



Australian Government

International Air Services Commission

RENEWAL DETERMINATION

Determination: [2013] IASC 127
Renewal of: [2009] IASC 103
The Route: Indonesia
The Applicant: Virgin Australia International Airlines Pty Ltd
(Virgin Australia) (ABN 63 125 580 823)
Public Register File: IASC/APP/2013

The Commission makes a fresh determination in favour of Virgin Australia allocating 720 seats per week on the Indonesia route for five years.

1 The application for renewal

1.1 On 25 February 2009, the delegate of the Commission issued Determination [2009] IASC 103 (the Determination) allocating to Pacific Blue Australia 720 seats per week in each direction on the Indonesia route in accordance with the terms of the Australia – Indonesia air services arrangements. The Determination was for five years and was subsequently varied by:

- Decision [2010] IASC 206 transferring the capacity to Virgin Blue Airlines;
- Decision [2011] IASC 214 permitting V Australia to code share on Virgin Blue Airlines;
- Resolution [2011] IASC R18 recognising the name change of Virgin Blue Airlines Pty Ltd to Virgin Australia Airlines Pty Ltd and Virgin Blue International Airlines (trading as V Australia) to Virgin Australia International Airlines Pty Ltd.
- Decision [2012] IASC 204 transferring capacity from Virgin Australia Airlines Pty Ltd to Virgin Australia International Airlines Pty Ltd, the current holder of the capacity.

1.2 Under 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 24 February 2014. In view of this, the Commission sent, on 27 March 2013, 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 2 April 2013 for a renewal of the Determination for five years from 25 February 2014.

1.4 As required by sections 12 and 17 of the Act, the Commission published a notice on 3 April 2013 inviting other applications for the capacity. No applications were received.

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

2 Commission's assessment

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 its application.

2.4 Under paragraph 8.1 of the Policy Statement, there is a presumption in favour of the carrier seeking the renewal.

2.5 In these circumstances, the Commission is satisfied that renewal of Determination [2009] IASC 103 would be of benefit to the public.

2.6 The Commission does, however, have concerns that there is very little available capacity on the Indonesia route (only 1,972 seats per week from Sydney, Melbourne, Brisbane and Perth) and that both Virgin Australia and Qantas are under-utilising their allocated capacity by some considerable margin. In its Northern Summer 2013 capacity utilisation report which it provided to the Commission on 2 April 2013, Virgin Australia indicated that it is assessing opportunities to schedule additional services during peak periods over the coming year and that it will fully utilise the capacity allocated to it by 1 April 2014 (or such other date approved by the Commission), as required by [2011] IASC 110.

2.7 The Commission notes that there has been strong growth on the Indonesia route in recent years, averaging 23% per annum since 2007¹, with the bulk of the traffic being Australians travelling to Denpasar. Taking these factors into account, and allowing for the need to give Virgin Australia flexibility to respond to growth on the route, the Commission will renew the Determination. The Commission will, however, include a condition that the capacity must be fully utilised by 1 April 2014. If by that time Virgin Australia is not fully utilising all its allocated capacity, the Commission would expect it to hand back unutilised

¹ Bureau of Infrastructure, Transport and Regional Economics

capacity, making reasonable allowance for seasonal peaks and anticipated growth over the short term. Should the airline fail to fully utilise its capacity without handing back the unutilised capacity, Virgin Australia could be in breach of a condition of its determinations. In such circumstances, the Commission reserves the right to conduct a review of the relevant determination(s) under section 10 of the Act.

2.9 Virgin Australia has advised the Commission that from mid-January 2013 all Virgin Australia flights will be operated under the VA designator and that once this occurs code share operations between Virgin Australia entities will no longer be required. Accordingly, in this determination the Commission has removed conditions contained in Determination [2009] IASC 103, as varied by Decision [2011] IASC 214, allowing for code sharing between Virgin Australia entities.

3 Determination for renewal of Determination [2009] IASC 103 allocating capacity on the Indonesia route to Virgin Australia ([2013] IASC 127)

3.1 The Commission, makes a determination in favour of Virgin Australia International Airlines Pty Ltd, allocating 720 seats per week in each direction on the Indonesia route under the Australia – Indonesia air services arrangements.

3.2 The determination is for five years from 25 February 2014.

3.3 The determination is subject to the following conditions:

- Virgin Australia is required to fully utilise the capacity from no later than 1 April 2014, or from such other date approved by the Commission;
- only Virgin Australia is permitted to utilise the capacity;
- Virgin Australia 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 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 Virgin Australia or be in a position to exercise effective control of Virgin Australia, without the prior consent of the Commission.

Dated: 20 May 2013



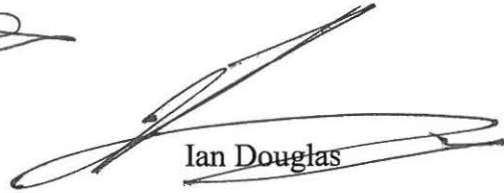
Jill Walker

Chairperson



Stephen Bartos

Member



Ian Douglas

Member