



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

**RENEWAL DETERMINATION**

<b>Determination:</b>	<b>[2017] IASC 108</b>
<b>Renewal of:</b>	<b>[2011] IASC 123</b>
<b>The Route:</b>	<b>Thailand</b>
<b>The Applicant:</b>	<b>Qantas Airways Limited</b> <b>(ABN 16 009 661 901) (Qantas)</b>
<b>Public Register File:</b>	<b>IASC/APP/201717</b>

**The Commission makes a fresh determination allocating to Qantas 35.6 B747 equivalent units and 26 third country code share frequencies of passenger capacity per week on the Thailand route. The determination is valid for five years from 1 July 2017.**

## **1 The application for renewal**

1.1 On 19 December 2011, the International Air Services Commission (the Commission) issued Determination [2011] IASC 123 (the Determination) allocating in favour of Qantas seven B747 weekly services of capacity each direction on the Thailand route. In 2014, upon the request of Qantas, the Commission consolidated under Decision [2014] IASC 211, the multiple determinations of Qantas on the Thailand route. This process consolidated into one determination the various capacity entitlements allocated to Qantas which amount to a total of 35.6 B747 equivalent units and 26 third country code share frequencies per week of passenger capacity in each direction. The Determination expires on 30 June 2017.

1.2 The Determination permits the use of the capacity by Qantas or another Australian carrier which is a wholly-owned subsidiary of Qantas and for code sharing between Qantas and its wholly-owned subsidiary. It was also amended several times to permit the use of the capacity for the provision of code share services by Qantas and the following airlines: Emirates, Finnair, British Airways, Jetstar Asia, Bangkok Airways and Jet Airways.

1.3 On 10 May 2017, Qantas applied to the Commission for a renewal of the Determination for a further period of five years from 1 July 2017 and sought to retain the existing conditions. On the same day, Qantas applied to seek a variation to the Determination to permit the use of the capacity for code sharing between Jetstar Airways Pty Ltd (Jetstar) and Finnair

1.4 As required by sections 12 and 17 of the Act, the Commission published a notice on 10 May 2017 inviting other applications for the capacity. No applications were received. The Commission also invited submissions, pursuant to section 22 of the Act, about the request to permit the use of the capacity for code share services by Jetstar and Finnair. No submissions were received.

1.5 All non-confidential 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 air services arrangements**

2.1 According to the Register of Available Capacity, there are 9.4 B747 equivalent units of capacity per week of passenger capacity. In the event that the Australian designated airlines wish to operate capacity which would result in the total capacity available to all airlines of Australia being exceeded by an amount of 0.3 B747-400 equivalent or less, the aeronautical authorities will permit such minor variations.

2.2 An Australian designated airline may enter into code-sharing arrangements with another Australian designated airline, as a non-operating airline, and the capacity utilised will only be counted against the operating airline.

2.3 An Australian designated airline may also enter into code share arrangements, as a non-operating airline, with any third country airlines. There are currently seven services per week available for third party code share arrangements. In addition to the seven weekly frequencies available for allocation, any designated airlines (of Australia or Thailand) are entitled to utilise any unused passenger capacity allocated to that airline for third country code sharing. It is understood that one unused B747 equivalent service per week in each direction is translated as one third country code share frequency per week in each direction. In such cases, one code share service is counted against the designated airline under its own entitlement as one frequency of capacity.

2.4 Any Australian designated airline may enter into code share arrangements, as the operating airline, with any airline(s) of a third country on any number of frequencies within its capacity entitlements.

## **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 Pursuant to section 11 of the Act, then Minister for Transport and Regional Services, the Hon. John Anderson MP issued Policy Statement No. 5 (hereinafter

referred to as the Policy Statement) dated 19 May 2004. 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.

3.3 Under paragraphs 6.2 of the Policy Statement, in circumstances where there is only one applicant for allocation of capacity on a route (as in this case), 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.

3.4 The Commission notes that:

- there are no other applicants seeking capacity on the route; and
- Qantas and its wholly-owned subsidiary Jetstar are established international carriers and are therefore reasonably capable of obtaining the necessary approvals to operate on the route and of implementing their application.

3.5 Under paragraph 8 of the Policy Statement, there is a presumption in favour of the carrier seeking a renewal which may be rebutted, after the start-up phase on the route, by the following criteria:

- whether the carrier seeking renewal has failed to service the route effectively; and
- whether use of the capacity in whole or in part by another Australian carrier that has applied for the capacity would better serve the public having regard to the criteria set out in paragraphs 4 and 5.

3.6 The Commission has no information that Qantas has not serviced the route effectively and notes that no other Australian carrier has applied for capacity on the route. In light of this, the Commission has decided it would allocate 35.6 B747 equivalent units and 26 third country code share frequencies per week of passenger capacity in each direction on the Thailand route in favour of Qantas. The Commission has also decided to permit the use of the capacity by another Australian carrier which is a wholly-owned subsidiary of Qantas which, in this case, is Jetstar.

### Conditions

3.7 Section 15 of the Act provides that the Commission may include such terms and conditions as the Commission thinks fit.

3.8 In its application for renewal, Qantas sought to retain all existing conditions including the permission to utilise the capacity for code sharing with its wholly-owned subsidiary, Emirates, Finnair, British Airways, Jetstar Asia, Bangkok Airways and Jet Airways. In a separate application, Qantas also sought to permit the code sharing on the route by Jetstar and Finnair.

3.9 Under paragraph 3.6 of the Policy Statement, where capacity that can be used for code share operations is available under the relevant 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).

3.10 The Australia-Thailand route is a highly competitive market. There are several international airlines offering either own metal or code share services. Most services offer direct flights between points in Australia and points in Thailand. Both Qantas and Jetstar offer either own metal or code share services directly or via third countries.

3.11 In the year ended December 2016, Thai Airways captured 63.0% share of passenger traffic between Australia and Thailand, followed by Jetstar at 20.2%; Qantas had 10.4% market share followed by Emirates at 6.0%; Virgin Australia, whose direct services ceased in February 2016, had 0.4% share of the market.<sup>1</sup>

3.12 In terms of “single flight number” passenger operations, in the year ended December 2016, there were 6,673 flights between Australia and Thailand. Thai Airways operated 59.0% of these flights, followed by Jetstar (17.6%); then Emirates via Dubai (13.0%); and Qantas (10.0%).<sup>2</sup>

3.13 Qantas operates seven weekly services between Sydney and Bangkok; Bangkok Airways, Emirates, Finnair and Jet Airways code share on Qantas’ services. Qantas, on the other hand code shares on services operated by Jetstar, Bangkok Airways, Emirates, Jet Airways and Jetstar Asia. Jetstar operates direct services between Melbourne and Bangkok/ Phuket; and between Sydney and Phuket.<sup>3</sup>

3.14 The Commission has no serious concerns that the code share arrangements would adversely impact on competition on the route. In light of this, the Commission did not find it necessary to apply the additional criteria in paragraph 5 of the Policy Statement and to specifically consult the ACCC. The Commission has decided to retain the existing conditions permitting the use of the capacity for code sharing between Qantas and its wholly-owned subsidiary (Jetstar), Emirates, Finnair, British Airways, Jetstar Asia, Bangkok Airways and Jet Airways. The Commission has also decided to permit code sharing on the route between Jetstar and Finnair as requested by Qantas.

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<sup>1</sup> Source: Bureau of Infrastructure, Transport and Regional Economics (BITRE)

<sup>2</sup> Source: Bureau of Infrastructure, Transport and Regional Economics (BITRE)

<sup>3</sup> Source: Northern Summer 2017 International Airlines Timetable Summary, [www.infrastructure.gov.au](http://www.infrastructure.gov.au)

#### **4 Determination for renewal of Determination [2011] IASC 123 allocating capacity on the Thailand route to Qantas ([2017] IASC 108)**

4.1 In accordance with section 8 of the Act, the Commission makes a determination in favour of Qantas, allocating 35.6 B747 equivalent units and 26 third country code share frequencies per week of passenger capacity in each direction on the Thailand route under the Australia - Thailand air services arrangements.

4.2 The determination is valid for five years from 1 July 2017.

4.3 The determination is subject to the following conditions:

- the allocation is required to be fully utilised from the date the determination comes into effect or from such other date approved by the Commission;
- the capacity may be utilised by Qantas or another Australian carrier which is a wholly-owned subsidiary of Qantas;
- 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 unless approved by the Commission;
- subject to the preceding condition, the capacity may be used by Qantas to provide joint services with any wholly-owned subsidiary of Qantas and by any wholly owned subsidiary of Qantas to provide joint services with Qantas;
- additionally, the capacity may be used by Qantas to provide code share services with:
  - Bangkok Airways in accordance with the code share agreement between Qantas and Bangkok Airways dated 3 March 2014, as amended;
  - British Airways in accordance with the code share agreement between Qantas and British Airways dated 19 November 2013, as amended;
  - Emirates Airways in accordance with the code share agreement between Qantas and Emirates dated 21 January 2013, as amended;
  - Finnair in accordance with the code share agreement between Qantas and Finnair dated 23 December 2010, amended;
  - Jet Airways in accordance with the code share agreement between Qantas and Jet Airways dated 5 September 2016, as amended;

- Jetstar Asia in accordance with the code share agreement between Qantas and Jetstar Asia dated 9 September 2013, as amended;
- the capacity may be used by Jetstar to provide code share services with Finnair in accordance with the code share agreement between Jetstar and Finnair dated 15 May 2017, as amended;
- Qantas must apply to the Commission for approval of the use of the capacity if there are variations to any of the code share arrangements listed above, which would change the relevant commercial aspects of the code share arrangements from a free sale to block space, or vice versa, or if Qantas proposes to add third country routes on which the airlines will code share where Australian capacity will be used for services on that route;
- to the extent that the capacity is used to provide joint or code share services on the route, the airlines must take all reasonable steps to ensure that passengers are informed of the carrier actually operating the flight at the time of the booking. Nothing in this determination exempts Qantas and any wholly owned subsidiary from complying with the Australian Consumer Law; and
- changes in relation to the ownership and control of the airlines authorised to use the capacity are permitted except to the extent that any change:
  - results in the designation of the airline(s) 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 the wholly-owned subsidiary) or be in a position to exercise effective control of Qantas (or the wholly-owned subsidiary), without the prior consent of the Commission.

Dated: 7 June 2017



IAN DOUGLAS  
Chairperson



JAN HARRIS  
Commissioner