



Australian Government

International Air Services Commission

DETERMINATION

Determination: [2022] IASC 122
The Route: Fiji
The Applicant: Virgin Australia (SE Asia) Pty Limited
(Virgin Australia)
ABN 79 097 892 389
Public Register File: IASC/APP/202240

The Commission makes a determination allocating to Virgin Australia (SE Asia) Pty Ltd 11 seats of passenger capacity per week in each direction on the Fiji route. The determination is valid for five years from 22 November 2022.

1 The application for capacity

1.1 On 18 October 2022, Virgin Australia applied to the International Air Services Commission (the Commission) for an allocation of 11 seats per week in each direction to operate passenger services on the Fiji route. In its application, Virgin Australia stated that the capacity will be utilised to operate an additional service per week using B737-800 aircraft, increasing its services from 24 services to 25 services per week during peak periods.

1.2 Virgin Australia has requested the capacity allocation on the following basis:

- the capacity may be utilised by Virgin Australia;
- the allocation is requested for a period of five years from the date of the determination; and
- the capacity will be fully utilised by 31 December 2022.

1.3 In accordance with section 12 of the *International Air Services Commission Act 1992* (the Act), on 20 October 2022, the Commission published Virgin Australia's application on the Commission's website inviting other applications for capacity on the Fiji route. No other applications were received.

1.4 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 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).

2.2 Under the Australia-Fiji air services arrangements, Australian designated airlines may operate up to 6,900 seats of passenger capacity per week in each direction between Fiji and the following points in Australia: Sydney, Melbourne, Brisbane and/or Perth. Additionally, the designated airlines of Australia may determine the frequency of service, capacity and aircraft type to be operated on the specified routes to or from points in Australia other than Sydney, Melbourne, Brisbane and/or Perth.

2.3 Virgin Australia has been allocated a total of 4,389 seats of passenger capacity per week to operate services to and from Sydney, Melbourne, Brisbane and/or Perth, and unlimited capacity to and from all other points in Australia. Qantas has a total allocation of 2,499 seats of passenger capacity per week in each direction to operate services to and from Sydney, Melbourne, Brisbane and/or Perth, and unlimited capacity to and from all other points in Australia.

2.4 According to the Register of Available Capacity, there are 12 seats of passenger capacity per week in each direction available for allocation to Australian designated airlines to operate services to and from Sydney, Melbourne, Brisbane and/or Perth.

3 Commission's consideration

3.1 Subsection 12(3) of the Act allows any person to apply to the Commission for a determination allocating capacity to enable an Australian carrier to operate international air services. Virgin Australia is seeking the allocation of 11 seats of passenger capacity per week in each direction to enable it to operate 25 services per week during peak periods.

3.2 Subsection 7(1) of the Act empowers the Commission to make a determination allocating available capacity. Subsection 7(2) requires, in part, that the Commission's determination must not allocate capacity unless the Commission is satisfied that the allocation would be of benefit to the public and would not be contrary to any restrictions on capacity contained in bilateral arrangements, or combination of bilateral arrangements.

3.3 Further, Subsection 7(3) of the Act provides that in assessing the benefit to the public of an allocation of capacity, the Commission must apply the criteria set out in the policy statement made by the Minister pursuant to section 11 of the Act.

3.4 Under Section 11 of the Act, the Minister made the International Air Services Commission Policy Statement 2018 (the Policy Statement) which came into effect on 28 March 2018. The Policy Statement sets out the criteria which the Commission is required to apply in assessing the benefit to the public of allocations of capacity.

3.5 The Commission notes that there are no other applicants seeking capacity on the route and no opposition to the application. Section 12 of the Policy Statement provides, in

part, that in circumstances where there is only one applicant for allocation of capacity on a route, and there is no opposition to the application, the Commission is to have regard to the 'reasonable capability criterion' in section 8 of the Policy Statement and need not have regard to any other matter.

3.6 Under the reasonable capability criterion in section 8 of the Policy Statement, the Commission is required to assess 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 licenses, 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.

3.7 The Commission notes that Virgin Australia is an established carrier that currently operates services between Australia and Fiji. Accordingly, the Commission has concluded that the carrier satisfies the criteria under section 8. The Commission, therefore, has decided to allocate the capacity as requested by Virgin Australia.

3.8 Section 15 provides that the Commission may include in a determination such terms and conditions as it thinks fit. Section 15 also provides for certain conditions to be included in a determination. In light of this, the Commission has decided to issue this determination subject to the conditions set out in Item 4 below.

3.9 Paragraph 15(2)(a) of the Act requires a determination to specify the period during which it is to be in force. Subsection 15(3) of the Act effectively provides that if the Policy Statement sets out how the period of validity of the determination is to be fixed, then the period of validity is as so fixed. In any other case, an interim determination is to be in force for three years while a determination that is not an interim determination is to be in force for five years.

3.10 Section 20 of the Policy Statement sets out how the Commission is to fix the period during which a determination is to be in force. The Commission considers that this application is within the scope of subsection 20(4) and has decided that this determination is to be in force for a period of five years.

4 Determination allocating capacity on the Fiji route to Virgin Australia Airlines (SE Asia) Pty Ltd ([2022] IASC 122)

4.1 In accordance with section 7 of the Act, the Commission makes a determination in favour of Virgin Australia (SE Asia) Pty Ltd, allocating 11 seats of capacity per week in each direction on the Fiji route in accordance with the Australia – Fiji air services arrangements.

4.2 The determination is valid for five years from 22 November 2022.


4.3 The determination is subject to the following conditions:

- (a) Virgin Australia (SE Asia) Pty Ltd is required to fully utilise the capacity from no later than

31 December 2022 or such other date approved by the Commission.

- (b) Only Virgin Australia (SE Asia) Pty Ltd is permitted to utilise the capacity.
- (c) Virgin Australia (SE Asia) Pty Ltd is not permitted to utilise the capacity to provide code share or joint services with another carrier or any other person unless approved by the Commission.
- (d) Changes in relation to the ownership and control of Virgin Australia (SE Asia) Pty Ltd are permitted except to the extent that any change:
 - results in the designation of the airline as an Australian carrier under the Australia — Fiji 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 (SE Asia) Pty Ltd or be in a position to exercise effective control of Virgin Australia (SE Asia) Pty Ltd without the prior consent of the Commission.

Dated: 22 November 2022


Genevieve Butler
Chairperson


Jane McKeon
Commissioner