



**Australian Government**  
**International Air Services Commission**

**RENEWAL DETERMINATION**

**Determination:** [2016] IASC 114  
**Renewal of:** [2011] IASC 115  
**The Route:** Solomon Islands  
**The Applicant:** Virgin Australia Airlines (SE Asia) Pty Ltd  
(ABN 79 097 892 389)  
**Public Register File:** IASC/APP/201639

**The Commission makes a fresh determination allocating 360 seats per week on the Solomon Islands route valid for five years from 10 December 2017. The capacity may be used by Virgin Australia Airlines (SE Asia) Pty Ltd for code share services with Singapore Airlines.**

**1 The application for renewal**

1.1 On 19 December 2011, the delegate of the International Air Services Commission (the Commission) issued, in favour of Pacific Blue Airlines (Aust) Pty Ltd, Determination [2011] IASC 115 (the Determination) allocating 360 seats per week of capacity on the Solomon Islands route in accordance with the Australia-Solomon Islands air services arrangements. The Determination was subsequently amended by [2016] IASC 203 to permit the capacity to be used for code share services on the route with Singapore Airlines and to recognise the name change of Pacific Blue Airlines (Aust) Pty Ltd to Virgin Australia Airlines (SE Asia) Pty Ltd (hereinafter referred to as 'Virgin Australia').

1.2 Under section 17 of 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 is due to expire on 9 December 2017. In view of this, the Commission sent, on 7 November 2016, 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 22 November 2016 for a renewal of the Determination for a further five-year period from 10 December 2017. Additionally, Virgin Australia requested the retention of the existing conditions.

1.4 As required by sections 12 and 17 of the Act, the Commission published a notice on 22 November 2016 inviting other applications for the capacity. No other applications were received.

1.5 All non-confidential material supplied by the applicant is available on the Commission's website ([www.iasc.gov.au](http://www.iasc.gov.au)).

## **2 Relevant provisions of the air services arrangements**

2.1 According to the Register of Available Capacity, there are 1,460 seats per week in each direction to and from Sydney, Melbourne (including Avalon), Brisbane and Perth available for allocation to Australian carriers. There is unrestricted capacity, frequency and aircraft type to and from all points in Australia other than Sydney, Melbourne (including Avalon), Brisbane and Perth.

2.2 The designated airline(s) of Australia may enter into code share, blocked space or other cooperative marketing arrangements, as the marketing and/or operating airline with any other airline, including other designated Australian airlines and airlines of third parties.

## **3 Commission's assessment**

3.1 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.

3.2 Pursuant to section 11 of the Act, the Minister issued Policy Statement No. 5 dated 19 May 2004 (the Policy Statement). 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.

3.3 Under paragraph 6.2 of 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.

3.4 The Commission notes that:

- there are no other applicants seeking capacity on the route; and
- 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.

3.5 Under paragraph 8.1 of the Policy Statement, there is a presumption in favour of the carrier seeking the renewal which may be rebutted, after the start-up phase on the route, by the following criteria:

- whether the carrier seeking renewal has failed to service the route effectively; and
- whether 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.

3.6 The Commission has no information that Virgin Australia has not serviced the route effectively and notes that no other Australian carrier has applied for capacity on the route. In light of this, the Commission has decided it would allocate 360 seats of passenger capacity in each direction per week on the Solomon Islands route in favour of Virgin Australia.

3.7 In relation to the request to retain the existing condition which permits the use of the capacity for code share services between Virgin Australia and Singapore Airlines, the Commission considered paragraph 3.6 of the Minister's Policy Statement.

3.8 Under paragraph 3.6, 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).

3.9 Virgin Australia operates two weekly services between Brisbane and Honiara with over 30% share of the total traffic between Australia and the Solomon Islands. Solomon Airlines has the largest share of the traffic operating five weekly services –four between Honiara and Brisbane and one weekly service between Honiara and Sydney. Qantas code shares on flights operated by Solomon Airlines.<sup>1</sup>

3.10 The Commission further notes that on 23 September 2016, the ACCC granted authorisation for Virgin Australia and Singapore Airlines' existing integrated network alliance for a further five years. In re-authorising the alliance, the ACCC was 'satisfied that the alliance is likely to result in a net public benefit' <sup>2</sup>. For this reason, the Commission did not specifically consult the ACCC and did not see the need to apply the additional criteria in paragraph 5 of the Policy Statement.

3.11 In light of the above, the Commission has no serious concerns about Virgin Australia's use of the capacity for code share services with Singapore Airlines and has decided to include the existing conditions as requested.

3.12 Nothing in this decision should be taken as indicating either approval or disapproval by the ACCC. This decision is made without prejudicing, in any way, possible future consideration of code share operations by the ACCC.

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<sup>1</sup> International Airlines Timetable Summary for 2016 Northern Summer Scheduling Period

<sup>2</sup> ACCC determination dated 23 September 2016, Authorisation No. A91539 & A91540

#### **4 Determination for renewal of Determination [2011] IASC 115 allocating capacity on the Solomon Islands route to Virgin Australia Airlines (SE Asia) Pty Ltd ([2016] IASC 114)**

4.1 In accordance with section 8 of the Act, the Commission makes a determination in favour of Virgin Australia Airlines (SE Asia) Pty Ltd, allocating 360 seats per week in each direction to and from Sydney, Melbourne (including Avalon), Brisbane and Perth on the Australia-Solomon Islands route in accordance with the Australia – Solomon Islands air services arrangements.

4.2 The determination is for five years from 10 December 2017.

4.3 The determination is subject to the following conditions:

- Virgin Australia Airlines (SE Asia) Pty Ltd is required to fully utilise the capacity from the date this determination comes into effect or such other date approved by the Commission;
- only Virgin Australia Airlines (SE Asia) Pty Ltd is permitted to utilise the capacity;
- the capacity may be used by Virgin Australia (SE Asia) Pty Ltd for code share services with Singapore Airlines to be conducted in accordance with Australia's air services arrangements with Solomon Islands and Singapore and the code share agreement between Virgin Australia and Singapore Airlines dated 3 February 2012, as amended;
- Virgin Australia (SE Asia) Pty Ltd must apply to the Commission for approval of the use of the capacity if there are variations to the code share arrangement which would change the relevant commercial aspects of the code share arrangement 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 the 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 the airlines from complying with the Australian Consumer Law; and
- changes in relation to the ownership and control of Virgin Australia (SE Asia) Pty Ltd are permitted except to the extent that any change:
  - results in the designation of Virgin Australia (SE Asia) Pty Ltd as an Australian carrier under the Australia – Solomon Islands 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 (SE Asia) Pty Ltd or be in a position to exercise effective control of Virgin Australia (SE Asia) Pty Ltd without the prior consent of the Commission.

Dated: 19 December 2016



IAN DOUGLAS  
Chairperson



JOHN KING  
Commissioner



JAN HARRIS  
Commissioner