



Australian Government

International Air Services Commission

RENEWAL DETERMINATION

Determination:	[2019] IASC 125
Renewal of:	[2014] IASC 117
The Route:	Thailand
The Applicant:	Virgin Australia International Airlines Pty Ltd (VAIA) (ABN 63 125 580 823)
Public Register:	IASC/APP/201932

The Commission makes a fresh determination allocating to Virgin Australia International Airlines Pty Ltd (VAIA) seven third party code share frequencies per week in each direction on the Thailand route. The fresh determination permits the capacity to be used by VAIA for the provision of code share services with Singapore Airlines and SilkAir and 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 117 (the Determination) allocating, in favour of Virgin Australia International Airlines Pty Ltd (VAIA), seven third party code share frequencies per week in each direction on the Thailand route. The capacity allocation is being utilised VAIA for the provision of code share services with Singapore Airlines and SilkAir and is valid for five years from 25 October 2015.

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. In its application VAIA stated that it continues to utilise the capacity to offer code share services to Thailand on flights operated by Singapore Airlines and SilkAir and that it wishes to retain all existing conditions.

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).

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 The Australia – Thailand air services arrangements allow multiple designation of Australian airlines to operate on the Thailand route. The designated airlines of Australia may enter into code sharing, blocked space and/or any other cooperative services arrangement with an airline(s) of Australia, Thailand or with a regional airline.

2.3 In addition to the bilateral code share capacity, the air services arrangements permit Australian designated carriers to be allocated a total of 40 frequencies for third country code share services. Qantas has been allocated 26 frequencies per week for third country code share while Virgin Australia has an allocation of seven frequencies per week, which the airline now wishes to renew.

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 Under section 11 of the Act, the Minister made the *International Air Services Commission Policy Statement 2018* (the Policy Statement) which came into effect on 28 March 2018. The Policy Statement sets out the criteria which the Commission is required to apply in assessing the benefit to the public of allocations of capacity.

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 The Commission notes that VAIA continues to offer code share services on flights

operated by Singapore Airlines and SilkAir between Australia and Thailand via Singapore. VAIA code shares on flights operated by Silkair between Singapore and Chiang Mai, Phuket and Samui and on flights operated by Singapore Airlines between Singapore and Bangkok.¹ In light of this, the Commission has no information that VAIA fails to service the route effectively.

3.6 As there is no other application on the capacity sought to be renewed, the Commission has decided to only apply section 8 of the Policy Statement and not any of the additional criteria in section 9. 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.

3.7 The Commission notes that VAIA is an established carrier operating scheduled international air services to various routes and finds it is reasonably capable of obtaining any licences, permits or other approvals required to operate on and service the Australia-Thailand route and of using the capacity allocated under the determination. In light of this, the Commission finds that allocating seven frequencies per week for third country code share in favour of VAIA would be of benefit to the public.

3.8 Section 15 of the Act provides that a determination may include such terms and conditions as the Commission thinks fit. Subsection 19(3) of the Act provides that, in including terms and conditions in the fresh determination, the Commission may make such changes to the terms and conditions included in the original determination sought to be renewed, including adding or deleting terms and conditions, where warranted by changes in circumstances since the original determination was made. The wording of the fresh determination below reflects the view of the Commission that determinations which renew original determinations should contain updated terms and conditions consistent with the legislative requirements and current air services arrangements.

4 Determination for renewal of [2014] IASC 117 allocating capacity on the Thailand route to Virgin Australia International Airlines Pty Ltd ([2019] IASC 125)

4.1 The Commission allocates to Virgin Australia International Airlines Pty Ltd (VAIA), pursuant to section 8 of the Act, seven frequencies per week in each direction for third country code share services in accordance with the terms of the Australia – Thailand 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:

¹ International Airlines Timetable Summary, Northern Summer 2019

- (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) The capacity must only be utilised by VAIA.
- (c) VAIA is not permitted to utilise the capacity to provide code share or joint services with another carrier or any other person unless approved in writing by the Commission or in accordance with condition (d).
- (d) VAIA is permitted to utilise the capacity to provide code share services with Singapore Airlines and SilkAir in accordance with the code share agreement between the airlines dated 3 February 2012, as amended from time to time.
- (e) VAIA must obtain the Commission's written approval before implementing any variation 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 VAIA proposes to add third country routes on which the airlines will code share where Australian capacity will be used for services on that route.
- (f) To the extent that the capacity is used to provide code share (or joint) 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.
- (g) 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 – Thailand 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 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