



Australian Government

International Air Services Commission

DECISION

Decision: [2009] IASC 201
The Route: New Zealand
The Applicant: Pacific Blue Airlines (Australia) Pty Ltd
(ACN 097 892 389) (Pacific Blue Australia)
Public Register File: IASC/APP/200901

1 The application

1.1 On 13 January 2009, Pacific Blue Australia (PBA) applied to the Commission for a variation to Determination [2007] IASC 118 to authorise code sharing with V Australia on services operated by PBA between Australia and New Zealand. The determination allocates unlimited passenger and freight capacity to PBA on the New Zealand route. PBA advised that both PBA and V Australia are wholly-owned subsidiaries of Virgin Blue Holdings Ltd and so the proposed arrangements would be exclusively within this established airline group. V Australia would participate in the arrangements only as a marketing carrier, so no capacity allocation was required for that airline.

1.2 PBA advised that the two carriers would independently price and sell their services on the route. Neither participates in IATA¹ tariff co-ordination activities. All reasonable steps would be taken to advise passengers at the time of booking of the carrier actually operating the flight. PBA argued that the proposed arrangements would bring extra competition to the Australia – New Zealand market and are in the public interest.

1.3 The Commission published a notice on 19 January 2009 inviting submissions about the PBA application. No submissions were received.

1.4 All material supplied by the applicant is filed on the Register of Public Documents.

2 Provisions of relevant air services arrangements

2.1 The Australia – New Zealand air services arrangements permit the designated airlines of both parties to enter into code share, blocked space or other co-operative marketing arrangements with any other airline as the marketing and/or operating airline, provided only that the airlines hold the authority to conduct air transport on the routes

¹ International Air Transport Association

or segments concerned. The airlines must also make it clear to the purchaser at the point of sale which airline will be the operating airline and with which airline/s the purchaser is entering into a contractual arrangement.

3 Delegate's assessment

3.1 In accordance with section 27AB of the Act and regulation 3A of the *International Air Services Commission Regulations*, the delegate of the Commission considers the Sky Air World application.

3.2 When considering an application to vary a determination, the Commission must decide whether the determination, as varied, would be of benefit to the public. Under paragraph 6.3 of the Minister's policy statement, where a carrier requests a variation of a determination to allow it flexibility in operating its capacity and no submission is received about the application, only the criteria in paragraph 4 of the policy statement are applicable. Under paragraph 4, the use of Australian entitlements by a carrier that is reasonably capable of obtaining the necessary approvals (4(b)(i)) and of implementing its proposals (4(b)(ii)) is of benefit to the public. For an established carrier such as PBA, this means there is public benefit arising from the use of the entitlements.

3.3 Under section 15(2)(e) of the *International Air Services Commission Act 1992* (the Act), a carrier cannot use allocated capacity to provide joint services with any other carrier without the prior approval of the Commission. Under the Minister's policy statement, the Commission is normally expected to authorise applications for the use of capacity to code share where this is provided for under the relevant air services arrangements. As noted above, the Australia – New Zealand air services arrangements provide for code sharing between airlines of either party and any other airline. However, where the Commission is concerned that a code share proposal may not be of benefit to the public, it may subject the application to detailed assessment against the paragraph 5 public benefit criteria in the policy statement.

3.4 This is the first occasion on which PBA and V Australia have sought to code share with one another. The delegate observes that, broadly speaking, V Australia's role within the Virgin group appears to be to operate long-haul services to and from Australia. V Australia holds allocations of capacity from the Commission on the United States and South Africa routes and will use B777 aircraft to operate these flights. By contrast, PBA's operations have been confined to relatively short-haul destinations with B737s flying to New Zealand, several south Pacific island nations, Indonesia and, more recently, Papua New Guinea.

3.5 This differentiation of roles means it is unlikely that PBA and V Australia will compete with one another directly by both operating their own services on the same route. Accordingly, allowing the two carriers to code share with each other on the New Zealand route is likely to make little or no difference to the already small probability that both would operate on the route at the same time. In the delegate's view, allowing the two carriers to code share on the New Zealand route is likely to make little difference to the degree of competition on this already highly contested route. Any

impact the arrangements might have is likely to be in the direction of increasing competition, as both carriers seek to market and sell seats on the same aircraft.

3.6 The delegate notes that this assessment encompasses similar considerations to those the Commission has canvassed in assessing applications from Qantas to code share with Jetstar on a number of routes. Although there is a technical difference in that Jetstar is a wholly-owned subsidiary of Qantas, whereas PBA and V Australia are members of the same airline grouping, the competitive implications of the code share arrangements within the two airline groups differ little in their essential character.

3.7 Accordingly, the delegate finds that there can generally be expected to be no lessening in public benefits from allowing PBA and V Australia to code share with one another. In this case concerning the very competitive New Zealand route, the delegate is satisfied that there is likely to be no lessening of public benefits from authorising code sharing between the two airlines.

4 Decision [2009] IASC 201

4.1 In accordance with section 24 of the Act the delegate, on behalf of the Commission, varies Determination [2007] IASC 118, as requested by Pacific Blue Australia, by adding the following conditions:

- “the capacity may be used by Pacific Blue Australia to provide services jointly with V Australia;
- under any code share agreement with V Australia
 - Pacific Blue Australia must take all reasonable steps to ensure that passengers are informed of the carrier actually operating the flight at the time of booking”

Dated: 28 January 2009

Michael Bird
Executive Director
Delegate of the IASC Commissioners