



Australian Government
International Air Services Commission

RENEWAL DETERMINATION

Determination:	[2017] IASC 125
Renewal of:	[2013] IASC 111
The Route:	Cook Islands
The Applicant:	Virgin Australia Airlines (SE Asia) Pty Ltd (Virgin Australia) ABN 79 097 892 389
Public Register	IASC/APP/201752

The Commission makes a determination allocating to Virgin Australia 180 seats of capacity per week in each direction on the Cook Islands route. The determination is valid for five years from 12 September 2018.

1 The application for renewal

1.1 On 8 March 2013, the Commission's delegate issued Determination [2013] IASC 111 (the Determination) allocating, in favour of Virgin Australia, 180 seats of capacity per week in each direction on the Cook Islands route.

1.2 Section 17 of the *International Air Services Commission Act 1992* (the Act) requires the Commission to 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 11 September 2018. In view of this, the Commission sent a letter, on 7 September 2017, inviting Virgin Australia to apply for renewal if it wished to renew the Determination.

1.3 Virgin Australia applied to the Commission on 21 September 2017 for a renewal of the Determination for a further five-year period from 12 September 2018, including the retention of the relevant conditions in the existing Determination.

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

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

2 Relevant provisions of the air services arrangements

2.1 In accordance with the Australia – Cook Islands air services arrangements, there are a total of 3,000 seats per week of passenger capacity in each direction which may be allocated to designated airlines of Australia using any aircraft type and without

limitation on frequency. Virgin Australia has a total capacity allocation of 900 weekly seats in each direction issued in various determinations while Qantas has a total allocation of 540 weekly seats. This leaves 1,560 seats of passenger capacity per week in each direction available for immediate allocation to designated airlines of Australia on the Cook Islands route.

2.2 Out of its total capacity allocation of 900 seats, Virgin Australia is seeking to renew 180 seats for another five-year term with effect from 12 September 2018.

3 Commission's consideration

3.1 Section 8 of the Act provides that the Commission may, at any time while a determination is in force, make a fresh determination allocating the capacity to which the original determination relates. The fresh determination 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, then Minister for Transport and Regional Services, the Hon. John Anderson MP issued Policy Statement No. 5 (hereinafter referred to as the Policy Statement) dated 19 May 2004. 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 8 of the Policy Statement, there is a presumption in favour of the carrier seeking a renewal which may be rebutted only if the carrier has failed to service the route effectively and the use of the capacity, in whole or in part, by another carrier who applied for the capacity, would better serve the public having regard to the criteria set out in paragraphs 4 and 5 of the Policy Statement.

3.4 The Commission does not have information to indicate that Virgin Australia has failed to service the route effectively. Virgin Australia operates up to five services per week between points in Australia and Cook Islands via New Zealand¹. Additionally, there is no other carrier applying for the capacity.

3.5 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.

3.6 The Commission notes that: (i) there are no other applicants seeking the capacity for which Virgin Australia has applied; and (ii) Virgin Australia is an

¹ Northern Summer 2017 International Airlines Timetable Summary (26 March 2017-28 October 2017)

established international carrier reasonably capable of obtaining the necessary approvals to operate on the route and of implementing its application.

3.7 In these circumstances, the Commission is satisfied that allocating 180 seats of capacity on the Cook Islands route to Virgin Australia is of benefit to the public.

3.8 In view of the above, the Commission has decided to renew the allocation of 180 seats of passenger capacity per week in each direction to Virgin Australia to operate services on the Cook Islands route subject to the conditions set out below. Subsection 15(1) of the Act allows a determination to include such terms and conditions as the Commission thinks fit.

4 Determination for renewal of [2013] IASC 111 allocating capacity on the Cook Islands route to Virgin Australia Airlines (SE Asia) Pty Ltd ([2017] IASC 125)

4.1 The Commission allocates to Virgin Australia, pursuant to section 8 of the Act, 180 seats of capacity in each direction on the Cook Islands route in accordance with the terms of the Australia – Cook Islands air services arrangements.

4.2 The determination is valid for five years from 12 September 2018.

4.3 The determination is subject to the following conditions:

- Virgin Australia is required to fully utilise the capacity from 30 September 2018 or such other date approved by the Commission;
- 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;
- 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 – Cook 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 or be in a position to exercise effective control of Virgin Australia, without the prior consent of the Commission

Dated: 17 October 2017



IAN DOUGLAS
Chairperson



IAN HARRIS
Commissioner