



Australian Government
International Air Services Commission

DETERMINATION

Determination: [2013] IASC 122
The Route: Italy
The Applicant: Virgin Australia International Airlines Pty Ltd
(Virgin Australia) ABN 63 125 580 823
Public Register: IASC/APP/201309

The Commission's delegate makes a determination allocating to Virgin Australia 300 third country code share seats per week and permitting Virgin Australia to code share with Singapore Airlines and Etihad on the Italy route.

1 The application

1.1 On 26 March 2013, Virgin Australia applied to the Commission for an allocation of 300 seats of third country code share capacity on the Italy route. Virgin Australia intends to implement code share services, as a marketing carrier, on flights operated by its alliance partners to Italy on the following routes:

- Australia-Singapore-Rome (operated by Singapore Airlines);
- Australia-Singapore-Milan (operated by Singapore Airlines); and
- Australia-Abu Dhabi-Milan (operated by Etihad Airlines).

1.2 Virgin Australia's application followed a decision on 25 March 2013 by the Commission reducing the capacity held by Qantas on the Italy route to a total of 700 third country code share seats per week in each direction. The Commission's decision [2013] IASC 214 enabled 300 seats of third country code share capacity to be made available for immediate allocation.

1.3 As required by section 12 of the *International Air Services Commission Act 1992* (the Act), the Commission published a notice on 26 March 2013 inviting other applications for the capacity. No other applications were received.

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

2 Relevant provisions of the air services arrangements

2.1 Under the Australia-Italy air services arrangements, designated airlines of Australia (Australian airlines) may operate seven frequencies per week with any aircraft type. None of this capacity is currently allocated. Australian airlines are entitled to

perform their services with wet lease, code sharing, blocked space and/or other cooperative service arrangements with any airline.

2.2 Australian airlines may enter into arrangements with an airline or airlines of a third country to carry out services through code share arrangements. These code share arrangements may constitute up to 1000 seats per week in total in each direction. Since Qantas currently holds a total capacity of 700 third country code share seats, 300 third country code share seats are available for immediate allocation.

2.3 Where the operating carrier is an airline of a third country, the marketing carrier may exercise own stopover rights at one point in the route schedule in the territory of a third country. Singapore was nominated by the Department of Infrastructure, Transport, Regional Development and Local Government, upon Qantas' request, as the point in the route schedule in the territory of a third country at which own stopover rights may be exercised by Australian carriers marketing code share services. This point may be changed upon the request of the concerned airline(s).

2.4 Australian airlines may operate to two points in Italy to be nominated by the relevant aeronautical authorities of Australia. Rome is the first nominated point while Milan is the second point. These two points may be changed only with the agreement of the Italian Government.

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 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. In assessing the benefit to the public of an allocation of capacity, the Commission must apply the criteria set out for that purpose in the policy statement made by the Minister under section 11 of the Act.

3.3 Under paragraph 6.2 of the Minister's Policy Statement (No. 5) of 19 May 2004 (the Policy Statement), 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.

3.4 The Commission notes that:

- there are no other applicants seeking the capacity for which Virgin Australia has applied; and
- Virgin Australia is an established international carrier and is therefore reasonably capable of obtaining the necessary approvals to operate on the route and of implementing its application.

3.5 In these circumstances, the Commission's delegate is satisfied that allocating 300 seats of third country code share capacity to Virgin Australia is of benefit to the public. Virgin Australia will provide competition in the provision of air services on the Italy route thus giving Australian consumers more options when travelling on the route.

3.6 Further, Virgin Australia sought authority to code share with:

- Singapore Airlines between Australia and Rome/ Milan via Singapore; and
- Etihad between Australia and Milan via Abu Dhabi.

3.7 Subsection 15(1) of the Act allows a determination to include such terms and conditions as the Commission thinks fit. Subsection 15(2) provides, in part, that the determination must include a condition stating the extent (if any) to which any such carrier may use that capacity by providing joint international air services with another Australian carrier or any other person.

3.8 Under paragraph 3.6 of the Policy Statement, where capacity that can be used for code share operations is available under air services arrangements, including where foreign airlines have rights to code share on services operated by Australian carriers, the Commission would generally be expected to authorise applications for use of capacity to code share. However, if the Commission has serious concerns that a code share application (or other joint service proposal) 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 (whether the application is contested or not). Before doing so, the Commission will consult with the Australian Competition and Consumer Commission (the ACCC).

3.9 The Commission has no concerns about Virgin Australia's proposed code sharing with Singapore Airlines and Etihad. The Commission considers that Virgin Australia's entry will result in increased competition on the route.

3.10 The Commission notes that on 1 December 2011, the 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. The authorisation does not, however, permit sharing or pooling of revenue.

3.11 The Commission further notes that on 3 February 2011, the ACCC granted authorisation for an alliance between the Virgin Australia Group and Etihad in relation to air passenger services. Under the alliance, the airlines were authorised to cooperate

on joint pricing and scheduling of services across their respective networks. As with the Singapore Airlines alliance, the authorisation does not permit sharing or pooling of revenue.

3.12 For the above reasons, and as no submissions were received on the Virgin Australia application, the Commission did not consider it necessary to assess the application against the criteria in paragraph 5 of the Policy Statement.

3.13 Nothing in this determination in relation to code sharing should be taken as indicating either approval or disapproval by the ACCC. This determination is made without prejudicing, in any way, possible future consideration of code share operations by the ACCC.

4 Determination [2013] IASC 122

4.1 The delegate, on behalf of the Commission, allocates under section 7 of the Act, in favour of Virgin Australia, 300 third country code share seats per week in each direction on the Italy route in accordance with the terms of the Australia – Italy air services arrangements.

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

4.3 The determination is subject to the following conditions:

- Virgin Australia is required to fully utilise the capacity by no later than 26 October 2013, or from such other date approved by the Commission;
- Only Virgin Australia is permitted to use 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 code share on services operated by 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;
- the capacity may be used by Virgin Australia to code share on services operated by Etihad in accordance with:
 - the code share agreement between Virgin Australia and Etihad dated 26 October 2010; or

- any subsequent code share agreement between Virgin Australia and Etihad, whether or not it replaces the existing agreement, with the prior approval of the Commission;
- to the extent that the capacity is used to provide joint services, 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;
- 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 – Italy 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: 8 April 2013



Marlene Tucker
Executive Director
Delegate of the IASC Commissioners