



Australian Government

International Air Services Commission

DETERMINATION

Determination: [2014] IASC 108
The Route: Papua New Guinea
The Applicant: Virgin Australia Airlines (SE Asia) Pty Ltd
(Virgin Australia) ACN 79 097 892 389
Public Register: IASC/APP/201457

The Commission's delegate makes a determination allocating 160 seats per week to Virgin Australia on the Papua New Guinea route for five years.

1 The application

1.1 On 7 May 2014, Virgin Australia applied to the Commission for an allocation of 160 seats per week on the Papua New Guinea route. Virgin Australia intends to operate an additional weekly B737-800 service between Brisbane and Port Moresby. Virgin Australia has requested the allocation for five years from the date of the determination and stated that the allocation will be fully used by 6 July 2014.

1.2 As required by section 12 of the *International Air Services Commission Act 1992* (the Act), the Commission published a notice on 8 May 2014 inviting other applications for capacity. No applications were received.

1.3 All non-confidential material supplied by Virgin Australia is available on the Commission's website (www.iasc.gov.au).

2 Relevant provisions of the air services arrangements

2.1 According to the Register of Available Capacity, there are currently 732 seats each way per week available for Australian airlines for services between Australia and Papua New Guinea.

3 Delegate's assessment

3.1 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 allocation of capacity. (For purposes of this decision, all references to the Commission include the delegate of the Commission).

3.2 In considering an application for allocating available capacity, section 7 of the

Act requires that the Commission must not allocate available capacity unless the Commission is satisfied that the allocation would be of benefit to the public. Section 7 further provides that the determination must not allocate available capacity contrary to any restrictions on capacity contained in a bilateral arrangement, or a combination of bilateral arrangements, permitting the carriage to which the capacity relates. 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.

3.3 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.

3.4 The Commission notes that:

- there are no other applicants seeking the capacity for which Virgin Australia has applied; and
- Virgin Australia 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.

3.5 Currently, Virgin Australia operates five weekly B737-800 services between Brisbane and Port Moresby, utilising 880 seats per week. Qantas operates 12 weekly Q400 services between Cairns and Port Moresby, utilising 888 seats per week. Qantas code shares up to an additional 780 seats per week on Air Niugini services between Port Moresby and Sydney and Brisbane. Virgin Australia's proposed additional weekly service would increase their capacity on the Brisbane-Port Moresby route to 1056 seats per week.

3.6 The proposed capacity increase by Virgin Australia on the Papua New Guinea route will increase competition and provide more travel choices for consumers. In these circumstances, the Commission is satisfied that allocating 160 seats per week of capacity on the Papua New Guinea route to Virgin Australia is of benefit to the public.

4 Determination allocating capacity on the Papua New Guinea route to Virgin Australia Airlines (SE Asia) Pty Ltd ([2014] IASC 108)

4.1 The Commission allocates, under section 7 of the Act, in favour of Virgin Australia, 160 seats per week in each direction on the Papua New Guinea route in accordance with the terms of the Australia-Papua New Guinea air services arrangements.

4.2 The determination is for five years from the date of the determination.

4.3 The determination is subject to the following conditions:

- Virgin Australia is required to fully utilise the capacity by no later than 6 July 2014, or from such other date approved by the Commission;
- Only Virgin Australia is permitted to use the capacity;
- Virgin Australia 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;
- nothing in this determination exempts Virgin Australia from complying with the Australian Consumer Law;
- changes in relation to the ownership and control of Virgin Australia are permitted except to the extent that any change:
 - results in the designation of the airline as an Australian carrier under the Australia-Papua New Guinea 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 Virgin Australia or be in a position to exercise effective control of Virgin Australia, without the prior consent of the Commission.

Dated: 20 May 2014



Marlene Tucker
Executive Director
Delegate of the IASC Commissioners