



Australian Government

International Air Services Commission

DECISION

Decision:	[2011] IASC 205
Variation of:	[2009] IASC 133
The Route:	Thailand
The Applicant:	Pacific Blue Airlines (Aust) Pty Ltd (Pacific Blue Australia) (ACN 097 892 389)
Public Register:	IASC/APP/201105

1 The application

1.1 On 30 March 2011, Pacific Blue Australia applied for a variation to Determination [2009] IASC 133 which allocates 3.15 B747 equivalent services of capacity each week in each direction on the Thailand route, to permit such capacity to be used to offer joint services with V Australia or any wholly-owned subsidiary of the Virgin Blue Group. Pacific Blue Australia is seeking to enable V Australia to code share on Pacific Blue Australia's four times weekly Perth – Phuket services.

1.2 On 12 April 2011 Pacific Blue Australia amended its application seeking permission to use such capacity to offer joint services with V Australia, removing the reference to “any wholly-owned subsidiary of the Virgin Blue Group”.

1.3 The arrangements are due to commence following approval of the variation. Pacific Blue Australia has requested the variation for the remaining duration of the Determination. The Determination is due to expire on 11 November 2014.

1.4 The Commission published a notice on 31 March 2011, inviting submissions about the application. No submissions were received. All material supplied by the applicant is filed on the Register of Public Documents.

2 Provisions of the relevant air services arrangements

2.1 The Australia – Thailand air services arrangements allow the designated airlines of each country to enter into code sharing arrangements with any other airline(s) which holds the appropriate route and traffic rights, subject to a number of provisions. Specifically in relation to same Party code share arrangements, the designated airline(s) of each country may enter into code sharing arrangements as the non-operating airline with any airline(s) of the same Party which has the appropriate authorisation. Capacity utilised will only be counted against the operating carrier.

3 Delegate's assessment

3.1 In accordance with section 27AB of the *International Air Services Commission Act 1992* (the Act) and regulation 3A of the *International Air Services Commission Amendment Regulations 2003 (No.1)*, the delegate of the Commission considers the Pacific Blue Australia application.

3.2 When considering applications to vary determinations, the Commission (or its delegate) must decide whether the determinations, as varied, would be of benefit to the public. Under section 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 entitlements by Australian carriers under a bilateral arrangement is of benefit to the public. Pacific Blue Australia is an established international carrier which is clearly capable of obtaining the necessary approvals and of implementing its proposal. This means that there is public benefit arising from the use of the entitlements.

3.3 Section 15(2)(e) of the Act, the Commission must include a condition in determinations stating the extent to which the carrier may use that capacity in joint services with another carrier. The Commission has previously authorised code sharing between Pacific Blue Australia and V Australia. The delegate notes that this assessment encompasses similar considerations to those the Commission has canvassed on previous occasions when assessing applications from Pacific Blue Australia to code share with V Australia, and 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 Pacific Blue Australia 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.

3.4 The delegate also notes the Thailand route is competitive and the scale of the Pacific Blue Australia's arrangements with V Australia is modest, applying to Pacific Blue Australia's four times weekly Perth – Phuket services.

3.5 Accordingly, the delegate will authorise the use of the capacity in joint services with V Australia. The delegate, on behalf of the Commission, will vary the determination as requested by Pacific Blue Australia.

4 Decision [2011] IASC 205

4.1 In accordance with section 24 of the Act, the delegate, on behalf of the Commission, varies Determination [2009] IASC 133, which allocates capacity on the Thailand route, by:

adding the following conditions to the Determination:

- “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: 13 April 2011

Michael Bird
Executive Director
Delegate of the IASC Commissioners