



Australian Government

International Air Services Commission

DECISION

Decision:	[2011] IASC 209
Variation of:	[2007] IASC 199, [2008] IASC 112, [2008] IASC 117 [2008] IASC 129, [2009] IASC 109, [2009] IASC 131
The Route:	Fiji
The Applicant:	Pacific Blue Airlines (Aust) Pty Ltd (Pacific Blue Australia) (ACN 097 892 389)
Public Register:	IASC/APP/201107

1 The application

1.1 On 15 April 2011, Pacific Blue Australia applied for a variation to the above determinations, 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 services between points in Australia and Nadi.

1.2 The arrangements are due to commence following approval of the variation. Pacific Blue Australia has requested the variation for the remaining duration of each Determination.

1.3 The Commission published a notice on 18 April 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 – Fiji air services arrangements allow the designated airlines of each country to enter into co-operative marketing arrangements, such as code sharing, whether as the operating or marketing airline, with an airline(s) of the same or the other Contracting Party. Capacity offered by a marketing airline is not counted against the capacity entitlements of the Contracting Party designating that airline.

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 may consider 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 Paragraph 15(2)(e) of the Act requires the Commission to 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 Accordingly, the delegate authorises the use of the capacity in joint services with V Australia. The delegate, on behalf of the Commission, varies the determination as requested by Pacific Blue Australia.

4 Decision [2011] IASC 209

4.1 In accordance with section 24 of the Act, the delegate, on behalf of the Commission, varies Determinations [2007] IASC 119, [2008] IASC 112, [2008] IASC 117, [2008] IASC 129, [2009] IASC 109 and, [2009] IASC 131 which allocates capacity on the Fiji route, by:

adding to the Determinations 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: 10 May 2011

Sue McIntosh
Executive Director
Delegate of the IASC Commissioners