



## **Australian Government**

### **International Air Services Commission**

#### **RENEWAL DETERMINATION**

**Determination:** [2017] IASC 132  
**Renewal of:** [2013] IASC 116  
**The Route:** Indonesia  
**The Applicant:** Virgin Australia International Airlines Pty Ltd (VAIA)  
(ABN 63 125 580 823)  
**Public Register File:** IASC/APP/201762

**The Commission makes a fresh determination allocating to VAIA 1,980 seats per week in each direction on the Indonesia route. The new determination includes a condition permitting the use of the capacity for code share services between VAIA and Delta Air Lines and is valid for five years from 8 October 2018.**

#### **1 The application for renewal**

1.1 On 8 March 2013, the Commission's delegate issued Determination [2013] IASC 116 (the Determination) allocating 1,980 seats per week in each direction on the Indonesia route in favour of VAIA in accordance with the terms of the Australia – Indonesia air services arrangements. The Determination is valid for five years from 8 October 2013. The Determination was subsequently varied by Decision [2015] IASC 208 permitting another Australian carrier which is a wholly-owned subsidiary of VAIA to utilise the capacity.

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 7 October 2018. In view of this, the Commission sent, on 16 October 2017, 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 31 October 2017 for a renewal of the Determination for a further five-year period from 8 October 2018. Additionally, VAIA requested the retention of the permission for the capacity to be utilised by its wholly-owned subsidiary which in this case is Tiger International Number1 Pty Ltd, trading as Tigerair. VAIA further requested the inclusion of a condition permitting the capacity to be used for code share services with Delta Air Lines (Delta).

1.4 As required by sections 12 and 17 of the Act, the Commission published a notice on 31 October 2017 inviting other applications for the capacity. Additionally, as VAIA requested a variation to the conditions, the Commission also invited submissions to the proposed variation, as required under section 22 of the Act. No competing applications or submissions were received. (It is noted that Qantas has also applied for renewal of its capacity allocation on the Indonesia route.)

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 Relevant provisions of the air services arrangements**

2.1 Paragraph 7(2)(aa) of the Act requires the Commission not to allocate available capacity contrary to any restrictions on capacity contained in a bilateral arrangement(s).

2.2 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 3,092 seats of capacity available for immediate allocation to and from Sydney, Melbourne (including Avalon), Brisbane and Perth on this route.

2.3 A designated airline of Australia may enter into code-share, blocked space or other cooperative marketing arrangements, as the marketing and/or operating carrier with another Australian airline(s), with an Indonesian airline(s), or with an airline(s) of a third country.

## **3 Commission's assessment**

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 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.

3.3 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 effectively 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 contesting the capacity sought to be renewed by VAIA. The Commission further notes that 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.

3.5 Under paragraph 8.1 of the Policy Statement, there is a presumption in favour of the carrier seeking the renewal which may be rebutted only in the following circumstances: (1) that the carrier seeking renewal has failed to service the route effectively; and (2) that 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 in paragraphs 4 and 5 of the Policy Statement.

3.6 In its application for the renewal of 1,980 weekly seats of capacity, VAIA stated that it ‘continues to operate services to Indonesia utilising capacity allocated under [2013] IASC 116’. The Commission has no information that VAIA has failed to service the route effectively or that another carrier is interested to apply for the capacity sought to be renewed.

3.7 As indicated earlier, VAIA also requested to retain the existing conditions in the Determination including the permission for another Australian carrier which is a wholly-owned subsidiary of VAIA to utilise the capacity. In supplementary information sent on 20 November 2017, VAIA indicated it would be able to secure the relevant regulatory approvals from the relevant Indonesian authorities if and when Tigerair wishes to recommence services to Indonesia. VAIA requested retaining the condition permitting a wholly-owned subsidiary to use the capacity to give VAIA flexibility in its operations on the route.

3.8 The Commission is mindful of the object of the Act, that is, to enhance the welfare of Australians by promoting economic efficiency through competition in the provision of international air services, resulting in: (a) increased responsiveness by airlines to the needs of consumers, including an increased range of choices and benefits; (b) growth in Australian tourism and trade; and (c) the maintenance of Australian carriers capable of competing effectively with airlines of foreign countries.

3.9 The Commission considers that permitting VAIA’s wholly-owned subsidiary to use the capacity on the Indonesia route would enable the airline to respond more efficiently to passenger needs on the route. It would provide an increased range of travel options to Australian travellers.

3.10 In relation to VAIA’s request to add a condition permitting the use of the capacity for code share services with Delta, the Commission notes that Delta currently code shares, as marketing carrier, on services operated by VAIA between Brisbane/Sydney and Denpasar<sup>1</sup>. The code share services were approved by the Commission under Determinations [2013] IASC 130, as amended by [2015] IASC 210], and [2013] IASC 134. Under these two determinations, Delta has permission to code share on VAIA’s capacity allocation of up to 1,800 weekly seats in each direction. VAIA informed the Commission that permitting Delta to code share on an additional 1,980 weekly seats would expand the number of VAIA-operated seats which Delta could market on the Indonesia route.

3.11 Paragraph 6.3 of the Policy Statement provides that, subject to paragraph 6.4, where a carrier requests a variation of a determination to allow it flexibility in operating its capacity, including to use the Australian capacity in a code share arrangement with a foreign carrier, and no submission is received about the application, only the criteria in paragraph 4 of the Policy Statement are applicable.

3.12 Paragraph 6.4 provides, in part, that the Commission may apply the criteria in paragraph 5 in the circumstances set out in paragraph 3.6 of the Policy Statement. Under paragraph 3.6, where capacity that can be used for code share operations is available under the relevant 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

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<sup>1</sup> Northern Summer 2017 International Airlines Timetable Summary (March-October 2017)

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).

3.13 The Commission notes that the Qantas Group offers the largest number of seats on the route, with Jetstar operating direct services of up to 60 weekly frequencies while Qantas operates up to 12 weekly frequencies. Jetstar also operates services to Singapore from Perth via Denpasar and vice-versa. VAIA operates up to 20 direct services a week while Garuda Indonesia operates up to 35 weekly frequencies. Batik Air which commenced services in June this year between Denpasar and Perth operates up to 14 frequencies a week. Various third country airlines code share on the services operated by the Australian and Indonesian carriers.<sup>2</sup>

3.14 The Commission considers that the proposed inclusion of a condition permitting the use of the capacity for code share services with Delta would have minimal impact on competition on the route. For this reason, the Commission did not consider it necessary to apply the additional criteria in paragraph 5 of the Policy Statement and did not specifically consult the ACCC.

3.15 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. The Commission has decided to include the additional condition, as requested.

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

#### **4 Determination for renewal of Determination [2013] IASC 116 allocating capacity on the Indonesia route to Virgin Australia International Airlines Pty Ltd ([2017] IASC 132)**

4.1 In accordance with section 8 of the Act, the Commission makes a determination in favour of VAIA allocating 1,980 seats per week in each direction to and from Sydney, Melbourne (including Avalon), Brisbane and Perth on the Australia-Indonesia route in accordance with the Australia – Indonesia air services arrangements.

4.2 The determination is for five years from 8 October 2018.

4.3 The determination is subject to the following conditions:


- VAIA is required to fully utilise the capacity from no later than 30 December 2018 or such other date approved by the Commission.
- Only VAIA or another Australian carrier which is a wholly-owned subsidiary of VAIA is permitted to utilise the capacity.


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<sup>2</sup> Ibid.

- Neither VAIA nor its wholly-owned subsidiary is permitted to utilise the capacity under code share or joint services with another carrier or any other person without the approval of the Commission.
- Subject to the preceding condition, the capacity may be utilised by VAIA to provide code share services with Delta Air Lines in accordance with the code share agreement between the airlines which came into effect from 8 July 2009, as amended.
- VAIA must apply to the Commission for approval of the use of the capacity if there are variations to the code share arrangement between VAIA and Delta Air Lines which would change the relevant commercial aspects of the code share arrangement from a free sale code share arrangement to a block space, or vice versa, or if VAIA proposes to add third country routes on which the airlines will code share where Australian capacity will be used for services on that route.
- To the extent that the capacity is used to provide code share (or joint) services on the route, the airlines must take all reasonable steps to ensure that passengers are informed, at the time of booking, of the carrier actually operating the flight. Nothing in this determination exempts the airlines from complying with the Australian Consumer Law.
- 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: 7 December 2017

  
IAN DOUGLAS  
Chairperson

  
JAN HARRIS  
Commissioner

  
KAREN GOSLING  
Commissioner