



Australian Government

International Air Services Commission

DETERMINATION

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| Determination: | [2013] IASC 121 |
| The Route: | Singapore |
| The Applicant: | Virgin Australia International Airlines Pty Ltd (ABN 63 125 580 823) |
| Public Register: | IASC/APP/201308 |

The Commission's delegate allocates to Virgin Australia 400 seats per week of capacity on the Singapore route to be used to exercise own stopover rights between Singapore and Colombo and permit Virgin Australia to code share on services operated by Singapore Airlines to Colombo via Singapore.

1 The application

1.1 On 20 March 2013, Virgin Australia applied for an allocation of 400 seats per week on the Singapore route to be used for exercising own stopover rights between Singapore and Colombo. Virgin Australia proposes to offer its passengers on code share services operated by Singapore Airlines the ability to include a stopover in Singapore en route to Colombo. Virgin Australia states that the allocation will be fully utilised by 26 October 2013.

1.2 As required by section 12 of the *International Air Services Commission Act 1992* (the Act), the Commission published a notice on 20 March 2013 inviting other applications for the capacity. No response was received in relation to the Virgin Australia application. However, Qantas has separately applied for allocation of 300 seats per week to be able to offer code share services on flights offered by Emirates to Colombo via Singapore.

1.3 All material supplied by the applicant is filed on the Commission's website (www.iasc.gov.au).

2 Relevant provisions of the air services arrangements

Under the Australia-Singapore air services arrangements, Australian carriers may enter into unrestricted codeshare, blocked space or other cooperative marketing arrangements with any other airline, including airlines of third parties. When exercising traffic rights

between Singapore and Colombo in either direction, Australian carriers are restricted to 1,200 seats per week in each direction on an own stopover basis.

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 may consider the Virgin Australia application. (For purposes of this determination, references to the Commission include the delegate of the Commission).

3.2 Virgin Australia has applied for 400 seats per week out of 1,200 seats available for allocation. The Commission notes that Qantas has applied for 300 of the 1,200 seats. Under paragraph 6.2 of Minister's Policy Statement (No. 5) of 19 May 2004 (the Policy Statement), if the amount of available capacity exceeds the total amount of capacity applied for only the criteria in paragraph 4 are applicable.

3.3 Paragraph 4.1 provides that the use of entitlements by Australian carriers that are reasonably capable of obtaining the necessary approvals and of implementing their applications is of benefit to the public. Virgin Australia is an established international carrier which is capable of obtaining the necessary approvals and of implementing its proposals. This means that the use of the entitlements by Virgin Australia is of benefit to the public.

3.4 In relation to the application to use the capacity for code sharing, under paragraph 3.6 the Commission may apply the additional criteria in paragraph 5 if it has serious concerns that the code share may not be of benefit to the public. The Commission does not have such concerns and therefore has not applied the paragraph 5 criteria. The Commission notes that there are no direct services between Australia and Sri Lanka. However, there are a range of alternative hubs and other airlines available for passengers wishing to travel from points in Australia to Colombo.

3.5 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.

3.6 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.

3.7 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 Determination allocating capacity on the Singapore route to Virgin Australia ([2013] IASC 121)

4.1 The delegate of the Commission makes, under section 7 of the Act, a determination in favour of Virgin Australia, allocating 400 seats per week of capacity on the Singapore route to be used to exercise own stopover rights between Singapore and Colombo in accordance with the Australia-Singapore air services arrangements, subject to the conditions set out below.

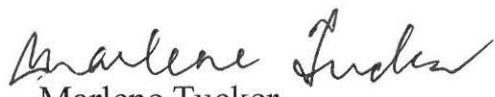
4.2 The determination is for five years from the date of this determination.

4.3 The determination is subject to the following conditions:

- Virgin Australia is required to fully utilise the capacity from no later than 26 October 2013, or from such other date approved by the Commission;
- 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 12 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 code share agreement Singapore Airlines, Virgin Australia must take all reasonable steps to ensure that passengers are informed of the carrier actually operating the flight at the time of booking. Nothing in this determination exempts Virgin Australia from complying with the Australian Consumer Law;
- 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 2012* or otherwise authorised by the Australian Competition Tribunal, in the event of review by that Tribunal; and
- 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 – Singapore 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: 28 March 2013



Marlene Tucker

Executive Director

Delegate of the IASC Commissioners