



Australian Government

International Air Services Commission

DETERMINATIONS

Determinations:	[2010] IASC 118, [2010] IASC 119, [2010] IASC 120, [2010] IASC 121, [2010] IASC 122
The Routes:	United Arab Emirates, Thailand, France, Greece and Bangladesh
The Applicant:	Virgin Blue International Airlines Pty Ltd (V Australia) (ACN 125 580 823)
Public Register:	IASC/APP/201018

1 The application

1.1 On 30 September 2010, V Australia applied for allocations of capacity on a number of routes and for authorisation to utilise capacity in joint services with Etihad Airways. Under the arrangements, V Australia plans to introduce three weekly B777-300ER services between Sydney and Abu Dhabi from February 2011 and accordingly has sought an allocation of three services per week on the United Arab Emirates route. Etihad Airways would code share on the V Australia services, with Etihad Airways customers having access to all Virgin Blue Group services via interlining. A further three weekly V Australia services are planned from February 2012 between Brisbane and Abu Dhabi. Those extra three weekly services are to be the subject of a separate application to the Commission.

1.2 The proposed arrangements also involve V Australia code sharing as a marketing carrier on services operated by Etihad Airways. While a range of routes are involved, on many of them, capacity utilised by a marketing carrier is not considered to be a use of capacity entitlements under the air services arrangements. Accordingly, on those routes, V Australia does not need an allocation of capacity from the Commission to participate in code sharing and, therefore, no authorisation from the Commission to do so. However, capacity allocations are required on the Thailand, France, Greece and Bangladesh routes in order for V Australia to participate as a marketing carrier with Etihad Airways on those routes. V Australia has sought allocations of daily frequencies on the Thailand route, 150 seats daily on the France route, 800 seats weekly on the Greece route, and five weekly frequencies on the Bangladesh route. V Australia has requested the period of the determinations be five-years.

1.3 The code share arrangements are of the free sale type. V Australia and Etihad propose to co-ordinate pricing and marketing of the services covered by the arrangements. However, they do not propose to pool or share revenue.

1.4 In a related but separate application, Pacific Blue Australia has sought the Commission's approval to code share with Etihad Airways on the New Zealand route.

That application is dealt with in a separate Commission decision.

1.5 The Commission published a notice on 4 October 2010, inviting other applications for capacity. No applications were received. All public material supplied by the applicant is filed on the Register of Public Documents. Confidential supporting information supplied by V Australia is filed on the Commission's Confidential Register.

2 Provisions of relevant air services arrangements

2.1 For the United Arab Emirates route, the Register of Available Capacity shows that there are 105 services per week, for passenger services to/from Sydney, Melbourne, Brisbane and Perth using any aircraft type, available for allocation to Australian carriers. Under the Australia – United Arab Emirates air services arrangements, in offering the agreed services, the designated airline/s of Australia may enter into code sharing arrangements, as marketing and/or operational airline, with any other airline/s.

2.2 Under the Australia – Thailand air services arrangements, the designated airlines of Australia may enter into code share arrangements with any other airlines provided the appropriate route and traffic rights are available. The Register of Available Capacity shows that there are 33 services per week of third party code share capacity available to Australian carriers to engage in code share services with third party airlines.

2.3 Under the Australia – France air services arrangements, for Route 1 (mainland France) the designated airlines of Australia are permitted to enter into arrangements with other airlines, including airlines of third countries, to undertake services through code share, blocked space or other joint venture arrangements. The Register of Available Capacity shows that there are up to a total of 150 one way seats per day on an average annual basis available for allocation.

2.4 In relation to the Australia – Greece air services arrangements, the designated airline or airlines of Australia may enter into arrangements with an airline or airlines of a third country to carry out agreed services through code share, blocked space and/or other co-operative arrangements. Up to a total of 800 seats per week in total in each direction are available for allocation, according to the Register of Available Capacity.

2.5 For the Bangladesh route, the Register of Available Capacity shows that there are five frequencies per week with any aircraft type available to Australian designated airlines. Under the Australia – Bangladesh air services arrangements, a designated airline of Australia may enter into code share arrangements, whether as the operating or marketing airline, with an airline of a third country.

3 Commission's consideration

3.1 V 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.

3.2 V Australia is an established airline which is clearly capable of obtaining the necessary approvals and of 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. The Commission notes that the entry of V Australia to the United Arab Emirates route is part of a substantial restructure of the airline's operations. It has recently withdrawn from the Fiji route and will also leave the Thailand and South Africa routes in early 2011. V Australia's new services to the United Arab Emirates and the broad range of routes embraced by the code share agreement with Etihad Airways will give V Australia access to a wider network of destinations than it could reasonably develop on its own account. The Commission notes that the Qantas Group also has an extensive range of code share arrangements to extend its network reach.

3.3 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 says 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).

3.4 The Commission has given careful consideration to the proposed code share arrangements, noting particularly that they entail joint pricing of services, although no revenue pooling or sharing. The Commission is aware that the Virgin Blue Group has sought authorisation from the ACCC for the proposed alliance with Etihad Airways. The conduct proposed includes co-operation on joint pricing and scheduling of services. The ACCC has granted interim approval to the alliance, noting that Virgin Blue and Etihad Airways do not operate any competing services. The ACCC also had regard to the lead time required to market and sell tickets before the commencement of long-haul services in granting interim authorisation.

3.5 The Commission has taken account of the ACCC's interim authorisation in deciding that it does not have serious concerns that the arrangement would not be of benefit to the public. Accordingly, the Commission will not subject the proposals to the paragraph 5 criteria in the Minister's policy statement.

3.6 The Commission will allocate to V Australia the capacity it has sought on all five routes and will authorise the use of that capacity in joint services with Etihad on all of those routes. A particular issue the Commission has considered in authorising the use of capacity in joint services is whether there are concerns from a public benefit point of view about the price co-ordination proposed between V Australia and Etihad Airways.

3.7 The Commission's view is that the United Arab Emirates, Thailand, France

and Greece routes are all strongly competitive, with multiple long haul carriers participating in services on those routes. The Bangladesh route is smaller in scale but nevertheless is well served by carriers operating via intermediate points. The addition of joint services by V Australia and Etihad Airways is unlikely to lessen competition, despite the co-ordination of pricing between them, given that the two carriers do not currently operate in competition with each other. The Commission will authorise the use of the capacity in code share services on each of the five routes concerned.

3.8 A usual condition applied by the Commission to authorisations to code share is that code share partners must price and sell their services separately from each other and must not share or pool revenues. In this case, the Commission will approve code sharing consistent with the code share agreement between V Australia and Etihad Airways; that is, there will be no condition of approval preventing joint pricing of services. However, the Commission's authorisation does not prejudice any consideration by the ACCC about the longer term authorisation of the arrangements. Should the ACCC decide not to continue authorisation, then IASC approval of co-ordinated pricing and marketing would be terminated, although the carriers would still be able to code share without such co-ordination. The Commission will include a condition of approval to this effect. The Commission notes that it has granted similar conditional approval in the case of the Qantas/British Airways joint service arrangements, where the parties also engage in joint pricing.

4 Determination allocating capacity on the United Arab Emirates route to V Australia ([2010] IASC 118)

4.1 The Commission makes a determination in favour of V Australia, allocating three services per week of capacity in each direction for services to/from Sydney, Melbourne (including Avalon), Brisbane and Perth on the United Arab Emirates route under the Australia – United Arab Emirates 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:

- V Australia is required to fully utilise the capacity from no later than 1 April 2011, or from such other date approved by the Commission;
- only V Australia is permitted to utilise the capacity;
- V 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 V Australia to provide services jointly with Etihad Airways in accordance with:
 - the code share agreement between V Australia and Etihad Airways dated 26 August 2010; or

- any subsequent code share agreement between V Australia and Etihad Airways, whether or not it replaces the existing agreement, with the prior approval of the Commission;
- under any code share agreement with Etihad Airways:
 - V Australia must not share or pool revenues on the route with Etihad Airways;
- under the arrangements with Etihad Airways, V Australia may only price and market its services on the route jointly with Etihad Airways as long as such practices are authorised under the *Trade Practices Act 1974* or otherwise authorised by the Australian Competition Tribunal, in the event of review by that Tribunal;
- to the extent that the capacity is used to provide joint services on the route, V Australia must take all reasonable steps to ensure that passengers are informed of the carrier actually operating the flight at the time of booking;
- changes in relation to the ownership and control of V Australia are permitted except to the extent that any change:
 - results in the designation of the airline as an Australian carrier under the Australia – United Arab Emirates 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 V Australia or be in a position to exercise effective control of V Australia, without the prior consent of the Commission, and
- changes in relation to the management, status or location of operations and Head Office of V 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 – United Arab Emirates air services arrangements.

5 Determination allocating capacity on the Thailand route to V Australia ([2010] IASC 119)

5.1 The Commission makes a determination in favour of V Australia, allocating seven weekly third party code share services in each direction on the Thailand route under the Australia – Thailand air services arrangements.

5.2 The determination is for five years from the date of the determination.

5.3 The determination is subject to the following conditions:

- V Australia is required to fully utilise the capacity from no later than 1 April 2011, or from such other date approved by the Commission;
- only V Australia is permitted to utilise the capacity;
- V 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 V Australia to provide services jointly with Etihad Airways in accordance with:
 - the code share agreement between V Australia and Etihad Airways dated 26 August 2010; or
 - any subsequent code share agreement between V Australia and Etihad Airways, whether or not it replaces the existing agreement, with the prior approval of the Commission;
- under any code share agreement with Etihad Airways:
 - V Australia must not share or pool revenues on the route with Etihad Airways;
- under the arrangements with Etihad Airways, V Australia may only price and market its services on the route jointly with Etihad Airways as long as such practices are authorised under the *Trade Practices Act 1974* or otherwise authorised by the Australian Competition Tribunal, in the event of review by that Tribunal;
- to the extent that the capacity is used to provide joint services on the route, V Australia must take all reasonable steps to ensure that passengers are informed of the carrier actually operating the flight at the time of booking;
- changes in relation to the ownership and control of V Australia are permitted except to the extent that any change:
 - results in the designation of the airline as an Australian carrier under the Australia – Thailand 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 V Australia or be in a position to exercise effective control of V Australia, without the prior consent of the Commission, and
- changes in relation to the management, status or location of operations and Head Office of V 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 – Thailand air services arrangements.

6 Determination allocating capacity on the France route to V Australia ([2010] IASC 120)

6.1 The Commission makes a determination in favour of V Australia, allocating 150 one way seats per day on an average annual basis on the France route under the Australia – France air services arrangements.

6.2 The determination is for five years from the date of the determination.

6.3 The determination is subject to the following conditions:

- V Australia is required to fully utilise the capacity from no later than 1 April 2011, or from such other date approved by the Commission;
- only V Australia is permitted to utilise the capacity;
- V 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 V Australia to provide services jointly with Etihad Airways in accordance with:
 - the code share agreement between V Australia and Etihad Airways dated 26 August 2010; or
 - any subsequent code share agreement between V Australia and Etihad Airways, whether or not it replaces the existing agreement, with the prior approval of the Commission;
- under any code share agreement with Etihad Airways:
 - V Australia must not share or pool revenues on the route with Etihad Airways;
- under the arrangements with Etihad Airways, V Australia may only price and market its services on the route jointly with Etihad Airways as long as such practices are authorised under the *Trade Practices Act 1974* or otherwise authorised by the Australian Competition Tribunal, in the event of review by that Tribunal;
- to the extent that the capacity is used to provide joint services on the route, V Australia must take all reasonable steps to ensure that passengers are informed of the carrier actually operating the flight at the time of booking;

- changes in relation to the ownership and control of V Australia are permitted except to the extent that any change:
 - results in the designation of the airline as an Australian carrier under the Australia – France 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 V Australia or be in a position to exercise effective control of V Australia, without the prior consent of the Commission, and
- changes in relation to the management, status or location of operations and Head Office of V 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 – France air services arrangements.

7 Determination allocating capacity on the Greece route to V Australia ([2010] IASC 121)

7.1 The Commission makes a determination in favour of V Australia, allocating 800 seats per week of capacity in each direction on the Greece route under the Australia – Greece air services arrangements.

7.2 The determination is for five years from the date of the determination.

7.3 The determination is subject to the following conditions:

- V Australia is required to fully utilise the capacity from no later than 1 April 2011, or from such other date approved by the Commission;
- only V Australia is permitted to utilise the capacity;
- V 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 V Australia to provide services jointly with Etihad Airways in accordance with:
 - the code share agreement between V Australia and Etihad Airways dated 26 August 2010; or
 - any subsequent code share agreement between V Australia and Etihad Airways, whether or not it replaces the existing agreement, with the prior approval of the Commission;

- under any code share agreement with Etihad Airways:
 - V Australia must not share or pool revenues on the route with Etihad Airways;
- under the arrangements with Etihad Airways, V Australia may only price and market its services on the route jointly with Etihad Airways as long as such practices are authorised under the *Trade Practices Act 1974* or otherwise authorised by the Australian Competition Tribunal, in the event of review by that Tribunal;
- to the extent that the capacity is used to provide joint services on the route, V Australia must take all reasonable steps to ensure that passengers are informed of the carrier actually operating the flight at the time of booking;
- changes in relation to the ownership and control of V Australia are permitted except to the extent that any change:
 - results in the designation of the airline as an Australian carrier under the Australia – Greece 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 V Australia or be in a position to exercise effective control of V Australia, without the prior consent of the Commission, and
- changes in relation to the management, status or location of operations and Head Office of V 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 – Greece air services arrangements.

8 Determination allocating capacity on the Bangladesh route to V Australia ([2010] IASC 122)

8.1 The Commission makes a determination in favour of V Australia, allocating five frequencies per week of capacity in each direction on the Bangladesh route under the Australia – Bangladesh air services arrangements.

8.2 The determination is for five years from the date of the determination.

8.3 The determination is subject to the following conditions:

- V Australia is required to fully utilise the capacity from no later than 1 April 2011, or from such other date approved by the Commission;
- only V Australia is permitted to utilise the capacity;

- V 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 V Australia to provide services jointly with Etihad Airways in accordance with:
 - the code share agreement between V Australia and Etihad Airways dated 26 August 2010; or
 - any subsequent code share agreement between V Australia and Etihad Airways, whether or not it replaces the existing agreement, with the prior approval of the Commission;
- under any code share agreement with Etihad Airways:
 - V Australia must not share or pool revenues on the route with Etihad Airways;
- under the arrangements with Etihad Airways, V Australia may only price and market its services on the route jointly with Etihad Airways as long as such practices are authorised under the *Trade Practices Act 1974* or otherwise authorised by the Australian Competition Tribunal, in the event of review by that Tribunal;
- to the extent that the capacity is used to provide joint services on the route, V Australia must take all reasonable steps to ensure that passengers are informed of the carrier actually operating the flight at the time of booking;
- changes in relation to the ownership and control of V Australia are permitted except to the extent that any change:
 - results in the designation of the airline as an Australian carrier under the Australia – Bangladesh 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 V Australia or be in a position to exercise effective control of V Australia, without the prior consent of the Commission, and
- changes in relation to the management, status or location of operations and Head Office of V 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 – Bangladesh air services arrangements.

Dated: 25 October 2010

Ian Smith
Member Presiding

Stephen Bartos
Member