



Australian Government

International Air Services Commission

RENEWAL DETERMINATION

Determination: [2019] IASC 105
Renewal of: [2015] IASC 102
The Route: Papua New Guinea (PNG)
The Applicant: Virgin Australia Airlines (SE Asia) Pty Ltd
(Virgin Australia)
(ABN 79 097 892 389)
Public Register: IASC/APP/201906

The Commission makes a fresh determination allocating to Virgin Australia 172 seats of capacity per week on the PNG route. The determination is valid for five years from 25 February 2020.

1 The application for renewal

1.1 Section 17 of the *International Air Services Commission Act 1992* (the Act) requires the International Air Services Commission (the Commission) to start its consideration of the renewal of a determination at least 12 months before the expiry of the Determination. Determination [2015] IASC 102 (the Determination) is due to expire on 24 February 2020. In view of this, the Commission sent, on 6 February 2019, a letter to Virgin Australia inviting it to apply for renewal if it wished to renew the Determination.

1.2 On 21 February 2019, the Commission received an application from Virgin Australia seeking to renew the Determination allocating, in favour of Virgin Australia, 172 seats per week of capacity on the Papua New Guinea route for a further five-year period from 25 February 2020.

1.3 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.

1.4 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 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 – PNG air services arrangements allow multiple designation of Australian airlines to operate on the PNG route. The Register of Available Capacity indicates there are 400 seats of capacity available for immediate allocation on this route.

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 for Infrastructure and Transport, the Hon. Michael McCormack MP, 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 14 of the Minister’s Policy Statement provides that there is a presumption of making the same allocation of capacity in favour of the carrier seeking a renewal. However, the Commission may consider that an allocation of capacity is no longer of benefit to the public 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 having regard to the reasonable capability criterion (in section 8 of the Policy Statement) and any of the additional criteria (set out in section 9 of the Policy Statement) is satisfied that a different allocation of the capacity would be of greater benefit to the public.

3.4 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.

3.5 The Commission notes that there are no other applicants seeking capacity on the route and there is no information to suggest that Virgin Australia 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.

3.6 The Commission notes that Virgin Australia is an established carrier operating scheduled services between Australia and Papua New Guinea and finds that the carrier is reasonably capable of obtaining the necessary regulatory approvals and of using the capacity allocated on the Papua New Guinea route. In light of this, the Commission is satisfied that renewing the capacity allocation in favour of Virgin Australia would be of benefit to the public.

3.7 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, 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 [2015] IASC 102 allocating capacity on the Papua New Guinea route to Virgin Australia ([2019] IASC 105)

4.1 The Commission allocates to Virgin Australia, pursuant to section 8 of the Act, 172 seats per week of capacity on the Papua New Guinea route in accordance with the terms of the Australia – Papua New Guinea air services arrangements.


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

4.3 The determination is subject to the following conditions:

- (a) Virgin Australia is required to fully utilise the capacity from no later than 25 May 2020 or such other date approved by the Commission;
- (b) Only Virgin Australia is permitted to utilise the capacity.
- (c) Virgin Australia is not permitted to utilise the capacity to provide code share or joint services with another carrier or any other person unless approved by the Commission.
- (d) 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 – Papua New Guinea 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 the airline or be in a position to exercise effective control of the airline, without the prior consent of the Commission.

Dated: 18 March 2019



IAN DOUGLAS
Chairperson



JAN HARRIS
Commissioner



KAREN GOSLING
Commissioner