



Australian Government

International Air Services Commission

DETERMINATION

Determination: [2012] IASC 105
The Route: Netherlands
The Applicant: Virgin Australia International Airlines Pty Ltd
(Virgin Australia)
(ABN 36 090 670 965)
Public Register: IASC/APP/201213

1 The application

1.1 On 26 June 2012 Virgin Australia applied for an allocation of 400 seats per week of capacity under the Australia – Netherlands air services arrangements. Virgin Australia plans to implement code share services on selected flights operated by Singapore Airlines on the Australia – Singapore – Amsterdam route.

1.2 Virgin Australia has requested the allocation for a period of five years and states that the allocation will be fully used by 24 March 2013.

1.3 On 26 June 2012, the Commission published a notice inviting applications from interested parties for some or all of the capacity sought by Virgin Australia. No applications were received.

1.4 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 - Netherlands air services arrangements. According to the Register of Available Capacity there are 600 seats per week in total in each direction for airlines to carry out services through code share arrangements.

3 Commission's consideration

3.1 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 Virgin Australia, this means that there is public benefit arising from the use of the entitlements.

3.2 The Commission concludes that an allocation to Virgin Australia of 400 seats per week in each direction on the Netherlands route for code share services would be of benefit to the public.

3.3 The Commission notes that it holds a copy of the confidential code share agreement between Australia and Singapore Airlines dated 3 February 2012.

4 Determination allocating capacity on the Netherlands route to Virgin Australia ([2012] IASC 105)

4.1 The Commission makes a determination in accordance with section 7 of the Act, in favour of Virgin Australia allocating 400 seats of capacity per week in each direction between Australia and the Netherlands, from the code share seats available to designated airlines.

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

4.3 The determination is subject to the following conditions:

- Virgin Australia is required to fully utilise the capacity from no later than 24 March 2013, 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 – Netherlands 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 – Netherlands air services arrangements.

Dated: 12 July 2012



Jill Walker
Chairwoman



Stephen Bartos
Member

