commission accepts that there will be some increase in the number of seats available for Australia-Thailand passengers as a result of the redirection of Qantas' Australia-UK/Europe traffic via Dubai rather than Bangkok and other Asian points.

3.12 Code sharing between Qantas and Emirates on the Thailand route is part of the proposed broader Qantas-Emirates alliance, for which the ACCC proposes to grant conditional authorisation for five years.

3.13 There is not, in the Commission's view, the same level of competition on the Thailand route as there is on some of the other routes on which Emirates and Qantas propose to code share. Nevertheless, there are several Asian airlines in addition to Thai Airways marketing flights between Australia and Thailand and offering competitive fares. Aviation statistics for the year ended 31 December 2012 shows that third country airlines carry nearly 40 % of Australia-Thailand origin/destination traffic, with Singapore Airlines, Air Asia X and Malaysia Airlines being the main third country carriers. Thai Airways has a larger share of Australia-Thailand origin/destination traffic (42%) than Qantas and Jetstar combined (20 %) which suggests that it is likely to be the main competitive constraint on Qantas given its

capacity on the route.¹ The extra capacity released onto the route for the carriage of Australia-Thailand traffic as a result Qantas ceasing to operate beyond Bangkok should also help to ensure that competitive pressure to sell seats is maintained.

3.14 There is currently very little capacity available for allocation on the Thailand route, either for own operated or third country code share services. This will change, however, when new capacity entitlements negotiated by Australia and Thailand in November 2012 come into effect upon completion of the domestic processes of the two countries.

3.15 Nonetheless, the Commission notes that Qantas is under utilising its allocations of capacity on the Thailand route (for own operated as well as third country code share services) by a considerable amount. The Commission understands that the airline wishes to maintain flexibility for possible increases in services and the deployment of larger aircraft during periods of peak demand. However, if Qantas has no plans to increase capacity on the route in the foreseeable future the Commission would expect Qantas to return allocated capacity that it will not be using.

3.16 For the reasons outlined above, and as the submission received from the ACCC did not raise concerns about the application, the Commission has applied the criteria in paragraph 4 only in relation to Qantas' application for a variation to enable it to use the capacity for code sharing with Emirates. As noted in paragraphs 3.2 and 3.3 above, Qantas satisfies the paragraph 4 criteria.

3.17 Subsection 15(1) of the Act empowers the Commission to include such terms and conditions as it thinks fit. Paragraph 15(2)(e) requires the inclusion of a condition stating the extent to which the carrier may use that capacity in joint services with another carrier. As is its normal practice, the Commission will also include a condition which requires Qantas to comply with the Australian Consumer Law and to take all reasonable steps to ensure that passengers are informed of the carrier that is actually operating the flight.

3.18 Nothing in this determination should be taken as indicating either approval or disapproval by the ACCC. This decision is made without prejudicing, in any way, possible future consideration of code share operations by the ACCC.

4 Determination for renewal of Determination [2007] IASC 107 allocating capacity on the Thailand route to Qantas ([2013] IASC 103)

4.1 The Commission makes, in accordance with section 8 of the Act, a determination in favour of Qantas, allocating seven third party code share services 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 23 April 2012.

4.3 The determination is subject to the following conditions:

¹ Information provided by the Bureau of Infrastructure, Transport and Regional Economics based on passenger card data collected and compiled by the Department of Immigration and Citizenship. Origin/destination traffic means Australian residents visiting Thailand as their main destination and Thai residents visiting Australia.

- Qantas is required to fully utilise the capacity;
- only Qantas is permitted to utilise the capacity;
- Qantas is not permitted to utilise the capacity to provide services jointly with another Australian carrier or any other person without the approval of the Commission;
- the capacity may be used by Qantas to provide services jointly with Emirates in accordance with:
 - the code share agreement of 21 January 2013; or
 - any new code share agreement, whether or not it replaces the existing agreement, with the prior approval of the Commission;
- under the arrangements with Emirates, Qantas may only price and market its services, or share or pool revenues/profits on the route jointly with Emirates as long as such practices are authorised under the *Competition and Consumer Act 2012* or otherwise authorised by the Australian Competition Tribunal, in the event of review by that Tribunal.
- 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 booking, of the carrier actually operating the flight. Nothing in this determination exempts Qantas from complying with the Australian Consumer Law; and
- 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.

Dated: 25 March 2013



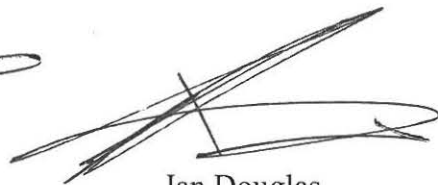
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