



Australian Government

International Air Services Commission

DECISION

Decision: [2011] IASC 218
Variation of: [2008] IASC 116, and [2009] IASC 130
The Route: Tonga
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 Determinations [2007] IASC 120 and [2009] IASC 110. The variation was sought to permit V Australia to code share on services operated by Pacific Blue Australia between points in Australia and Nuku`alofa on the Tonga 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 – Tonga air service arrangements permit a designated airline of Australia to enter into co-operative marketing arrangements such as blocked space, code sharing or aircraft leasing, whether as the operating or marketing airline, with an Australian airline(s), a Tongan airline(s) or an airline(s) of a third country.

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 – Tonga 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 Tonga 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 218

4.1 In accordance with section 24 of the Act the delegate, on behalf of the Commission, varies Determinations [2007] IASC 120 and [2009] IASC 110 which allocate capacity on the Tonga 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