



Australian Government

International Air Services Commission

DETERMINATION

Determination: [2014] IASC 116
Renewal of: [2010] IASC 118
The Route: United Arab Emirates
The Applicant: Virgin Australia International Airlines Pty Ltd
(Virgin Australia) ABN 63 125 580 823
Public Register: IASC/APP/201470

The Commission's delegate makes a fresh determination allocating three frequencies per week to Virgin Australia on the United Arab Emirates route for five years. Virgin Australia is permitted to use the capacity to provide joint services with Etihad and Air Berlin on the route.

1 The application

1.1 On 25 October 2010, the Commission issued Determination [2010] IASC 118 (the Determination) allocating three frequencies per week in each direction to and from Sydney, Melbourne (including Avalon), Brisbane and Perth in favour of Virgin Australia on the United Arab Emirates route. The Determination is valid for five years from the date of issue and permits the use of the capacity in joint services with Etihad Airways. The Determination was varied by [2011] IASC R10, [2013] IASC 215 and [2014] IASC R01 to:

- recognise the name change of Virgin Blue International Airlines Pty Ltd, trading as V Australia, to Virgin Australia International Airlines Pty Ltd; and
- permit Virgin Australia to provide joint services on the route with Air Berlin.

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 its expiry. The Determination (as varied) expires on 24 October 2015. In view of this, on 23 October 2014 the Commission sent a letter to Virgin Australia inviting it to apply for renewal if it wished to renew the Determination.

1.3 Virgin Australia applied to the Commission on 31 October 2014 for a renewal of the Determination for five years from 25 October 2015. Virgin Australia confirmed that the capacity is currently being fully utilised. Virgin Australia also requested the continuation of the conditions authorising the use of capacity to offer joint services with Etihad Airways and Air Berlin on the route.

1.4 As required by sections 12 and 17 of the Act, the Commission published a notice on 31 October 2014 inviting other applications for capacity. No other applications were received.

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

2 Relevant provisions of the air services arrangements

2.1 According to the Register of Available Capacity, there are currently 123 frequencies per week of capacity on the UAE route (to and from Sydney, Melbourne (including Avalon), Brisbane and Perth) available for immediate allocation to the designated airlines of Australia. Third country code share capacity 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 allocation of capacity. (For purposes of this determination, all references to the Commission include the delegate of the Commission).

3.2 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.

3.3 Under paragraph 6.2 of the Minister's Policy Statement (No. 5) of 19 May 2004 (the Policy Statement), 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.

3.4 The Commission notes that:

- there are no other applicants seeking the capacity for which Virgin Australia has applied; and
- Virgin Australia is an established international carrier incumbent on the route and is therefore reasonably capable of obtaining the necessary approvals to operate on the route and of implementing its application.

3.5 Under paragraph 8.1 of the Policy Statement, there is a presumption in favour of the carrier seeking the renewal that may only be rebutted (after the start-up phase) by applying the following criteria:

- whether the carrier seeking renewal has failed to service the route effectively; and
- whether the use of the capacity in whole or part by another Australian carrier that has applied for capacity would better serve the public having regard to the criteria set out in paragraphs 4 and 5.

3.6 The Commission has no information that Virgin Australia has failed to service the route effectively and since no other application was received, the Commission did not apply the paragraph 5 criteria.

3.7 In these circumstances, the Commission is satisfied that renewal of [2010] IASC 118 (as varied) allocating three frequencies per week of capacity to Virgin Australia on the United Arab Emirates route is of benefit to the public.

3.8 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. As the capacity is currently being utilised to provide joint services with Etihad Airways and Air Berlin, the Commission will continue to authorise the capacity being utilised to provide joint services. As is normal practice, the Commission will also include a condition that requires Virgin Australia to comply with the Australian Consumer Law.

4 Determination for renewal of Determination [2010] IASC 118 allocating capacity on the United Arab Emirates route to Virgin Australia ([2014] IASC 116)

4.1 In accordance with section 8 of the Act, the delegate, on behalf of the Commission, makes a fresh determination in favour of Virgin Australia, allocating three frequencies per week in each direction on the United Arab Emirates route in accordance with the terms of the Australia-United Arab Emirates air services arrangements.

4.2 The determination is for five years from 25 October 2015.

4.3 The determination is subject to the following conditions:

- Virgin Australia is required to fully utilise the capacity from the date this instrument comes into effect;
- Only Virgin Australia is permitted to use 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 Etihad in accordance with the code share agreement between Virgin Australia and Etihad Airways dated 26 August 2010, as amended;

- the capacity may be used by Virgin Australia to provide services jointly with Air Berlin in accordance with the code share agreement between Virgin Australia and Air Berlin dated 28 June 2013, as amended;
- Virgin Australia must apply to the Commission for approval of any proposed variations to the code share arrangements with Etihad Airways or Air Berlin which would change the relevant commercial aspects of the respective 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 if the additional routes would require a variation to a determination held by Virgin Australia;
- under any code share agreements with Etihad Airways and Air Berlin, Virgin Australia must not price and market its services jointly, or share or pool revenues/profits with either Etihad Airways or Air Berlin unless such practices are authorised under the *Competition and Consumer Act 2010*;
- to the extent that the capacity is used to provide joint services, Virgin Australia 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;
- 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-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 Virgin Australia or be in a position to exercise effective control of Virgin Australia, without the prior consent of the Commission.

Dated: 21 November 2014



Marlene Tucker
 Executive Director
 Delegate of the IASC Commissioners