



## Australian Government

### International Air Services Commission

#### RENEWAL DETERMINATION

<b>Determination:</b>	[2019] IASC 124
<b>Renewal of:</b>	[2014] IASC 118
<b>The Route:</b>	France
<b>The Applicant:</b>	Virgin Australia International Airlines Pty Ltd (VAIA) (ABN 63 125 580 823)
<b>Public Register:</b>	IASC/APP/201931

**The Commission makes a fresh determination allocating to Virgin Australia International Airlines (VAIA) 150 one way seats per day on an average basis on the France route. VAIA is also permitted to use the capacity to provide services jointly with Etihad Airways and Singapore Airlines. The determination is valid for five years from 25 October 2020.**

#### 1 The application for renewal

1.1 On 21 November 2014, the International Air Services Commission (the Commission) issued Determination [2014] IASC 118 (the Determination) allocating, in favour of VAIA, 150 one way seats per day on an average basis on the Australia-France route. The capacity allocation is being utilised by VAIA to provide code share services on flights operated by Etihad Airways to Paris via Abu Dhabi and on flights operated by Singapore Airlines to Paris via Singapore.

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 24 October 2020. In view of this, the Commission sent, on 11 October 2019, a letter to Virgin Australia inviting it to apply for renewal if it wished to renew the Determination.

1.3 VAIA applied to the Commission on 25 October 2019 for a renewal of the Determination for a further five-year period from 25 October 2020.

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 VAIA 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 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 Under the Australia-France air services arrangements, the designated airlines of Australia may enter into arrangements with other airlines, including airlines of third countries, to undertake services through code share, blocked space or other joint venture arrangements. The total traffic carried through such arrangements by the Australian designated airlines will not exceed 400 one-way seats daily on a yearly basis. Currently, all 400 one-way seats of capacity entitlements have been allocated to Australian carriers (250 seats to Qantas and 150 seats to Virgin Australia).

## **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 In accordance with section 11 of the Act, the Minister issued the International Air Services Commission Policy Statement 2018 (the Policy Statement), which came into effect on 28 March 2018.

3.3 Section 7 of the Policy Statement explains that, in assessing the benefit to the public of an allocation of capacity when deciding to make, renew or vary a determination, the Commission is to have regard to the 'reasonable capability criterion' in section 8 and the additional criteria in section 9, when circumstances so warrant under Division 3 of Part 3 of the Policy Statement.

3.4 Under section 14 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 there are other applications for some or all of the capacity; and the Commission is satisfied that a different allocation of capacity would be of greater benefit to the public, having regard to the criteria set out in sections 8 and 9 of the Policy Statement.

3.5 Under the 'reasonable capability criterion' in section 8 of the Policy Statement, in assessing the public benefit of an application, the Commission is to have regard to the extent to which all Australian carriers that are, or would be, permitted to use the capacity allocated under a determination are reasonably capable of: (a) obtaining any licences, permits or other approvals required to operate on and service the route to which the determination relates; and (b) using the capacity allocated under the determination.

3.6 The Commission notes that there are no other applicants seeking capacity on the route and there is no information to suggest that VAIA has failed to service the route effectively. For this reason, the Commission decided to only apply the reasonable capability criterion under section 8 of the Policy Statement and did not consider it necessary to assess the application against the additional criteria in section 9 of the Policy Statement.

3.7 VAIA uses its allocation of 150 seats under code share arrangements with Etihad and Singapore Airlines, while Qantas holds 250 one way seats per day (on an annual average basis) on the route, used for code sharing with Emirates and British Airways. The service offerings of both major Australian carriers on the Australia-France route, in addition to services offered by Air France and Air Austral, provide travel options to consumers. In light of the above, the Commission is satisfied that renewal of the determination allocating 150 one way seats of capacity per day on the France route to VAIA is of benefit to the public.

3.8 Subsection 15(1) of the Act allows a determination to include such terms and conditions as the Commission thinks fit. Subsection 19(3) of the Act provides that “[i]n including terms and conditions in the determination, the Commission may make such changes (if any) to the terms and conditions included in the original determination (including adding or deleting terms and conditions) as it is satisfied are warranted because of changes in circumstances since the original determination was made”. VAIA, in its application requested for the retention of all conditions in the Determination sought to be renewed. In light of this, the Commission has decided to issue this fresh determination with the conditions set out below.

#### **4 Determination for renewal of [2014] IASC 118 allocating capacity on France route 1 to Virgin Australia International Airlines (VAIA) ([2019] IASC 124)**

4.1 The Commission allocates to Virgin Australia International Airlines, pursuant to section 8 of the Act, 150 one way seats per day on an average basis on the Australia-France route in accordance with the terms of the Australia – France air services arrangements.

4.2 The determination is valid for five years from 25 October 2020.

4.3 The determination is subject to the following conditions:

(a) VAIA is required to fully utilise the capacity from no later than 31 December 2020 or such other date approved by the Commission;

(b) Only VAIA is permitted to use the capacity;

(c) VAIA is not permitted to utilise the capacity to provide code share or joint services with another carrier or any other person without the approval of the Commission, subject to conditions (d) and (e);

- (d) The capacity may be used by VAIA to provide services jointly with Etihad Airways in accordance with the code share agreement between Virgin Australia and Etihad Airways dated 26 August 2010, as amended;
- (e) The capacity may be used by VAIA to provide services jointly with Singapore Airlines in accordance with the code share agreement between Virgin Australia and Singapore Airlines dated 3 February 2012, as amended;
- (f) VAIA must obtain the Commission's written approval of any proposed variations to the code share arrangements with Etihad Airways and/or Singapore Airlines which would change the relevant commercial aspects of the arrangements 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 that route;
- (g) Under any code share agreement with Etihad Airways and Singapore Airlines, Virgin Australia may only price and market its services jointly, or share or pool revenues/ profits with the airlines so long as such practices are authorised under the *Competition and Consumer Act 2010*;
- (h) To the extent that the capacity is used to provide joint or code share services, the airlines must take all reasonable steps to ensure that passengers are informed of the carrier actually operating the flight at the time of booking. Nothing in this determination exempts the airlines from complying with the Australian Consumer Law.
- (i) Changes in relation to the ownership and control of VAIA are permitted except to the extent that any change:
- results in the designation of the airline as an Australian carrier under the Australia – France 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 VAIA or be in a position to exercise effective control of the airline, without the prior consent of the Commission.

Dated: 28 November 2019



IAN DOUGLAS  
Chairperson



KAREN GOSLING  
Commissioner