



Australian Government

International Air Services Commission

RENEWAL DETERMINATION

Determination:	[2015] IASC 110
Renewal of:	[2011] IASC 110
The Route:	Indonesia
The Applicant:	Virgin Australia International Airlines Pty Ltd (VAIA) (ABN 63 125 580 823)
Public Register File:	IASC/APP/201516

The Commission's delegate makes a fresh determination allocating 2,800 seats per week on the Indonesia route for five years. The new determination permits the use of the capacity by VAIA or an Australian carrier which is a wholly-owned subsidiary of VAIA.

1 The application for renewal

1.1 On 30 August 2011, the International Air Services Commission issued Determination [2011] IASC 110 (the Determination) and subsequently amended by [2011] IASC R10 and [2012] IASC 204. The Determination, as amended, allocates 2,800 seats per week in each direction on the Indonesia route in favour of Virgin Australia International Airlines Pty Ltd (VAIA) in accordance with the terms of the Australia – Indonesia air services arrangements.

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 is due to expire on 29 August 2016. In view of this, the Commission sent, on 24 August 2015, a letter to VAIA inviting it to apply for renewal if it wished to renew the Determination.

1.3 VAIA applied to the Commission on 4 September 2015 for a renewal of the Determination for a further five-year period from 30 August 2016. Additionally, VAIA requested authority for the use of the capacity by VAIA or another Australian carrier which is a wholly-owned subsidiary of VAIA.

1.4 As required by sections 12 and 17 of the Act, the Commission published a notice on 4 September 2015 inviting other applications for the capacity. No other 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 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 from VAIA. (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 Pursuant to section 11 of the Act, the Minister issued Policy Statement No. 5 dated 19 May 2004 (the Policy Statement). The Policy Statement sets out the range of criteria which the Commission is required to apply in assessing the benefit to the public of allocations of capacity. It also provides other guidance to the Commission in performing its functions.

2.4 Under paragraph 6.2 of 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.

2.5 The Commission notes that:

- there are no other applicants seeking capacity on the route; and
- VAIA 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.

2.6 Under paragraph 8.1 of the Policy Statement, there is a presumption in favour of the carrier seeking the renewal. In these circumstances, the Commission's delegate is satisfied that the renewal of 2,800 seats in favour of VAIA would be of benefit to the public.

2.7 In relation to VAIA's request to permit the capacity to be used as well by another Australian carrier which is a wholly-owned subsidiary of VAIA, the delegate notes the recent decisions of the Commission in [2015] IASC 208, [2015] IASC 209, [2015] IASC 210, [2015] IASC 211 and [2015] IASC 212 issued on 24 September 2015. These decisions extensively discuss the applications to allow Tiger International Number1 Pty Ltd (also known as Tigerair) to use the capacity allocated to VAIA on the Indonesia route.

2.8 Paragraph 6.5 of the Policy Statement provides that in circumstances where a carrier requests a variation of a determination to allow it flexibility in operating capacity allocated to it to include a condition of a type referred to in section 15(2)(ea) of the Act, the criteria in paragraph 4 of the Policy Statement are applicable to any persons of the description used in that section. In effect, the old determination is not only being renewed but effectively varied to allow a wholly-owned subsidiary of VAIA to utilise the capacity.

2.9 Section 15(2)(ea) of the Act provides for the inclusion of a condition in the determination that the capacity may be used in whole or in part by one or more of the following:

- (a) the carrier (to whom the capacity is allocated);
- (b) a wholly-owned subsidiary of the carrier; and
- (c) if the carrier is a wholly-owned subsidiary of another Australian carrier—that other carrier.

2.10 Under the circumstances, the Commission is required to apply the criteria in paragraph 4 of the Policy Statement to any of the persons listed in section 15(2)(ea).

2.11 The Commission sought advice from the Department of Infrastructure and Regional Development (the Department) to determine if Tigerair is reasonably capable of obtaining the designation, licensing and operational approvals necessary to operate on the Indonesia route. On 18 September 2015, the Department advised the Commission that on the basis of information provided by Tigerair, the Department has determined that Tigerair complies with the relevant ownership and control requirements of the *Air Navigation Act 1920* as well as the requirements for designation as an Australian international airline. The Department further advised that on 3 August 2015, the Department formally designated Tigerair under the Australia-Indonesia air services arrangements.

2.12 Based on the information available to the Commission, the Commission's delegate considers Tigerair is reasonably capable of obtaining the necessary approvals to operate on the Indonesia route and reasonably capable of implementing its proposed operations. This means that there is public benefit arising from the proposed use of the capacity on the Indonesia route by Tigerair.

2.13 In light of the above, the delegate has decided to renew Determination [2011] IASC 110 in favour of VAIA and to include a condition allowing another Australian carrier which is a wholly-owned subsidiary of VAIA to utilise the capacity in accordance with section 15 of the Act.

3 Relevant provisions of the air services arrangements

The Australia – Indonesia air services arrangements allow multiple designation of Australian airlines to operate on the Indonesia route. The Register of Available Capacity indicates there are 1,972 seats of capacity available for immediate allocation to and from Sydney, Melbourne (including Avalon), Brisbane and Perth on this route.

4 Determination for renewal of Determination [2011] IASC 110 allocating capacity on the Indonesia route to Virgin Australia International Airlines Pty Ltd ([2015] IASC 110)

4.1 In accordance with section 8 of the Act, the Commission's delegate makes a determination in favour of Virgin Australia International Airlines Pty Ltd, allocating 2,800 seats per week in each direction to and from Sydney, Melbourne (including Avalon), Brisbane and Perth on the Australia-Indonesia route under the Australia – Indonesia air services arrangements.

4.2 The determination is for five years from 30 August 2016.

4.3 The determination is subject to the following conditions:

- Virgin Australia International Airlines Pty Ltd is required to fully utilise the capacity from no later than 30 August 2016 or such other date approved by the Commission;
- only Virgin Australia International Airlines Pty Ltd or another Australian carrier which is a wholly-owned subsidiary of Virgin Australia International Airlines Pty Ltd is permitted to utilise the capacity;
- neither Virgin Australia International Airlines Pty Ltd nor its wholly-owned subsidiary which is an Australian carrier is 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 the airlines authorised to utilise the capacity are permitted except to the extent that any change:
 - results in the designation of the relevant 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 the airlines (authorised to utilise the capacity) or be in a position to exercise effective control of the airlines (authorised to utilise the capacity) without the prior consent of the Commission.

Dated: 30 September 2015



Marlene Tucker
Executive Director
Delegate of the IASC Commissioners