



Australian Government
International Air Services Commission

DECISION

Decision: [2012] IASC 218
Variation of: [2009] IASC 113
The Route: Indonesia
The Applicant: Virgin Australia International Airlines Pty Ltd
(Virgin Australia)
ABN 63 125 580 823
Public Register: IASC/APP/201217

1 The application

1.1 On 20 September 2012, Virgin Australia applied, under section 21 of the *International Air Services Commission Act 1992* (the Act), for a variation to Determination [2009] IASC 113. The variation was sought to permit Delta Air Lines (Delta) to code share on services operated by Virgin Australia on the Indonesia route.

1.2 Determination [2009] IASC 113 has been varied as follows by:

- Decision [2010] IASC 206 transferring to Virgin Blue Airlines the allocations of capacity made to Pacific Blue Australia;
- Decision [2011] IASC 214 adding conditions to previous determinations allowing Virgin Blue Airlines to provide services jointly with V Australia;
- Resolution [2011] IASC R18 recognising the name change of Virgin Blue Airlines Pty Ltd to Virgin Australia Airlines Pty Ltd and Virgin Blue Australia International Airlines Pty Ltd, trading as V Australia, to Virgin Australia International Airlines Pty Ltd, trading as Virgin Australia; and
- Decision [2012] IASC 204 transferring from Virgin Australia to Virgin Australia International (ABN 63 125 580 823) the allocation of seats of capacity.

1.3 On 25 September 2012, the Commission published a notice, in accordance with section 22 of the Act, inviting submissions about the application for variation of the determination. No submissions were received. All material supplied by the applicant is filed on the Commission's website, www.iasc.gov.au.

2 Provisions of relevant air services arrangements

Under the Australia – Indonesia air services arrangements, a designated airline of Australia may enter into code-share, blocked space or other cooperative marketing arrangements, as

the marketing and/or operating airline with another Australian airline or airlines, with an Indonesian airline or airlines, or with an airline or airlines of a third country.

3 Delegate's consideration

3.1 In accordance with section 27AB of the Act and regulation 3A of the *International Air Services Commission Regulations 1992*, the delegate of the Commission considers the application. (For purposes of this instrument, references to the Commission include the delegate of the Commission).

3.2 When considering applications to vary determinations, subsection 24(2) of the Act provides that the Commission must not make a decision varying the determination unless the Commission is satisfied that the determination, as varied, would be of benefit to the public. In assessing the benefit to the public of a variation of an allocation of capacity, the Commission is required under section 26 of the Act to apply the criteria set out for that purpose in the policy statement issued by the Minister under section 11 of the Act.

3.3 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 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 entitlements by an Australian carrier that is reasonably capable of obtaining the necessary approvals and of implementing its proposals is of benefit to the public.

3.4 Under paragraph 15(2)(e) of the Act, the Commission must include a condition in determinations stating the extent to which the carrier may use that capacity in joint services with another carrier. The Commission has been provided a copy of the code sharing agreement between Delta and Virgin Australia.

3.5 The delegate of the Commission notes that on 10 December 2009, the Australian Competition and Consumer Commission (ACCC) granted authorisation for a joint venture between Virgin Blue Group and Delta Airlines in relation to air passenger and freight services between the United States and Australia. The joint venture includes coordination and agreement between the parties on trans-Pacific routes between Australia and mainland United States relating to schedules, capacity and routes flown, passengers sales and marketing activities, pricing and revenue management, enhancement of frequent flyer and lounge program offerings, purchasing and procurement.

3.6 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.

4 Decision [2012] IASC 218

4.1 In accordance with section 24 of the Act, the delegate of the Commission varies Determination [2009] IASC 113 by:

adding the following conditions:

- “the capacity may be used by Virgin Australia to provide joint services with Delta in accordance with:
 - the Code Share agreement, signed by Virgin Australia and Delta dated 8 July 2009;
 - or any subsequent code share agreement between Virgin Australia and Delta for operations on the Indonesia route, with the prior approval of the Commission.”

Dated: 13 November 2012

A handwritten signature in black ink, appearing to read 'Marlene Tucker', with a large, stylized flourish at the end.

Marlene Tucker
Executive Director
Delegate of the IASC
Commissioners

