



## **Australian Government**

### **International Air Services Commission**

#### **DETERMINATION**

**Determination:** [2018] IASC 106  
**The Route:** Hong Kong  
**The Applicant:** Virgin Australia International Airlines Pty Ltd  
(Virgin Australia)  
ABN 63 125 580 823  
**Public Register:** IASC/APP/201817

**The Commission makes a determination allocating to Virgin Australia seven frequencies per week of capacity on the Hong Kong route. The determination is valid for five years.**

#### **1 The application**

1.1 On 28 February 2018, Virgin Australia applied to the International Air Services Commission (the Commission) for an allocation of seven frequencies per week on the Hong Kong route. The capacity is planned to be used to provide services jointly with Hong Kong Airlines and Virgin Atlantic.

1.2 As required by section 12 of the International Air Services Commission Act 1992 (the Act), the Commission published a notice on 28 February 2018 inviting other applications for capacity. No other applications were received.

1.3 All non-confidential material supplied by Virgin Australia is available on the Commission's website ([www.iasc.gov.au](http://www.iasc.gov.au)).

#### **2 Relevant provisions of the air services arrangements**

2.1 Paragraph 7(2)(aa) of the Act requires the Commission not to allocate available capacity contrary to any restrictions on capacity contained in a bilateral arrangement(s)

2.2 According to the Register of Available Capacity, there are 35 frequencies per week available for passenger services between Sydney, Melbourne, Brisbane and Perth and Hong Kong.

2.3 Designated airlines of Australia may enter, subject to conditions, into code share, blocked space or other cooperative marketing arrangements, as the marketing

and/or operating airline, with any other airline, including other designated airlines of Australia, Hong Kong and of third parties.

### **3 Commission's assessment**

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 Pursuant to section 11 of the Act, then Minister for Transport and Regional Services, the Hon. John Anderson MP issued Policy Statement No. 5 (hereinafter referred to as the Policy Statement) dated 19 May 2004. The Policy Statement sets out the range of criteria which the Commission is required to apply in assessing the benefit to the public of allocations of capacity.

3.3 Under paragraph 6.2 of 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 capacity on the route; and
- Virgin Australia is an established international carrier, and is reasonably capable of obtaining the necessary approvals and of implementing its application.

3.5 To date, Virgin Australia has a total capacity allocation of seven frequencies on the Hong Kong route.

3.6 The Commission considers that Virgin Australia fulfils the criteria under paragraph 4 of the Policy Statement to operate additional services on the Hong Kong route and allocating capacity to Virgin Australia on the Hong Kong route would be of benefit to the public.

### **4 Determination allocating capacity to Virgin Australia International Airlines Pty Ltd on the Hong Kong route ([2018] IASC 106)**

4.1 The Commission, under section 7 of the Act, allocates seven frequencies per week in each direction to Virgin Australia on the Hong Kong route in accordance with the terms of the Australia-Hong Kong 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 from no later than 28 February 2019, 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 code share services with Hong Kong Airlines to be conducted in accordance with Australia's air services arrangements with Hong Kong and the code share agreement between Virgin Australia and Hong Kong Airlines dated 4 May 2017.
- The capacity may be used by Virgin Australia to provide code share services with Virgin Atlantic in accordance with the code share agreement between Virgin Australia and Virgin Atlantic made on 18 December 2017.
- Virgin Australia must apply to the Commission for approval of any proposed variations to its code share agreements with Hong Kong Airlines and/ or Virgin Atlantic which would change the relevant commercial aspects of the relevant agreement(s) from a free sale code share arrangement to a block space, or vice versa, or if the airlines propose to add third country routes on which the airlines will code share where Australian capacity entitlements will be used for services on that route.
- To the extent that the capacity is used to provide code share services on the route, the airlines must take all reasonable steps to ensure that passengers are informed, at the time of booking, of the carrier actually operating the flight. 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-Hong Kong 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: 16 March 2018



IAN DOUGLAS  
Chairperson



JAN HARRIS  
Commissioner



KAREN GOSLING  
Commissioner