



Australian Government
International Air Services Commission

DECISION

Decision:	[2014] IASC 230
Variation of:	[2013] IASC 108 and [2013] IASC 109
The Route:	Vanuatu
The Applicant:	Virgin Australia Airlines (SE Asia) Pty Ltd (Virgin Australia) ACN 79 097 892 389
Public Register File:	IASC/APP/201464

The Commission varies Determinations [2013] IASC 108 and [2013] IASC 109 to permit Singapore Airlines to code share on Virgin Australia services on the Vanuatu route.

1 The application

1.1 On 28 August 2014, Virgin Australia applied for a variation to Determinations [2013] IASC 108 and [2013] IASC 109 (together, the Determinations) to enable Singapore Airlines to code share on flights operated by Virgin Australia on the Vanuatu route. The Determinations allocate 900 seats per week of passenger capacity on the route.

1.2 On 29 August 2014, the Commission published a notice, in accordance with section 22 of the Act, inviting submissions about the application for variation. No submissions were received. All material supplied by the applicant is available on the Commission's website, www.iasc.gov.au.

2 Commission's assessment

2.1 Virgin Australia's application seeks to vary the Determinations to include a condition of a kind referred to in paragraph 15(2)(e) of the Act. In view of this, the application is a transfer application as so defined in subsection 4(1) of the Act and has been assessed in accordance with section 25.

2.2 Subsection 25(1) provides that the Commission must make a decision varying the determination in a way that gives effect to the variation requested, subject to subsection 25(2). Subsection 25(2) states that the Commission must not make a decision varying the determination in a way that varies, or has the effect of varying an allocation of capacity if the Commission is satisfied that the allocation, as so varied, would not be of benefit to the public.

2.3 Under section 26 of the Act, in assessing the benefit to the public of a variation of an allocation of capacity, the Commission is required to apply the criteria set out in any policy statement issued by the Minister under section 11.

2.4 Paragraph 6.3 of the Minister's Policy Statement (No. 5) of 19 May 2004 (the Policy Statement) provides that, subject to paragraph 6.4, where a carrier requests a variation of a determination to allow it flexibility in operating its capacity, including to use the Australian

capacity in a code share arrangement with a foreign carrier, and no submission is received about the application, only the criteria in paragraph 4 of the Policy Statement are applicable.

2.5 Paragraph 6.4 provides, in part, that the Commission may apply the criteria in paragraph 5 in the circumstances set out in paragraph 3.6 of the Policy Statement.

2.6 Under paragraph 3.6, 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).

2.7 Virgin Australia currently operates four services per week between Brisbane and Port Vila. Traffic levels on the route have remained relatively consistent over the past five years with average annual growth of 1.5 per cent over this time, suggesting a stable market unlikely to incur significant growth in the near future. Virgin Australia's operations on the Vanuatu route have remained around the same level during this time.

2.8 According to the Register of Available Capacity, there are 1900 seats per week available for Australian airlines for services between Australia and Vanuatu, increasing to 2500 in December 2014. While Virgin Australia is currently the only Australian carrier on the route, there is sufficient capacity available for new market entrants, and no other Australian carriers are seeking capacity at this stage.

2.9 Singapore Airlines does not operate services to any Pacific Island countries, aside from New Zealand. In view of this, the Commission considers that Singapore Airlines would likely not commence own aircraft operations to Vanuatu absent the code share.

2.10 Australia's air services arrangements with Singapore authorise the exercise of transit rights by Singaporean carriers beyond Australia, but do not provide for Singaporean carriers to exercise traffic rights between Australia and Vanuatu. Consequently, all passengers travelling between Australia and Vanuatu on a Singapore Airlines code will need to originate in, or be destined for, a point other than Australia. Upon the request of the Commission, Virgin Australia confirmed on 1 September 2014 that Singapore Airlines intends to exercise transit rights only between Australia and Vanuatu.

2.11 In the Commission's overall assessment of the code share, allowing Singapore Airlines to code share on Virgin Australia services between Australia and Vanuatu could assist in making Virgin Australia's services more sustainable. As Singapore Airlines is not carrying local traffic, the code share will have little or no impact on competition on the route.

2.12 In light of the above, the Commission does not have concerns that the code share application may not be of benefit to the public.

2.13 Under paragraph 4 of the Policy Statement, 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 of

implementing their proposals. The Commission notes that Virgin Australia is an established international carrier incumbent on the route, which is clearly capable of obtaining the necessary approvals and of implementing its proposals.

2.14 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 is its normal practice, the Commission will also include a condition which requires Virgin Australia to comply with the Australian Consumer Law and to take all reasonable steps to ensure that passengers are informed of the carrier that is actually operating the flight.

2.15 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.


3 Decision varying Determinations [2013] IASC 108 and [2013] IASC 109 allocating capacity to Virgin Australia on the Vanuatu route ([2014] IASC 230)

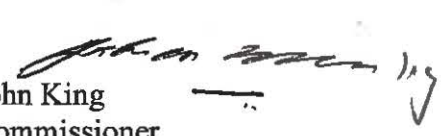
3.1 In accordance with section 25 of the Act, the Commission varies Determinations [2013] IASC 108 and [2013] IASC 109 which allocate capacity to Virgin Australia on the Vanuatu route, by:

adding the following conditions to the Determination:

- 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 arrangement with 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 Singapore Airlines, Virgin Australia must price and sell its services on the route independently of Singapore Airlines and must not share or pool revenues on the route with Singapore Airlines; and
- under the code share arrangements with Singapore Airlines, 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.

Dated: 8 September 2014


Ian Douglas
Presiding Commissioner


John King
Commissioner