



Australian Government

International Air Services Commission

DECISION

Decision: [2012] IASC 219
Variation of: [2007] IASC 118
The Route: New Zealand
The Applicant: Virgin Australia Airlines (SE Asia) Pty Ltd
(ABN 79 097 892 389) (Virgin Australia)
Public Register: IASC/APP/201218

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 [2007] IASC 118. The variation was sought to permit Singapore Airlines to code share on services operated by Virgin Australia on the New Zealand route.

1.2 Determination [2007] IASC 118 was issued on 11 October 2007 and subsequently varied by Decisions [2009] IASC 201, [2010] IASC 208, [2001] IASC 210 and Resolution [2011] IASC R16.

1.3 The Commission published a notice on 25 September 2012, in accordance with section 22 of the Act, inviting submissions about the application. 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 – New Zealand 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 a New Zealand 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 section 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 application 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 share agreement between Virgin Australia and Singapore Airlines.

3.5 The Commission notes that on 1 December 2011, the Australian Competition and Consumer Commission (ACCC) granted authorisation for Virgin Australia Group and Singapore Airlines to establish an integrated network alliance in relation to international air passenger transport services. Under this alliance, Virgin Australia and Singapore Airlines are able to fully cooperate on all aspects of their Australia-Singapore services and any international and domestic connecting routes including joint pricing and scheduling and joint marketing and sales. It does not however, include sharing or pooling of revenue.

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 219

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 Singapore Airlines in accordance with:
 - the Code Share agreement, signed by Virgin Australia and Singapore Airlines dated 2 February 2012;
 - or any subsequent code share agreement between Virgin Australia and Singapore Airlines for operations on the New Zealand route, with the prior approval of the Commission;
- under any code share agreement with Singapore Airlines:
 - Virgin Australia must price and sell its services on the route independently of Singapore Airlines; and
 - Virgin Australia must not share or pool revenues on the route with Singapore Airlines.”

Dated: 13 November 2012

A handwritten signature in cursive script that reads "Marlene Tucker".

Marlene Tucker
Executive Director
Delegate of the IASC
Commissioners

