



Australian Government

International Air Services Commission

DECISION

Decision: [2009] IASC 215
Variation of: [2009] IASC 117
The Route: Fiji
The Applicant: Pacific Blue Airlines (Australia) Pty Ltd
(ACN 097 892 389) (Pacific Blue Australia)
Public Register File: IASC/APP/200926

1 The application

1.1 On 30 October 2009, the Virgin Blue Group applied to transfer from Pacific Blue Australia to Virgin Blue International Airlines Pty Ltd (ACN 125 580 823) (V Australia) the 360 seats per week of capacity allocated to Pacific Blue Australia on the Fiji route under Determination [2008] IASC 117. Pacific Blue Australia noted that both it and V Australia are wholly-owned subsidiaries of Virgin Blue Holdings Limited. The proposed transfer would therefore occur within an established airline group.

1.2 The application was made to enable V Australia to operate daily B777-300 services between Sydney and Nadi, using a combination of the transferred capacity now sought, 1,260 seats per week of capacity transferred by Decision [2009] IASC 214 and 907 seats per week of capacity allocated by the Commission in Determination [2009] IASC 131. The services are planned to commence in December 2009.

1.3 On 16 November 2009, Pacific Blue Australia provided advice to confirm that the application was made on behalf of Pacific Blue Australia as the holder of the capacity the subject of the proposed transfer.

1.4 The Commission published a notice on 2 November 2009 inviting submissions about the transfer application. No submissions were received.

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

2 Commission's assessment

2.1 Section 25 (1) of the *International Air Services Commission Act 1992* (the Act), states that the Commission must, having conducted a review to decide a transfer application, make a decision varying the determination concerned in a way that gives

effect to the variation requested. However, the Commission must not do so if it is satisfied that the allocation, as varied, would not be of benefit to the public (section 25(2)).

2.2 Paragraph 4 and paragraph 10 of the Minister's policy statement contain the criteria relevant to this application. Under paragraph 4, the use of Australian entitlements by a carrier that is reasonably capable of obtaining the necessary approvals and of implementing its proposals is of benefit to the public. Paragraph 10 makes it clear that approvals which encourage speculative activity would not be of benefit to the public. Further, except in exceptional circumstances, approvals should not be given that would have the effect of allowing a carrier that has never exercised an allocation to transfer that allocation, or has only exercised it for less than a reasonable period. Six months would usually represent a reasonable period.

2.3 In relation to paragraph 4, the Commission has previously found V Australia to meet the criteria and has allocated capacity to the airline on other routes, including recently on the Fiji route. V Australia is clearly capable of obtaining the necessary approvals and of implementing its proposed operations. This means that there is public benefit arising from the use of the entitlements.

2.4 Turning to the paragraph 10 provisions of the Ministers' policy statement, the Commission notes that Pacific Blue Australia has been operating on the Fiji route for some years. However, it has not yet used the capacity under the determination in question. Nevertheless, the Commission considers that, in terms of the policy statement, there are exceptional circumstances in this case which warrant the Commission authorising this transfer, despite the capacity having not been used.

2.5 Pacific Blue Australia had clearly stated plans to utilise the capacity to add services to Adelaide and Melbourne. The Commission is satisfied that it would have done so, except that V Australia can only implement its planned daily B777-300 services on the Fiji route with this additional capacity. V Australia had applied for sufficient capacity to operate the daily services without the need to transfer this extra capacity from Pacific Blue Australia. However, that application was contested by Qantas. The Commission's determinations in that case meant that V Australia received an allocation of 360 seats per week less than it had sought (see Determinations [2009] IASC 131 and 132). Indeed, the Commission took account of the unused 360 seats held by Pacific Blue Australia in its considerations in that case as a source of possible additional capacity which could be available to V Australia. Had V Australia received the full allocation it had requested, this transfer application would not have been required.

2.6 It is clear to the Commission that there is no speculative element to the proposal and the circumstances of the request are exceptional. The transfer is between two carriers within the same airline grouping with V Australia taking over the use of the capacity from Pacific Blue Australia. The proposed transfer represents an efficient use of capacity on the Fiji route (with virtually all Australian capacity now allocated by the Commission) and the capacity transferred is intended to be used quickly by V Australia, from December 2009. This is earlier than the capacity is likely to have been

used by Pacific Blue Australia.

2.7 The Commission finds, in accordance with the requirements of Section 25 of the Act, that there would be no reduction in public benefit through allowing the transfer sought and will vary the Determination as sought by Pacific Blue Australia.

3 Decision [2009] IASC 215

3.1 In accordance with section 25 of the Act, the Commission varies Determination [2008] IASC 117, as requested by Pacific Blue Australia, by transferring from Pacific Blue Australia to V Australia the allocation of 360 seats of capacity per week made to Pacific Blue Australia under this determination.

Dated: 17 November 2009

John Martin
Chairman

Philippa Stone
Member

Ian Smith
Member