



Australian Government
International Air Services Commission

RENEWAL DETERMINATION

Determination: [2014] IASC 118
Renewal of: [2010] IASC 120
The Route: France
The Applicant: Virgin Australia International Airlines Pty Ltd
(Virgin Australia) ABN 63 125 580 823
Public Register: IASC/APP/201472

The Commission's delegate makes a fresh determination allocating 150 one way seats per day on an average basis on the France route for five years. Virgin Australia is also permitted to use the capacity to provide services jointly with Etihad Airways and Singapore Airlines.

1 The application

1.1 On 25 October 2010, the Commission issued Determination [2010] IASC 120 (the Determination) allocating 150 one way seats per day on an average basis on the France route in favour of Virgin Australia. The Determination permits code sharing on the route with Etihad Airways and was varied by Decision [2012] IASC 217 and Commission resolutions to:

- extend the date of utilisation of capacity;
- recognise the name change of Virgin Blue International Airlines Pty Ltd, trading as V Australia, to Virgin Australia International Airlines Pty Ltd; and
- permit Virgin Australia to provide joint services on the route with Singapore Airlines.

1.2 The Determination (as varied) expires on 24 October 2015. Under section 17 of the *International Air Services Commission Act 1992* (the Act), the Commission must start its consideration of the renewal of a determination at least 12 months before its expiry. In view of this, on 23 October 2014, the Commission sent a letter to Virgin Australia inviting it to apply for renewal if it wished to renew the Determination.

1.3 Virgin Australia applied to the Commission on 31 October 2014 for a renewal of the Determination for five years from 25 October 2015. Virgin Australia confirmed that it offers code share services to France on flights operated by both Etihad Airways and Singapore Airlines utilising the capacity allocated by the Determination. The airline indicated its capacity utilisation on this route has been variable but expects the capacity utilisation to grow in the coming seasons. In light of this, it sought to renew the full

allocation for a further period of five years.

1.4 As required by sections 12 and 17 of the Act, the Commission published a notice on 31 October 2014 inviting other applications for capacity. No applications were received.

1.5 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-France air services arrangements, designated airlines of Australia may operate up to the equivalent of three units of capacity per week in each direction. The three units of capacity are still available for immediate allocation.

2.2 Additionally, the designated airlines of each contracting party may enter into arrangements with other airlines, including airlines of third countries, to undertake services through code share, blocked space or other joint venture arrangements up to a total of 400 one way seats per day on annual average basis subject to certain conditions. All 400 one way seats have been allocated, under code share arrangements, to Australian carriers (250 seats to Qantas Airways and 150 seats to Virgin Australia).

3 Delegate's assessment

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 application for allocation of capacity. (For purposes of this determination, all references to the Commission include the delegate of the Commission).

3.2 In considering an application for renewal of a determination under section 8 of the Act, the Commission must make the same allocation of capacity as the original determination unless the Commission is satisfied that the allocation is no longer of benefit to the public. 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 incumbent on the route and is therefore reasonably capable of obtaining the necessary approvals to operate on the route and of implementing its application.

3.5 Under paragraph 8.1 of the Policy Statement, there is a presumption in favour of the carrier seeking the renewal.

3.6 Qantas holds 250 one way seats per day (on an annual average basis) on the route, exercised under code sharing with Emirates and British Airways, while Virgin Australia uses its allocation of 150 seats under code share arrangements with Etihad and Singapore Airlines. The service offerings of both major Australian carriers on the Australia-France route, in addition to services offered by Air France and Air Austral, provide travel options to consumers.

3.7 In light of the above, the Commission is satisfied that renewal of [2010] IASC 120 (as varied) allocating 150 one way seats of capacity per day on the France route to Virgin Australia is of benefit to the public.

3.8 Subsection 15(1) of the Act empowers the Commission to include such terms and conditions as it thinks fit. Paragraph 15(2)(e) requires the inclusion of a condition stating the extent to which the carrier may use that capacity in joint services with another carrier. As the capacity is being utilised under code share arrangements with Etihad and Singapore Airlines, the Commission will continue to authorise the use of the capacity under joint services.

4 Determination for renewal of Determination [2010] IASC 120 allocating capacity on the France route to Virgin Australia ([2014] IASC 118)

4.1 In accordance with section 8 of the Act, the delegate, on behalf of the Commission, makes a fresh determination in favour of Virgin Australia, allocating 150 one ways seats of capacity per day on an average annual basis on the France route in accordance with the terms of the Australia-France air services arrangements.

4.2 The determination is for five years from 25 October 2015.

4.3 The determination is subject to the following conditions:

- Virgin Australia is required to fully utilise the capacity from the date this instrument comes into effect;
- 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 provide services jointly with Etihad Airways in accordance with the code share agreement between Virgin Australia and Etihad Airways dated 26 August 2010, as amended;
- 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 3 February 2012, as amended;
- Virgin Australia must apply to the Commission for approval of any proposed variations to the code share arrangements with Etihad Airways and/or Singapore Airlines which would change the relevant commercial aspects of the arrangements from a free sale code share arrangement to a block space, or vice versa, or if Virgin Australia proposes to add third country routes on which the airlines will code share if the additional routes would require a variation to a determination held by Virgin Australia;
- under any code share agreement with Etihad Airways and Singapore Airlines, Virgin Australia may only price and market its services jointly, or share or pool revenues/ profits with the airlines so long as such practices are authorised under the *Competition and Consumer Act 2010*;
- 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-France 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: 21 November 2014



Marlene Tucker
Executive Director
Delegate of the IASC Commissioners