



Australian Government

International Air Services Commission

Decision

Decision: [2010] IASC 201
Variation of: [2008] IASC 117
The route: Fiji
The applicant: Virgin Blue International Airlines Pty Ltd
(ACN 125 580 823) (V Australia)
Public register file: IASC/APP/201001

1 The application

1.1 On 22 February 2010, V Australia applied to transfer from V Australia to Pacific Blue Australia the 360 seats per week of capacity allocated to V Australia on the Fiji route in Determination [2008] IASC 117. This capacity had been allocated originally to Pacific Blue Australia and transferred to V Australia in Decision [2009] IASC 215 of 17 November 2009. Pacific Blue Australia noted that both it and V Australia are wholly-owned subsidiaries of Virgin Blue Holdings Limited. The proposed transfer would therefore occur within an established airline group.

1.2 V Australia explained that it intended to operate six weekly B777-300ER services to Fiji rather than the seven services per week operated currently between Sydney and Nadi. The Virgin Group would maintain daily services on the sector by using 180 of the 360 seats per week to be transferred to enable Pacific Blue Australia to introduce a once weekly B737-800 service. Pacific Blue Australia would also introduce a third weekly Melbourne-Nadi service utilising the remaining 180 weekly seats.

1.3 In seeking the variation, V Australia set out the reasons for the proposed change in operations by the Pacific Blue Group. The proposal follows V Australia's experience of operations in the Fiji market, as well as taking account of the anticipated entry of a new competitor (Jetstar, which has capacity available to enable it to operate four A320 services per week between Sydney and Nadi). The proposal enables Pacific Blue Australia to add the originally planned third weekly service between Melbourne and Nadi.

1.4 The Commission published a notice on 22 February 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 Paragraph 4 and paragraph 10 of the Minister's policy statement contain the criteria relevant to this application. 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 encourage speculative activity would not be of benefit to the public. Further, except in exceptional circumstances, approvals should not be given that would have the effect of allowing a carrier that has never exercised an allocation to transfer that allocation, or has only exercised it for less than a reasonable period. Six months would usually represent a reasonable period.

2.3 In relation to 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 Fiji. 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 when V Australia originally sought capacity on the Fiji route, there would have been sufficient capacity available for it to operate daily B777 services had the airline's application not been contested by Qantas. The Commission's determinations in that contested case meant that V Australia received an allocation of 360 seats per week less than it had sought (see Determinations [2009] IASC 131 and 132). This meant that for V Australia to implement its proposed daily services, it needed to rely on the transfer of the 360 unused seats held by Pacific Blue Australia. Indeed, the Commission took account of these unused seats in its considerations in the contested case as a source of additional capacity which could be available to V Australia.

2.5 The Pacific Blue Group decided to seek the transfer of the unused Pacific Blue Australia seats to V Australia. In doing so, there was an opportunity cost to Pacific Blue Australia through being unable to implement two weekly B737-800 services originally planned for other sectors on the Fiji route. The Commission authorised the transfer in Decision [2009] IASC 215.

2.6 The Commission notes that V Australia has used the capacity as required by the Commission, although it has done so for less than the six-month period indicated in the policy statement. The Commission considers that, in terms of the policy

statement, there are exceptional circumstances in this case which warrant the Commission authorising this transfer.

2.7 The current proposal would see the capacity remain in continuous use and would be operated by another airline in the Virgin Blue Group. V Australia has now had experience of the level of demand on the route in response to its new services and, related to this, has taken account of the commercial implications of the expected impending entry of Jetstar to the route. The Virgin Group has also considered the level of demand on the Melbourne – Nadi sector. The transfer proposal therefore represents a sensible commercial response to market circumstances and lacks any element of speculative behaviour.

2.8 The Commission notes that the Virgin Group would continue to offer daily services between Sydney and Nadi. The replacement of only one weekly V Australia service by Pacific Blue Australia should result in a very similar level of public benefits on that sector as those originally assessed by the Commission. Further, the addition of a weekly Melbourne – Nadi services would bring clear additional public benefits. Jetstar is likely to introduce its proposed four weekly services on the sector in the near future (the capacity is required to be utilised by 30 April 2010). The overall result will be the same frequency balance between Qantas/Jetstar and the Virgin Group on this sector as that on which the Commission based its public benefit assessments in its recent determinations and decisions relating to this route.

2.9 It is clear to the Commission that there is no speculative element to the proposal. The transfer is between two carriers within the same airline grouping with Pacific Blue Australia being reallocated the 360 weekly seats it was assigned originally. This would therefore restore the status quo which applied when Pacific Blue Australia originally held the capacity in question. The proposed transfer will result in a continuing efficient use of capacity on the Fiji route.

2.10 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 201

3.1 In accordance with section 25 of the Act, the Commission varies Determination [2008] IASC 117, as requested by V Australia, by transferring from V Australia to Pacific Blue Australia the allocation of 360 seats of capacity per week made to V Australia under Decision [2009] IASC 215.

Dated: 2 March 2010

Ian Smith
Member Presiding

Philippa Stone
Member