



## Australian Government

### International Air Services Commission

#### RENEWAL DETERMINATION

**Determination:** [2013] IASC 134  
**Renewal of:** [2009] IASC 113  
**The Route:** Indonesia  
**The Applicant:** Virgin Australia International Airlines Pty Ltd  
(Virgin Australia) (ABN 63 125 580 823)  
**Public Register File:** IASC/APP/201328

**The Commission's delegate 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 11 August 2009, the Commission issued Determination [2009] IASC 113 (the Determination) allocating to Pacific Blue Australia 720 seats of capacity 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 the capacity from Virgin Australia Airlines Pty Ltd to Virgin Australia International Airlines Pty Ltd, the current holder of the capacity; and
- Decision [2012] IASC 218 permitting Delta Air Lines (Delta) to code share on services operated by Virgin Australia.

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 10 August 2014. In view of this, the Commission sent, on 12 August 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 16 August 2013 for a renewal of the Determination for five years from 11 August 2014 including the continued authorisation of

code share arrangements between Virgin Australia and Delta on the route.

1.4 As required by sections 12 and 17 of the Act, the Commission published a notice on 19 August 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](http://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 Virgin Australia's 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 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 which may be rebutted by applying the following criteria, where the start-up phase has concluded:

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

2.6 The Commission notes that:

- there are no other applicants seeking capacity on the route; and
- there is no evidence that Virgin Australia has failed to service the route effectively.

2.7 In these circumstances, the Commission is satisfied that renewal of Determination [2009] IASC 113 would be of benefit to the public.

2.8 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 application for renewal of the Determination, Virgin Australia stated that it wishes to retain all of its allocated capacity on the Indonesia route to ensure it has the flexibility to respond to future growth.

2.9 The Commission notes that traffic growth on the Indonesia route has averaged 24% per annum since 2008, although this growth has slowed over the last two years. Most of this traffic is made up of Australian tourists travelling to Bali. By far, the highest volume city pair sector is Perth-Denpasar accounting for 41% of total traffic on the Australia-Indonesia route. Traffic between Perth and Denpasar has grown by an average of 31% per annum over the five years since 2008, the highest annual growth on any city pair<sup>1</sup>.

2.10 Taking into account the need to give Virgin Australia flexibility to respond to growth on the route, the Commission will renew the Determination. Should the airline fail to fully utilise its capacity and not hand 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.

2.11 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 113, as varied by Decision [2011] IASC 214, allowing for code sharing between Virgin Australia entities.

### **3 Determination for renewal of Determination [2009] IASC 113 allocating capacity on the Indonesia route to Virgin Australia ([2013] IASC 134)**

3.1 In accordance with section 8 of the Act, the delegate of 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 11 August 2014.

3.3 The determination is subject to the following conditions:

- Virgin Australia is required to fully utilise the capacity;
- 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;
- the capacity may be used by Virgin Australia to provide joint services with Delta in accordance with:

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<sup>1</sup> Bureau of Infrastructure, Transport and Regional Economics

- the Code Share agreement, signed by Virgin Australia and Delta dated 8 July 2009; and
  - or any subsequent code share agreement between Virgin Australia and Delta for operations on the Indonesia route, with the prior approval of the Commission.
- under the code share arrangements with Delta, Virgin Australia may only price and market its services on the route jointly with Delta as long as such practices are authorised under the *Competition and Consumer Act 2012* or otherwise authorised by the Australian Competition Tribunal, in the event of review by that Tribunal; and
- to the extent that the capacity is used to provide joint services on the route, Virgin Australia must take all reasonable steps to ensure that passengers are informed of the carrier actually operating the flight at the time of booking. Nothing in this determination exempts Virgin Australia from complying with the Australian Consumer Law; 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: 6 September 2013



Marlene Tucker  
Executive Director  
Delegate of the IASC Commissioners