



## DETERMINATION

**DETERMINATIONS:** [2003] IASC 109, [2003] IASC 110 AND  
[2003] IASC 111  
**THE ROUTES:** NEW ZEALAND, FIJI AND VANUATU  
**THE APPLICANT:** VIRGIN BLUE PTY LTD  
(ACN 090 670 965) (VIRGIN BLUE)  
**PUBLIC REGISTER FILE:** IASC/APP/200313

### 1 The application

1.1 On 12 June 2003, Virgin Blue applied for an allocation of capacity on each of the New Zealand, Fiji and Vanuatu routes. Capacity sought is as follows:

- New Zealand – unlimited capacity, with services planned to commence from October 2003;
- Fiji – 1260 seats per week, to be exercised in part from October 2003, and fully used by October 2004;
- Vanuatu – 720 seats per week, to be utilised in full within twelve months, following services commencing in October 2003.

1.2 Virgin Blue plans to operate its services using Boeing B737-800 and/or B737-700 aircraft, with seating capacities of 180 seats and 144 seats respectively.

1.3 For New Zealand, Virgin Blue stated that the extent of its operations on this route is contingent on the outcome of consideration by regulatory authorities of the proposed Qantas/Air New Zealand/Air Pacific alliance. Virgin Blue proposes to expand capacity on the trans-Tasman fairly quickly if the regulatory outcome is satisfactory to it.

1.4 Virgin Blue advised that it would provide its international services under a new operating name, to be announced in the near future. The airline claimed that it meets the paragraph 4 criteria of the Minister's policy statement. Virgin Blue advised that it had applied to the Department of Transport and Regional Services (the Department) to be designated on the specified routes and for an international airline licence. Virgin Blue also said that it had lodged with the Civil Aviation Safety Authority (CASA) an application for an international Aircraft Operator's Certificate (AOC).

1.5 The Commission published a notice on 17 June 2003 inviting other applications for all or any part of the capacity and submissions from interested parties about the Virgin Blue application. No submissions were received.

1.6 All public material supplied by the applicant is filed on the Register of Public Documents. Commercial in confidence material provided by the applicant is filed on the Commission's Confidential Register.

## **2 Current services**

2.1 The New Zealand route is served by:

- Air New Zealand, which typically operates about 105 services per week between various points in New Zealand and points in Australia;
- Qantas, which flies about 115 services per week;
- Freedom Air, which operates about 51 services per week, mostly from smaller New Zealand gateways to points in Australia;
- several third-country carriers that provide a comparatively low frequency of services.

2.2 On the Fiji route, Air Pacific flies:

- a daily B747-400 service between Sydney and Nadi;
- five B737-800 services per week between Brisbane and Nadi;
- four B767-300 services per week between Melbourne and Nadi; and
- two B737-800 services per week between Sydney and Suva.

2.3 Qantas code shares on Air Pacific's flights to Fiji.

2.4 On the Vanuatu route, Air Vanuatu operates:

- five B737 services per week between Sydney and Port Vila;
- three B737 services per week between Brisbane and Port Vila.

2.5 Qantas code shares on Air Vanuatu's services.

### 3 Characteristics of the Australia – New Zealand, Fiji and Vanuatu routes

#### AUSTRALIA - NEW ZEALAND

#### MONTHLY OD TRAFFIC SUMMARY

LATEST Y/E DATA	MAR 2002 PAX	MAR 2002 PAX	PAX EWEW or OW	% CHG
<b>TOTAL OD TRAFFIC</b>	2,880,091	2,829,818	27,210 EWEW	-1.7%
<b>TOTAL VISITORS (ARR &amp; DEP)</b> (Proportion of Total OD Traffic)	1,685,936 ( 58.5% )	1,609,682 ( 56.9% )	15,478 EWEW	-4.5%
<b>TOTAL RESIDENTS (ARR &amp; DEP)</b> (Proportion of Total OD Traffic)	1,194,154 ( 41.5% )	1,220,139 ( 43.1% )	11,732 EWEW	2.2%

#### New Zealand – annual traffic flows

Traffic category	Year ended March				Compound annual growth rate 00-03
	2000	2001	2002	2003	
Direct traffic (Annual % change)	2,435,700	2,720,800 (+11.7%)	2,787,900 (+2.5%)	2,749,300 (-1.4%)	(76.5%) 4.1%
Indirect traffic (Annual % change)	88,900	87,300 (-1.8%)	91,700 (+5.0%)	80,500 (-12.2%)	(2.2%) -3.3%
Beyond traffic (Annual % change)	628,700	712,500 (+13.3%)	677,400 (-4.9%)	763,600 (+12.7%)	(21.2%) 6.7%
<b>Total traffic</b> (Annual % change)	<b>3,153,400</b>	<b>3,520,600</b> (+11.6%)	<b>3,556,900</b> (+1.0%)	<b>3,593,500</b> (+1.0%)	(100.0%) 4.5%

## AUSTRALIA - FIJI

### MONTHLY OD TRAFFIC SUMMARY

LATEST Y/E DATA	MAR	MAR	PAX	% CHG
	2002 PAX	2003 PAX	EWEW or OW	
<b>TOTAL OD TRAFFIC</b>	265,433	310,764	2,988	EWEW 17.1%
<b>TOTAL VISITORS (ARR &amp; DEP)</b>	56,596	54,578	525	EWEW -3.6%
(Proportion of Total OD Traffic)	( 21.3% )	( 17.6% )		
<b>TOTAL RESIDENTS (ARR &amp; DEP)</b>	208,837	256,183	2,463	EWEW 22.7%
(Proportion of Total OD Traffic)	( 78.7% )	( 82.4% )		

### Fiji – annual traffic flows

Traffic category	Year ended March				Compound annual growth rate 00-03
	2000	2001	2002	2003	
Direct traffic (Annual % change)	274,300	183,200 (-33.2%)	250,100 (+36.5%)	296,300 (+18.5%)	(81.6%) 2.6%
Indirect traffic (Annual % change)	14,800	12,500 (-15.5%)	15,300 (+22.4%)	14,500 (-5.2%)	(4.0%) -0.7%
Beyond traffic (Annual % change)	61,400	45,000 (-26.7%)	44,900 (-0.2%)	52,200 (+16.3%)	(14.4%) -5.3%
<b>Total traffic</b> (Annual % change)	<b>350,400</b>	<b>240,700</b> (-31.3%)	<b>310,200</b> (+28.9%)	<b>363,000</b> (+17.0%)	(100.0%) 1.2%

## AUSTRALIA - VANUATU

### MONTHLY OD TRAFFIC SUMMARY

LATEST Y/E DATA	MAR 2002 PAX	MAR 2003 PAX	PAX EWEW or OW	% CHG
<b>TOTAL OD TRAFFIC</b>	75,448	68,541	659	EWEW -9.2%
<b>TOTAL VISITORS (ARR &amp; DEP)</b>	11,160	11,613	112	EWEW 4.1%
(Proportion of Total OD Traffic)	( 14.8% )	( 16.9% )		
<b>TOTAL RESIDENTS (ARR &amp; DEP)</b>	64,282	56,917	547	EWEW -11.5%
(Proportion of Total OD Traffic)	( 85.2% )	( 83.0% )		

### Vanuatu – annual traffic flows

Traffic category	Year ended March				Compound annual growth rate 00-03
	2000	2001	2002	2003	
<b>Direct traffic</b> (Annual % change)	72,700	83,400 (+14.7%)	72,300 (-13.3%)	64,900 (-10.2%)	(86.2%) -3.7%
<b>Indirect traffic</b> (Annual % change)	2,400	3,600 (+50.0%)	3,100 (-13.9%)	3,600 (+16.1%)	(4.8%) 14.5%
<b>Beyond traffic</b> (Annual % change)	7,700	7,300 (-5.2%)	6,000 (-17.8%)	6,800 (+13.3%)	(9.0%) -4.1%
<b>Total traffic</b> (Annual % change)	82,800	94,300 (+13.9%)	81,400 (-13.7%)	75,300 (-7.5%)	(100.0%) -3.1%

## **4 Provisions of relevant air services arrangements**

4.1 The proposed operations by Virgin Blue are consistent with the air services arrangements between Australia and New Zealand, Fiji and Vanuatu respectively.

4.2 Under the arrangements with New Zealand, designation of multiple airlines is permitted and there is unlimited capacity available to Australian carriers which may be used between any points in Australia and any points in New Zealand.

4.3 The Fiji air services arrangements allow multiple designation of carriers to operate on the Fiji route. Five thousand seats per week of capacity for passenger services remain available for allocation to Australian carriers for services between Sydney, Melbourne, Brisbane and/or Perth. There is no restriction on capacity, frequency or aircraft type for services between Fiji and other Australian points.

4.4 The air services arrangements with Vanuatu allow for multiple designation of carriers. Currently 1100 seats per week of capacity for passenger services remain available for allocation on the Vanuatu route between any points in Australia and any points in Vanuatu.

## **5 Commission's assessment**

### Overview

5.1 Under paragraph 6.2 of the Minister's policy statement, in the absence of submissions about or opposing an application, the Commission is required only to apply the criteria in paragraph 4 of the policy statement. Where there are submissions received about or opposing a proposal, the Commission may apply the additional criteria in paragraph 5 of the policy statement. The Commission will apply only the paragraph 4 criteria in this case.

5.2 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. In relation to obtaining the necessary approvals, as with any airline seeking to operate international services, Virgin Blue must be designated and obtain a licence from the Department and safety approvals from CASA before it has authority to commence services. The Commission makes its own assessment of whether the applicant is reasonably capable of implementing its proposals, having regard to a range of factors including the applicant's experience, business plan and other detailed commercial information provided to the Commission.

### Necessary approvals

5.3 Although an established Australian domestic carrier, Virgin Blue has not previously operated international services. Its ability to obtain the necessary approvals for international operations cannot be assumed by the Commission to be a foregone conclusion. In line with its normal practice for new entrant airlines, the Commission

sought advice from the Department as to whether it considered Virgin Blue to be reasonably capable of obtaining the necessary approvals. The Department has advised that it considers Virgin Blue to be reasonably capable of doing so.

#### Ability to implement proposals

5.4 Virgin Blue is an experienced inter and intra-state airline operator and is Australia's second largest domestic carrier. The airline therefore possesses experience and a range of physical, financial and skilled personnel resources which provide a substantial and credible basis for the development of its international venture. The carrier's operating plans for the routes in question involve using the same type of equipment as it flies for domestic purposes, thus avoiding a quantum step into larger or different aircraft types, which may have represented an additional level of complexity.

5.5 Virgin Blue has provided the Commission with detailed commercial in confidence material to support its claims that it is capable of implementing international services successfully. The Commission has assessed this material in detail. The Commission considered the information in an overall sense, and in the context of the individual markets which Virgin Blue proposes to enter.

#### Conclusion

5.6 The information provided by Virgin Blue in support of its application suggests to the Commission that the carrier has the financial capacity, resources, skills and experience necessary to implement its proposals successfully. As the Commission has stated on past occasions, it is not necessary for the Commission to be certain that a carrier will be able to maintain services over the long term. In competitive markets, carriers may exit, yet deliver important public benefits for the period in which they do operate and to some extent provide benefits beyond that period. In this case, the Commission considers that Virgin Blue's successful track record in the domestic market and its sound business plan for international services makes it well placed to launch and maintain its planned services for the foreseeable future.

5.7 The Commission is satisfied that Virgin Blue is reasonably capable of obtaining the necessary approvals and of implementing its proposals. Allocations of capacity to Virgin Blue would therefore be of benefit to the public.

5.8 The Commission will make the following allocations of capacity to Virgin Blue:

- unlimited capacity on the New Zealand route;
- 1260 seats per week in each direction on the Fiji route; and
- 720 seats per week in each direction on the Vanuatu route.

5.9 The Commission notes that Virgin Blue proposes to commence services on all three routes from October 2003 and, in the case of Fiji and Vanuatu, to fully utilise the capacity by October 2004. The Minister's policy statement gives the Commission discretion in specifying a period within which a carrier must fully utilise allocated

capacity. In line with the Commission's practice of providing some flexibility for new entrants in fully utilising allocated capacity, the Commission will require Virgin Blue to fully utilise its capacity on the Fiji and Vanuatu routes by end-November 2004. Consistent with the Commission's approach in allocating capacity to other carriers on the open-capacity New Zealand route, Virgin Blue will simply be required to utilise capacity on some scale but not to any specified timetable.

## **6 Determination allocating capacity on the New Zealand route to Virgin Blue ([2003] IASC 109)**

6.1 The Commission makes a determination in favour of Virgin Blue, allocating unlimited passenger and freight capacity for operation in accordance with the terms of the Australia – New Zealand air services arrangements.

6.2 The determination is for five years from the date of the determination.

6.3 The determination is subject to the following conditions:

- Virgin Blue is required to utilise the capacity;
- only Virgin Blue is permitted to utilise the capacity;
- Virgin Blue is not permitted to utilise the capacity to provide joint services jointly with another Australian carrier or any other person without the approval of the Commission;
- changes in relation to the ownership and control of Virgin Blue are permitted except to the extent that any change:
  - results in the designation of the airline as an Australian carrier under the Australia – New Zealand air services arrangements being withdrawn; or
  - has the effect that another Australian carrier, or a person (or group of persons) having substantial ownership or effective control of another Australian carrier, would take substantial ownership of Virgin Blue or be in a position to exercise effective control of Virgin Blue, without the prior consent of the Commission; and
- changes in relation to the management, status or location of operations and head office of Virgin Blue are permitted except to the extent that any change would result in the airline ceasing to be an airline designated by the Australian Government for the purposes of the Australia – New Zealand air services arrangements.

## **7 Determination allocating capacity on the Fiji route to Virgin Blue ([2003] IASC 110)**



7.1 The Commission makes a determination in favour of Virgin Blue, allocating 1,260 seats of capacity per week in each direction on the Australia – Fiji route to/from Sydney, Brisbane, Melbourne and/or Perth, in accordance with the Australia – Fiji air services arrangements.

7.2 The determination is for five years from the date of the determination.

7.3 The determination is subject to the following conditions:

- Virgin Blue is required to fully utilise the capacity from no later than 30 November 2004 or from such other date approved by the Commission;
- only Virgin Blue is permitted to utilise the capacity;
- Virgin Blue is not permitted to utilise the capacity to provide services jointly with another Australian carrier or any other person without the approval of the Commission;
- changes in relation to the ownership and control of Virgin Blue are permitted except to the extent that any change:
  - results in the designation of the airline as an Australian carrier under the Australia – Fiji air services arrangements being withdrawn; or
  - has the effect that another Australian carrier, or a person (or group of persons) having substantial ownership or effective control of another Australian carrier, would take substantial ownership of Virgin Blue or be in a position to exercise effective control of Virgin Blue, without the prior consent of the Commission; and
- changes in relation to the management, status or location of operations and head office of Virgin Blue are permitted except to the extent that any change would result in the airline ceasing to be an airline designated by the Australian Government for the purposes of the Australia – Fiji air services arrangements.

## **8 Determination allocating capacity on the Vanuatu route to Virgin Blue ([2003] IASC 111)**

8.1 The Commission makes a determination in favour of Virgin Blue, allocating 720 seats of capacity per week in each direction on the Australia – Vanuatu route, in accordance with the Australia – Vanuatu air services arrangements.

8.2 The determination is for five years from the date of the determination.

8.3 The determination is subject to the following conditions:

- Virgin Blue is required to fully utilise the capacity from no later than 30 November 2004 or from such other date approved by the Commission;
- only Virgin Blue is permitted to utilise the capacity;
- Virgin Blue is not permitted to utilise the capacity to provide services jointly with another Australian carrier or any other person without the approval of the Commission;
- changes in relation to the ownership and control of Virgin Blue are permitted except to the extent that any change:
  - results in the designation of the airline as an Australian carrier under the Australia – Vanuatu air services arrangements being withdrawn; or
  - has the effect that another Australian carrier, or a person (or group of persons) having substantial ownership or effective control of another Australian carrier, would take substantial ownership of Virgin Blue or be in a position to exercise effective control of Virgin Blue, without the prior consent of the Commission; and
- changes in relation to the management, status or location of operations and head office of Virgin Blue are permitted except to the extent that any change would result in the airline ceasing to be an airline designated by the Australian Government for the purposes of the Australia – Vanuatu air services arrangements.

Dated: 10 July 2003

Ross Jones  
Chairman

Stephen Lonergan  
Member

Michael Lawriwsky  
Member