



Australian Government

International Air Services Commission

DECISION

Decision:	[2011 IASC 210
Variation of:	[2007] IASC 118
The Route:	New Zealand
The Applicant	Pacific Blue Airlines (Australia) Pty Ltd (ACN 097 892 389) (Pacific Blue Australia)
Public Register File:	IASC/APP/201111

1 The application

1.1 On 16 May 2011 Pacific Blue Australia applied for a variation of Determination [2007] IASC 118 to permit Air New Zealand to code share on Pacific Blue Australia services between Australia and New Zealand. The determination allocates unlimited passenger and freight capacity to Pacific Blue Australia on the New Zealand route.

1.2 Pacific Blue Australia provided the Commission with a copy of its confidential code share agreement with Air New Zealand. This is a free sale type arrangement which involves co-ordinated pricing, network planning and the pooling of revenue from the trans-Tasman route which will then be allocated to the respective airline.

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

1.4 The Commission published a notice on 16 May 2011 inviting submissions about the application. No submissions were received.

2 Provisions of the relevant air services arrangements

2.1 The Australia – New Zealand 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. The airlines must also make it clear to the purchaser at the point of sale which airline will be the operating airline and with which airline/s the purchaser is entering into a contractual arrangement.

3 Delegate's consideration

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 Regulations 2003 (No.1)*, the delegate of the Commission may consider the Pacific Blue Australia application.

3.2 When considering an application to vary a determination the Commission (or its delegate) 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 (subparagraph 4(b)(i)) and of implementing its proposals (subparagraph 4(b)(ii)) is of benefit to the public. For an established carrier such as Pacific Blue Australia, this means there is public benefit arising from the use of the entitlements.

3.3 Under paragraph 15(2)(e) of 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 – New Zealand 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.

3.4 The delegate has considered the proposed code share arrangements, noting particularly that they involve joint pricing of services and a revenue pooling arrangement. The delegate notes that the ACCC authorised an airline alliance between Pacific Blue Australia and Air New Zealand for a period of three years from 16 December 2010. In granting this authorisation, the ACCC was of the view that the alliance is likely to benefit passengers in a number of ways including more choice of routes and frequencies and potentially lower fares as a result of cost savings and efficiency improvements. The ACCC was also of the view that the alliance raised material competition issues on the trans-Tasman routes to and from Wellington and the Dunedin-Brisbane route. The ACCC noted it was uncertain what effect the alliance would have on the Auckland-Brisbane and Queenstown-Sydney routes. In light of these competition concerns the ACCC imposed conditions requiring Virgin Blue and Air New Zealand to maintain and grow a base level of capacity on the routes of concern for the term of the ACCC approval.

3.5 Accordingly, the delegate will not subject the proposals to the paragraph 5 criteria in the Minister's policy statement. The delegate considers that there is unlikely to be any lessening of public benefit through authorising the code sharing arrangement in relation to the New Zealand route.

3.6 In authorising code share arrangements the Commission normally includes a condition that the code share partners price and sell their services separately and do not share or pool revenues. In this case the delegate will approve code sharing which allows joint pricing of services and/or pooling of revenue. If the ACCC, which has authorised the alliance between Pacific Blue and Air New Zealand discontinues its authorisation, the Commission's authorisation of the code share is terminated. A condition of approval to this effect is included. The delegate notes that the Commission has granted similar conditional approval in the case of the Qantas/British Airways joint service arrangements where the parties also engage in joint pricing.

4 Decision [2011] IASC 210

4.1 In accordance with section 24 of the Act, the delegate, on behalf of the Commission varies Determination [2007] IASC 118 as requested by Pacific Blue Australia by adding the following conditions:

- “the capacity may be used by Pacific Blue Australia to provide services jointly with Air New Zealand in accordance with:
 - the code share agreement between Pacific Blue Australia and Air New Zealand dated 3 May 2010; or
 - any subsequent code share agreement between Pacific Blue Australia and Air New Zealand for operations on the Australia – New Zealand route with the prior approval of the Commission;
- Under the arrangements with Air New Zealand, Pacific Blue Australia may only price and market its services on the route jointly with Air New Zealand as long as such practices are authorised under the *Competition and Consumer Act 2010* or otherwise authorised by the Australian Competition Tribunal, in the event of review by that Tribunal;
- To the extent that the capacity is used to provide joint services on the route, 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: 3 June 2011

Sue McIntosh
Executive Director
Delegate of the IASC Commissioners