



Australian Government

International Air Services Commission

DETERMINATION

Determinations: [2012] IASC 104
The Routes: Taiwan
The Applicant: Virgin Australia International Airlines Pty Ltd
(Virgin Australia) (ABN 63 125 580 823)
Public Register: IASC/APP/201206

1 The application

1.1 On 5 March 2012, Virgin Australia applied for an allocation of 1,000 seats of third country code share capacity on the Taiwan route under the Australia – Taiwan air services arrangements. Virgin Australia also applied for authorisation to use the capacity to implement code share services, as a marketing carrier, on flights operated by Singapore Airlines on the Australia – Singapore – Taipei route.

1.2 The proposed arrangements are part of Virgin Australia's cooperation under an integrated network aviation alliance with Singapore Airlines. On 1 December 2011 the Australian Competition and Consumer Commission (ACCC) granted authorisation for Virgin Australia and Singapore Airlines to enter into the alliance. Under the alliance, the airlines will cooperate on all aspects of their Australia – Singapore services, including joint pricing and scheduling and joint marketing and sales.

1.3 Virgin Australia has requested the allocation for a period of five years and indicated that the capacity will be fully used by 29 October 2012.

1.4 The Commission published a notice on 6 March 2012, inviting other applications for capacity. No applications or other comments were received. All public material supplied by the applicant is filed on the Register of Public Documents. Confidential supporting information supplied by Virgin Australia is filed on the Commission's Confidential Register.

2 Provisions of relevant air services arrangements

2.1 The Register of Available Capacity shows that there are 3,879 seats available per week in each direction on the Taiwan route for services to and from Brisbane, Sydney, Melbourne and Perth. Under the Australia – Taiwan air services arrangements, a designated airline of Australia may enter into code sharing arrangements as either the operating or non-operating airline with airlines of third countries within the capacity entitlements set out in the air services arrangements.

3 Commission's consideration

3.1 Virgin Australia is the only applicant for capacity. Under paragraph 6.2 of the

Minister's Policy Statement (No.5), of 19 May 2004, 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. Virgin Australia is an established airline which is clearly capable of obtaining the necessary approvals and implementing the proposed operations. In terms of paragraph 4, this means that there is public benefit arising from the use of the entitlements on each of the routes concerned.

3.2 Section 15(2)(e) of the *International Air Services Commission Act 1992* (the Act) specifies that the Commission must include a condition in determinations stating the extent to which the carrier may use allocated capacity in joint services with another carrier. The Commission notes that paragraph 3.6 of the Minister's policy statement states that "where capacity that can be used for code share operations is available under air services arrangements, including where foreign airlines have rights to code share on services operated by Australian carriers, the Commission would generally be expected to authorise applications for use of capacity to code share". Paragraph 3.6 also provides that if the Commission has serious concerns that a code share or other joint service proposal may not be of benefit to the public, it may subject the proposal to more detailed consideration using the paragraph 5 public benefit criteria. Before doing so, it must consult with the Australian Competition and Consumer Commission (ACCC).

3.3 In this case, in authorising the integrated network aviation alliance between Virgin Australia and Singapore Airlines, the ACCC concluded that the alliance is likely to lead to increased competition for international air passenger services. The ACCC also expressed the view that the alliance is unlikely to be significantly anti-competitive in any of the relevant markets.

3.4 The Commission has taken account of this decision by the ACCC to authorise the conduct. Accordingly, the Commission will not subject the proposals to the paragraph 5 criteria in the Minister's policy statement.

4 Determination allocating capacity on the Taiwan route to Virgin Australia [2012] IASC 104

4.1 The Commission makes a determination in favour of Virgin Australia, allocating 1,000 seats per week of capacity in each direction on the Taiwan route under the Australia – Taiwan 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 29 October 2012, or from such other date approved by the Commission;
- only Virgin Australia is permitted to utilise 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;
- 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 3 February 2012; or
 - any subsequent code share agreement between Virgin Australia and Singapore Airlines, whether or not it replaces the existing agreement, with the prior approval of the Commission;
- under the arrangements with Singapore Airlines, Virgin Australia may only price and market its services on the route jointly with Singapore Airlines as long as such practices are authorised under the *Competition and Consumer Act 2010*;
- to the extent that the capacity is used to provide joint services on the route, nothing in this determination exempts Virgin Australia from complying with the Australian Consumer Law. Virgin Australia is required to take all reasonable steps to ensure that passengers are informed, at the time of booking, of the carrier actually operating;
- 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 – Taiwan 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; and
- changes in relation to the management, status or location of operations and Head Office of Virgin 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 – Taiwan air services arrangements.

Dated: March 2012



Jill Walker
Chairwoman



Stephen Bartos
Member

