



## Australian Government

### International Air Services Commission

#### DECISION

<b>Decision:</b>	<b>[2010] IASC 206</b>
<b>Variation of:</b>	<b>[2008] IASC 120, [2009] IASC 103, [2009] IASC 105 [2009] IASC 106, [2009] IASC 107 and [2009] IASC 113</b>
<b>The route:</b>	<b>Indonesia</b>
<b>The applicant:</b>	<b>Pacific Blue Airlines (Australia) Pty Ltd (ACN 097 892 389) (Pacific Blue Australia)</b>
<b>Public register file:</b>	<b>IASC/APP/201016</b>

#### 1 The application

1.1 On 9 September 2010, Pacific Blue Australia applied to transfer to Virgin Blue Airlines the allocations of capacity made to Pacific Blue Australia under all determinations issued to it by the Commission for operations on the Indonesia route.

1.2 Pacific Blue Australia said that the proposed transfer would facilitate revised operations by the Virgin Blue Group between Australia and Indonesia. It noted that both Pacific Blue Australia and Virgin Blue Airlines are wholly-owned subsidiaries of Virgin Blue Holdings Limited, so the transfer would occur with an established airline group. Virgin Blue Airlines would take over flying from Pacific Blue Australia from the commencement of the IATA Northern Winter 2010 scheduling period (31 October 2010).

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

1.4 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 Virgin Blue Airlines to meet the criteria and accordingly allocated capacity to the airline on the Fiji, Vanuatu and New Caledonia routes in 2003. That capacity was later transferred to Pacific Blue Australia. Virgin Blue Airlines 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. The Commission understands that Virgin Blue Airlines has applied to the Department of Infrastructure and Transport for an international airline licence and to be designated as an Australian international airline under the Australia – Indonesia air services arrangements.

2.4 Turning to the paragraph 10 provisions of the Ministers' policy statement, the Commission notes that Pacific Blue Australia has been operating an extensive range of services on the Indonesia route since December 2008. The Commission finds that there is no speculative element to the proposal. The capacity under the determinations concerned has, with one exception, been in use by Pacific Blue Australia for various periods, all longer than the six-months benchmark in the Minister's policy statement and the capacity would remain in continuous use within the Virgin Blue Group. The only capacity which has not yet been used is 540 seats per week and three weekly frequencies for services beyond Indonesia. However, Pacific Blue Australia has previously confirmed to the Commission its intention to utilise this capacity.

2.5 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 determinations as sought by Pacific Blue Australia.

### **3 Decision [2010] IASC 206**

3.1 In accordance with section 25 of the Act, the Commission varies Determinations [2008] IASC 120, [2009] IASC 103, [2009] IASC 105, [2009] IASC 106, [2009] IASC 107 and [2009] IASC 113, as requested by Pacific Blue Australia, by transferring from Pacific Blue Australia to Virgin Blue Airlines (ACN 090 670 965) the allocations of capacity made in those determinations.

Dated: 29 September 2010

Stephen Bartos  
Member Presiding

Ian Smith  
Member