



**Australian Government**  
**International Air Services Commission**

**DECISION**

**Decision:** [2014] IASC 211  
**Variation of:** [2011] IASC 123  
**The Route:** Thailand  
**The Applicant:** Qantas Airways Ltd  
(ACN 009 661 901) (Qantas)  
**Public Register File:** IASC/APP/201447

The Commission makes a decision consolidating all of Qantas' capacity on the Thailand route into [2011] IASC 123 by varying that determination, and in separate decisions, by varying Qantas' other determinations to change their expiry dates to the date when the variation to [2011] IASC 123 comes into effect.

## **1 The applications**

1.1 On 13 February 2014, the Commission received applications from Qantas seeking variations to nine of its determinations which allocate passenger capacity on the Thailand route. The applications have the effect of consolidating Qantas' capacity allocations on the route.

1.2 On 25 February 2014, Qantas wrote to the Commission to clarify that it wishes to retain its total allocation of 35.6 B747 equivalent units of passenger capacity and 26 third country code share frequencies per week. Qantas further informed the Commission that of the 35.6 B747 equivalent units of passenger capacity, 23 frequencies are being used for third country code share. In effect, Qantas utilises a total of 12.6 B747 equivalent units of passenger capacity and 49 third country code share frequencies.

1.3 In addition to nine determinations allocating a total of 35.6 B747 equivalent units of passenger capacity per week and 26 third country code share frequencies per week, Qantas holds Determination [2008] IASC 119 which allocates unlimited capacity for all-cargo services on the Thailand route, valid for 10 years.

1.4 Qantas is seeking a variation to Determination [2011] IASC 123 to increase the allocation to a total of 35.6 B747 equivalent units of passenger capacity per week in each direction for passenger services and 26 third country code share frequencies per week between Australia and Thailand.

1.5 Qantas further seeks to vary the other eight determinations to amend their expiry dates to the date when the variation to Determination [2011] IASC 123 takes effect, should that variation be granted by the Commission. These determinations, which will effectively cease to be in force when the variation to Determination [2011] IASC 123 takes effect, are as follows:

- [2009] IASC 120
- [2009] IASC 127
- [2010] IASC 114
- [2011] IASC 101
- [2011] IASC 105
- [2011] IASC 112
- [2013] IASC 103; and
- [2013] IASC 139.

1.6 The Commission published a notice on 14 February 2014, in accordance with section 22 of *International Air Services Commission Act 1992* (the Act), inviting submissions about the proposed variations. No submissions were received. Qantas' supplementary letter was published on 25 February 2014.

1.7 All material supplied by the applicant is available on the Commission's website ([www.iasc.gov.au](http://www.iasc.gov.au)).

## **2 Relevant provisions of the Australia – Thailand air services arrangements**

2.1 The Register of Available Capacity indicates that there are currently the equivalent of 6.25 B747-400 weekly services in each direction between Australia and Thailand available for allocation. In addition to this capacity, seven services per week in each direction are available for third country code sharing.

2.2 The Australia – Thailand air services arrangements allow the designated airlines of Australia to enter into code share 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.

2.3 Further, any unused passenger capacity (not being code share or cargo capacity) may be converted by designated airlines of Australia into additional third country code share capacity on the basis of one unused B747 equivalent service per week in each direction being equal to one third country code share frequency per week.

## **3 Requirements under the Act and the Policy Statement**

3.1 An Australian carrier may, at any time, apply under section 21 of the Act to have a determination varied. Under subsection 10(2) of the Act, the Commission must conduct a review of a determination if an Australian carrier applies for variation of a determination under section 21. However, before conducting a review under section 10,

the Commission must, by notice, invite submissions about the review of the determination as required under section 22.

3.2 Subsection 24(1) of the Act provides that the Commission must, having conducted a review to decide an application to vary a determination, make a decision: (a) confirming the determination; or (b) varying the determination in a way that gives effect to the variation requested.

3.3 Subsection 24(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 unless the Commission is satisfied that the allocation, as so varied, would be of benefit to the public.

3.4 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.

3.5 Pursuant to section 11 of the Act, the Minister issued Policy Statement No. 5 dated 19 May 2004 (the Policy Statement). The Policy Statement sets out the range of criteria which the Commission is required to apply in assessing the benefit to the public of allocations of capacity. It also provides other guidance to the Commission in performing its functions.

3.6 Under paragraph 4 of the Policy Statement, the use of entitlements by Australian carriers under a bilateral arrangement is of benefit to the public unless such carrier is not reasonably capable of obtaining the necessary approvals to operate on the route and of implementing its application.

3.7 The Commission notes that Qantas is seeking to consolidate nine of its existing determinations with the desire to retain all capacity it has been allocated. Qantas is not seeking additional capacity.

3.8 The Commission further notes that Qantas is an established international carrier which is clearly capable of obtaining the necessary approvals and of implementing its proposal. This means that there is public benefit arising from the use of the capacity entitlements which Qantas currently holds under multiple determinations in accordance with the Australia-Thailand air services arrangements.

## **4 Commission's consideration**

4.1 In this instance, Qantas has applied to have one determination ([2011] IASC 123) varied to include all its allocated capacity (apart from unlimited capacity provided for in [2008] IASC 119) and to have its other determinations varied to expire on the date when the variation to [2011] IASC 123 comes into effect.

4.2 The Commission considers that Qantas has effectively applied for a variation of each of the nine determinations. In light of this, the Commission has decided to make a decision for each of the nine determinations which Qantas seeks to vary.

4.3 The Qantas applications are in accordance with the Commission's Procedures for Applications for Consolidation of Determinations which are, in turn, consistent with the Act and the Policy Statement.

#### **Conditions in the determination**

4.4 Qantas has requested that, as part of the variation, the following conditions be included in the consolidated determination:

- the capacity may be utilised by Qantas or another Australian carrier which is a wholly-owned subsidiary of Qantas;
- the capacity may be used by Qantas to provide joint services with any wholly-owned subsidiary and by any wholly-owned subsidiary of the Qantas Group to provide joint services with Qantas;
- the capacity may be used by Qantas to provide services jointly with Emirates;
- the capacity may be used by Qantas to provide services jointly with Finnair;
- the capacity may be used by Qantas to provide services jointly with British Airways; and
- the capacity may be used by Qantas to provide services jointly with Jetstar Asia.

4.5 The Commission notes the above code share arrangements are currently permitted by at least one of the determinations sought to be consolidated. In light of this, the Commission has decided to include the above conditions in the consolidated determination.

4.6 Furthermore, Qantas confirmed that it no longer wishes to retain the conditions permitting the use of the capacity to provide services jointly with Air Malta, Iberia and Kenya Airways.

### **5 Decision varying Determination [2011] IASC 123 allocating capacity on the Thailand route to Qantas ([2014] IASC 211)**

5.1 In accordance with section 24 of the Act, the Commission makes a decision varying Determination [2011] IASC 123 to increase capacity allocated to Qantas on the Thailand route as follows:

- to a total allocation of 35.6 B747 equivalent units of capacity per week in each direction for passenger services; and
- 26 third country code share frequencies per week between Australia and Thailand.

5.2 In accordance with the Australia-Thailand air services arrangements, Qantas

may convert any unused passenger capacity into additional third country code share capacity on the basis of one unused B747 equivalent service per week in each direction being equal to one third country code share frequency per week.

5.3 The Commission also makes a decision, under section 25 of the Act, varying Determination [2011] IASC 123 by:

*replacing* the existing conditions to the Determination with the following conditions:

- Qantas is required to fully utilise the capacity from the date this decision comes into effect;
- only Qantas or another Australian carrier which is a wholly-owned subsidiary of Qantas is permitted to utilise the capacity;
- neither Qantas nor another Australian carrier which is a wholly-owned subsidiary of Qantas is permitted to utilise the capacity to provide services jointly with another Australian carrier or any other person without the prior approval of the Commission;
- the capacity may be used by Qantas to provide joint services with any wholly-owned subsidiary and by any wholly owned subsidiary of the Qantas Group to provide joint services with Qantas;
- 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, as amended, or any subsequent code share agreement between Qantas and Emirates for operations on the Australia – Thailand route, whether or not it replaces the existing agreement, with the prior approval of the Commission;
- the capacity may be used by Qantas to provide services jointly with Finnair in accordance with the code share agreement between Qantas and Finnair dated 23 December 2010, as amended in January 2014, or any subsequent code share agreement between Qantas and Finnair for operations on the Australia – Thailand route, whether or not it replaces the existing agreement, with the prior approval of the Commission;
- the capacity may be used by Qantas to provide services jointly with British Airways in accordance with the code share agreement between Qantas and British Airways dated 19 November 2013, as amended, or any subsequent code share agreement between Qantas and British Airways for operations on the Australia – Thailand route, whether or not it replaces the existing agreement, with the prior approval of the Commission;
- the capacity may be used by Qantas to provide services jointly with Jetstar Asia in accordance with the code share agreement between Qantas and Jetstar Asia dated 9 September 2013, as amended, or any subsequent

code share agreement between Qantas and Jetstar Asia for operations on the Australia – Thailand route, whether or not it replaces the existing agreement, with the prior approval of the Commission;

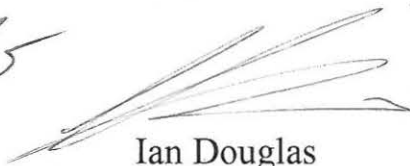
- in providing joint services, the airlines may not jointly price and market their services, or share or pool revenues/profits on the route, unless such practices are authorised under the *Competition and Consumer Act 2012* or otherwise authorised by the Australian Competition Tribunal, in the event of review by the Tribunal;
- to the extent that the capacity is used to provide joint services on the route, the airlines 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 the airlines 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.

5.4 This decision varying Determination [2011] IASC 123 will take effect from the date of this instrument.

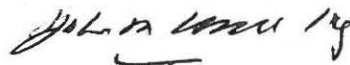
Dated: 14 March 2014



Jill Walker  
Chairwoman



Ian Douglas  
Member



John King  
Member