



Australian Government

International Air Services Commission

DETERMINATION

Determination: [2016] IASC 107
The Route: Hong Kong
The Applicant: Virgin Australia International Airlines Pty Ltd
(Virgin Australia)
ABN 63 125 580 823
Public Register: IASC/APP/201628

The Commission's delegate makes a determination allocating to Virgin Australia International Airlines Pty Ltd seven frequencies per week of capacity on the Hong Kong route. The determination is valid for five years.

1 The application

1.1 On 31 May 2016, Virgin Australia applied to the International Air Services Commission (the Commission) for an allocation of seven frequencies per week on the Hong Kong route. As part of a proposed alliance with the HNA Aviation Group Co. Ltd, Virgin Australia intends to commence a daily service between an Australian major gateway airport and Hong Kong. The flights will be operated from 1 June 2017 with Airbus 330-200 aircraft configured with 275 seats.

1.2 As required by section 12 of the *International Air Services Commission Act 1992* (the Act), the Commission published a notice on 1 June 2016 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).

2 Relevant provisions of the air services arrangements

According to the Register of Available Capacity, there are currently a total of 42 frequencies of passenger services between Sydney, Melbourne, Brisbane and Perth and Hong Kong available for immediate allocation. There is no limit on the number of frequencies between all points in Australia other than Sydney, Melbourne, Brisbane and Perth and Hong Kong.

3 Delegate's assessment

3.1 In accordance with section 27AB of the Act and regulation 3A of the International Air Services Commission Regulations 1992, the delegate of the

Commission may consider Virgin Australia's application. (For purposes of this determination, all references to the Commission include the delegate of the Commission.)

3.2 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.

3.3 Under paragraph 6.2 of the Minister's Policy Statement (No. 5) of 19 May 2004 (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 therefore reasonably capable of obtaining the necessary approvals and of implementing its application.

3.5 The Hong Kong route has consistently grown over the last five years, averaging over four percent growth per annum. The route is serviced mainly by two major carriers, Cathay Pacific which has the biggest share of the market with 45.3% and Qantas with 36.2% market share.¹ Certain third country airlines (e.g. British Airways, Finnair, Japan Airlines, Jetairways and Qatar Airways) market flights on the route through code sharing with either Cathay Pacific or Qantas, or both.²

3.6 The Commission considers that the entry of Virgin Australia on this route (with the operation of its own services) would provide more options to Australian travellers and promote further competition on the Australia-Hong Kong route. Currently, Virgin Australia offers services on the Australia-Hong Kong route (via Singapore) under its code share arrangements with Singapore Airlines.³

3.7 In light of the above, the Commission considers allocating capacity to Virgin Australia on the Hong Kong route would be of benefit to the public.

¹ Source: Bureau of Infrastructure, Transport and Regional Economics, data as at April 2016.

² Source: International Airlines Timetable Summary for Northern Summer 2016

³ Ibid.

4 Determination allocating capacity to Virgin Australia International Airlines Pty Ltd on the Hong Kong route ([2016] IASC 107)

4.1 The Commission's delegate allocates, under section 7 of the Act, seven frequencies per week in each direction to Virgin Australia International Airlines Pty Ltd 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 1 June 2017, 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; and
- 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: 17 June 2016



Marlene Tucker
Executive Director
Delegate of the IASC Commissioners