



## Australian Government

### International Air Services Commission

#### DETERMINATION

**Determination:** [2003] IASC 129  
**The Route:** France (Route 3 – New Caledonia)  
**The Applicant:** Virgin Blue Airlines Pty Ltd  
(ACN 090 670 965) (Virgin Blue)  
**Public Register File:** IASC/APP/200326

#### 1 The application

1.1 On 3 November 2003, the Commission published a notice calling for submissions about a review of determinations held by Transpac Express Pty Ltd (Transpac) including [2002] IASC 121 which allocated 0.75 units of passenger capacity on the New Caledonia route. The notice also called for applications for, or submissions about allocation of all or part of the capacity that is the subject of the review in anticipation of the Commission possibly revoking the determinations.

1.2 On 4 November 2003, Virgin Blue indicated its intent to apply and on 18 November 2003 applied for an allocation of 0.75 units of passenger capacity for operation on the New Caledonia route under the Australia - France air services arrangements. Virgin Blue proposes to operate up to 3 services per week using B737-700 aircraft and/or B737-800 aircraft. Virgin Blue was the only applicant for the passenger capacity on the route.

1.3 On 28 November 2003, the Commission issued Draft Decision [2003] IASC 215 proposing to revoke all of Transpac's determinations including [2002] IASC 121. On 12 December 2003, having received no submissions on the Draft Decision, the Commission finalised Decision [2003] IASC 215 revoking all of Transpac's determinations.

1.4 All material supplied by the applicant is filed on the Register of Public Documents

#### 2 Provisions of relevant air services arrangements

2.1 Under the Australia – France air services arrangements, the designated airlines of Australia are entitled to operate 2.5 units of capacity and one B737 freighter per week on France Route 3 (Australia – Noumea). Qantas has a total allocation of 1.75 units of capacity per week on France Route 3. Accordingly, following the revocation of Transpac's determinations, 0.75 units of capacity remain available for immediate allocation on France Route 3.

2.2 In the aircraft substitution formula under the air services arrangements between Australia and France, aircraft with a seating capacity of below 150 seats have a coefficient of 0.25 units and those with between 150 and 199 seats have a coefficient of 0.4 units. Virgin Blue's B737-700 have 144 seats and are thus equivalent to 0.25 units while the B737-800 aircraft have 180 seats and are equivalent to 0.4 units.

2.3 Under the Australia – France arrangements there is a “flexibility factor” of no more than 0.25 units. Virgin Blue has indicated to the Commission that it will seek some or all of the “flexibility factor” capacity to give it flexibility in the services it can operate on the route.

### **3 Commission's assessment**

3.1 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 relevant aeronautical safety authorities 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.

3.2 Although an established Australian domestic carrier, Virgin Blue has not yet operated international services. The Commission has previously sought advice from the Department, see [2003] IASC 109, 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.

3.3 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 New Caledonia route involve using the same type of equipment as it flies for domestic purposes.

3.4 Virgin Blue has previously 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 some of the individual markets which Virgin Blue proposes to enter.

3.5 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. 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. The Commission also notes Virgin Blue's successful listing on the Australian Stock Exchange on 8 December 2003.

3.6 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. The Commission will allocate Virgin Blue the 0.75 units of capacity sought.

#### **4 Determination allocating capacity on the France Route 3 route to Virgin Blue ([2003] IASC 129)**

4.1 The Commission makes a determination in favour of Virgin Blue, allocating 0.75 units of capacity per week in each direction on the France Route 3 route under the Australia - France air services arrangements.

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

4.3 The determination is subject to the following conditions:

- Virgin Blue is required to commence utilisation of the capacity from no later than 30 November 2004 and to fully utilise the capacity from no later than 30 May 2005 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 – France 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 – France air services arrangements.

Dated: 12 December 2003

John Martin  
Chairman

Michael Lawriwsky  
Member

Stephen Lonergan  
Member