

22 September 2015

Ms Marlene Tucker
Executive Director
International Air Services Commission
PO Box 630
Canberra ACT 2601

Dear Ms ^{Marlene}Tucker

Re: Applications for variation and renewal on the Indonesia route

I refer to Qantas' submission dated 17 September 2015 in relation to applications lodged with the International Air Services Commission (the Commission) by Virgin Australia on 4 September, seeking variation and renewal of capacity held by Virgin Australia International Airlines Pty Ltd (VAIA) on the Indonesia route.

Assessment of Virgin Australia's applications against the legislative framework

A lack of understanding of both the relevant legislative framework and the respective roles and responsibilities of the Commission and the Department of Infrastructure and Regional Development (the Department) is apparent in the Qantas submission.

Virgin Australia's applications for variation and renewal on the Indonesia route comply with the *International Air Services Commission Act 1992* (Cth) (the Act) and the Minister's Policy Statement. There is no requirement in the Commission's legislative framework that compels such applications to disclose the name of the wholly-owned subsidiary/subsidiaries for which flexibility in relation to the use of the capacity has been sought. In this case, the capacity will be utilised by Tigerair for the operation of services between points in Australia and Denpasar, as the Commission is well aware.

Virgin Australia notes that conditions relating to the ownership and control of any carriers authorised to use the capacity are a mandatory component of the content of all determinations, as per section 15(2)(f) of the Act. Accordingly, we expect that each of the determinations which are the subject of VAIA's applications will, when varied or renewed, include a condition addressing this matter.

It is important to highlight, however, that the Commission does not possess any powers to assess, monitor or enforce ownership and control requirements for Australian international airlines. This role resides exclusively with the Department, through its administration of the *Air Navigation Act 1920* (Cth) and application of the national interest criteria which underpin designation under Australia's air services arrangements. In performing this function, the Department carries out a range of activities to assess compliance, including undertaking audits of International Airline Licences held by Australian international airlines.

The Commission must assess our applications in strict accordance with the legislative framework. Only the paragraph 4 criteria of the Minister's Policy Statement are relevant to the Commission's assessment of whether the variation and renewal sought would be of benefit to the public, as noted in our applications.

Non-compliance with the Commission's published procedures

Virgin Australia notes that written notification of our applications was provided to the public by the Commission on 4 September. In accordance with the Commission's own procedures as published on its website, this notification specified that, "the closing date for notice of intention to make an application is COB (ie 5pm) on 11 September 2015, with the application due by COB 18 September 2015. If no notice of intention is received by COB 11 September 2015, the Commission may proceed to make a decision".

The Commission advised Virgin Australia that Qantas had sought to lodge a notice of intention to lodge a submission after the timeframe for doing so had ended. It remains unclear to Virgin Australia why the Commission decided to accept Qantas' submission of 17 September instead of proceeding directly to make a decision on 14 September, given Qantas' failure to lodge a notice of intention to lodge a submission by 5pm on 11 September. It would also seem that compliance with the Commission's published procedures is optional.

The Commission will appreciate the importance of all Australian carriers being subject to the same procedures and requirements in relation to its administration of the Act and Minister's Policy Statement. Variability and lack of certainty for stakeholders in the application of this legislative framework is inconsistent with the Commission's ability to effectively perform its functions and pursue the object of the Act "to enhance the welfare of Australians by promoting economic efficiency through competition in the provision of international air services".

Virgin Australia expects that the Commission will conclude its assessment of our applications and issue its decisions in relation to these matters without further delay.

Should you require any further information, please do not hesitate to contact me on (02) 8093 7001.

Yours sincerely



Jane McKeon
Group Executive
Government Relations