



Australian Government

International Air Services Commission

DETERMINATION

Determination: [2017] IASC 120
The Route: Samoa
The Applicant: Virgin Australia International Airlines Pty Ltd
(Virgin Australia) ABN 63 125 580 823
Public Register File: IASC/APP/201734

The Commission's delegate makes a determination allocating to Virgin Australia 880 seats of capacity per week on the Samoa route. The determination is valid for five years from 10 August 2017.

1 The application

1.1 On 10 July 2017, the International Air Services Commission (the Commission) received an application from Virgin Australia seeking an allocation of 880 seats per week on the Samoa route. Virgin Australia plans to commence five services per week between Australia and Samoa from 13 November 2017. The application was made on the following basis:

- the allocation is requested for a period of five years from the date of the determination; and
- the capacity may be utilised by Virgin Australia or another Australian carrier which is a wholly-owned subsidiary of Virgin Australia.

1.2 In a subsequent communication on 4 August 2017, Virgin Australia nominated Tiger International Number1 Pty Ltd (Tiger International) as the wholly-owned subsidiary.

1.3 In accordance with section 12 of the *International Air Services Commission Act 1992* (the Act), the Commission published Virgin Australia's application on the Commission's website, on 11 July 2017, inviting other applications on the Samoa route. No other applications were received.

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

2 Air services arrangements

2.1 According to the Register of Available Capacity, there are 1,000 seats per week of passenger capacity available for allocation on the Samoa route in accordance with the Australia–Samoa air services arrangements. Additionally, the designated airlines of Australia may determine the number of frequencies, capacity and aircraft type to be operated for freight services.

3 Delegate’s consideration

3.1 Subsection 12(3) of the Act allows any person to apply to the Commission for a determination allocating capacity to enable an Australian carrier to operate international air services.

3.2 In accordance with section 27AB of the Act and regulation 3A of the International Air Services Commission Regulations 1992, the delegate of the Commission may consider Virgin Australia’s application. (For purposes of this determination, all references to the Commission include the delegate of the Commission.)

3.3 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.

3.4 Further, subsection 7(3) of the Act provides that in assessing the benefit to the public of an allocation of capacity, the Commission must apply the criteria set out in the policy statement made by the Minister pursuant to section 11 of the Act.

3.5 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.

3.6 Paragraph 6.2 of the Policy Statement provides, in part, that 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.

3.7 The Commission’s delegate notes that there are no other applicants seeking capacity on the route. The delegate further notes that Virgin Australia is an established

international carrier and, as such, is reasonably capable of obtaining the necessary approvals to operate on the route and of implementing its proposed services. In relation to the request to permit Virgin Australia's wholly-owned subsidiary Tiger International to use the capacity, the delegate is required to assess whether Tiger International is reasonably capable of obtaining the necessary approvals to operate on the route and of implementing its proposed services. From available information, the delegate has reached the view that Tiger International is reasonably capable of obtaining the necessary approvals such as obtaining designation as an Australian airline for purposes of the Australia-Samoa air services agreement. Accordingly, the delegate considers that the use of the entitlements by Virgin Australia or its wholly-owned subsidiary would be of benefit to the public and has decided to allocate the capacity sought to Virgin Australia and permit the capacity to be used by Virgin Australia or its wholly-owned subsidiary.

3.8 Section 15 of the Act provides that the Commission may include such terms and conditions as the Commission thinks fit. In light of this, the Commission's delegate has decided to include certain conditions set out below.

4 Determination allocating capacity on the Samoa route to Virgin Australia ([2017] IASC 120)

4.1 In accordance with section 7 of the Act, the Commission's delegate makes a determination in favour of Virgin Australia, allocating 880 seats of capacity on the Samoa route in accordance with the Australia – Samoa air services arrangements.

4.2 The determination is valid for five years from 10 August 2017.

4.3 The determination is subject to the following conditions:

- Virgin Australia is required to fully utilise the capacity from no later than 31 December 2017 or such other date approved by the Commission;
- the capacity may be utilised by Virgin Australia or another Australian carrier which is a wholly-owned subsidiary of Virgin Australia;
- Virgin Australia is not permitted to utilise the capacity to provide services jointly with another Australian carrier or any other person unless approved by the Commission;
- changes in relation to the ownership and control of Virgin Australia and/or its wholly-owned subsidiary are permitted except to the extent that any change:
 - results in the designation of the airline as an Australian carrier under the Australia – Samoa 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 and/or its wholly-owned subsidiary or be in a position to exercise effective control of Virgin Australia and/or its wholly-owned subsidiary, without the prior consent of the Commission.

Dated: 10 August 2017



Marlene Tucker
Executive Director
Delegate of the IASC Commissioners