



Australian Government

International Air Services Commission

DETERMINATION

Determination: [2022] IASC 121
The Route: Indonesia
The Applicant: Virgin Australia International Airlines Pty Ltd
(Virgin Australia)
ABN 63 125 580 823
Public Register File: IASC/APP/202220

The Commission makes a determination allocating to Virgin Australia International Airlines Pty Ltd 172 seats per week of passenger capacity in each direction on the Indonesia route. The determination is valid for five years from 7 November 2022.

1 The application

1.1 On 23 August 2022, Virgin Australia applied to the International Air Services Commission (the Commission) for an allocation of 172 seats per week in each direction of passenger capacity on the Indonesia route. Virgin Australia stated in its application that it intends to use the capacity to operate an additional weekly service on the Melbourne-Denpasar route, using B737-800 aircraft.

1.2 Virgin Australia has requested the capacity allocation on the following basis:

- the allocation is requested for a period of five years from the date of the determination;
- the capacity may be utilised by Virgin Australia; and
- the capacity will be fully utilised by 31 December 2022.

1.3 In accordance with section 12 of the *International Air Services Commission Act 1992* (the Act), on 24 August 2022, the Commission published Virgin Australia's application on the Commission's website inviting other applications for capacity on the Indonesia route. In response to this notice, on 6 September 2022, Qantas applied for an allocation of 162 seats on the Indonesia route.

1.4 As the applications from Virgin Australia and Qantas created competing applications for the same available capacity, on 9 September 2022, the Commission wrote to Virgin Australia and Qantas inviting them to address the additional public benefit criteria as set out within section 9 of the *International Air Services Commission Policy Statement 2018* (Minister's policy statement) in support of their respective applications.

1.5 Following receipt of the additional public benefit criteria responses from the airlines on 26 September 2022, the Commission published a notice on its website on 27 September 2022, inviting submissions about the two applications. No submissions were received.

1.6 On 4 November 2022, Qantas withdrew its application due to a change in circumstances.

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

2 Air services arrangements

2.1 Paragraph 7(2)(aa) of the Act provides that the Commission must not allocate available capacity contrary to any restrictions on capacity contained in a bilateral arrangement(s).

2.2 Under the Australia-Indonesia air services arrangements, Australian designated airlines may operate up to 25,000 seats per week of passenger capacity to and from Sydney, Melbourne, Brisbane and/or Perth.

2.3 Virgin Australia has been allocated 4,752 seats of passenger capacity per week to operate services to and from Sydney, Melbourne, Brisbane and/or Perth. Qantas has been allocated a total of 20,076 seats of passenger capacity per week in each direction to operate services to and from Sydney, Melbourne, Brisbane and/or Perth.

2.4 According to the Register of Available Capacity, there are 172 seats of passenger capacity per week available for allocation to Australian designated airlines to operate services to and from Sydney, Melbourne, Brisbane and/or Perth.

2.5 An additional 150 seats per week are available under the spill-over provisions of the air services arrangements. These seats are not available for allocation by the Commission but are subject to approvals by the aeronautical authorities.

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 Under section 11 of the Act, the Minister issued the *International Air Services Commission Policy Statement 2018* (the Policy Statement) which came into effect on 28 March 2018. The Policy Statement sets out the criteria which the Commission is required to apply in assessing the benefit to the public of allocations of capacity.

3.5 Section 12 of the Policy Statement provides, in part, that in circumstances where there is only one applicant for allocation of capacity on a route, and there is no opposition to the application, the Commission is to have regard to the 'reasonable capability criterion' in section 8 of the 2018 Policy Statement and need not have regard to any other matter.

3.6 Under the reasonable capability criterion in section 8 of the Policy Statement, the Commission is required to assess the extent to which all Australian carriers that are, or would be, permitted to use the capacity allocated under a determination are reasonably capable of: (a) obtaining any licenses, permits or other approvals required to operate on and service the route to which the determination relates; and (b) using the capacity allocated under the determination.

3.7 The Commission notes that there are no other applicants seeking capacity on the route and no opposition to the application. The Commission further notes that Virgin Australia is an established international carrier that currently operates services between Australia and Indonesia.

3.8 Accordingly, the Commission has concluded that Virgin Australia satisfies the criteria under section 8. The Commission, therefore, has decided to allocate the capacity as requested by Virgin Australia.

3.9 Subsection 15(1) of the Act empowers the Commission to include such terms and conditions as it thinks fit. Section 15 also provides for certain conditions to be included in a determination. In light of this, the Commission has decided to issue this determination subject to the conditions set out in Item 4 below.

3.10 Paragraph 15(2)(a) of the Act requires a determination to specify the period during which it is to be in force. Subsection 15(3) of the Act effectively provides that if the Minister's Policy Statement sets out how the period of validity of the determination is to be fixed, then the period of validity is as so fixed. In any other case, an interim determination is to be in force for three years while a determination that is not an interim determination is to be in force for five years.

3.11 Section 20 of the Policy Statement sets out how the Commission is to fix the period during which a determination is to be in force. The Commission considers that this application is within the scope of subsection 20(4) and has decided that this determination is to be in force for a period of five years.

4 Determination allocating capacity on the Indonesia route to Virgin Australia International Airlines Pty Ltd ([2022] IASC 121)

4.1 In accordance with section 7 of the Act, the Commission makes a determination in favour of Virgin Australia International Airlines Pty Ltd, allocating 172 seats of capacity per week in each direction on the Indonesia route in accordance with the Australia - Indonesia air services arrangements.

4.2 The determination is valid for five years from 7 November 2022.

4.3 The determination is subject to the following conditions:

- (a) Only Virgin Australia International Airlines Pty Ltd is permitted to utilise the capacity.
- (b) Virgin Australia International Airlines Pty Ltd is required to fully utilise the capacity by 31 December 2022 or such other date approved by the Commission.
- (c) Virgin Australia International Airlines Pty Ltd is not permitted to utilise the capacity to provide code share or joint services with another Australian carrier or any other person unless approved by the Commission.
- (d) Changes in relation to the ownership and control of Virgin Australia International Airlines Pty Ltd 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 Airlines Pty Ltd or be in a position to exercise effective control of Virgin Australia International Airlines Pty Ltd, without the prior consent of the Commission.

Dated: 7 November 2022



GENEVIEVE BUTLER
Chairperson



JANE MCKEON
Commissioner