



Australian Government

International Air Services Commission

DECISION

Decision: [2024] IASC 207
Variation Of: [2021] IASC 117
The Route: Samoa
The Applicant: Virgin Australia International Airlines Pty Limited
(Virgin Australia) (ABN 63 125 580 823)
Public Register File: IASC/APP/202431

The Commission varies Determination [2021] IASC 117, to increase the capacity allocation to Virgin Australia International Airlines Pty Limited (Virgin Australia) by 30 seats on the Samoa route. The decision is valid for the duration of Determination [2021] IASC 117 commencing from the date of issue of this decision.

1 The application

1.1 On 16 September 2024, Virgin Australia applied to the International Air Services Commission (the Commission) seeking to vary Determination [2021] IASC 117 (the Determination), to increase the capacity allocated under the Determination.

1.2 The Determination allocates to Virgin Australia 880 seats of capacity per week in each direction on the Samoa route, subject to certain conditions.

1.3 In its application, Virgin Australia stated that due to the airline's fleet reconfiguration program, the capacity on the Boeing 737 aircraft used to operate up to 5 services per week on the Samoa route will increase from 176 seats to 182 seats. Virgin Australia seeks a variation to increase the capacity allocated by 30 seats per week in each direction on the Samoa route.

1.4 In accordance with section 22 of the *International Air Services Commission Act 1992* (the Act), the Commission published, on 18 September 2024, a notice inviting submissions about the application for variation. No 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 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 According to the Register of Available Capacity, there are 76 seats of capacity per week available for allocation to Australian designated airlines to operate passenger services between Australia and Samoa.

3 The Commission's consideration

3.1 An Australian carrier to whom a determination is issued may, at any time, apply to the Commission to vary the determination under section 21 of the Act. Under subsection 10(2) of the Act, the Commission must conduct a review of a determination if an Australian carrier applies for a variation of a determination under section 21 of the Act. However, before conducting a review under section 10 of the Act, the Commission must by notice, invite submissions about the review of the determination as required by section 22 of the Act.

3.2 Subsection 24(1) of the Act provides that the Commission must, having conducted a review to decide an application for variation (other than a transfer application), make a decision either: a) confirming the determination or b) varying the determination in a way that gives effect to the variation requested in the application.

3.3 Subsection 24(2) of the Act 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 unless the Commission is satisfied that the allocation, as so varied, would be of benefit to the public.

3.4 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 of the Act.

3.5 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.

3.6 Section 17 of the Policy Statement provides that, if the Commission does not receive submissions opposing the variation requested in the application then, in assessing whether the allocation, as so varied, would be of benefit to the public for the purpose of subsection 24(2) of the Act, the Commission is to have regard to the 'reasonable capability criterion' set out in section 8 of the Policy Statement and need not have regard to any other matter.

3.7 'Reasonable capability criterion' is defined in section 8 of the Policy Statement to mean the extent to which Australian carriers are reasonably capable of: a) obtaining

the necessary approvals to operate on and service the route, and b) using the capacity allocated under the Determination.

3.8 The Commission notes that it has received no submissions opposing the variation sought in Virgin Australia's application. It has therefore assessed the application against the 'reasonable capability criterion' as set out in section 8 of the Policy Statement.

3.9 The Commission notes that Virgin Australia is an established Australian international carrier that currently operates international services on the Australia-Samoa route, and therefore finds that the airline is reasonably capable of obtaining the necessary regulatory approvals and of using the capacity allocated under the Determination.

3.10 Having considered the criteria set out in section 17 of the Policy Statement, the Commission is satisfied that the allocation, as proposed to be varied, would be of benefit to the public. Therefore, in accordance with section 24(1) of the Act, the Commission varies the Determination to give effect to the variation as requested in Virgin Australia's application.

4 Decision varying Determination [2021] IASC 117 which allocates capacity to Virgin Australia International Airlines Pty Limited on the Samoa route ([2024] IASC 207)

4.1 In accordance with section 25 of the Act, the Commission varies Determination [2021] IASC 117 which allocates capacity to Virgin Australia International Airlines Pty Limited on the Samoa route, by increasing the total capacity allocation from 880 seats of passenger capacity to 910 seats of passenger capacity.

4.2 This decision comes into effect from the date of issue and is valid for the duration of Determination [2021] IASC 117.

Dated: 17 October 2024



Genevieve Butler
Chairperson



Jane McKeon
Commissioner