



## Australian Government

### International Air Services Commission

#### DECISION

**Decision:** [2013] IASC 225  
**Variation of:** [2009] IASC 105 and [2013] IASC 130  
**The Route:** Indonesia  
**The Applicant:** Virgin Australia International Airlines Pty Ltd  
ABN 63 125 580 823 (Virgin Australia)  
**Public Register:** IASC/APP/201333

The Commission's delegate varies Determinations [2009] IASC 105 and [2013] IASC 130 to allow the capacity to be used by Virgin Australia for code share services with Delta.

#### 1 The application

1.1 On 17 September 2013 Virgin Australia applied for variations to Determinations [2009] IASC 105 and [2013] IASC 130 (which renews [2009] IASC 105), which allocates 1,080 seats per week on the Indonesia route, to permit the capacity to be used for code share services with Delta Air Lines (Delta).

1.2 Determination [2009] IASC 105 was originally issued to Pacific Blue Australia and subsequently varied as follows:

- [2010] IASC 206 transferring the capacity to Virgin Blue Airlines (ACN 090 670 965);
- [2011] IASC 214 permitting V Australia to code share on Virgin Blue Airlines;
- [2011] IASC R18 recognising the name change of Virgin Blue Airlines Pty Ltd to Virgin Australia Airlines Pty Ltd and Virgin Blue International Airlines (trading as V Australia) to Virgin Australia International Airlines Pty Ltd; and
- [2012] IASC 204 transferring the capacity to Virgin Australia International (ABN 63 125 580 823), revoking all conditions previously given and replacing them with new conditions.

1.3 On 18 September 2013, the Commission published a notice, in accordance with section 22 of the Act, inviting submissions about the application. No submissions were received. All material supplied by the applicant is available on the Commission's website, [www.iasc.gov.au](http://www.iasc.gov.au).

## 2 Delegate's assessment

2.1 In accordance with section 27AB of the *International Air Services Commission Act 1992* (the Act) and regulation 3A of the *International Air Services Commission Regulations 1992*, the delegate of the Commission may consider the application for variation. (For the purposes of this decision, all references to the Commission include the delegate of the Commission).

2.2 Virgin Australia's application seeks to vary conditions in the Determinations of a kind referred to in paragraph 15(2)(e) of the Act. In view of this, the application is a transfer application as so defined in subsection 4(1) of the Act and will have to be assessed in accordance with section 25.

2.3 Subsection 25(1) provides that the Commission must make a decision varying the determinations 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 determinations 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.

2.4 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.

2.5 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.

2.6 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.

2.7 Under paragraph 4, 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.

2.8 The Commission notes that Virgin Australia International 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 entitlements.

2.9 Paragraph 6.4 of the Policy Statement, in part, provides that the Commission may apply the additional criteria set out in paragraph 5 in circumstances set out in paragraph 3.6. Paragraph 3.6 states, inter alia, that "...if the Commission has serious concerns that a code share application... 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 (ACCC)."

2.10 The Commission notes that on 10 December 2009, the ACCC granted authorisation for a joint venture, which included code sharing, between the Virgin Blue Group and Delta for passenger and freight services. Furthermore, the Commission has previously indicated that it does not have serious concerns about Virgin Australia code sharing with Delta on its Indonesia services and has approved applications by Virgin Australia to permit this.

2.11 In view of the above, the delegate, on behalf of the Commission, will authorise the use of the capacity by Virgin Australia for code share services with Delta.

2.12 Nothing in this decision 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.

### **3 Decision [2013] IASC 225**

3.1 In accordance with section 25 of the Act, the delegate, on behalf of the Commission, varies Determinations [2009] IASC 105 and [2013] IASC 130, which allocate capacity on the Indonesia route, by:

*adding* the following conditions to the Determinations:

- "the capacity may be used by Virgin Australia International Airlines (Virgin Australia) to provide services jointly with Delta Air Lines (Delta) in accordance with;
  - the code share agreement between Virgin Australia and Delta dated 8 July 2009, as amended on 10 December 2012; or
  - any subsequent code share agreement between Virgin Australia and Delta, whether or not it replaces the existing agreement, with the prior approval of the Commission;
- nothing in this decision exempts Virgin Australia and Delta from complying with the Australian Consumer Law and the marketing carrier is required to take all reasonable steps to ensure that passengers are informed, at the time of booking, of the carrier actually operating the flight; and

- under the arrangements with Delta, Virgin Australia may only price and market its services on the route jointly with Delta 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.”

Dated: 9 October 2013



Chris Samuel  
Senior Adviser  
Delegate of the IASC Commissioners