



Australian Government

International Air Services Commission

DECISION

The Route: New Zealand
The Applicant: Virgin Australia International Airlines Pty Ltd
(Virgin Australia) (ABN 63 125 580 823)
Decision: [2025] IASC 202
Variation Of: [2017] IASC 113
Public Register File: IASC/APP/202504

The Commission varies Determination [2017] IASC 113 to permit the use of the capacity on the New Zealand route for code sharing between Virgin Australia International Airlines Pty Ltd and Air India Limited. The permission is valid for the duration of the Determination commencing from the date of issue of this decision.

1 The application

1.1 On 18 February 2025, Virgin Australia International Airlines Pty Ltd (Virgin Australia) applied to the International Air Services Commission (the Commission) seeking to vary Determination [2017] IASC 113 (the Determination) to permit Air India Limited (Air India) to code share on Virgin Australia operated air services. Virgin Australia provided the Commission with a copy of the code share agreement with Air India, on a confidential basis.

1.2 Virgin Australia's application is for Air India to offer code share services on flights operated by Virgin Australia on the New Zealand route. The proposed code share flights would operate between Melbourne and Queenstown (v.v.) and Sydney and Queenstown (v.v.) respectively.

1.3 In accordance with section 22 of the *International Air Services Commission Act 1992* (the Act), the Commission published, on 20 February 2025, a notice inviting submissions about the application for variation to enable Air India to code share on Virgin Australia services. No submissions were received.

1.4 All non-confidential material supplied by the applicant 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). Any variation made to an existing allocation of capacity should also not be contrary to any restrictions on capacity contained in a bilateral arrangement(s).

2.2 The Australia-New Zealand air services arrangements provide for unlimited frequency and capacity of services to enable the designated airlines of both countries to operate international air services between points in Australia and New Zealand.

2.3 Additionally, Australian designated carriers may enter into code share, blocked space or other cooperative marketing arrangements, whether as the operating or marketing airline, with any airline including airlines of third countries, provided only that the airline holds the appropriate authority to conduct air transport on the routes or segments concerned.

3 The Commission's consideration

3.1 Virgin Australia's application seeks to vary the Determination to include a condition of a kind referred to in paragraph 15(2)(e) of the Act. In view of this, the application is a transfer application as so defined in subsection 4(1) of the Act. The Commission has assessed the application in accordance with section 25 of the Act.

3.2 Subsection 25(1) of the Act provides that the Commission must make a decision varying the determination in a way that gives effect to the variation requested, subject to subsection 25(2). Subsection 25(2) states that the Commission must not make a decision varying the determination in a way that varies, or has the effect of varying an allocation of capacity if the Commission is satisfied that the allocation, as so varied, would not be of benefit to the public.

3.3 Under section 26 of the Act, in assessing the benefit to the public of a variation of an allocation of capacity, the Commission is required to apply the criteria set out in any policy statement issued by the Minister under section 11 of the Act.

3.4 Under section 11 of the Act, the Minister made 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 18 of the Policy Statement specifically deals with 'transfer applications' such as this one. It provides that, in assessing whether the variation requested would not be of benefit to the public for the purpose of subsection 25(2) of the Act, the Commission is to have regard to the 'reasonable capability criterion' set out in section 8 of the Policy Statement and may have regard to any of the additional criteria set out in section 9 that the Commission considers to be relevant. The Commission is also to have regard to the matters specified in paragraph 18(2)(b) of the Policy Statement to the extent that they are relevant to the variation under consideration.

3.6 'Reasonable capability criterion' is defined in section 8 of the Policy Statement to mean the extent to which Australian carriers are reasonably capable of: a) obtaining the necessary approvals to operate on and service the route, and b) using the capacity

allocated under the Determination. The ‘additional criteria’ to which the Commission may have regard are set out in section 9 of the Policy Statement.

3.7 The Commission notes that Virgin Australia is an established Australian international carrier that currently operates up to 32 services per week on the New Zealand route¹, and therefore finds that the airline is reasonably capable of obtaining the necessary regulatory approvals and of using the capacity allocated under the Determination.

3.8 The Commission notes that there is unlimited passenger capacity on the route and that it has received no submissions opposing the variation sought in Virgin Australia’s ‘transfer application’.

3.9 The Commission finds that the matters specified in subsection 18(2)(b) of the Policy Statement are not relevant to the variation under consideration. The Commission does not have information to suggest that Virgin Australia’s transfer application involves speculative activity.

3.10 The Commission considers that the proposed arrangement will enhance connectivity and provide additional options and choice for consumers through access to wider networks. Consumers will have a greater choice of connections on services between Australia and New Zealand, marketed through Virgin Australia and Air India’s distribution channels.

3.11 Having considered the criteria set out in section 18 of the Policy Statement, the Commission is satisfied that the allocation, as proposed to be varied permitting Air India to code share, as marketing carrier, on flights operated by Virgin Australia on the New Zealand route, would be of benefit to the public. Therefore, in accordance with section 25 of the Act, the Commission must make a decision varying the Determination in a way that gives effect to the variation requested in Virgin Australia’s ‘transfer application’.

3.12 Subsection 15(1) of the Act empowers the Commission to include such terms and conditions in a determination as it thinks fit. Paragraph 15(2)(e) requires the inclusion of a condition stating the extent to which the carrier may use capacity allocated under a determination in joint services with another carrier.

3.13 The Commission has decided to add conditions permitting the use of the capacity for the provision of code share services between Virgin Australia and Air India on the New Zealand route. As required by section 23 of the Policy Statement, the Commission has included a condition requiring the airlines to take all reasonable steps to ensure that passengers are informed of the carrier that is actually operating the flights.

3.14 Nothing in this decision should be taken as indicating either approval or disapproval by the Australian Competition and Consumer Commission (ACCC). This decision is made without prejudicing, in any way, possible future consideration of code share operations by the ACCC.

¹ See New Zealand entry: [Northern Winter 2024-25 Timetable Summary](#)

4 Decision varying Determination [2017] IASC 113 which allocates capacity to Virgin Australia International Airlines Pty Ltd on the New Zealand route ([2025] IASC 202)

4.1 In accordance with section 25 of the Act, the Commission varies Determination [2017] IASC 113 which allocates capacity to Virgin Australia International Airlines Pty Ltd on the New Zealand route, by:

adding the following conditions to the Determination:

- The capacity may be used by Virgin Australia International Airlines Pty Ltd to provide code share services with Air India Limited in accordance with the code share agreement between Virgin Australia International Airlines Pty Ltd and Air India Limited, made effective on 11 February 2025, and the air services arrangements between Australia and New Zealand.
- Virgin Australia International Airlines Pty Ltd must apply to the Commission for approval of any proposed variations to the code share agreement between Virgin Australia International Airlines Pty Ltd and Air India Limited which would change the relevant commercial aspects of the structure of the agreement from a free sale code share arrangement to a blocked space, or vice versa, or if the airlines propose 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 code share services on the route, the airlines must take all reasonable steps to ensure that passengers are informed, at the time of booking, of the carrier actually operating the flight. Nothing in this Determination exempts airlines from complying with the Australian Consumer Law.

4.2 This decision comes into effect from the date of issue and is valid for the duration of Determination [2017] IASC 113.

Dated: 17 March 2025



GENEVIEVE BUTLER
Chairperson



JANE MCKEON
Commissioner