



Australian Government

International Air Services Commission

DECISION

Decision: [2011] IASC 212
Variation of: [2008] IASC 110
The Route: United States
The Applicant: Virgin Blue International Airlines Pty Ltd
(ACN 125 580 823) (V Australia)
Public Register File: IASC/APP/201115

1 The application

1.1 On 14 June 2011, V Australia applied for a variation of Determination [2008] IASC 110 to permit Delta Air Lines Inc (Delta) to code share on V Australia services between Australia and United States. The determination allocates unlimited passenger and freight capacity to V Australia on the United States route.

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

1.3 The Commission published a notice on 14 June 2011 inviting submissions about the application. A submission was received from Victorian State Government on the 28 June 2011, in support of the application.

2 Provisions of the relevant air services arrangements

2.1 The Australia – United States 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 or segments concerned.

3 Commission's assessment

3.1 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 V Australia, this means there is public benefit arising from the use of the entitlements.

3.2 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 – United States 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.

3.3 V Australia provided the Commission with a copy of its confidential code share agreement with Delta. The arrangement involves co-ordinated pricing and marketing between the carriers. The arrangements also include revenue pooling founded on the principle of “metal neutrality”, whereby V Australia and Delta will adopt revenue allocation arrangements that make it irrelevant which aircraft the passenger travels on. The Joint Venture between Delta and the Virgin Blue Group of airlines includes the New Zealand route, as well as the United States route.

3.4 Because of the extensive level of co-ordination involved in the arrangements, the Virgin Australia group of airlines has sought authorisation of the full set of arrangements from the ACCC, as well the US Department of Transportation (DoT) for the US route. The Joint Venture was approved by the ACCC on 10 December 2009, and by the US DoT on 10 June 2011.

3.5 The Commission has carefully considered the proposed code share arrangements, noting particularly that they involve joint pricing of services and a revenue pooling arrangement. The Commission is aware that the Virgin Australia group of airlines has sought and received authorisation from the ACCC for the proposed Joint Venture with Delta. As noted above, the ACCC granted approval to the Joint Venture on 10 December 2009 for five and a half years, noting that it is satisfied that the public benefit likely to result from the Joint Venture outweighs the public detriment.

3.6 The Commission has taken account of this decision by the ACCC to authorise the conduct. The Commission notes that in making its decision the ACCC considered the Joint Venture is likely to give rise to route connectivity benefits for consumers, enhanced route coverage and schedules, and more sustainable competition. The ACCC also recognised that revenue sharing under the Joint Venture would give the applicants an incentive to offer low cost code share inventory on their respective domestic sectors, facilitating lower fares. Accordingly, the Commission will not subject the proposals to the paragraph 5 criteria in the Minister's policy statement. The Commission considers that there is unlikely to be any lessening of public benefit through authorising the code sharing arrangement in relation to the United States route.

4 Decision [2011] IASC 212

4.1 In accordance with section 24 of the Act the Commission varies Determination [2008] IASC 110, as requested by V Australia, by adding the following conditions:

- “the capacity may be used by V Australia to provide services jointly with Delta in accordance with:

- the code share agreement between V Australia and Delta dated 8 July 2009; or
- any subsequent code share agreement between V Australia and Delta for operations on the Australia – New Zealand route with the prior approval of the Commission;
- Under the arrangements with Delta, V Australia may only price and market its services on the route jointly with Delta as long as such practices are authorised under the *Competition and Consumer Act 2010*;
- To the extent that the capacity is used to provide joint services on the route, V 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: 30 June 2011

Jill Walker
Chairwoman

Stephen Bartos
Member