



## Australian Government

### International Air Services Commission

#### DECISION

**Decision:** [2010] IASC 205  
**Variation of:** [2008] IASC 129 and [2009] IASC 131  
**The route:** Fiji  
**The applicant:** Virgin Blue International Airlines Pty Ltd  
(ACN 125 580 823) (V Australia)  
**Public register file:** IASC/APP/201016

#### 1 The application

1.1 On 10 September 2010, V Australia applied to transfer to Pacific Blue Australia a total of 2,167 seats per week of capacity. The capacity is allocated by Determinations [2008] IASC 129 and [2009] IASC 131, which grant 1,260 seats and 907 seats per week respectively.

1.2 The capacity in Determination [2008] IASC 129 was originally allocated to Pacific Blue Australia in October 2008 and was transferred to V Australia on 5 November 2009 by Decision [2009] IASC 214. Determination [2009] IASC 131 was also made on 5 November 2009. Pacific Blue Australia noted that the capacity made available by these decisions, together with other capacity, enabled V Australia to commence daily B777-300ER services between Australia and Fiji in December 2009.

1.3 Pacific Blue Australia explained that the change from Pacific Blue Australia to V Australia serving the route was planned to occur between 19 and 25 October 2010. The change would free-up V Australia aircraft to participate in revised network operations and its new partnership arrangements with Etihad Airways, which were announced recently. It would also see the Group's commitment to Fiji continue, with Pacific Blue Australia using the capacity to increase services from Melbourne, Brisbane and Sydney to Nadi.

1.4 The Commission published a notice on 13 September 2010 inviting submissions about the transfer application. No submissions were received.

1.5 All material supplied by the applicant is filed on the register of public documents.

#### 2 Commission's assessment

2.1 Section 25 (1) of the *International Air Services Commission Act 1992* (the Act), states that the Commission must, having conducted a review to decide a transfer

application, make a decision varying the determination concerned in a way that gives effect to the variation requested. However, the Commission must not do so if it is satisfied that the allocation, as varied, would not be of benefit to the public (section 25(2)).

2.2 The criteria relevant to this application are set out in Paragraphs 4 and 10 of the Minister's policy statement. Under paragraph 4, the use of Australian entitlements by a carrier that is reasonably capable of obtaining the necessary approvals and of implementing its proposals is of benefit to the public. Paragraph 10 makes it clear that approvals which would encourage speculative activity would not be of benefit to the public. Except in exceptional circumstances, the Commission should not approve transfers which would have the effect of allowing a carrier that had never exercised an allocation to transfer that allocation, or had only exercised it for less than a reasonable period. Six months would usually represent a reasonable period.

2.3 Concerning paragraph 4, the Commission has previously found Pacific Blue Australia to meet the criteria and has allocated capacity to the airline on a number of routes including the Fiji route on which the airline continues to operate. Pacific Blue Australia is clearly capable of obtaining the necessary approvals and of implementing its proposed operations. This means that there is public benefit arising from the use of the entitlements.

2.4 Turning to the paragraph 10 provisions of the Ministers' policy statement, the Commission notes that V Australia has been operating the capacity for nearly 10 months, having commenced daily services in December 2009. It reduced frequency to six services per week in March 2010 with the capacity used to support the withdrawn seventh service being transferred by the Commission from V Australia to Pacific Blue Australia at that time. That capacity had originally been allocated to Pacific Blue Australia.

2.5 The Commission finds that there is no speculative element to the proposal. The capacity has been in continuous use by V Australia for a lengthier period than the six-months benchmark in the Minister's policy statement and the capacity would remain in continuing use within the Virgin Blue Group. Further, there is a major restructure of V Australia's international operations underway. In addition to V Australia withdrawing from the Fiji route, it is also ceasing services to South Africa and Thailand over coming months. The airline has entered into an extensive co-operation agreement with Etihad Airways and, as part of those arrangements, V Australia will commence services three times per week between Australia and Abu Dhabi. This will create linkages with Etihad services into the UK and Europe. V Australia needs to free-up aircraft from existing services in order to implement its long-haul services to the Middle East.

2.6 The Commission notes that the transfer would enable Pacific Blue Australia to operate 12 frequencies per week with its 180-seat B737-800 aircraft compared with the current six weekly V Australia 361-seat B777-300ER services, although with no change in the amount of capacity on offer.

2.7 The Commission noted the possibility of such a future change in Virgin Group operations when dividing capacity approximately equally between V Australia and

Qantas in the contested case between them in November 2009. The Commission also identified a small risk that Qantas could lose its access to the market in the unlikely event of that airline's code share arrangement with Air Pacific ending unexpectedly. For these reasons, the Commission considered that a judicious course of action was to ensure that Qantas was allocated a commercially viable amount of capacity which would enable Jetstar to compete effectively. Qantas was allocated 852 seats of capacity per week, sufficient for Jetstar to implement four A320 services per week between Sydney and Nadi. These services complemented existing Qantas services on that sector, provided through its code share agreement with Air Pacific.

2.8 In further recognition of the potential for public benefits to alter if market circumstances were to change, the Commission decided to issue interim – three year – determinations to both Qantas and V Australia. This means that the Commission is able to review the allocations to both carriers, when considering renewal of the determinations, two years earlier than would be the case with full five year determinations. The Commission will invite both carriers to seek renewal of their determinations in the second half of 2011.

2.9 The Commission considers that the proposed change in Virgin Group operations would alter public benefits on the Fiji route but not to an extent which raises concerns for the Commission. The travelling public on the Sydney sector would lose access to V Australia's product, which is a wide-body aircraft with business and premium economy cabins in addition to economy. There will also be a loss of containerised cargo capacity with the departure of the B777-300ER aircraft from the Sydney – Nadi sector.

2.10 However, offsetting these changes would be an increase in frequencies on the Sydney route, which will provide consumers with additional choice of travel times. Further, travellers on the Melbourne and Brisbane sectors will benefit from additional capacity and frequencies. The Commission considers that Pacific Blue Australia's proposal to operate some of the 12 frequencies to Melbourne and Brisbane means that there will not be a major alteration to the balance of opportunities between Qantas/Jetstar and the Virgin Group on the Sydney – Nadi sector. It is likely that Pacific Blue Australia will operate about ten services per week on that sector, compared with seven per week up to December 2009, an increase of three frequencies. This compares with the four frequencies per week added by Jetstar on the Sydney – Nadi sector.

2.11 In respect of Jetstar, the Commission notes that the airline is not yet fully utilising its capacity allocation on the Fiji route. Although operating four services per week, it is doing so with smaller capacity aircraft than originally proposed and so is utilising 708 of the allocated 852 seats per week. Jetstar therefore has scope to add further seats by substituting larger capacity aircraft in response to the changed operations by the Virgin Group airlines.

2.12 The Commission finds, in accordance with the requirements of section 25 of the Act, that there would be no reduction in public benefit through allowing the transfer sought and will vary the determination as sought by V Australia.

### **3 Decision [2010] IASC 205**

3.1 In accordance with section 25 of the Act, the Commission varies Determinations [2008] IASC 129 and [2009] IASC 131, as requested by V Australia, by transferring from V Australia to Pacific Blue Australia the allocations of capacity made in those determinations, being respectively 1,260 seats of capacity per week and 907 seats of capacity per week.

Dated: 29 September 2010

Stephen Bartos  
Member Presiding

Ian Smith  
Member