



## Australian Government

### International Air Services Commission

#### RENEWAL DETERMINATION

<b>Determination:</b>	[2017] IASC 107
<b>Renewal of:</b>	[2013] IASC 122
<b>The Route:</b>	Italy
<b>The Applicant:</b>	Virgin Australia International Airlines Pty Ltd (Virgin Australia) ABN 63 125 580 823
<b>Public Register:</b>	IASC/APP/201712

**The Commission's delegate makes a determination allocating to Virgin Australia 300 third country code share seats per week on the Italy route and permitting the use of the capacity by Virgin Australia for the provision of code share services with Singapore Airlines and Etihad Airways. The determination is valid for five years from 8 April 2018.**

#### 1 The application for renewal

1.1 On 8 April 2013, the Commission's delegate issued Determination [2013] IASC 122 (the Determination) allocating, in favour of Virgin Australia, 300 seats of third country code share capacity on the Italy route. Under the capacity allocation, Virgin Australia offers code share services, as a marketing carrier, on flights operated by Singapore Airlines (Milan and Rome) and Etihad Airways (Milan, Rome and Venice).

1.2 Section 17 of the *International Air Services Commission Act 1992* (the Act) requires the Commission to start its consideration of the renewal of a determination at least 12 months before the expiry of the Determination. The Determination is due to expire on 7 April 2018. In view of this, the Commission sent, on 3 April 2017, 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 13 April 2017 for a renewal of the Determination for a further five-year period from 8 April 2018. Additionally, Virgin Australia requested the retention of the existing conditions permitting the use of the capacity for code sharing with Singapore Airlines and Etihad Airways.

1.4 As required by sections 12 and 17 of the Act, the Commission published a notice on its website inviting other applications for the 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](http://www.iasc.gov.au)).

## **2 Relevant provisions of the air services arrangements**

2.1 Under the Australia - Italy air services arrangements, designated airlines of Australia (Australian airlines) may operate seven frequencies per week with any aircraft type. None of this capacity is currently allocated. Australian airlines are entitled to perform their services with wet lease, code sharing, blocked space and/or other cooperative service arrangements with any airline.

2.2 Australian airlines may enter into arrangements with an airline or airlines of a third country to carry out services through code share arrangements. These code share arrangements may constitute up to 1000 seats per week in total in each direction. Qantas currently holds a total capacity of 700 third country code share seats while 300 third country code share seats have been allocated to Virgin Australia.

2.3 Where the operating carrier is an airline of a third country, the marketing carrier may exercise own stop-over rights at one point in the route schedule in the territory of a third country. The United Arab Emirates and one additional point (currently Singapore) were nominated by the Department of Infrastructure and Regional Development as the points in the route schedule in the territory of a third country at which own stop-over rights may be exercised by Australian carriers marketing code share services. These points may be changed upon the request of the concerned airline(s).

2.4 Australian airlines may operate to three points in Italy to be nominated by the relevant aeronautical authorities of Australia. Rome, Milan and Venice have been nominated for this purpose. These points may be changed only with the agreement of the Australian and Italian governments.

## **3 Delegate's consideration**

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 Virgin Australia application. (For purposes of this determination, references to the Commission include the delegate of the Commission).

3.2 Section 8 of the Act provides that the Commission may, at any time while a determination is in force, make a fresh determination allocating the capacity to which the original determination relates. The fresh determination 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 8 of the Minister's Policy Statement issued on 19 May 2004, there is a presumption in favour of the carrier seeking a renewal which may be rebutted only if the carrier has failed to service the route effectively and the use of the capacity, in whole or in part, by another carrier who applied for the capacity, would better serve

the public having regard to the criteria set out in paragraphs 4 and 5 of the Minister's Policy Statement.

3.4 The Commission's delegate does not have information that Virgin Australia has failed to service the route effectively. Additionally, there is no other carrier applying for the capacity.

3.5 Under paragraph 6.2 of the Minister's 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.

3.6 The Commission's delegate notes that: (i) there are no other applicants seeking the capacity for which Virgin Australia has applied; and (ii) Virgin Australia is an established international carrier reasonably capable of obtaining the necessary approvals to operate on the route and of implementing its application.

3.7 In these circumstances, the Commission's delegate is satisfied that allocating 300 seats of third country code share capacity to Virgin Australia is of benefit to the public.

3.8 Further, Virgin Australia sought authority to continue utilising the capacity to offer code share services operated by:

- Singapore Airlines between Australia and Rome/ Milan via Singapore; and
- Etihad between Australia and Rome/ Milan/ Venice via Abu Dhabi.

3.9 Subsection 15(1) of the Act allows a determination to include such terms and conditions as the Commission thinks fit. Subsection 15(2) provides, in part, that the determination must include a condition stating the extent (if any) to which any such carrier may use that capacity by providing joint international air services with another Australian carrier or any other person.

3.10 Under paragraph 3.6 of the Minister's 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).

3.11 Virgin Australia does not operate its own services between points in Australia and Italy and it is unlikely for Virgin Australia and Singapore Airlines/ Etihad to be competitors on the route. In light of this, the Commission's delegate considers that

Virgin Australia's continued code sharing with Singapore Airlines and Etihad on the Italy route does not have competition impact on the route. For this reason, the delegate did not consider it necessary to assess the application against the additional criteria in paragraph 5 of the Minister's Policy Statement and did not specifically consult the ACCC.

3.12 The delegate notes that the ACCC re-granted, on 23 September 2016, authorisation for the Virgin Australia Group and Singapore Airlines to continue their existing airline alliance for a further period of five years. Under the alliance, Virgin Australia and Singapore Airlines are able to coordinate their operations and code share on each other's regular air passenger transport networks.

3.13 The delegate further notes that on 4 December 2015, the ACCC re-granted authorisation for the existing alliance between the Virgin Australia Group and Etihad Airways in relation to air transport services between Australia and the Middle East. Under the ACCC decision, the airlines are authorised to coordinate their services on routes between Australia and Abu Dhabi and behind and beyond connections, for a period of five years (until 30 December 2020).

3.14 In view of the above, the delegate has decided to include the existing conditions to permit the use of the capacity for the provision of code share services between Virgin Australia and Singapore Airlines and Etihad, as requested. Nothing in this determination in relation to code sharing should be taken as indicating either approval or disapproval by the ACCC. This determination is made without prejudicing, in any way, possible future consideration of code share operations by the ACCC.

#### **4 Determination for renewal of [2013] IASC 122 allocating capacity on the Italy route to Virgin Australia ([2017] IASC 107)**

4.1 The Commission's delegate allocates to Virgin Australia, pursuant to section 8 of the Act, 300 third country code share seats per week in each direction on the Italy route in accordance with the terms of the Australia – Italy air services arrangements.

4.2 The determination is valid for five years from 8 April 2018.

4.3 The determination is subject to the following conditions:

- Virgin Australia is required to fully utilise the capacity by no later than 30 April 2018, or from such other date approved by the Commission;
- 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 code share on services operated by Singapore Airlines in accordance with the code share



agreement between Virgin Australia and Singapore Airlines which came into effect on 2 February 2012, amended;

- the capacity may be used by Virgin Australia to code share on services operated by Etihad in accordance with the code share agreement between Virgin Australia and Etihad which came into effect on 26 August 2010, as amended;
- Virgin Australia must apply to the Commission for approval of the use of the capacity if there are variations to the code share arrangement(s) which would change the relevant commercial aspects of the code share arrangement(s) 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;
- to the extent that the capacity is used to provide joint services, the airlines 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 – Italy 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: 3 May 2017



Marlene Tucker  
Executive Director  
Delegate of the IASC Commissioners