



## Australian Government

### International Air Services Commission

#### DECISION

**Decision:** [2011] IASC 217  
**Variation of:** [2007] IASC 117, [2008] IASC 111  
**The Route:** Vanuatu  
**The Applicant:** Pacific Blue Airlines (Australia) Pty Ltd  
(ACN 097 892 389) (Pacific Blue Australia)  
**Public Register:** IASC/APP/201113

### 1 The application

1.1 On 9 June 2011 Pacific Blue Australia applied for a variation to Determination [2008] IASC 114. The variation was sought to permit V Australia to code share on services operated by Pacific Blue Australia between points in Australia and Port Vila on the Vanuatu route.

1.2 The Commission published a notice on 10 June 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 relevant air services arrangements

2.1 The Australia – Vanuatu air service arrangements permit a designated airline of Australia to enter into code share, blocked space or other cooperative marketing arrangements, as the marketing and/or operating airline, with another designated airline(s) of Australia, with the designated airline(s) of Vanuatu, and/or the designated airline(s) of third parties.

### 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 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 (4(b)(i)) and of implementing its proposals (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 section 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. In accordance with 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 – Vanuatu air services arrangements provide for code sharing between airlines of either party and any other airline. In a case in which 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 finds, in accordance with the requirements of section 24 of the Act, that the variation authorising the code sharing arrangement in relation to the Vanuatu route is not detrimental to the public. In making this finding the delegate notes that the Commission has previously authorised the use of capacity in joint services between Pacific Blue Australia and V Australia on the New Zealand route and will authorise the use of capacity in joint services with V Australia.

#### **4 Decision [2011] IASC 217**

4.1 In accordance with section 24 of the Act the delegate, on behalf of the Commission, varies Determination [2008] IASC 114 which allocates capacity on the Vanuatu route, 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 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: 14 July 2011

Sue McIntosh  
Executive Director  
Delegate of the IASC Commissioners