



Australian Government

International Air Services Commission

RENEWAL DETERMINATION

Determination: [2013] IASC 111
Renewal of: [2008] IASC 115
The Route: Cook Islands
The Applicant: Virgin Australia Airlines (SE Asia) Pty Ltd
formerly Pacific Blue Airlines (Australia) Pty Ltd
(ABN 79 097 892 389)
Public Register File: IASC/APP/201216

The Commission's delegate makes a fresh determination allocating 180 seats per week on the Cook Islands route for five years.

1 The application for renewal

1.1 On 12 September 2008, the Commission issued Determination [2008] IASC 115 (the Determination) allocating to Pacific Blue Airlines (Australia) Pty Ltd 180 seats 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 11 September 2013. In view of this, the Commission sent, on 12 August 2012, a letter to Virgin Australia inviting it to apply for renewal if it wished to renew the Determination.

1.3 On 3 September 2012, Virgin Australia applied to the Commission for the renewal of the Determination.

1.4 As required by sections 12 and 17 of the Act, the Commission published a notice on 4 September 2012 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 Provisions of the air services arrangements

2.1 The air services arrangements between Australia and Cook Islands permit the designation of multiple Australian airlines. According to the Register of Available Capacity, there are 2100 seats per week in each direction available for allocation.

3 Delegate's consideration

3.1 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).

3.2 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.

3.3 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.

3.4 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.

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

3.6 In these circumstances, the Commission is satisfied that renewal of Determination [2008] IASC 115 would be of benefit to the public.

3.7 The wording of the fresh determination below reflects the view of the Commission that determinations which renew original determinations should contain updated terms and conditions consistent with the Commission's current practice and current air services arrangements. Under the Act, the Commission may make changes to the terms and conditions included in the original determination where warranted by changes in circumstances since the original determination was made.

3.8 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 [2008] IASC 115, as varied by Decision [2011] IASC 213, allowing for joint services and code sharing between Virgin Australia entities.

4 Determination for renewal of Determination [2008] IASC 115 allocating capacity on the Cook Islands route to Virgin Australia ([2013] IASC 111)

4.1 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 180 seats per week in each direction on the Cook Islands route under the Australia – Cook Islands air services arrangements.

4.2 The determination is for five years from 12 September 2013.

4.3 The determination is subject to the following conditions:

- Virgin Australia (SE Asia) Pty Ltd is required to fully utilise the capacity;
- 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: 8 March 2013



Marlene Tucker
Executive Director
Delegate of the IASC Commissioners