



Australian Government

International Air Services Commission

DETERMINATION

Determination: [2019] IASC 128
The Route: Indonesia
The Applicant: Virgin Australia International Airlines Pty Ltd
(Virgin Australia)
(ABN 63 125 580 823)
Public Register File: IASC/APP/201936

The Commission makes a determination allocating to Virgin Australia International Airlines Pty Ltd 880 seats per week of capacity in each direction on the Indonesia route. The determination is valid for five years from 28 November 2019.

1 The application

1.1 On 6 November 2019, the International Air Services Commission (the Commission) received an application from Virgin Australia International Airlines Pty Ltd (VAIA) seeking an allocation of 880 seats per week in each direction of passenger capacity on the Indonesia route. VAIA intends to introduce five additional services per week between Australia and Indonesia using a B737-800 aircraft. VAIA sought the capacity on the following basis:

- the allocation is requested for a period of five years from the date of the determination;
- the capacity will be fully utilised by 29 March 2020;
- the capacity may be used by VAIA.

1.2 In accordance with section 12 of the *International Air Services Commission Act 1992* (the Act), on 6 November 2019, the Commission published VAIA's application on the Commission's website inviting other applications on the Indonesia route. No other applications were received.

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

2 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 According to the Register of Available Capacity, there are 1,722 seats per week in each direction to and from Sydney, Melbourne (including Avalon), Brisbane and Perth available for allocation to Australian carriers.

3 Commission's consideration

3.1 Subsection 12(3) of the Act allows any person to apply to the Commission for a determination allocating capacity to enable an Australian carrier to operate international air services.

3.2 Subsection 7(1) of the Act empowers the Commission to make a determination allocating available capacity. Subsection 7(2) requires, in part, that the Commission's determination must not allocate capacity unless the Commission is satisfied that the allocation would be of benefit to the public and would not be contrary to any restrictions on capacity contained in bilateral arrangements, or combination of bilateral arrangements.

3.3 Further, subsection 7(3) of the Act provides that in assessing the benefit to the public of an allocation of capacity, the Commission must apply the criteria set out in the policy statement made by the Minister pursuant to section 11 of the Act.

3.4 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.

3.5 VAIA is seeking the allocation of 880 seats per week of capacity in each direction on the Indonesia route. The new capacity sought is in addition to VAIA's current capacity allocation of 3,872 seats per week, and will be used to operate five additional weekly services using a B737-800 aircraft.

3.6 Section 12 of the Policy Statement provides, in part, that in circumstances where: (a) there is only one applicant for allocation of capacity on a route; (b) there is sufficient available capacity on the route for the Commission to make a determination sought in the application; and (c) there is no opposition to the application, the Commission is to have regard to the 'reasonable capability criterion' in section 8 of the 2018 Policy Statement and need not have regard to any other matter.

3.7 Under section 8 of the Policy Statement, the Commission is to assess 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 licenses, 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.

3.8 The Commission notes there are no other applicants seeking capacity on the route and no opposition to the application. The Commission further notes that VAIA is an established international carrier and, as such, is reasonably capable of obtaining any licenses, permits or other approvals required to operate on and service the route and of using the capacity allocated under the determination. Accordingly, the Commission has concluded that VAIA fulfils the criteria under section 8 and has decided to allocate the capacity in favour of VAIA, as requested.

3.9 Subsection 15(1) of the Act empowers the Commission to include such terms and conditions as it thinks fit. Subsection 15(2) requires that the determination must specify the period during which it is to be in force and must include a condition that it must be fully used. In light of this, the Commission has decided to issue the determination subject to the conditions set out below.

4 Determination allocating capacity on the Indonesia route to VAIA ([2019] IASC 128)

4.1 In accordance with section 7 of the Act, the Commission makes a determination in favour of Virgin Australia International Airlines Pty Ltd, allocating 880 seats of capacity per week in each direction on the Indonesia route in accordance with the Australia – Indonesia air services arrangements.

4.2 The determination is valid for five years from 28 November 2019.

4.3 The determination is subject to the following conditions:

- a. VAIA is required to fully utilise the capacity from no later than 29 March 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.
- d. 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 – Indonesia 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 VAIA without the prior consent of the Commission.

Dated: 28 November 2019

A blue ink signature of Ian Douglas, consisting of a large, stylized 'I' followed by a horizontal line.

IAN DOUGLAS
Chairperson

A blue ink signature of Karen Gosling, featuring a stylized 'K' and 'G'.

KAREN GOSLING
Commissioner