



## Australian Government

### International Air Services Commission

#### RENEWAL DETERMINATION

**Determination:** [2016] IASC 112  
**Renewal of:** [2011] IASC 131  
**The Route:** Fiji  
**The Applicant:** Virgin Australia Airlines (SE Asia) Pty Ltd  
(ABN 79 097 892 389) (Virgin Australia)  
**Public Register File:** IASC/APP/201638

**The Commission makes a fresh determination allocating 907 seats of capacity per week in each direction on the Fiji route. The determination is valid for five years from 5 November 2017.**

#### 1 The application for renewal

1.1 On 19 December 2011, the Commission issued Determination [2011] IASC 131 (the Determination) allocating 907 seats of capacity per week in each direction on the Fiji route in favour of Pacific Blue Airlines (Aust) Pty Ltd. The Determination was valid for five years from 5 November 2012.

1.2 Under section 17 of the *International Air Services Commission Act 1992* (the Act), the Commission must start its consideration of the renewal of a determination at least 12 months before the expiry of the Determination. The Determination expires on 4 November 2017. In view of this, the Commission sent, on 7 November 2016, a letter to Virgin Australia inviting it to apply for renewal if it wished to renew the Determination.

1.3 Virgin Australia applied to the Commission on 22 November 2016 for a renewal of the allocation of 907 seats per week in each direction for a further period of five years from 5 November 2017.

1.4 Virgin Australia further requested that the renewal of the Determination also recognise the name change of Pacific Blue Airlines (Aust) Pty Ltd to Virgin Australia Airlines (SE Asia) Pty Ltd.

1.5 As required by sections 12 and 17 of the Act, the Commission published a notice on 22 November 2016 inviting other applications for the capacity. No applications were received.

1.6 All non-confidential material supplied by the applicant is available on the Commission's website ([www.iasc.gov.au](http://www.iasc.gov.au)).

## **2 Commission's consideration**

2.1 In considering an application for renewal of a determination under section 8 of the Act, the Commission 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.

2.2 Under paragraph 6.2 of the Minister's Policy Statement (No. 5) of 19 May 2004 (the Policy Statement), in circumstances where there is only one applicant for allocation of capacity on a route, only the criteria in paragraph 4 are applicable. Paragraph 4 provides that the use of entitlements by Australian carriers under a bilateral arrangement is of benefit to the public unless such carriers are not reasonably capable of obtaining the necessary approvals to operate on the route and are not reasonably capable of implementing their applications.

2.3 The Commission notes that:

- there are no other applicants seeking capacity on the route; and
- Virgin Australia is an established international carrier and is therefore reasonably capable of obtaining the necessary approvals to operate on the route and of implementing their proposed services.

2.4 Under paragraph 8.1 of the Policy Statement, there is a presumption in favour of the carrier seeking the renewal which may be rebutted only in the following circumstances: (1) that the carrier seeking renewal has failed to service the route effectively; and (2) that the use of the capacity in whole or in part by another Australian carrier that has applied for the capacity would better serve the public having regard to the criteria in paragraphs 4 and 5 of the Policy Statement.

2.5 The Commission has no information that Virgin Australia has failed to service the route effectively or that another carrier is interested to apply for the capacity sought to be renewed.

2.6 In relation to the name change, the Commission has decided to issue a resolution to recognise the name change of Pacific Blue Airlines (Aust) Pty Ltd to Virgin Australia Airlines (SE Asia) Pty Ltd., as requested. The renewal determination will be issued in the name of Virgin Australia Airlines (SE Asia) Pty Ltd.

## **3 Relevant provisions of the air services arrangements**

3.1 The air services arrangements between Australia and Fiji permit the designation of multiple Australian airlines. According to the Register of Available Capacity, there is currently just one seat per week available for allocation on specified routes to and from Sydney, Melbourne, Brisbane and Perth. However, designated Australian airlines may determine the frequency of service, capacity and aircraft type to be operated on the specified routes to or from points in Australia other than Sydney, Melbourne, Brisbane and Perth.

#### **4 Determination for renewal of Determination [2011] IASC 131 allocating capacity on the Fiji route to Virgin Australia ([2016] IASC 112)**

4.1 Pursuant to section 8 of the Act, the Commission makes a determination in favour of Virgin Australia Airlines (SE Asia) Pty Ltd., allocating 907 seats of capacity per week in each direction on the Fiji route in accordance with the Australia - Fiji air services arrangements.

4.2 The determination is for five years from 5 November 2017.

4.3 The determination is subject to the following conditions:

- Virgin Australia (SE Asia) Pty Ltd is required to fully utilise the capacity from the date this determination comes into effect or such other date as may be approved by the Commission;
- only Virgin Australia (SE Asia) Pty Ltd is permitted to utilise the capacity;
- Virgin Australia (SE Asia) Pty Ltd is not permitted to utilise the capacity to provide services jointly with another Australian carrier or any other person without the approval of the Commission; and
- changes in relation to the ownership and control of Virgin Australia (SE Asia) Pty Ltd are permitted except to the extent that any change:
  - results in the designation of the airline as an Australian carrier under the Australia – Fiji 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 Virgin Australia (SE Asia) Pty Ltd or be in a position to exercise effective control of Virgin Australia (SE Asia) Pty Ltd, without the prior consent of the Commission.

Dated: 19 December 2016

  
IAN DOUGLAS  
Chairperson

  
JOHN KING  
Commissioner

  
IAN HARRIS  
Commissioner