



Australian Government
International Air Services Commission

DETERMINATION

Determination:	[2014] IASC 104
The Route:	Republic of Korea (Korea)
The Applicant:	Virgin Australia International Airlines Pty Ltd (Virgin Australia) ABN 63 125 580 823
Public Register:	IASC/APP/201449

The Commission makes a determination allocating to Virgin Australia 1000 seats per week and permitting Virgin Australia to use the capacity to code share with Singapore Airlines on the Korea route.

1 The application

1.1 On 18 February 2014, Virgin Australia applied to the Commission for an allocation of 1000 seats per week on the Korea route. Virgin Australia intends to implement code share services, as a marketing carrier, on flights operated by Singapore Airlines between Australia and Korea via Singapore. Virgin Australia has requested the allocation for five years from the date of the determination and stated that the allocation will be fully used by 25 October 2014.

1.2 As required by section 12 of the *International Air Services Commission Act 1992* (the Act), the Commission published a notice on 19 February 2014 inviting other applications for capacity. No applications were received.

1.3 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 According to the Register of Available Capacity, there are currently 8000 seats each way per week available for Australian airlines for services between Sydney, Melbourne, Brisbane and Perth and Korea. Capacity between other points in Australia and Korea is unrestricted.

2.2 Under the Australia-Korea air services arrangements, capacity offered by a designated airline of Australia, as a marketing airline, on services operated by other airlines, including third country airlines, is counted against the capacity entitlements of the country designating the marketing airline.

3 Commission's consideration

3.1 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.

3.2 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.

3.3 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.

3.4 In these circumstances, the Commission is satisfied that allocating 1000 seats per week of capacity to Virgin Australia is of benefit to the public.

3.5 Further, Virgin Australia has sought authority to code share with Singapore Airlines between Australia and Korea via Singapore.

3.6 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.

3.7 Under paragraph 3.6 of the Policy Statement, 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 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).

3.8 Currently, Korean Air and Asiana Airlines are together operating some 20 services per week between Australia and Korea, while no Australian carriers are operating own aircraft services on the route. Qantas has already been allocated 500 seats per week for code sharing on Asiana Airlines. The Commission considers that the entry of Virgin Australia onto the route as a marketing carrier will increase competition and provide more travel choices for consumers.

3.9 The Commission notes that on 1 December 2011, the ACCC granted authorisation for the 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.

3.10 In view of the above, the Commission did not identify any serious concerns that the code share between Virgin Australia and Singapore Airlines may not be of benefit to the public. For this reason, the Commission did not consult the ACCC and did not consider it necessary to assess the application against the criteria in paragraph 5 of the Policy Statement.

3.11 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 allocating capacity on the Korea route to Virgin Australia International Airlines Pty Ltd ([2014] IASC 104)

4.1 The Commission allocates, under section 7 of the Act, in favour of Virgin Australia, 1000 seats per week in each direction on the Korea route in accordance with the terms of the Australia – Korea 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 25 October 2014, 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 for joint services 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;
- in providing joint services, the airlines may not jointly price and market their services, or share or pool revenues/profits on the route, unless 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 the Tribunal;
- to the extent that the capacity is used to provide joint services, the airlines 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 the airlines 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 – Korea 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.

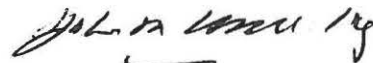
Dated: 14 March 2014



Jill Walker
Chairwoman



Ian Douglas
Member



John King
Member