



Australian Government

International Air Services Commission

DETERMINATION

Determination: [2011] IASC 108
The Route: India
The Applicant: Virgin Australia
(ACN 36 090 670 965)
Public Register: IASC/APP/20110715

1 The application

1.1 On 15 July 2011 Virgin Australia applied for an allocation of 1,625 seats of third country code share capacity under the Australia – India air services arrangements. Pending changes to regulatory requirements that will see all of its domestic and international service operated by Virgin Australia before the end of 2011, Virgin Australia International Airlines Pty Ltd, trading as V Australia, (V Australia) is seeking the allocation.

1.2 Virgin Australia plans to offer code share services as a marketing carrier on selected routes operated by Singapore Airlines and/or its wholly owned subsidiary Silk Air between points in Australia and points in India via Singapore. The seats would be sold under a code share arrangement with Singapore Airlines as part of a wider alliance. In a joint application to the Australian and Consumer Commission (ACCC), Virgin and Australia and Singapore Airlines have sought approval to cooperate across a broad range of commercial functions in order to build an integrated alliance. Virgin Australia anticipates that the ACCC will issue its determination before the end of 2011 and if the alliance is approved, Virgin Australia proposes to implement the code share as soon as possible thereafter.

1.3 Virgin Australia has requested the allocation for a period of five years and states that the allocation will be fully used by 31 January 2012.

1.4 On 15 July 2011, the Commission published a notice inviting applications from interested parties for some or all of the capacity sought by Virgin Australia Airlines. No applications were received.

1.5 All material supplied by the applicant is filed on the Commission's Register of Public Documents.

2 Provisions of relevant air services arrangements

Use of the capacity involved in the application is consistent with the provisions of the Australia - India air services arrangements. According to the Register of Available Capacity there are 1625 seats to and from Mumbai, New Delhi, Kolkata, Chennai, Bangalore and Hyderabad for code sharing on services operated by third party airlines.

3 Delegate's consideration

3.1 In accordance with section 27AB of the *International Air Services Commission Act 1992* (the Act) and regulation 3A of the *International Air Services Commission Amendment Regulations 2003 (No.1)*, the delegate of the Commission may consider the Virgin Australia application.

3.2 Under paragraph 6.2 of the Minister's policy statement, the Commission is required only to apply the criteria in paragraph 4 of the policy statement. Under paragraph 4 the use of entitlements by an Australian carrier that is reasonably capable of obtaining the necessary approvals and of implementing its proposals is of benefit to the public. For an established international carrier such as V Australia, this means that there is public benefit arising from the use of the entitlements.

3.3 The delegate concludes that an allocation to V Australia of 1.625 seats per week in each direction on the India route would be of benefit to the public.

3.4 The Commission notes that implementation of the code share is dependent on authorisation by the ACCC of a strategic alliance agreement between Virgin Australia and Singapore Airlines. The Commission's determination does not prejudice any consideration by the ACCC about the authorisation of the alliance. Should the ACCC decide not to authorise the alliance, then the IASC's determination would be terminated. The Commission will include a condition of approval to this effect.

4 Determination allocating capacity on the India route to V Australia ([2011] IASC 108)

4.1 The delegate, on behalf of the Commission, makes a determination in favour of V Australia allocating 1,625 seats of capacity per week in each direction between Australia and India, from the third party code share seats available to the designated airlines of Australia to and from Mumbai, New Delhi, Kolkata, Chennai, Bangalore and Hyderabad.

4.2 The determination is for five years from the date of this determination.

4.3 The determination is subject to the following conditions:

- V Australia is required to utilise the capacity by no later than 31 January 2012, or from such other date approved by the Commission;

- only V Australia is permitted to utilise the capacity;
- V 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;
- changes in relation to the ownership and control of V Australia are permitted except to the extent that any change:
 - results in the designation of the airline as an Australian carrier under the Australia – India 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 V Australia or be in a position to exercise effective control of V Australia, without the prior consent of the Commission;
- changes in relation to the management, status or location of operations and Head Office of V Australia are permitted except to the extent that any change would result in the airline ceasing to be an airline designated by the Australian Government for the purposes of the Australia – India air services arrangements; and
- if the ACCC does not authorise the strategic alliance agreement between Virgin Australia and Singapore Airlines the determination will be revoked.

Dated: 30 August 2011



Dr Jill Walker
Chairwoman



Stephen Bartos
Member