



Australian Government

International Air Services Commission

RENEWAL DETERMINATION

Determination: [2019] IASC 122
Renewal of: [2014] IASC 119
The Route: Bangladesh
The Applicant: Virgin Australia International Airlines Pty Ltd
(Virgin Australia)
(ABN 63 125 580 823)
Public Register: IASC/APP/201929

The Commission makes a fresh determination allocating to Virgin Australia five frequencies per week of capacity in each direction on the Bangladesh route. Virgin Australia is also permitted to use the capacity to provide services jointly with Singapore Airlines. The determination is valid for five years from 25 October 2020.

1 The application for renewal

1.1 On 21 November 2014, the International Air Services Commission (the Commission) issued Determination [2014] IASC 119 (the Determination) allocating, in favour of Virgin Australia, five frequencies per week of capacity in each direction on the Australia-Bangladesh route. The capacity allocation is being utilised by Virgin Australia to code share on flights operated by Singapore Airlines to Dacca via Singapore.

1.2 Section 17 of the *International Air Services Commission Act 1992* (the Act) requires the Commission to start its consideration of the renewal of a determination at least 12 months before the expiry of the Determination. The Determination is due to expire on 24 October 2020. In view of this, the Commission sent, on 11 October 2019, 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 25 October 2019 for a renewal of the Determination for a further five-year period from 25 October 2020.

1.4 As required by sections 12 and 17 of the Act, the Commission published a notice on its website inviting other applications for the capacity. No other 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 Paragraph 7(2)(aa) of the Act provides that the Commission must not allocate available capacity contrary to any restrictions on capacity contained in a bilateral arrangement(s). Any variation made to an existing allocation of capacity should also not be contrary to any restrictions on capacity contained in a bilateral arrangement(s).

2.2 Under the Australia-Bangladesh air services arrangements, designated airlines of Australia may operate up to five frequencies per week in each direction with any aircraft type. All five frequencies are currently allocated to Virgin Australia.

2.3 The Australia-Bangladesh air services arrangements also permit a designated airline of Australia to enter into code share arrangements, whether as the operating airline or marketing airline, with a designated airline of Bangladesh, a designated airline of Australia and/or an airline of a third country. The capacity offered by an Australian designated airline, as a marketing carrier under a code share arrangement with an airline of a third country (like Singapore), will be counted against Australian capacity entitlements.

3 Commission's consideration

3.1 Section 8 of the Act provides that the Commission may, at any time while a determination is in force, make a fresh determination allocating the capacity to which the original determination relates. The fresh determination 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.

3.2 In accordance with section 11 of the Act, the Minister issued the International Air Services Commission Policy Statement 2018 (the Policy Statement), which came into effect on 28 March 2018.

3.3 Section 7 of the Policy Statement explains that, in assessing the benefit to the public of an allocation of capacity when deciding to make, renew or vary a determination, the Commission is to have regard to the 'reasonable capability criterion' in section 8 and the additional criteria in section 9, when circumstances so warrant under Division 3 of Part 3 of the Policy Statement.

3.4 Under section 14 of the Policy Statement, there is a presumption in favour of the carrier seeking a renewal which may be rebutted only if the carrier has failed to service the route effectively; and there are other applications for some or all of the capacity; and the Commission is satisfied that a different allocation of capacity would be of greater benefit to the public, having regard to the criteria set out in sections 8 and 9 of the Policy Statement.

3.5 Under the 'reasonable capability criterion' in section 8 of the Policy Statement, in assessing the public benefit of an application, the Commission is to have regard to the extent to which all Australian carriers that are, or would be, permitted to use the

capacity allocated under a determination are reasonably capable of: (a) obtaining any licences, permits or other approvals required to operate on and service the route to which the determination relates; and (b) using the capacity allocated under the determination.

3.6 The Commission notes that there are no other applicants seeking capacity on the route and there is no information to suggest that Virgin Australia has failed to service the route effectively. For this reason, the Commission decided to only apply the reasonable capability criterion under section 8 of the Policy Statement and did not consider it necessary to assess the application against the additional criteria in section 9 of the Policy Statement.

3.7 Virgin Australia is the only Australian carrier offering services between Australia and Bangladesh via Singapore, under code share arrangements with Singapore Airlines. While the current air services arrangements preclude the operation of additional services and therefore the introduction of a second Australian carrier on the route, the Commission notes that there are no other Australian airlines seeking capacity to Bangladesh at this time. In light of this, the Commission is satisfied that renewing the capacity allocation in favour of Virgin Australia would be of benefit to the public.

3.8 Subsection 15(1) of the Act allows a determination to include such terms and conditions as the Commission thinks fit. Subsection 19(3) of the Act provides that “[i]n including terms and conditions in the determination, the Commission may make such changes (if any) to the terms and conditions included in the original determination (including adding or deleting terms and conditions) as it is satisfied are warranted because of changes in circumstances since the original determination was made”. Virgin Australia, in its application requested for the retention of all conditions in the Determination sought to be renewed. In light of this, the Commission has decided to issue this fresh determination with the conditions set out below.

4 Determination for renewal of [2014] IASC 119 allocating capacity on the Bangladesh route to Virgin Australia ([2019] IASC 122)

4.1 The Commission allocates to Virgin Australia International Airlines, pursuant to section 8 of the Act, five frequencies per week of capacity in each direction on the Australia-Bangladesh route in accordance with the terms of the Australia – Bangladesh air services arrangements.

4.2 The determination is valid for five years from 25 October 2020.

4.3 The determination is subject to the following conditions:

- (a) Virgin Australia is required to fully utilise the capacity from no later than 31 December 2020 or such other date approved by the Commission.
- (b) Only Virgin Australia is permitted to use the capacity.

(c) Virgin Australia is not permitted to utilise the capacity to provide code share or joint services with another carrier or any other person without the approval of the Commission, except to the extent permitted in condition (d).

(d) The capacity may be used by Virgin Australia to provide code share services with Singapore Airlines in accordance with the code share agreement between Virgin Australia and Singapore Airlines made on 2 February 2012, as amended, and the air services arrangements between Australia and Bangladesh.

(e) Virgin Australia must obtain the Commission's written approval before implementing any variation to the code share arrangement which would change the relevant commercial aspects of the code share arrangement 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 where Australian capacity will be used for services on that route.

(f) To the extent that the capacity is used to provide code share (or joint) 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

(g) 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 – Bangladesh 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 the airline, without the prior consent of the Commission.

Dated: 28 November 2019



IAN DOUGLAS
Chairperson



KAREN GOSLING
Commissioner