



## Australian Government

### International Air Services Commission

#### DECISION

**Decisions:** [2013] IASC 206 and [2013] IASC 207  
**Variation of:** [2011] IASC 123 and [2011] IASC 101  
**The Route:** Thailand  
**The Applicant:** Qantas Airways Ltd  
(ACN 009 661 901) (Qantas)  
**Public Register File:** IASC/APP/201302/201303

The Commission has decided to vary Determinations [2011] IASC 123 and [2011] IASC 101 to permit Emirates and Qantas to code share on the Thailand route.

#### 1 The applications

1.1 On 19 December 2011, the International Air Services Commission (the Commission) issued Determination [2011] IASC 123 (the Determination), allocating to Qantas the equivalent of seven weekly B747 services in each direction on the Thailand route. The Determination included conditions that the capacity may be used by Qantas to provide services jointly with British Airways, Air Malta, Iberia and Kenya Airways.

1.2 Qantas applied to the Commission on 22 January 2013 for a variation to the Determination to permit Emirates to code share on Qantas operated services on the Thailand route.

1.3 The Commission published a notice on 24 January 2013, in accordance with section 22 of the Act, inviting submissions about the application. No submissions were received.

1.4 On 24 January 2011 the Commission issued Determination [2011] IASC 101 (the Determination), allocating to Qantas fourteen third party code share services per week in each direction on the Thailand route. The Determination included a condition that the capacity may be used by Qantas to provide services jointly with Finnair.

1.5 Qantas applied to the Commission on 7 February 2013 for a variation to the Determination to add conditions enabling the capacity allocated to be utilised to provide services jointly with Emirates. Qantas also requested as part of the variation that the conditions enabling the capacity allocated to be utilised to provide services jointly with Finnair be removed.

1.6 The Commission published a notice on 11 February 2013, in accordance with section 22 of the Act, inviting submissions about the application. No submissions were received.

1.7 All non-confidential material supplied by the applicant is filed on the Commission's website ([www.iasc.gov.au](http://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 Qantas' applications seek to vary the Determinations to include a condition of a kind referred to in paragraph 15(2)(e) of the Act. In view of this, the applications are transfer applications as so defined in subsection 4(1) of the Act and have been assessed in accordance with section 25.

3.2 Subsection 25(1) provides that the Commission must make a decision varying the determination in a way that gives effect to the variation requested, subject to subsection 25(2). Subsection 25(2) states that the Commission must not make a decision varying the determination in a way that varies, or has the effect of varying an allocation of capacity if the Commission is satisfied that the allocation, as so varied, would not be of benefit to the public.

3.3 Under section 26 of the Act, in assessing the benefit to the public of a variation of an allocation of capacity, the Commission is required to apply the criteria set out in any policy statement issued by the Minister under section 11.

3.4 Paragraph 6.3 of the Minister's Policy Statement (No. 5) of 19 May 2004 (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.

3.5 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.

3.6 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).

3.7 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.

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

3.9 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 on Qantas services to and from Bangkok 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.

3.10 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.

3.11 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 show 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 the alliance carriers given its capacity on the route.<sup>1</sup> 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.

3.12 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.

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<sup>1</sup> 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.

3.13 For the reasons outlined above, and as the submission received from the ACCC did not raise concerns about the applications, the Commission has applied the criteria in paragraph 4 of the Policy Statement only.

3.14 Under paragraph 4, 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 of implementing their applications. The Commission notes that Qantas is an established international carrier which is clearly capable of obtaining the necessary approvals and of implementing its applications.

3.15 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.

3.16 Nothing in these decisions should be taken as indicating either approval or disapproval by the ACCC. These decisions are made without prejudicing, in any way, possible future consideration of code share operations by the ACCC.

## **4 Decision [2013] IASC 206**

4.1 In accordance with section 25 of the Act, the Commission varies Determination [2011] IASC 123, which allocates capacity on the Thailand route, by:

*adding* the following conditions to the Determination:

- the capacity may be used by Qantas to provide services jointly with Emirates in accordance with;
  - the code share agreement between Qantas and Emirates dated 21 January 2013; or
  - any subsequent code share agreement between Qantas and Emirates, whether or not it replaces the existing agreement, with the prior approval of the Commission;
- under the code share agreement with Emirates, Qantas must take all reasonable steps to ensure that passengers are informed of the carrier actually operating the flight at the time of booking. Nothing in this determination exempts Qantas from complying with the Australian Consumer Law; and
- 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.

## 5 Decision [2013] IASC 207

5.1 In accordance with section 25 of the Act, the Commission varies Determination [2011] IASC 101, which allocates capacity on the Thailand route, by:

*adding* the following conditions to the Determination:

- the capacity may be used by Qantas to provide services jointly with Emirates in accordance with;
  - the code share agreement between Qantas and Emirates dated 21 January 2013; or
  - any subsequent code share agreement between Qantas and Emirates, whether or not it replaces the existing agreement, with the prior approval of the Commission;
- under the code share agreement with Emirates, Qantas must take all reasonable steps to ensure that passengers are informed of the carrier actually operating the flight at the time of booking. Nothing in this determination exempts Qantas from complying with the Australian Consumer Law; and
- 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.

*removing* the following conditions in the determination:

- “the capacity may be used by Qantas to provide services jointly with Finnair in accordance with:
  - the code share agreement of 23 December 2010 between Qantas and Finnair for operations on the Australia – Thailand route; or
  - any subsequent code share agreement between Qantas and Finnair, whether or not it replaces the existing agreement, with the prior approval of the Commission;
- under any code share agreement with Finnair:
  - Qantas must price and sell its services on the route independently of Finnair; and
  - Qantas must not share or pool revenues on the route with Finnair;
- 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;”



Dated: 25 March 2013



Jill Walker

Chairperson



Stephen Bartos

Member



Ian Douglas

Member