



Australian Government

International Air Services Commission

RENEWAL DETERMINATION

Determination:	[2018] IASC 105
Renewal of:	[2013] IASC 127
The Route:	Indonesia
The Applicant:	Virgin Australia International Airlines Pty Ltd (Virgin Australia) ABN 63 125 580 823
Public Register:	IASC/APP/201813

The Commission makes a fresh determination allocating to Virgin Australia 720 seats per week of capacity on the Indonesia route. The determination is valid for five years from 25 February 2019.

1 The application

1.1 On 20 May 2013, the International Air Services Commission (the Commission) issued Determination [2013] IASC 127 (the Determination) allocating 720 seats per week of capacity in each direction in favour of Virgin Australia, valid until 24 February 2019.

1.2 On 24 September 2015, the Commission varied the determination to permit the capacity allocated to be used by Tigerair, an Australian carrier which is a wholly-owned subsidiary of Virgin Australia.

1.3 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 24 February 2019. In view of this, the Commission sent, on 1 February 2018, a letter to Virgin Australia inviting it to apply for renewal if it wished to renew the Determination. Virgin Australia subsequently applied on 19 February 2018 for a renewal of the Determination for a further period of five years from 25 February 2019 and requested to retain the relevant existing conditions.

1.4 As required by sections 12 and 17 of the Act, the Commission published a notice on 20 February 2018 inviting other applications for capacity. No applications were received. All non-confidential material supplied by the applicant is available on the Commission's website (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 3,120 seats of capacity available for immediate allocation to and from Sydney, Melbourne (including Avalon), Brisbane and Perth on this route. Additional 2,500 seats per week in each direction to Sydney, Melbourne (including Avalon), Brisbane and Perth, may be allocated provided such services operate via or beyond to a point in Australia other than Sydney, Melbourne (including Avalon), Brisbane and Perth.

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, then Minister for Transport and Regional Services, the Hon. John Anderson MP issued Policy Statement No. 5 (hereinafter referred to as the Policy Statement) dated 19 May 2004. 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 Virgin Australia. The Commission further notes that Virgin Australia is an established international carrier and is reasonably capable of obtaining the necessary approvals to operate on the route and of implementing its application. In relation to Tigerair, the Commission notes the information provided by Virgin Australia that it would be able to secure the relevant regulatory approvals from the Indonesian authorities if and when Tigerair wishes to recommence services to Indonesia.

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 renewal, Virgin Australia stated that it ‘continues to operate services to Indonesia utilising capacity allocated under [2013] IASC 127’. The Commission has no information that Virgin Australia has failed to service the route effectively or that another carrier is interested to apply for the capacity sought to be renewed.

3.7 Section 15 of the Act provides that the Commission may include such terms and conditions as the Commission thinks fit. In light of this, the delegate decided to include certain conditions set out below.

4 Determination for renewal of [2013] IASC 127 allocating capacity on the Indonesia route to Virgin Australia ([2018] IASC 105)

4.1 Pursuant to section 8 of the Act, the Commission allocates to Virgin Australia 720 seats per week of capacity in each direction on the Indonesia route in accordance with the terms of the Australia – Indonesia air services arrangements.

4.2 The determination is valid for five years from 25 February 2019.

4.3 The determination is subject to the following conditions:

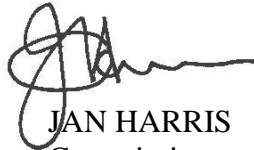
- Virgin Australia is required to fully utilise the capacity from no later than 30 June 2019 or such other date approved by the Commission.
- Only Virgin Australia or another Australian carrier which is a wholly-owned subsidiary of Virgin Australia is permitted to utilise the capacity.
- Virgin Australia or its wholly-owned subsidiary, that is permitted to utilise the capacity, is not permitted to use the capacity under code share or joint services with another carrier or any other person without the approval of the Commission.
- Changes in relation to the ownership and control of Virgin Australia, or its wholly-owned subsidiary authorised to use the capacity, are permitted except to the extent that any change:
 - results in the designation of Virgin Australian, or its wholly-owned subsidiary, 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 its wholly-owned subsidiary or be in a position to exercise effective control of ownership of Virgin Australia or its wholly-owned subsidiary without the prior consent of the Commission.

Dated: 16 March 2018



IAN DOUGLAS
Chairperson



JAN HARRIS
Commissioner



KAREN GOSLING
Commissioner