



Australian Government

International Air Services Commission

RENEWAL DETERMINATION

Determination:	[2014] IASC 107
Renewal of:	[2010] IASC 102
The Route:	Cook Islands
The Applicant:	Virgin Australia Airlines (SE Asia) Pty Ltd (Virgin Australia) formerly Pacific Blue Airlines (Australia) Pty Ltd (ABN 79 097 892 389)
Public Register File:	IASC/APP/201451

The Commission's delegate makes a fresh determination allocating 360 seats per week to Virgin Australia on the Cook Islands route for five years.

1 The application for renewal

1.1 On 9 April 2010, the Commission's delegate issued Determination [2010] IASC 102 (the Determination) allocating to Pacific Blue Airlines (Australia) Pty Ltd 360 seats of capacity per week in each direction on the Cook Islands route in accordance with the terms of the Australia – Cook Islands air services arrangements. The Determination was subsequently varied by Decision [2011] IASC 213 to allow Pacific Blue Australia to use its allocated capacity to provide services jointly with V Australia. On 8 December 2011, the Commission issued Resolution [2011] IASC R16 recognising the name change of Pacific Blue Airlines (Australia) Pty Ltd to Virgin Australia Airlines (SE Asia) Pty Ltd.

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 8 April 2015. In view of this, the Commission sent, on 3 April 2014, a letter to Virgin Australia inviting it to apply for renewal if it wished to renew the Determination.

1.3 On 4 April 2014, Virgin Australia applied to the Commission for the renewal of the Determination for five years from 9 April 2015.

1.4 As required by sections 12 and 17 of the Act, the Commission published a notice on 7 April 2014 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 Delegate's consideration

2.1 In accordance with section 27AB of the Act and regulation 3A of the International Air Services Commission Regulations 1992, the delegate of the Commission may consider the Virgin Australia application. (For purposes of this determination, all references to the Commission include the delegate of the Commission).

2.2 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.

2.3 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.

2.4 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.

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

2.6 In these circumstances, the Commission is satisfied that renewal of Determination [2010] IASC 102 would be of benefit to the public.

3 Determination for renewal of Determination [2010] IASC 102 allocating capacity on the Cook Islands route to Virgin Australia ([2014] IASC 107)

3.1 The delegate, on behalf of the Commission, makes a determination, in accordance with section 8 of the Act, in favour of Virgin Australia (SE Asia) Pty Ltd, allocating 360 seats per week in each direction on the Cook Islands route under the Australia – Cook Islands air services arrangements.

3.2 The determination is for five years from 9 April 2015.

3.3 The determination is subject to the following conditions:

- Virgin Australia (SE Asia) Pty Ltd is required to fully utilise the capacity from the date of issue of this instrument;

- 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 – Cook Islands 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: 16 April 2014



Marlene Tucker
Executive Director
Delegate of the IASC Commissioners