



Australian Government

International Air Services Commission

DETERMINATION

Determination: [2017] IASC 119
The Route: Italy
The Applicant: Virgin Australia International Airlines Pty Ltd
(Virgin Australia) ABN 63 125 580 823
Public Register: IASC/APP/201736

The Commission makes a determination allocating to Virgin Australia 300 third country code share seats per week on the Italy route for code share services with Singapore Airlines and Etihad Airways. The determination is valid for five years from 10 August 2017.

1 The application

1.1 On 19 July 2017, the International Air Services Commission (the Commission) received an application from Virgin Australia seeking an allocation of 300 third country code share seats per week on the Italy route. Virgin Australia intends to use the capacity for code share services on flights operated by Singapore Airlines on the Australia-Singapore-Italy route and Etihad Airways on the Australia-Abu Dhabi-Italy route. Virgin Australia is seeking the capacity on the following basis:

- that the capacity may be utilised by Virgin Australia or another Australian carrier which is a wholly-owned subsidiary of Virgin Australia;
- that the capacity may be utilised for joint services with Singapore Airlines and Etihad Airways; and
- the allocation is requested for a period of five years from the date of the determination.

1.2 In a subsequent communication on 4 August 2017, Virgin Australia nominated Tiger International Number1 Pty Ltd (Tiger International) as the wholly-owned subsidiary.

1.3 In accordance with section 12 of the *International Air Services Commission Act 1992* (the Act), the Commission published Virgin Australia's application on the Commission's website, on 21 July 2017, inviting other applications on the Italy route. No other competing applications were received. However, the Commission has previously received an application from Qantas concurrently seeking an allocation of 300 third country code share seats on the Italy route.

1.4 All non-confidential material supplied by the applicant is available on the Commission's website (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 1700 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. There are currently 700 seats per week in each direction available for immediate allocation to Australian airlines.

3 Commission's consideration

3.1 Subsection 12(3) of the Act allows any person to apply to the Commission for a determination allocating capacity to enable an Australian carrier to operate international air services.

3.2 Subsection 7(1) of the Act empowers the Commission to make a determination allocating available capacity. Subsection 7(2) requires, in part, that the Commission's determination must not allocate capacity unless the Commission is satisfied that the allocation would be of benefit to the public and would not be contrary to any restrictions on capacity contained in bilateral arrangements, or combination of bilateral arrangements.

3.3 Further, subsection 7(3) of the Act provides that in assessing the benefit to the public of an allocation of capacity, the Commission must apply the criteria set out in the policy statement made by the Minister pursuant to section 11 of the Act.

3.4 Pursuant to section 11 of the Act, then Minister for Transport and Regional Services, the Hon. John Anderson MP issued Policy Statement No. 5 (hereinafter referred to as the Policy Statement) dated 19 May 2004. The Policy Statement sets out the range of criteria which the Commission is required to apply in assessing the benefit to the public of allocations of capacity. It also provides other guidance to the Commission in performing its functions.

3.5 Paragraph 6.2 of the Policy Statement provides, in part, that 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 notes that other than a concurrent application from Qantas for 300 third country code share seats, there are no other competing applicants seeking capacity on the route. The Commission further notes that Virgin Australia is an established international carrier and, as such, is reasonably capable of obtaining the necessary approvals to operate on the route and of implementing its proposed code share services. In relation to the request to permit Virgin Australia's wholly-owned subsidiary Tiger International to use the capacity, the Commission is required to assess whether Tiger International is reasonably capable of obtaining the necessary approvals to operate on the route and of implementing its proposed services. From information available to the Commission, it has reached the view that Tiger International is reasonably capable of obtaining the necessary approvals such as getting designated as an Australian airline for purposes of the Australia-Italy air services agreement. The Commission also considers that with the support and backing of its parent airline, Tiger International would be reasonably capable of implementing code share services with a third country airline. Accordingly, the Commission considers that the use of the entitlements by Virgin Australia or its wholly-owned subsidiary would be of benefit to the public and has decided to allocate the capacity sought to Virgin Australia and permit the capacity to be used by Virgin Australia or its wholly-owned subsidiary.

3.7 In relation to the request to permit the capacity for code sharing with Singapore Airlines and Etihad, 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).

3.8 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 considers that Virgin Australia's code sharing with Singapore Airlines and Etihad on the Italy route does not have competition impact on the route. For this reason, the Commission 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.

3.9 The Commission further 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.

3.10 Additionally, the Commission 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).

3.11 In view of the above, the Commission has decided 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.

3.12 Section 15 of the Act provides that the Commission may include such terms and conditions as the Commission thinks fit. In light of this, the Commission decided to include certain conditions set out below.

4 Determination allocating capacity on the Italy route to Virgin Australia ([2017] IASC 119)

4.1 The Commission allocates to Virgin Australia, pursuant to section 7 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 10 August 2017.

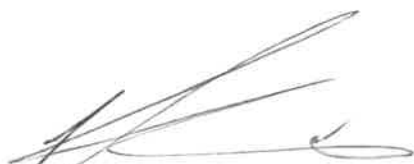
4.3 The determination is subject to the following conditions:

- Virgin Australia is required to fully utilise the capacity by no later than 31 July 2018, or from such other date approved by the Commission;
- the capacity may be utilised by Virgin Australia or another Australian carrier which is a wholly-owned subsidiary of Virgin Australia;
- Virgin Australia is not permitted to utilise the capacity to provide services jointly with another Australian carrier or any other person unless approved by 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 the airlines 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: 10 August 2017



IAN DOUGLAS
Chairperson



JAN HARRIS
Commissioner