



Australian Government

International Air Services Commission

DETERMINATION

Determination: [2007] IASC 104
The Route: United States
The Applicant: Virgin Blue International Airlines Pty Ltd
(ACN 125 580 823) (Virgin Blue International Airlines)
Public Register File: IASC/APP/200714

1 The application

1.1 On 27 June 2007, Virgin Blue International Airlines (VBIA) applied for an allocation of capacity on the South Pacific route consistent with the terms of the Australia - United States air services arrangements. VBIA plans to operate ten weekly return non-stop B777-300ER services between Australia and United States, commencing in late 2008.

1.2 VBIA is a wholly-owned subsidiary of Virgin Blue Holdings Limited. Virgin Blue Holdings Limited is also the ultimate parent of Pacific Blue Airlines (Australia) Pty Ltd (PBA). PBA has for several years operated international services as an Australian designated airline to a number of countries within the south Pacific region. The Virgin Blue group also operates air services from and within New Zealand via Pacific Blue Airlines (NZ) Ltd.

1.3 The Commission published a notice on 6 July 2007 inviting applications for some or all of the capacity sought by VBIA. No applications were received.

1.4 All public material supplied by the applicant is filed on the Register of Public Documents. Confidential supporting material provided by VBIA is filed on the Commission's Confidential Register.

2 Provisions of relevant air services arrangements

2.1 Under the Australia – United States air services arrangements, the designated airlines of Australia are entitled to operate capacity on the South Pacific routing in accordance with the terms of those arrangements. According to the Register of Available Capacity, each designated airline has the right to operate a minimum of four round trip frequencies per week without limitation as to aircraft type.

3 Commission's assessment

3.1 Under paragraph 6.2 of the Minister's policy statement, the Commission is required only to apply the criteria in paragraph 4 of the policy statement. 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.

3.2 The Commission has previously found, in relation to applications for capacity on other routes, that the Pacific Blue Group has the financial capacity, resources, skills and experience necessary to implement its proposals successfully. PBA is now a well established international operator, providing an extensive network of services on routes to New Zealand, Fiji, Tonga, the Cook Islands, New Caledonia and Vanuatu. Similarly, Pacific Blue Airlines (NZ) is an established New Zealand based operator.

3.3 Although VBIA is a new entity within the Virgin Blue Group, the Commission is satisfied that VBIA is reasonably capable of obtaining the necessary approvals and of implementing its proposals. In addition to taking account of the success of the Virgin Blue Group in establishing a substantial network of domestic and international air services, the Commission has assessed confidential supporting material provided by the applicant. The Commission notes that VBIA has already initiated processes with the relevant Australian and United States regulatory authorities with a view to obtaining the necessary approvals. There is considerable lead time available to the airline to achieve these approvals prior to the proposed commencement of operations in late 2008.

3.4 The Commission concludes that an allocation of capacity to Virgin Blue International Airlines on the United States route would be of benefit to the public. The Commission will allocate to VBIA the capacity it has sought and will require that the capacity be exercised from November 2008.

4 Determination allocating capacity on the United States route to Virgin Blue International Airlines ([2007] IASC 104)

4.1 The Commission makes a determination in favour of Virgin Blue International Airlines, providing that Virgin Blue International Airlines may operate capacity on the South Pacific route in each direction between Australia and the United States consistent with the terms of the Australia – United States air transport 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 International Airlines is required to utilise the capacity from no later than 30 November 2008;
- only Virgin Blue International Airlines is permitted to utilise the capacity;

- Virgin Blue International Airlines 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 International Airlines are permitted except to the extent that any change:
 - results in the designation of the airline as an Australian carrier under the Australia – United States 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 International Airlines or be in a position to exercise effective control of Virgin Blue International Airlines, 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 International Airlines 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 – United States air services arrangements.

Dated: 23 July 2007

John Martin
Chairman

Philippa Stone
Member

Vanessa Fanning
Member