



Australian Government

International Air Services Commission

DECISION

Decision: [2004] IASC 207
The Route: New Zealand
The Applicant: Virgin Blue Airlines Pty Ltd
(ACN 090 670 965) (Virgin Blue)
Public Register File: IASC/APP/200421

1 The application

1.1 On 3 September 2004, Virgin Blue applied to transfer to Pacific Blue Airlines (Australia) Pty Ltd (ACN 097 892 389) (Pacific Blue Australia) unlimited passenger and freight capacity allocated to Virgin Blue on the New Zealand route under Determination [2003] IASC 109. Virgin Blue stated that the transfer application was made in the context of plans by Pacific Blue Australia to commence services between Australia and the Cook Islands. The Cook Islands services would operate via Christchurch in New Zealand. Accordingly, Pacific Blue Australia has concurrently sought an allocation of capacity on the Cook Islands route. That application for capacity is the subject of a separate determination by the Commission.

1.2 Virgin Blue noted that the Commission had previously transferred capacity from Virgin Blue to Pacific Blue Australia on the Fiji, Vanuatu and France Route 3 (New Caledonia) routes (Decision [2004] IASC 201). Virgin Blue stated that it would have no objection to the Commission imposing a condition of the transfer requiring Pacific Blue Australia to remain part of the Virgin Australia Holdings Limited Group until 31 March 2005, in the same way that it had done in its earlier decision.

1.3 The Commission published a notice on 9 September 2004 inviting submissions about the transfer application. No submissions were received.

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

2 Delegate's assessment

2.1 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 considers the Qantas application.

2.2 Section 25 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.

2.3 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. Also, 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.

2.4 The Commission has previously considered and approved an identical application from Virgin Blue in relation to the transfer of capacity allocated on the Fiji, Vanuatu and France - Route 3 (New Caledonia) routes. Details of the Commission's consideration of the issues in that earlier case are contained in Decision [2004] IASC 201. The reasons for the proposed transfer in this case are the same as advanced on that earlier occasion. The delegate therefore concludes that Pacific Blue Australia is capable of implementing its proposals and that there is an appropriate basis upon which to authorise the transfer in this case.

2.5 Consistent with the Commission's earlier decision, the delegate 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, on the basis that Pacific Blue Australia remains a wholly owned subsidiary within the Virgin Blue Holdings Limited Group. In this respect, the delegate notes that there has been no material change to the ownership and control of Pacific Blue Australia since the earlier transfer application. The delegate, on behalf of the Commission, will make the variation to Determination [2003] IASC 109 as requested by Virgin Blue, adding a condition that any structural change to the current ownership and control arrangements pertaining to Pacific Blue Australia prior to 31 March 2005 will not be permitted without the prior approval of the Commission. The delegate will also retain in the determination the existing provisions concerning changes to ownership and control.

3 Decision [2004] IASC 207

3.1 In accordance with section 25 of the Act, the delegate, on behalf of the Commission, varies Determination [2003] IASC 109 as requested by Virgin Blue by transferring from Virgin Blue to Pacific Blue Australia the allocation of capacity made to Virgin Blue under that determination. The following condition is added: “until 31 March 2005, the allocation of capacity hereunder is conditional upon Pacific Blue Australia remaining, except with the prior approval of the Commission, a wholly owned subsidiary in the Virgin Australia Holdings Limited Group”.

Dated: 20 September 2004

Michael Bird
Executive Director
Delegate of the IASC Commissioners