



Australian Government

International Air Services Commission

DETERMINATION

Determination: [2014] IASC 112
Renewal of: [2009] IASC 130
The Route: Tonga
The Applicant: Virgin Australia Airlines (SE Asia) Pty Ltd
(Virgin Australia) ACN 79 097 892 389
Public Register: IASC/APP/201465

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

1 The application

1.1 On 12 October 2009, the Commission issued Renewal Determination [2009] IASC 130 (the Determination) allocating 360 seats per week on the Tonga route to Virgin Australia. The Determination, as varied by [2011] IASC 218 and [2014] IASC 228, is valid for five years from 8 September 2010.

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 its expiry; the Determination (as varied) expires on 7 September 2015. In view of this, on 1 September 2014 the Commission sent 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 4 September 2014 for a renewal of the Determination for five years from 8 September 2015. Virgin Australia confirmed that the capacity is currently being fully utilised. Virgin Australia also requested the continuation of the conditions authorising Singapore Airlines to code share on the route, subject to restrictions on local traffic rights under the Australia-Singapore air services arrangements.

1.4 As required by sections 12 and 17 of the Act, the Commission published a notice on 4 September 2014 inviting other applications for capacity. No applications were received.

1.5 All non-confidential material supplied by Virgin Australia is available on the Commission's website (www.iasc.gov.au).

2 Delegate's assessment

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 application for allocation of capacity. (For purposes of this decision, 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 the capacity for which Virgin Australia has applied; and
- Virgin Australia is an established international carrier incumbent on the route and is therefore reasonably capable of obtaining the necessary approvals to operate on the route and of implementing its application.

2.5 The Register of Available Capacity notes there are currently 60 seats per week of capacity available for allocation on the Tonga route. While this level precludes the introduction of a second carrier on the route, other Australian international airlines are not seeking capacity to Tonga at this time.

2.6 Under paragraph 8.1 of the Policy Statement, there is a presumption in favour of the carrier seeking the renewal that may only be rebutted, after the start-up phase, by applying the following criteria:

- whether the carrier seeking renewal has failed to service the route effectively; and
- whether the use of the capacity in whole or part by another Australian carrier that has applied for capacity would better serve the public having regard to the criteria set out in paragraphs 4 and 5.

2.7 The Commission has no information that Virgin Australia has failed to service the route effectively and since no other application was received, the Commission did not apply the paragraph 5 criteria.

2.8 In these circumstances, the Commission is satisfied that renewal of [2009] IASC 130 (as varied) allocating 360 seats per week of capacity on the Tonga route to Virgin Australia is of benefit to the public.

2.9 Subsection 15(1) of the Act empowers the Commission to include such terms and conditions as it thinks fit. Paragraph 15(2)(e) requires the inclusion of a condition stating the extent to which the carrier may use that capacity in joint services with another carrier. As is normal practice, the Commission will also include a condition that requires Virgin Australia to comply with the Australian Consumer Law.

2.10 In relation to Virgin Australia's request to allow for the capacity to continue to be used to provide joint services with Singapore Airlines, as provided for by [2014] IASC 228, the Commission considers there are no competition issues with this and has decided to continue to include the conditions requested by Virgin Australia.

3 Determination for renewal of Determination [2009] IASC 130 allocating capacity on the Tonga route to Virgin Australia ([2014] IASC 112)

3.1 In accordance with section 8 of the Act, the delegate, on behalf of the Commission, makes a fresh determination in favour of Virgin Australia, allocating 360 seats per week in each direction on the Tonga route in accordance with the terms of the Australia-Tonga air services arrangements.

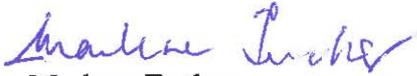
3.2 The determination is for five years from 8 September 2015.

3.3 The determination is subject to the following conditions:

- Virgin Australia is required to fully utilise the capacity from the date of issue of this instrument;
- Only Virgin Australia is permitted to use 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;
- the capacity may be used by Virgin Australia to provide services jointly with Singapore Airlines in accordance with the code share agreement between Virgin Australia and Singapore Airlines dated 3 February 2012, as amended;
- nothing in this determination exempts Virgin Australia from complying with the Australian Consumer Law;
- 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-Tonga 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: 15 September 2014



Marlene Tucker
Executive Director
Delegate of the IASC Commissioners