



Australian Government

International Air Services Commission

RENEWAL DETERMINATION

Determination: [2017] IASC 105
Renewal of: [2013] IASC 121
The Route: Singapore
The Applicant: Virgin Australia International Airlines Pty Ltd
(Virgin Australia)
(ABN 63 125 580 823)
Public Register: IASC/APP/201710

The Commission makes a fresh determination allocating to Virgin Australia 400 seats per week of capacity on the Singapore route to be used to exercise own stop-over rights between Singapore and Colombo. The determination permits Virgin Australia to code share on services operated by Singapore Airlines to Colombo via Singapore.

1 The application for renewal

1.1 On 28 March 2013, the Commission's delegate issued Determination [2013] ASC 121 (the Determination) allocating to Virgin Australia 400 seats per week of capacity on the Singapore route to be used for exercising own stop-over rights between Singapore and Colombo. The Determination permits Virgin Australia to code share on services operated by Singapore Airlines to Colombo via Singapore in accordance with the Australia-Singapore air services arrangements.

1.2 Under section 17 of the *International Air Services Commission Act 1992* (the Act), the Commission must start its consideration of the renewal of a determination at least 12 months before the expiry of the Determination. The Determination expires on 27 March 2018. In view of this, the Commission sent, on 16 March 2017, a letter to Virgin Australia inviting it to apply for renewal if it wished to renew the Determination

1.3 On 31 March 2017, Virgin Australia expressed its interest to renew Determination [2013] IASC 121 including the conditions permitting Virgin Australia to code share on the Australia-Singapore-Colombo route on flights operated by Singapore Airlines.

1.4 As required by sections 12 and 17 of the *International Air Services Commission Act 1992* (the Act), the Commission published a notice on 31 March 2013 inviting other applications for the capacity. No response was received in relation to the Virgin Australia application. It is noted, however, that Qantas has separately applied for renewal of its allocation of 300 seats per week to be able to offer code share services on flights offered by Emirates and SriLankan Airlines between Singapore and Colombo.

1.5 All non-confidential material supplied by the applicant is available on the Commission's website (www.iasc.gov.au).

2 Relevant provisions of the air services arrangements

2.1 Under the Australia-Singapore air services arrangements, Australian carriers may enter into unrestricted codeshare, blocked space or other cooperative marketing arrangements with any other airline, including airlines of third parties.

2.2 When exercising traffic rights between Singapore and Colombo in either direction, Australian carriers are restricted to 1,200 seats per week in each direction on an own stop-over basis.

3 Commission's consideration

3.1 In considering an application for renewal of a determination under section 8 of the Act, the Commission must make the same allocation of capacity as the original determination unless the Commission is satisfied that the allocation is no longer of benefit to the public. 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.

3.2 Under paragraph 6.2 of the Minister's Policy Statement (No. 5) (the Policy Statement) issued on 19 May 2004, pursuant to section 11 of the Act, 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.

3.3 The Commission notes that:

- there are no other applicants contesting the capacity being renewed; and
- Virgin Australia is an established international carrier and is therefore reasonably capable of obtaining the necessary approvals to operate on the route and of implementing its proposed services.

3.4 Under paragraph 8.1 of the Policy Statement, there is a presumption in favour of the carrier seeking the renewal which may be rebutted only in the following circumstances: (1) that the carrier seeking renewal has failed to service the route effectively; and (2) that the use of the capacity in whole or in part by another Australian carrier that has applied for the capacity would better serve the public having regard to the criteria in paragraphs 4 and 5 of the Policy Statement.

3.5 The Commission has no information that Virgin Australia has failed to service the route effectively or that another carrier is interested to apply for the capacity sought to be renewed.

3.5 In light of the above, the Commission considers it is of benefit to the public to renew

the allocation of 400 seats per week of capacity in favour of Virgin Australia to be used to exercise own stop-over rights between Singapore and Colombo.

3.6 In relation to the application to use the capacity for code sharing with Singapore Airlines, the Commission notes that paragraph 3.6 of the Policy Statement empowers the Commission to apply the additional criteria in paragraph 5 if it has serious concerns that the code share may not be of benefit to the public. However, before doing so, the Commission is required to consult the Australian Competition and Consumer Commission (ACCC). The Commission does not have such concerns and therefore has not applied the paragraph 5 criteria and did not specifically consult the ACCC.

3.7 The Commission notes that there are no direct services between Australia and Sri Lanka. However, there are a range of alternative hubs and other airlines available for passengers wishing to travel from points in Australia to Colombo. Both Virgin Australia and Qantas offer code share services between Australia and Colombo via Singapore.

3.8 The Commission further notes that the ACCC re-granted, on 23 September 2016, authorisation for the Virgin Australia Group and Singapore Airlines to continue their existing airline alliance for a further period of five years. Under the alliance, Virgin Australia and Singapore Airlines are able to coordinate their operations and code share on each other's regular air passenger transport networks. It does not, however, include sharing or pooling of revenue.

3.9 The Commission considers that the continued code share arrangements between Virgin Australia and Singapore Airlines on the Australia-Singapore-Colombo route would provide more options to Australian passengers travelling on the route. In this regard, the Commission is of the view that it would be of public benefit to permit the continued code share arrangements between Virgin Australia and Singapore Airlines on the Australia-Singapore-Colombo route and vice versa.

3.10 Under paragraph 15(2)(e) of the Act, the Commission must include a condition in determinations stating the extent to which the carrier may use that capacity in joint services with another carrier. In this regard, the Commission has decided to include a condition permitting the use of the capacity for the provision of code share services between Virgin Australia and Singapore Airlines on the Australia-Singapore-Colombo route. A copy of the code share agreement between Virgin Australia and Singapore Airlines has been provided to the Commission.

3.11 Nothing in this decision should be taken as indicating either approval or disapproval by the ACCC. This decision is made without prejudicing, in any way, possible future consideration of code share operations by the ACCC.

4 Determination allocating capacity on the Singapore route to Virgin Australia ([2017] IASC 105)

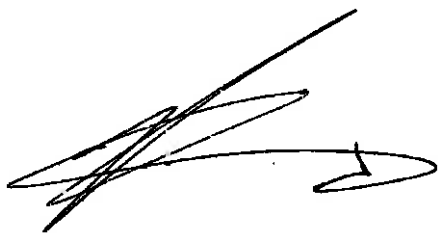
4.1 Pursuant to section 8 of the Act, the Commission makes a determination in favour of Virgin Australia allocating 400 seats per week of capacity on the Singapore route to be used to exercise own stop-over rights between Singapore and Colombo in accordance with the Australia-Singapore air services arrangements, subject to the conditions set out below.

4.2 The determination is for five years from 28 March 2018.

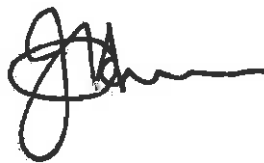
4.3 The determination is subject to the following conditions:

- Virgin Australia is required to fully utilise the capacity from no later than 28 March 2018, or from such other date approved by the Commission;
- 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 12 February 2012, as amended;
- Virgin Australia must apply to the Commission for approval of the use of the capacity if there are variations to the code share arrangement which would change the relevant commercial aspects of the code share arrangement from a free sale code share arrangement to a block space, or vice versa, or if Virgin Australia proposes to add third country routes on which the airlines will code share where Australian capacity will be used for services on that route;
- to the extent that the capacity is used to provide code share (or joint) services, the airlines must take all reasonable steps to ensure that passengers are informed of the carrier actually operating the flight at the time of booking. Nothing in this determination exempts Virgin Australia from complying with the Australian Consumer Law; 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 – Singapore 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: 27 April 2017

A handwritten signature in black ink, consisting of several overlapping, sweeping strokes that form a stylized representation of the name Ian Douglas.

IAN DOUGLAS
Chairperson

A handwritten signature in black ink, featuring a large, circular initial 'JH' followed by a series of smaller, connected loops and a horizontal tail stroke.

JAN HARRIS
Commissioner