



Australian Government

International Air Services Commission

DECISION

Decision:	[2012] IASC 213
Variation of:	[2010] IASC 119
The Route:	Thailand
The Applicant:	Virgin Australia International Airlines (ABN 63 125 580 823)
Public Register:	IASC/APP/201211

1 The application

1.1 On 3 April 2012, Virgin Australia International Airlines applied for a variation to Determination [2010] IASC 119 to permit provision of joint services with Singapore Airways between Australia and Thailand. The Determination allocates to Virgin seven weekly third party code share services in each direction on the Thailand route and permits provision of joint services with Etihad Airways.

1.2 The Commission published a notice on 12 April 2012, inviting submissions about the application. No applications were received.

1.3 All material supplied by the applicant is filed on the Register of Public Documents.

2 Provisions of relevant air services arrangements

2.1 Under the Australia – Thailand air services arrangements, the designated airlines of Australia may enter into code share arrangements with any other airlines provided the appropriate route and traffic rights are available. The Register of Available Capacity shows that there are 33 services per week of third party code share capacity available to Australian carriers to engage in code share services with third party airlines.

3 Commission's consideration

2.2 Under section 15(2)(e) of the Act a carrier cannot use allocated capacity to provide joint services with any other carrier without the prior approval of the Commission. Under paragraph 6.3 of the Minister's policy statement, where a carrier requests a variation of a determination to allow it flexibility in operating its capacity, including to use 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. Under paragraph 4 the use of Australian entitlements by a carrier that is reasonably capable of obtaining the necessary approvals (4(b)(i)) and of implementing its proposals (4(b)(ii)) is of benefit to the public.

2.3 Under paragraph 6.4 of the Minister's policy statement, the Commission may apply the additional criteria set out in paragraph 5 of the policy statement where submissions are received about the application for variation, provided that those criteria were considered when the original application for allocation of capacity was made, or in the circumstances set out in paragraph 3.6.

2.4 Paragraph 3.6 provides that where capacity that can be used for code share operations is available under air services arrangements, the Commission would generally be expected to authorise applications for the use of capacity to code share. However, 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.

2.5 In this case, the criteria in paragraph 5 were not considered when the original allocation for capacity was made. Further, the Commission notes that, in authorising the integrated network aviation alliance between Virgin Australia and Singapore Airlines, the ACCC concluded that the alliance is likely to lead to increased competition for international air passenger services. The ACCC also expressed the view that the alliance is unlikely to be significantly anti-competitive in any of the relevant markets.

2.6 The Commission has taken account of this decision by the ACCC to authorise the conduct. Accordingly, the Commission will not subject the proposals to the paragraph 5 criteria in the Minister's policy statement.

3 Decision ([2012] IASC 213)

3.1 In accordance with section 24 of the Act, the Commission varies Determination [2010] IASC 119 by:

Deleting the conditions in paragraph 8.3 of Determination [2010] IASC 119 and ***adding*** the following conditions:


- Virgin Australia is required to fully utilise the capacity from no later than 27 October 2012, or from such other date approved by the Commission;
- only Virgin Australia is permitted to utilise 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;
- the capacity may be used by Virgin Australia to provide services jointly with Singapore Airlines in accordance with:
 - the code share agreement between Virgin Australia and Singapore Airlines dated 3 February 2012; or

- any subsequent code share agreement between Virgin Australia and Singapore Airlines, whether or not it replaces the existing agreement, with the prior approval of the Commission;
- under the arrangements with Singapore Airlines, Virgin Australia may only price and market its services on the route jointly with Singapore Airlines as long as such practices are authorised under the *Competition and Consumer Act 2010*;
- to the extent that the capacity is used to provide joint services on the route, nothing in this determination exempts Virgin Australia from complying with the Australian Consumer Law. Virgin Australia is required to take all reasonable steps to ensure that passengers are informed, at the time of booking, of the carrier actually operating;
- 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 – 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 Virgin Australia or be in a position to exercise effective control of Virgin Australia, without the prior consent of the Commission; and
- changes in relation to the management, status or location of operations and Head Office of Virgin Australia are permitted except to the extent that any change would result in the airline ceasing to be an airline designated by the Australian Government for the purposes of the Australia – Thailand air services arrangements.

Dated: 11 May 2012



Jill Walker
Chairwoman



Stephen Bartos
Member

