



## Australian Government

### International Air Services Commission

#### RENEWAL DETERMINATION

**Determination:** [2013] IASC 112  
**Renewal of:** [2008] IASC 114  
**The Route:** Papua New Guinea  
**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 900 seats per week on the PNG route for five years.**

#### 1 The application for renewal

1.1 On 12 September 2008, the Commission issued Determination [2008] IASC 114 (the Determination) allocating to Pacific Blue Airlines (Australia) Pty Ltd 900 seats per week in each direction on the Papua New Guinea route in accordance with the terms of the Australia – Papua New Guinea air services arrangements. The Determination was subsequently varied by:

- Decision [2008] IASC 218 allowing Pacific Blue Australia to use its allocated capacity to provide services jointly with Airlines of PNG;
- Decision [2011] IASC 216 Pacific Blue Australia to use the capacity to provide services jointly with V Australia; and
- 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 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](http://www.iasc.gov.au)).

## **2 Provisions of the air services arrangements**

2.1 The air services arrangements between Australia and Papua New Guinea permit the designation of multiple Australian airlines. According to the Register of Available Capacity, in terms of passenger capacity, there are 732 seats per week in each direction available for allocation.

2.2 The air services arrangements provide that an Australian designated airline, when operating or holding out agreed services on the specified routes, may enter into and perform any of its agreed services through code-sharing, blocked space and/ or any other cooperative service arrangements with any designated airlines of either Australia or PNG, over the whole or any part of the specified route.

## **3 Commission's consideration**

3.1 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.

3.2 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.

3.3 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.

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

3.5 In these circumstances, the Commission is satisfied that renewal of Determination [2008] IASC 114 would be of benefit to the public.

3.6 Further, Virgin Australia has also requested that the new Determination continue

to permit the capacity to be used provide services jointly with Airlines of PNG.

3.7 Subsection 15(1) of the Act allows a determination to include such terms and conditions as the Commission thinks fit. Subsection 15(2) provides, in part, that the determination must include a condition stating the extent (if any) to which any such carrier may use that capacity by providing joint international air services with another Australian carrier or any other person.

3.8 Under paragraph 3.6 of the Policy Statement, where capacity that can be used for code share operations is available under air services arrangements, including where foreign airlines have rights to code share on services operated by Australian carriers, the Commission would generally be expected to authorise applications for use of capacity to code share. However, if the Commission has serious concerns that a code share application (or other joint service proposal) may not be of benefit to the public, it may subject the application to more detailed assessment using the additional criteria set out in paragraph 5 (whether the application is contested or not). Before doing so, the Commission will consult with the Australian Competition and Consumer Commission (the ACCC).

3.9 The Commission does not have serious concerns that the continued use of the capacity on the PNG route by Virgin Australia Airlines (SE Asia) Pty in joint services with Airlines of PNG may not be of benefit to the public. The Commission most recently examined the competitive environment on the PNG route when, in 2012, it considered the application by Qantas to continue code sharing arrangements on Air Niugini services from Port Moresby to Sydney and Brisbane.

3.10 In its decision of 28 June 2012 on the Qantas' application (Decision [2012] IASC 215), the Commission noted that since 2002 the competitive environment had improved, with the most significant development being the entry of Pacific Blue (now Virgin Australia) on the Brisbane route in 2008. The Commission further commented that while there is little evidence yet that the increased competition has put downward pressure on fares, the potential is there, in particular if Virgin Australia continues to expand and begins to make inroads into the business market. The Commission considers that to the extent continuation of the code share with Airlines of PNG helps maintain and expand Virgin Australia's presence on the route, it is positive for competition.

3.11 In view of this, the Commission considers it is not necessary to assess Virgin Australia's application to continue its code sharing arrangements with Airlines of PNG against the criteria set out in paragraph 5 of the Policy Statement or to consult the ACCC.

3.12 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 the Determination as varied by Decision [2011] IASC 216, allowing for joint services and code sharing between Virgin Australia entities.

3.13 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.

3.14 Nothing in this determination in relation to code sharing should be taken as indicating either approval or disapproval by the ACCC. This determination is made without prejudicing, in any way, possible future consideration of code share operations by the ACCC.

#### **4 Determination for renewal of Determination [2008] IASC 114 allocating capacity on the Papua New Guinea route to Virgin Australia Airlines (SE Asia) Pty Ltd ([2013] IASC 112)**

4.1 The Commission makes a fresh determination, under section 8 of the Act, in favour of Virgin Australia Airlines (SE Asia) Pty Ltd, renewing the allocation of 900 seats of capacity per week in each direction on the Papua New Guinea route in accordance with the terms of the Australia – Papua New Guinea 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:

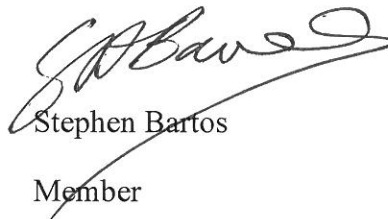
- Virgin Australia Airlines (SE Asia) Pty Ltd is required to fully utilise the capacity;
- the capacity may be used by Virgin Australia (SE Asia) Pty Ltd to provide services jointly with Airlines of PNG in accordance with:
  - the code share agreement between Virgin Australia and Airlines of PNG dated 29 November 2012; or
  - any subsequent code share agreement between Virgin Australia and Airlines of PNG, with the prior approval of the Commission;
- under any code share agreement with Airlines of PNG:
  - Virgin Australia (SE Asia) Pty Ltd must price and sell its services on the route independently of Airlines of PNG;
  - Virgin Australia (SE Asia) Pty Ltd must not share or pool revenues on the route with Airlines of PNG; and

- Virgin Australia (SE Asia) Pty Ltd must take all reasonable steps to ensure that passengers are informed of the carrier actually operating the flight at the time of booking;
- Virgin Australia Airlines (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 Airlines (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 – Papua New Guinea 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 Airlines (SE Asia) Pty Ltd or be in a position to exercise effective control of Virgin Australia Airlines (SE Asia) Pty Ltd, without the prior consent of the Commission.

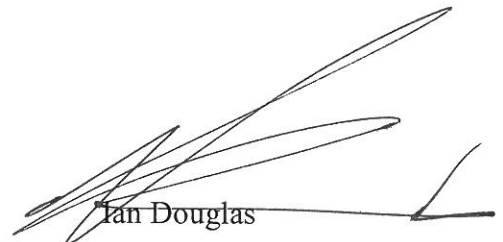
Dated: 8 March 2013



Jill Walker  
Chairperson



Stephen Bartos  
Member



Ian Douglas  
Member