



Australian Government

International Air Services Commission

DECISION

Decision: [2012] IASC 204
The Route: Indonesia
Variation of: [2008] IASC 120, [2009] IASC 103, [2009] IASC 105,
[2009] IASC 113, [2010] IASC 109, and [2011] IASC 110
The Applicant: Virgin Australia Airlines Pty Ltd
(ABN 36 090 670 965) (Virgin Australia)
Public Register File: IASC/APP/201204

1 The application

1.1 On 23 February 2012, Virgin Australia applied to transfer to Virgin Australia International Airlines Pty Ltd (Virgin Australia International) the 8,560 seats per week of capacity under Determinations [2008] IASC 120, [2009] IASC 103, [2009] IASC 105, [2009] IASC 113, [2010] IASC 109, and [2011] IASC 110 and the unlimited capacity allocated under Determination [2009] IASC 106. The proposed transfer would occur within an established airline group.

1.2 In its application Virgin Australia indicated that they are implementing a new structure for the Virgin group of airlines which is designed to ensure ongoing compliance with the *Air Navigation Act 1920* which limits foreign ownership of Australian international airlines to 49 per cent. Virgin Australia's application also indicated that the transfer of capacity on the Indonesia route to Virgin Australia International would preserve their ability to access rights under the Australia – Indonesia air services arrangements as an Australian designated carrier.

1.3 The Commission published a notice on 28 February 2012 inviting submissions about the transfer application. Submissions were received from Qantas and the Department of Infrastructure and Transport.

1.4 In its submission, Qantas requested that the Commission undertake a comprehensive public review to confirm that Virgin Australia International Holdings, the holding company of Virgin Australia International in the new Virgin structure, will, at all times in the future, be in a position to comply with the requirements to be designated as an Australian carrier under the relevant air services arrangements.

1.5 In its submission, the Department of Infrastructure and Transport noted that the Virgin Australia application is a routine application for the transfer of capacity from one Virgin group entity to another. The Department also advised that, should an unacceptable ownership and control situation arise in the future, the Minister may exercise powers under relevant legislation to require compliance, including to withdraw the airline's designation which allows it to access rights under Australia's bilateral agreements. In the event of this occurring, the Department would advise the IASC to ensure that any capacity held by the airline was returned.

1.6 All material supplied by the applicant and submitters is filed on the Register of Public Documents.

2 Commission's assessment

2.1 Section 25 (1) of the *International Air Services Commission Act 1992* (the Act) states that the Commission must, having conducted a review to decide a transfer application, make a decision varying the determination concerned in a way that gives effect to the variation requested. However, the Commission must not do so if it is satisfied that the allocation, as varied, would not be of benefit to the public (section 25(2)).

2.2 Paragraph 4 and paragraph 10 of the Minister's policy statement contain the criteria relevant to this application. Under paragraph 4, the use of Australian entitlements by a carrier that is reasonably capable of obtaining the necessary approvals and of implementing its proposals is of benefit to the public. Paragraph 10 makes it clear that approvals which encourage speculative activity would not be of benefit to the public. Further, other than in exceptional circumstances, approvals should not be given that would have the effect of allowing a carrier that has never exercised an allocation to transfer that allocation, or has only exercised it for less than a reasonable period.

2.3 In relation to paragraph 4, the Commission has previously found Virgin Australia International meets the criteria and has allocated capacity to the airline on other routes. Virgin Australia International is an established international carrier operating on the United States and United Arab Emirates routes. Virgin Australia International is clearly capable of obtaining the necessary approvals and of implementing its proposed operations.

2.4 In relation to the current application, the Department's submission includes the specific advice to the Commission that Virgin Australia International remains a designated Australian international airline and is eligible to apply for and receive further capacity allocations.

2.5 The Commission concludes that there is public benefit arising from the use of the entitlements.

2.6 Turning to the paragraph 10 provisions of the Minister's policy statement, the Commission notes that Virgin group airlines have been operating on the Indonesia route for some years. Further, there is clearly no speculative element to the proposal.

The transfer is between two carriers within the same airline grouping with Virgin Australia International taking over the use of the capacity from Virgin Australia as a result of restructuring within the Virgin group of airlines.

2.7 The Commission finds, in accordance with the requirements of section 25 of the Act, that there would be no reduction in public benefit through allowing the transfer sought and will vary the Determinations as sought by Virgin Australia.

2.8 The Commission notes that this decision will impose on Virgin Australia International conditions in relation to ownership and control and the location of the airline's head office and operational base which pertain to the maintenance of Virgin Australia International's status as an airline designated by the Australian Government for the purposes of the Australia – Indonesia air services arrangements.

3 Decision [2012] IASC 204

3.1 In accordance with section 25 of the Act, the Commission varies Determinations [2008] IASC 120, [2009] IASC 103, [2009] IASC 105, [2009] IASC 106, [2009] IASC 113, [2010] IASC 109, and [2011] IASC 110 as requested by Virgin Australia by transferring from Virgin Australia to Virgin Australia International (ABN 63 125 580 823) the allocation of 8,560 seats of capacity per week and unlimited capacity.

3.2 The Commission varies Determinations [2008] IASC 120, [2009] IASC 103, [2009] IASC 105, [2009] IASC 106, [2009] IASC 113 and [2010] IASC 109 by revoking the conditions in those Determinations and replacing them with the following conditions:

- only Virgin Australia International is permitted to utilise the capacity;
- Virgin Australia International 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 Virgin Australia International are permitted except to the extent that any change:
 - results in the designation of the airline as an Australian carrier under the Australia – Indonesia 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 International or be in a position to exercise effective control of Virgin Australia International, 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 International 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 – Indonesia air services arrangements.

3.3 The Commission varies Determination [2011] IASC 110 by revoking the conditions in that Determination and replacing them with the following conditions:

- Virgin Australia International is required to fully utilise the capacity from no later than 1 April 2014 or from such other date approved by the Commission;
- only Virgin Australia International is permitted to utilise the capacity;
- Virgin Australia International 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 Virgin Australia International are permitted except to the extent that any change:
 - results in the designation of the airline as an Australian carrier under the Australia – Indonesia 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 International or be in a position to exercise effective control of Virgin Australia International, 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 International 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 – Indonesia air services arrangements.

Dated: March 2012



Jill Walker
Chairwoman



Stephen Bartos
Member