



Australian Government

International Air Services Commission

RENEWAL DETERMINATION

Determination: [2013] IASC 130
Renewal of: [2009] IASC 105
The Route: Indonesia
The Applicant: Virgin Australia International Airlines Pty Ltd
(Virgin Australia) (ABN 63 125 580 823)
Public Register File: IASC/APP/201325

The Commission's delegate makes a fresh determination in favour of Virgin Australia allocating 1,080 seats per week on the Indonesia route for five years.

1 The application for renewal

1.1 On 11 May 2009, the delegate of the Commission issued Determination [2009] IASC 105 (the Determination) allocating to Pacific Blue Australia 1,080 seats per week in each direction on the Indonesia route in accordance with the terms of the Australia – Indonesia air services arrangements. The Determination was for five years and was subsequently varied by:

- Decision [2010] IASC 206 transferring the capacity to Virgin Blue Airlines;
- Decision [2011] IASC 214 permitting V Australia to code share on Virgin Blue Airlines;
- Resolution [2011] IASC R18 recognising the name change of Virgin Blue Airlines Pty Ltd to Virgin Australia Airlines Pty Ltd and Virgin Blue International Airlines (trading as V Australia) to Virgin Australia International Airlines Pty Ltd; and
- Decision [2012] IASC 204 transferring capacity from Virgin Australia Airlines Pty Ltd to Virgin Australia International Airlines Pty Ltd, the current holder of the capacity.

1.2 Under 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 the expiry of the Determination. The Determination expires on 10 May 2014. In view of this, the Commission sent, on 29 May 2013, 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 6 June 2013 for a renewal of the Determination for five years from 11 May 2014.

1.4 As required by sections 12 and 17 of the Act, the Commission published a notice on 7 June 2013 inviting other applications for the capacity. No applications were received.

1.5 All material supplied by the applicant is available on the Commission's website (www.iasc.gov.au).

2 Delegate's assessment

2.1 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, all references to the Commission include the delegate of the Commission).

2.2 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.

2.3 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.

2.4 Virgin Australia is an established international carrier and is therefore reasonably capable of obtaining the necessary approvals to operate on the route and of implementing its application.

2.5 Under paragraph 8.1 of the Policy Statement, there is a presumption in favour of the carrier seeking the renewal which may be rebutted by applying the following criteria, where the start-up phase has concluded:

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

The Commission notes that:

- there are no other applicants seeking capacity on the route; and
- there is no evidence that Virgin Australia has failed to service the route effectively.

2.6 In these circumstances, the Commission is satisfied that renewal of Determination [2009] IASC 105 would be of benefit to the public.

2.7 The Commission does, however, have concerns that there is very little available capacity on the Indonesia route (only 1,972 seats per week from Sydney, Melbourne, Brisbane and Perth) and that both Virgin Australia and Qantas are under-utilising their allocated capacity by some considerable margin. In its application for renewal of the

Determination, Virgin Australia stated that it wishes to retain all of its allocated capacity on the Indonesia route to ensure it has the flexibility to respond to future growth.

2.8 The Commission notes that there has been strong growth on the Indonesia route in recent years, averaging 23% per annum since 2007¹, with the bulk of the traffic being Australians travelling to Denpasar. Taking these factors into account, and allowing for the need to give Virgin Australia flexibility to respond to growth on the route, the Commission will renew the Determination. Should the airline fail to fully utilise its capacity without handing back the unutilised capacity, Virgin Australia could be in breach of a condition of its determinations. In such circumstances, the Commission reserves the right to conduct a review of the relevant determination(s) under section 10 of the Act.

2.9 Virgin Australia has advised the Commission that from mid-January 2013 all Virgin Australia flights will be operated under the VA designator and that once this occurs code share operations between Virgin Australia entities will no longer be required. Accordingly, in this determination the Commission has removed conditions contained in Determination [2009] IASC 105, as varied by Decision [2011] IASC 214, allowing for code sharing between Virgin Australia entities.

3 Determination for renewal of Determination [2009] IASC 105 allocating capacity on the Indonesia route to Virgin Australia ([2013] IASC 130)

3.1 In accordance with section 8 of the Act, the delegate of the Commission, makes a determination in favour of Virgin Australia International Airlines Pty Ltd, allocating 1,080 seats per week in each direction on the Indonesia route under the Australia – Indonesia air services arrangements.

3.2 The determination is for five years from 11 May 2014.

3.3 The determination is subject to the following conditions:

- Virgin Australia is required to fully utilise the capacity;
- only Virgin Australia is permitted to utilise 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; and
- 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 – Indonesia air services arrangements being withdrawn; or

¹ Bureau of Infrastructure, Transport and Regional Economics

- 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: 8 July 2013



Marlene Tucker
Executive Director
Delegate of the IASC Commissioners