



Australian Government

International Air Services Commission

DECISION

Decision: [2016] IASC 201
Variation of: [2014] IASC 116
The Route: United Arab Emirates
The Applicant: Virgin Australia International Airlines Pty Ltd
(Virgin Australia) ABN 63 125 580 823
Public Register File: IASC/APP/201602

The Commission's delegate varies Determination [2014] IASC 116 to permit Alitalia to code share on services operated by Virgin Australia International Airlines Pty Ltd between Australia and the United Arab Emirates route.

1 The application

1.1 On 11 April 2016, Virgin Australia applied for a variation to Determination [2014] IASC 116 (the Determination) to permit the use of the capacity for code share services with Alitalia on the United Arab Emirates route. The Determination allocates three frequencies per week of passenger capacity in each direction on the route in accordance with the terms of the Australia- United Arab Emirates air services arrangements.

1.2 As required under section 22 of the *International Air Services Commission Act 1992* (the Act), the Commission published a notice on 11 April 2016, inviting submissions about the application for variation. No submissions were received. All non-confidential material supplied by the applicant is available on the Commission's website, www.iasc.gov.au.

2 Air services arrangements

The Australia – United Arab Emirates air services arrangements allow designated Australian airlines to enter into code-sharing arrangements, as marketing and/or operating airline, with any other airline. Third country code sharing is unrestricted.

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 the application for variation. (For purposes of this decision, all references to the Commission include the delegate of the Commission).

3.2 Virgin Australia's application seeks to vary the Determination to include a condition of a kind referred to in paragraph 15(2)(e) of the Act. In view of this, the application is a transfer application as so defined in subsection 4(1) of the Act and has been assessed in accordance with section 25.

3.3 Subsection 25(1) provides that the Commission must make a decision varying the determination in a way that gives effect to the variation requested, subject to subsection 25(2). Subsection 25(2) 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 if the Commission is satisfied that the allocation, as so varied, would not 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.

3.5 Paragraph 6.3 of the Minister's Policy Statement (No. 5) of 19 May 2004 (the Policy Statement) provides that, subject to paragraph 6.4, where a carrier requests a variation of a determination to allow it flexibility in operating its capacity, including to use the Australian capacity in a code share arrangement with a foreign carrier, and no submission is received about the application, only the criteria in paragraph 4 of the Policy Statement are applicable. (Paragraph 6.4 provides, in part, that the Commission may apply the criteria in paragraph 5 in the circumstances set out in paragraph 3.6 of the Policy Statement.)

3.6 Under paragraph 4 of the Policy Statement, the use of entitlements by Australian carriers under a bilateral arrangement is of benefit to the public unless such carrier is not reasonably capable of obtaining the necessary approvals to operate on the route and of implementing its application. The Commission notes that Virgin Australia is an established international carrier which is clearly capable of obtaining the necessary approvals and of implementing its proposal. This means that there is public benefit arising from the use of the entitlements.

3.7 Under paragraph 3.6 of the Policy Statement, 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. However, if the Commission has serious concerns that a code share application (or other joint service proposal) may not be of benefit to the public, it may subject the application to more detailed assessment using the additional criteria set out in paragraph 5 (whether the application is contested or not). Before doing so, the Commission will consult with the Australian Competition and Consumer Commission (the ACCC).

3.8 The Commission does not have serious concerns that Virgin Australia's use of the capacity on the United Arab Emirates under code share arrangements with Alitalia may not be of benefit to the public. In light of this, the Commission did not specifically consult the ACCC.

3.9 Under the code share arrangement, Virgin Australia would be able to market Alitalia-operated flights between Abu Dhabi and various points in Italy. In the same manner, Alitalia would be able to market flights operated by Virgin Australia between points in Australia and Abu Dhabi. In the delegate's view, this will provide more travel options to Australians traveling to Italy. Likewise, Australian tourism could benefit from Alitalia's ability to market Virgin Australia-operated flights to various points in Australia.

3.10 In light of the above, the Commission's delegate does not have concerns that the code share application may not be of benefit to the public.

3.11 Subsection 15(1) of the Act empowers the Commission to include such terms and conditions as it thinks fit. Paragraph 15(2)(e) requires the inclusion of a condition stating the extent to which the carrier may use that capacity in joint services with another carrier.

3.12 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 Decision varying Determination [2014] IASC 116 allocating capacity to Virgin Australia on the United Arab Emirates route ([2016] IASC 201)

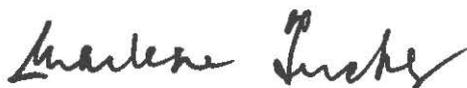
4.1 In accordance with section 25 of the Act, the delegate, on behalf of the Commission, varies Determination [2014] IASC 116 which allocates capacity to Virgin Australia International Airlines Pty Ltd on the United Arab Emirates route, by:

adding the following conditions to the Determination:

- “the capacity may be used by Virgin Australia to provide code share services with Alitalia in accordance with the code share agreement between Virgin Australia and Alitalia dated 1 April 2016, as amended;
- Virgin Australia must apply to the Commission for approval of any proposed variations to the code share arrangement which would change the relevant commercial aspects of the respective code share arrangements 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;
- under any code share agreement with Alitalia, Virgin Australia must price and sell its services on the route independently of Alitalia and must not share or pool revenues on the route with Alitalia unless such practices are authorised under the *Competition and Consumer Act 2010*;

4.2 The variation takes effect on the date of this instrument.

Dated: 27 April 2016



Marlene Tucker
Executive Director
Delegate of the IASC Commissioners