



Australian Government

Department of Infrastructure and Transport

Deputy Secretary

File Reference: 11/10291
Contact: Ilona Balint

Ms Sue McIntosh
Executive Director
International Air Services Commission
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Dear Ms McIntosh

Virgin Australia Request to Transfer Capacity on the Indonesia Route

I refer to the request by Virgin Australia Airlines Pty Ltd (VAA) to transfer capacity on the Indonesia route to Virgin Australia International Airlines Pty Ltd (VAIA), dated 23 February 2012. The Department of Infrastructure and Transport welcomes the opportunity to make a submission in relation to the application and the issues raised by Qantas Airways Limited in its submission dated 12 March 2012.

The Department notes the application made by VAA is a routine application for the transfer of capacity from one Virgin Australia Group entity to another. The IASC has previously considered applications to transfer capacity on the Indonesian route among airlines within the Virgin Australia Group. This particular application is necessary because under an impending corporate restructure VAA (formerly Virgin Blue Airlines) is returning to being a solely domestic operation.

The Department notes to date, and as permitted by the *International Air Services Commission Act 1992* (the IASC Act), the IASC has allocated capacity to Qantas for use by Qantas Group airlines (e.g. Qantas Airways Limited and Jetstar Airways Pty Limited). As a result, the allocated capacity is able to be transferred between Qantas Group airlines without the need for a further application to the IASC. These provisions have afforded the Qantas Group considerable flexibility in serving certain routes.

In contrast, due to the particular way the IASC Act is worded, the Virgin Australia Group requires the approval of the IASC to transfer capacity between Virgin Australia Group airlines (VAA (previously Virgin Blue Airlines Pty Ltd), VAIA (previously Virgin Blue International Airlines Pty Ltd trading as V Australia), and Virgin Australia Airlines (SE Asia) Pty Ltd (previously Pacific Blue Airlines Australia Pty Ltd)).

The Qantas submission raises concerns about the potential, as a result of the impending corporate restructure, for the international airlines of the Virgin Australia Group to become effectively controlled by foreign persons.

The impending corporate restructure is ultimately a matter for the Virgin Australia Group. The Department understands the restructure is designed to ensure the international business continues to comply with the foreign ownership and control restrictions while the domestic operations can benefit from opening up to international capital markets. Australia's aviation policy allows majority foreign-

owned domestic operations, subject to compliance with Australia's broader foreign investment regulatory requirements.

The Department's primary interest, as it relates to the impending corporate restructure, is the ongoing compliance of the international airlines of the Virgin Australia Group with the ownership and control provisions of the *Air Navigation Act 1920* and the associated airline licensing policies.

The Department monitors the operations of all Australian international airlines for ongoing compliance with regulatory requirements. Should an unacceptable foreign ownership and control situation arise, then the Minister for Infrastructure and Transport may exercise powers under the relevant legislation to require compliance with the foreign ownership restrictions.

Should an unacceptable foreign ownership and control situation persist, then the airlines designation as an Australian international airline would be withdrawn and it would no longer be able to access rights under Australia's bilateral air services agreements. The Department would then advise the IASC to ensure any capacity held by that airline is returned to the IASC for reallocation.

In relation to the international operations of the Virgin Australia Group, the Department understands a separate company, Virgin Australia International Holdings (VAIH), will be the holding company for the existing Australian international airline companies of the Virgin Australia Group (VAIA and VAA (SEA)). The constitution of VAIH and the constitutions of the Australian international airline companies are expected to contain the required provisions restricting levels of foreign ownership. The respective constitutions are also expected to require:

- At least two-thirds of the board members to be Australian citizens;
- The Chairman of the board to be an Australian citizen;
- The head office of the international airline operations to be located in Australia; and
- The operational base of the international airline operations to be located in Australia.

The Department notes these provisions are consistent with the regulatory requirements for the designation of the Australian international airline companies of the Virgin Australia Group as Australian international airlines. In relation to the current application, VAIA remains a designated Australian international airline holding a range of IASC capacity allocations and is eligible to apply for (and receive) further capacity allocations from the IASC.

In light of the Department's role in monitoring the operations of all Australian international airlines for ongoing compliance with regulatory requirements, we do not believe Qantas' suggestion of the need for a public inquiry is either necessary or appropriate in the context of this application.

In summary, the Department does not support the call for an public review of the establishment of VAIH. Instead I believe the current application should be considered by the IASC in its usual manner, in line with its responsibilities pursuant to the IASC Act, the International Air Services Commission Regulations 1992, and the Minister's Policy Statement.

I would be happy to discuss these matters further with you.

Yours sincerely



Andrew Wilson

20 March 2012