



Australian Government

International Air Services Commission

RENEWAL DETERMINATION

Determination:	[2022] IASC 105
Renewal of:	[2017] IASC 105
The Route:	Singapore
The Applicant:	Virgin Australia International Airlines Pty Limited ABN 63 125 580 823
Public Register File:	IASC/APP/202204

The Commission makes a fresh determination allocating to Virgin Australia International Airlines Pty Limited 400 seats per week in each direction on the Singapore route to be used to exercise own stop-over rights between Singapore and Colombo. The determination permits Virgin Australia to code share on services operated by Singapore Airlines to Colombo via Singapore. The determination is valid for five years from 28 March 2023.

1 The application for renewal

1.1 On 27 April 2017, the International Air Services Commission (the Commission) issued Renewal Determination [2017] IASC 105 (the Determination) in favour of Virgin Australia International Airlines Pty Ltd (Virgin Australia) renewing the allocation of 400 seats of capacity per week in each direction to be used to exercise own stop-over rights between Singapore and Colombo in accordance with the Australia-Singapore air services arrangements. The Determination is valid for five years from 28 March 2018 and permits Virgin Australia to code share on services operated by Singapore Airlines to Colombo 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 original determination. The Determination is due to expire on 27 March 2023. In view of this, the Commission sent, on 10 December 2021, a letter to Virgin Australia inviting it to apply for renewal if it wished to renew the Determination.

1.3 On 13 January 2022, Virgin Australia applied to the Commission for a renewal of the Determination for a further five-year period and also requested the retention of all relevant conditions.

1.4 As required by sections 12 and 17 of the Act, the Commission published, on 14 January 2022, a notice on its website and subsequently sent a notification by email to

stakeholders inviting other applications on the route. No applications or submissions were received.

1.5 All non-confidential material supplied by the applicant is available on the Commission's website (www.iasc.gov.au).

2 Air services arrangements

2.1 Under the Australia-Singapore air services arrangements, when exercising traffic rights between Singapore and Colombo in either direction, designated carriers of Australia are restricted to 1,200 seats per week in each direction on an own stop-over basis. Virgin Australia has been allocated 400 seats per week in each direction, which is currently the subject of this renewal application. Qantas has a total allocation of 600 weekly seats, leaving 200 weekly seats available for allocation

2.2 Additionally, designated Australian carriers may enter into unrestricted codeshare, blocked space or other cooperative marketing arrangements with any other airline, including airlines of third parties.

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. Subsection 8(2) provides in part that 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 Pursuant to 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 14 of the Policy Statement applies where the Commission is proposing to make a fresh determination under section 8 of the Act, and is considering whether the allocation of capacity in the original determination is no longer of benefit to the public for the purpose of section 8(2)(a)(i) of the Act. Subsection 14(2) of the Policy Statement provides that, without limiting the matters to which the Commission may have regard, an allocation is generally no longer of benefit to the public if:

- the carrier has failed to service the route effectively [s 14(2)(a)]; and
- there are other applications for some or all of the capacity [s 14(2)(b)]; 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 [s 14(2)(c)].

3.4 The Commission notes that, under subsection 14(2) of the Policy Statement, an allocation will generally no longer be of benefit to the public where all of the above conditions are satisfied.

3.5 There are no other applications for some or all of the capacity to which the determination in question relates, and therefore the condition in section 14(2)(b) of the Policy Statement is not satisfied. The Commission therefore finds that the proposed allocation does not fall within the class of allocations that are generally no longer of benefit to the public contemplated by subsection 14(2) of the Policy Statement.

3.6 However, subsection 14(2) of the Policy Statement operates ‘without limiting the matters to which the Commission may have regard’. In view of the circumstances pertaining to the COVID-19 pandemic, the Commission has proceeded to consider whether the allocation is no longer of benefit to the public in all the circumstances.

3.7 On 11 March 2020, the World Health Organization declared the outbreak of COVID-19 (coronavirus) a pandemic. In response the Australian Government introduced a range of health, financial and other measures to minimise the number of people becoming infected or sick with COVID-19.

3.8 In this context, on 24 March 2020 the Prime Minister announced that the Government was introducing a ‘do not travel’ ban on Australians travelling overseas under the Biosecurity Act 2015. This ban was intended to limit travellers returning to Australia with coronavirus and to reduce the risks of spreading the coronavirus to other countries. The Prime Minister’s media statement indicated that the prohibition was aligned with the Government’s decision to raise the Smartraveller Travel Advice to Level 4 – “Do not go overseas. A travel ban is in place.” On 27 October 2021, the Government announced it would lift the international travel ban for certain categories of travellers from 01 November 2021, subject to certain conditions.¹ On 7 February 2022, the Prime Minister announced that Australian international borders would re-open from 21 February 2022.²

3.9 In assessing the current Virgin Australia application for the renewal of its capacity allocation of 400 seats per week in each direction of passenger capacity on the Singapore route, the Commission considered whether Virgin Australia has failed to service the route effectively.

3.10 Until travel restrictions linked to the COVID-19 pandemic were imposed by the Australian Government in March 2020, the Virgin Australia Group was offering code share seats as marketing carrier on flights operated by Singapore Airlines to Colombo (via Singapore) in accordance with the Australia-Singapore air services

¹ <https://www.pm.gov.au/media/interview-david-koch-and-natalie-barr-sunrise-0>

² <https://www.pm.gov.au/media/reopening-tourists-and-other-international-travellers-secure-our-economic-recovery>

arrangements. Prior to March 2020, there was no information to suggest that Virgin Australia has failed to service the Australia-Singapore route effectively.

3.11 The Commission notes that airlines globally have also been operating reduced networks in response to the impact of the COVID-19 pandemic on travel demand. This has affected the ability of Australian carriers to offer code share services in some international markets.

3.12 The Commission considers that the temporary suspension of the use of the capacity by Virgin Australia in 2020 and 2021 was in response to the COVID-19 travel restrictions. The Commission therefore finds that Virgin Australia's temporary suspension of the use of the capacity does not mean that the airline has failed to service the route effectively.

3.13 The Commission has also considered the 'reasonable capability criterion' in section 8 of the Policy Statement, i.e. 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.

3.14 The Commission notes that Virgin Australia is an established carrier which, under normal circumstances, operates scheduled international services on various routes and finds that the carrier is reasonably capable of obtaining the necessary regulatory approvals and of using the capacity allocated on the Australia-Singapore route.

3.15 There is no other information before the Commission that it considers to be relevant or material to its assessment of Virgin Australia's application. Based on its findings above, the Commission is not satisfied that the allocation of capacity in the original determination is no longer of benefit to the public for the purposes of section 8(2)(a)(i) of the Act. Therefore, the Commission is required to make the same allocation of capacity as the original determination (see section 8(2)(a) of the Act).

3.16 The Commission will continue to monitor the utilisation of capacity by the Virgin Australia Group on this route.

3.17 Under section 19 of the Act, the Commission "must include the same terms and conditions as the original determination to which it relates" (s 19(1)(c)), but "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" (s 19(3)).

3.18 Pursuant to section 19 of the Act, the Commission has decided to include certain conditions as set out in item 4 below.

3.19 Nothing in this decision should be taken as indicating either approval or disapproval by the Australian Competition and Consumer Commission (ACCC). This decision is made without prejudicing, in any way, possible future consideration of code

share operations by the ACCC.

4 Determination allocating capacity on the Singapore route to Virgin Australia International Airlines Pty Ltd ([2022] IASC 105)

4.1 In accordance with section 8 of the Act, the Commission makes a determination in favour of Virgin Australia International Airlines Pty Ltd, allocating 400 seats per week in each direction on the Singapore route to be used to exercise own stop-over rights between Singapore and Colombo in accordance with the Australia - Singapore air services arrangements. This capacity allocation is subject to the conditions set out below.


4.2 The determination is valid for five years from 28 March 2023.

4.3 The determination is subject to the following conditions:

- (a) Virgin Australia is required to fully utilise the capacity from the date this determination comes into effect or such other date as may be approved by the Commission.
- (b) Only Virgin Australia is permitted to utilise the capacity.
- (c) Virgin Australia is not permitted to utilise the capacity to provide code share or joint services with another Australian carrier or any other carrier unless approved by the Commission;
- (d) As approved by the Commission, 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 12 February 2012, as amended.
- (e) Virgin Australia must apply to the Commission for approval of the use of the capacity if there are variations 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, 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 Virgin Australia 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 - Singapore 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: 11 February 2022


GENEVIEVE BUTLER
Chairperson


JANE MCKEON
Commissioner