



Australian Government

International Air Services Commission

RENEWAL DETERMINATION

Determination:	[2018] IASC 119
Renewal of:	[2013] IASC 137
The Route:	Cook Islands
The Applicant:	Virgin Australia Airlines (SE Asia) Pty Ltd (ABN 79 097 892 389)
Public Register:	IASC/APP/201855

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 Cook Islands route. The fresh determination permits the capacity to be used by either VAIA or its wholly-owned subsidiary, Tiger International Number1 Pty Ltd and is valid for five years from 20 September 2019.

1 The application for renewal

1.1 On 1 October 2013, the Commission's delegate issued Determination [2013] IASC 137 (the Determination) allocating, in favour of Virgin Australia Airlines (SE Asia) Pty Ltd (VAASEA), 180 seats per week of capacity in each direction on the Cook Islands route. On 21 September 2018, the Commission varied the Determination, upon VAASEA's request, to transfer the capacity allocation to Virgin Australia International Airlines Pty Ltd (VAIA) and permit the capacity to be used by either VAIA or its wholly-owned subsidiary, Tiger International Number1 Pty Ltd¹.

1.2 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. The Determination is due to expire on 19 September 2019. In view of this, the Commission sent, on 5 September 2018, a letter to VAASEA inviting it to apply for renewal if it wished to renew the Determination.

1.3 VAASEA applied to the Commission on 17 September 2018 for a renewal of the Determination for a further five-year period from 20 September 2019.

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.

¹See Decision [2018] IASC 220

1.5 All non-confidential material supplied by VAASEA 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 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 Australia – Cook Islands air services arrangements allow multiple designation of Australian airlines to operate on the Cook Islands route. The designated airlines of Australia may enter into code sharing, blocked space and/or any other cooperative services arrangement with an airline(s) of Australia, the Cook Islands or with a regional airline.

2.3 The Register of Available Capacity indicates that there are 1,200 seats per week in each direction available for immediate allocation to designated airlines of Australia on the Cook Islands route.

3 Commission's consideration

3.1 Section 8 of the Act provides that the Commission may, at any time while a determination is in force, make a fresh determination allocating the capacity to which the original determination relates. The fresh determination 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 On 20 March 2018, the Hon. Michael McCormack MP, Deputy Prime Minister and Minister for Infrastructure and Transport, issued in accordance with section 11 of the Act, the International Air Services Commission Policy Statement 2018 (the Policy Statement), which came into effect on 28 March 2018.

3.3 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. Section 7 of the Policy Statement explains this.

3.4 Under section 14 of the Policy Statement, there is a presumption in favour of the carrier seeking a renewal which may be rebutted only if the carrier has failed to service the route effectively; and there are other applications for some or all of the capacity; and the Commission is satisfied that a different allocation of capacity would be of greater benefit to the public, having regard to the criteria set out in sections 8 and 9 of the Policy Statement.

3.5 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.

3.6 The Commission notes that VAIA is an established carrier operating scheduled international air services and finds it is reasonably capable of obtaining any licences, permits or other approvals required to operate on and service the Cook Islands route and of using the capacity allocated under the determination. In relation to Tiger International, as the Commission stated in Decision [2018] IASC 220, 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 Cook 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.

3.7 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 legislative requirements and current air services arrangements.

4 Determination for renewal of [2013] IASC 137 allocating capacity on the Cook Islands route to Virgin Australia ([2018] IASC 119)

4.1 The Commission allocates to Virgin Australia International Airlines Pty Ltd (VAIA), pursuant to section 8 of the Act, 180 seats per week of capacity in each direction on the Cook Islands route in accordance with the terms of the Australia – Cook Islands air services arrangements.

4.2 The determination is valid for five years from 20 September 2019.

4.3 The determination is subject to the following conditions:

- VAIA is required to fully utilise the capacity from no later than 31 December 2019 or 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 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 the airlines authorised to use 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 – Cook 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: 12 October 2018



IAN DOUGLAS
Chairperson



JAN HARRIS
Commissioner



KAREN GOSLING
Commissioner