



## Australian Government

### International Air Services Commission

#### RENEWAL DETERMINATION

<b>Determination:</b>	<b>[2018] IASC 116</b>
<b>Renewal of:</b>	<b>[2013] IASC 133</b>
<b>The Route:</b>	<b>Solomon Islands</b>
<b>The Applicant:</b>	<b>Virgin Australia Airlines (SE Asia) Pty Ltd (VAASEA) ABN 79 097 892 389</b>
<b>Public Register</b>	<b>IASC/APP/201847</b>

**The Commission makes a fresh determination allocating to Virgin Australia International Airlines Pty Ltd (VAIA) 180 seats per week of capacity in each direction on the Solomon Islands route. The capacity may be also used by VAIA or its wholly-owned subsidiary, Tiger International Number1 Pty Ltd, and for the provision of code share services with Singapore Airlines. The determination is valid for five years from 9 July 2019.**

#### 1 The application for renewal

1.1 On 10 August 2018, the International Air Services Commission (the Commission) received an application from Virgin Australia Airlines (SE Asia) Pty Ltd (VAASEA) to transfer the capacity allocated under Determination [2013] IASC 133 (the Determination) to Virgin Australia International Airlines Pty Ltd (VAIA) and to renew the capacity for a further period of five years from 9 July 2019. The Determination allocates 180 seats of capacity on the Solomon Islands route, valid for five years from 9 July 2014. The Determination was varied by Decision [2016] IASC 204 authorising the use of the capacity for the provision of code share services with Singapore Airlines on the Solomon Islands route.

1.2 VAASEA also requested the Commission to authorise the capacity to be used by either VAIA or another Australian carrier which is the wholly-owned of VAIA, namely Tiger International Number1 Pty Ltd (Tiger International).

1.3 Section 17 of the *International Air Services Commission Act 1992* (the Act) requires the Commission to start its consideration of the renewal of a determination at least 12 months before the expiry of the Determination. As the Determination is due to expire on 8 July 2019, the Commission sent, on 2 July 2018, a letter to VAASEA inviting it to apply for renewal if it wished to renew the Determination. VAASEA applied for the renewal and variation of the determination on 10 August 2018 as indicated above.

1.4 As required by sections 12 and 17 of the Act, the Commission published a notice on its website inviting other applications for the capacity. No other applications were received. Additionally, the Commission invited submissions about the transfer application pursuant to section 22 of the Act. No submissions were received.

1.5 All non-confidential material supplied by VAASEA 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 provides that the Commission must not allocate available capacity contrary to any restrictions on capacity contained in a bilateral arrangement(s). Any variation made to an existing allocation of capacity should also not be contrary to any restrictions on capacity contained in a bilateral arrangement(s).

2.2 The air services arrangements between Australia – Solomon Islands allow multiple designation of Australian airlines to operate on the Solomon Islands route. The Register of Available Capacity indicates there are 1,460 seats of capacity available for immediate allocation on this route to operate passengers services to and from Sydney, Melbourne, Brisbane and Perth.

2.3 Under the terms of the Australia – Solomon Islands air services arrangements, any Australian designated airline can enter into code share, blocked space or other cooperative marketing arrangements, as the marketing and/or operating airline with any other airline including other designated Australian airlines and of third parties.

## **3 Commission's consideration**

### Transfer application

3.1 On 21 September 2018, the Commission issued Decision [2018] IASC 231 varying [2013] IASC 133 to transfer the capacity to VAIA and permit the capacity to be used by either VAIA or its wholly-owned subsidiary, Tiger International.

### Renewal of the capacity

3.2 Section 7 of the Policy Statement explains that, in assessing the benefit to the public of an allocation of capacity when deciding to renew a determination, the Commission is to have regard to the 'reasonable capability criterion' in section 8 and the additional criteria in section 9, when circumstances so warrant under Division 3 of Part 3 of the Policy Statement.

3.3 Under the 'reasonable capability criterion' in section 8 of the Policy Statement, in assessing the public benefit of an application, the Commission is to have regard to the extent to which all Australian carriers that are, or would be, permitted to use the capacity allocated under a determination are reasonably capable of: (a) obtaining any licences, permits or other approvals required to operate on and service the route to which the determination relates; and (b) using the capacity allocated under the determination.

3.4 The Commission notes that VAIA is an established international carrier, and finds that it is reasonably capable of obtaining the necessary regulatory approvals and of using the capacity allocated on the route. In relation to Tiger International, as the Commission stated in Decision [2018] IASC 231, it consulted the Department of Infrastructure, Regional Development and Cities (the Department) to assess whether Tiger International is reasonably capable of: (a) obtaining any licenses, permits or other approvals required to operate on and service the route; and (b) using the capacity allocated under the determination. The Department advised the Commission that it considers Tiger International as reasonably capable of obtaining the designation, licensing and other operational approvals to operate scheduled services on the Solomon Islands route. In light of this, the Commission has formed the view that Tiger International fulfils the reasonably capable criterion in section 8 of the Policy Statement. The Commission has therefore decided to renew the capacity allocation in favour of VAIA and permit the capacity to be used by either VAIA or its wholly-owned subsidiary, Tiger International.

3.5 Furthermore, VAASEA sought renewal of the authorisation to utilise the capacity for code sharing with Singapore Airlines. The Commission notes that, on 23 September 2016, the Australian Competition and Consumer Commission (ACCC) granted re-authorisation to Virgin Australia and Singapore Airlines to continue their existing airline alliance until September 2021. In granting re-authorisation, the ACCC stated that the alliance has resulted, and is likely to continue to result in material public benefits in the form of enhanced products and services, including facilitation of new services and additional frequencies, increased and better online connection options, greater loyalty program benefits and improved lounge access. The ACCC further stated that the alliance is also likely to result in the promotion of competition in international air passenger transport services markets and by leveraging their integrated alliance network, Virgin Australia and Singapore Airlines are likely to attract passengers who otherwise may not have flown with either Virgin Australia or Singapore Airlines. The ACCC stated that this is likely to trigger a competitive response from competing airlines.

3.6 In light of the above, the Commission does not have concerns about the continued use of the capacity for code sharing with Singapore Airlines. For this reason, it did not consider it necessary to assess the application against the additional criteria in section 9 of the Policy Statement.

3.7 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.

3.8 Section 15 of the Act provides that a determination may include such terms and conditions as the Commission thinks fit. Subsection 19(3) of the Act provides that, in including terms and conditions in the fresh determination, the Commission may make such changes to the terms and conditions included in the original determination sought to be renewed, including adding or deleting terms and conditions, where warranted by changes in circumstances since the original determination was made. 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.

#### **4 Determination for renewal of [2013] IASC 133 allocating capacity on the Solomon Islands route to VAIA ([2018] IASC 116)**

4.1 The Commission allocates to VAIA, pursuant to section 8 of the Act, 180 seats of capacity in each direction on the Solomon Islands route in accordance with the terms of the Australia – Solomon Islands air services arrangements.

4.2 The determination is valid for five years from 9 July 2019.

4.3 The determination is subject to the following conditions:

- VAIA is required to fully utilise the capacity from no later than 31 August 2019, or from such other date approved by the Commission;
- the capacity may be utilised by;
  - VAIA; or
  - Tiger International Number1 Pty Ltd, as long as it remains a wholly-owned subsidiary of VAIA; or
  - such other wholly-owned subsidiary of VAIA that the Commission approves in writing, as long as it remains a wholly-owned subsidiary of VAIA;
- VAIA is not permitted to utilise the capacity to provide services jointly with another Australian carrier or any other person unless approved by the Commission;
- the capacity may be used by VAIA to provide code share services with Singapore Airlines to be conducted in accordance with Australia's air services arrangements with Solomon Islands and Singapore and the code share agreement between VAIA and Singapore Airlines made with effect from 02 February 2012, 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 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 the route;
- to the extent that the capacity is used to provide code share 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 airline(s) as an Australian carrier under the Australia – Solomon Islands 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 airline(s) or be in a position to exercise effective control of the airline(s), without the prior consent of the Commission.

Dated: 24 September 2018



IAN DOUGLAS  
Chairperson



JAN HARRIS  
Commissioner



KAREN GOSLING  
Commissioner