



## Australian Government

### International Air Services Commission

#### DECISION

**Decision:** [2016] IASC 203  
**Variation of:** [2011] IASC 115  
**The Route:** Solomon Islands  
**The Applicant:** Virgin Australia Airlines (SE Asia) Pty Ltd  
(Virgin Australia) ACN 79 097 892 389  
**Public Register File:** IASC/APP/201610

**The Commission's delegate varies Determination [2011] IASC 115 to permit Singapore Airlines to code share on Virgin Australia services on the Solomon Islands route.**

#### 1 The application

1.1 On 29 April 2016, Virgin Australia applied for a variation to Determinations [2011] IASC 115 and [2013] IASC 133 to enable Singapore Airlines to code share on flights operated by Virgin Australia on the Solomon Islands route.

1.2 Virgin Australia further requested the variation of Determination [2011] IASC 115 issued in favour of Pacific Blue Australia Airlines (Aust) Pty Ltd to recognise the name change of Pacific Blue Airlines (Aust) Pty Ltd to Virgin Australia Airlines (SE Asia) Pty Ltd.

1.3 On 2 May 2016, the Commission published a notice, in accordance with section 22 of the Act, inviting submissions about the application for variation. No submissions were received. All material supplied by the applicant is available on the Commission's website, [www.iasc.gov.au](http://www.iasc.gov.au).

1.4 The variation of each determination will be dealt in separate decisions.

#### 2 Air services arrangements

2.1 Under the Australia – Solomon Islands air services arrangements, the designated airline(s) of Australia can enter into code share, blocked space or other cooperative marketing arrangements, as the marketing and/or operating airline with any other airline, including other designated Australian airlines and 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 Regulations 1992*, the delegate of the Commission may consider the application for variation. (For purposes of this decision, all references to the Commission include the delegate of the Commission).

3.2 Virgin Australia's application seeks to vary the Determinations to include a condition of a kind referred to in paragraph 15(2)(e) of the Act. In view of this, the application is a transfer application as so defined in subsection 4(1) of the Act and has been assessed in accordance with section 25.

3.3 Subsection 25(1) provides that the Commission must make a decision varying the determination in a way that gives effect to the variation requested, subject to subsection 25(2). Subsection 25(2) states that the Commission must not make a decision varying the determination in a way that varies, or has the effect of varying an allocation of capacity if the Commission is satisfied that the allocation, as so varied, would not be of benefit to the public.

3.4 Under section 26 of the Act, in assessing the benefit to the public of a variation of an allocation of capacity, the Commission is required to apply the criteria set out in any policy statement issued by the Minister under section 11.

3.5 Paragraph 6.3 of the Minister's Policy Statement (No. 5) of 19 May 2004 (the Policy Statement) provides that, subject to paragraph 6.4, where a carrier requests a variation of a determination to allow it flexibility in operating its capacity, including to use the Australian capacity in a code share arrangement with a foreign carrier, and no submission is received about the application, only the criteria in paragraph 4 of the Policy Statement are applicable.

3.6 Paragraph 6.4 provides, in part, that the Commission may apply the criteria in paragraph 5 in the circumstances set out in paragraph 3.6 of the Policy Statement.

3.7 Under paragraph 3.6, where capacity that can be used for code share operations is available under air services arrangements, including where foreign airlines have rights to code share on services operated by Australian carriers, the Commission would generally be expected to authorise applications for use of capacity to code share. However, if the Commission has serious concerns that a code share application (or other joint service proposal) may not be of benefit to the public, it may subject the application to more detailed assessment using the additional criteria set out in paragraph 5 (whether the application is contested or not). Before doing so, the Commission will consult with the Australian Competition and Consumer Commission (the ACCC).

3.8 Virgin Australia operates two weekly services between Brisbane and Honiara with 30.2% share of the total traffic between Australia and the Solomon Islands. Solomon Airlines has the largest share of the traffic (56.7%)<sup>1</sup>, operating five weekly services –four between Honiara and Brisbane and one weekly service between Honiara and Sydney. Qantas code shares on flights operated by Solomon Airlines.<sup>2</sup>

3.9 The Commission further notes that in December 2011, the ACCC granted authorisation for Virgin Australia and Singapore Airlines' integrated network alliance. In authorising the alliance, the ACCC considered that the alliance is 'unlikely to result in any significant public detriment in the market(s) for international air passenger transport services or the market for domestic air passenger transport services in Australia'.<sup>3</sup>

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<sup>1</sup> Data between March 2015 to February 2016, Bureau of Infrastructure, Transport and Regional Economics

<sup>2</sup> International Airlines Timetable Summary for 2016 Northern Summer Scheduling Period

<sup>3</sup> ACCC determination dated 1 December 2011, Authorisation No. A91267 & A91268

3.10 The Commission has no serious concerns about Virgin Australia's proposed use of the capacity for code share services with Singapore Airlines. In light of this, the Commission did not specifically consult the ACCC and did not see the need to apply the paragraph 5 criteria.

3.11 Under paragraph 4 of the Policy Statement, the use of entitlements by Australian carriers under a bilateral arrangement is of benefit to the public unless such carriers are not reasonably capable of obtaining the necessary approvals to operate on the route and of implementing their proposals. The Commission notes that Virgin Australia is an established international carrier which is clearly capable of obtaining the necessary approvals and of implementing its proposals.

3.12 In light of the above, the Commission will permit the use of the capacity for code share services between Virgin Australia and Singapore Airlines to be conducted in accordance with Australia's air services arrangements with the Solomon Islands and Singapore.

3.13 In relation to the name change, the Commission will vary Determination [2011] IASC 115 to reflect the name change of Pacific Blue Airlines (Aust) Pty Ltd to Virgin Australia Airlines (SE Asia) Pty Ltd., as requested.

3.14 Subsection 15(1) of the Act empowers the Commission to include such terms and conditions as it thinks fit. Paragraph 15(2)(e) requires the inclusion of a condition stating the extent to which the carrier may use that capacity in joint services with another carrier. As is its normal practice, the Commission will also include a condition which requires Virgin Australia to comply with the Australian Consumer Law and to take all reasonable steps to ensure that passengers are informed of the carrier that is actually operating the flight.

3.15 Nothing in this decision should be taken as indicating either approval or disapproval by the ACCC. This decision is made without prejudicing, in any way, possible future consideration of code share operations by the ACCC.

#### **4 Decision varying Determinations [2011] IASC 115 allocating capacity to Virgin Australia on the Solomon Islands route ([2016] IASC 203)**

4.1 In accordance with section 25 of the Act, the delegate, on behalf of the Commission, varies Determination [2011] IASC 115 which allocates 360 seats of passenger capacity per week in each direction to Virgin Australia on the Solomon Islands route, by:

*adding* the following conditions to the Determination:

- the capacity may be used by Virgin Australia for code share services with Singapore Airlines to be conducted in accordance with Australia's air services arrangements with Solomon Islands and Singapore and the code share agreement between Virgin Australia and Singapore Airlines dated 3 February 2012, as amended;
- Virgin Australia must apply to the Commission for approval of the use of the capacity if there are variations to the code share arrangement which would change the relevant commercial aspects of the code share arrangement from a free sale code share arrangement to a block space, or vice versa, or if Virgin Australia proposes to add third

country routes on which the airlines will code share where Australian capacity will be used for services on the route;

- to the extent that the capacity is used to provide code share services on the route, the airlines must take all reasonable steps to ensure that passengers are informed, at the time of booking, of the carrier actually operating the flight. Nothing in this determination exempts the airlines from complying with the Australian Consumer Law.

4.2 In accordance with section 24 of the Act, Determination [2011] IASC 115 is varied to recognise the name change of Pacific Blue Airlines (Aust) Pty Ltd to Virgin Australia Airlines (SE Asia) Pty Ltd.

4.3 The variations take effect from the date of this instrument.

Dated: 16 May 2016



Marlene Tucker  
Executive Director  
Delegate of the IASC Commissioner