



## Australian Government

### International Air Services Commission

#### DECISION

**Decision:** [2009] IASC 214  
**The Route:** Fiji  
**The Applicant:** Pacific Blue Airlines (Australia) Pty Ltd  
(ACN 097 892 389) (Pacific Blue Australia)  
**Public Register File:** IASC/APP/200927

#### 1 The application

1.1 On 12 August 2009, Pacific Blue Australia applied to transfer to Virgin Blue International Airlines Pty Ltd (ACN 125 580 823) (V Australia) the 1,260 seats per week of capacity allocated to Pacific Blue Australia on the Fiji route under Determination [2008] IASC 129. 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 concurrently with an application from V Australia for an allocation of 1,267 seats per week on the route. The combined capacity entitlements sought through the two applications would enable V Australia to operate daily B777-300 services between Australia and Fiji. Subsequently, Qantas lodged a competing application for capacity on the Fiji route in response to the V Australia application. In light of the Qantas' application, V Australia asked the Commission to defer consideration of the transfer application pending the Commission's determinations on the competing applications. In response to a draft determination in that contested case, proposing to allocate 907 seats per week to V Australia, the Virgin Group requested that the transfer application be reactivated. The V Australia application for capacity is dealt with in Determination [2009] IASC 131.

1.3 Also in response to the draft determination, on 30 October 2009 the Virgin Group sought a variation to Determination [2008] IASC 117 to transfer the 360 seats per week allocated by that Determination from Pacific Blue Australia to V Australia. That application will be the subject of a subsequent Commission decision. These additional seats were required to enable V Australia to operate the daily services originally planned.

1.4 The Commission published a notice on 13 August 2009 inviting submissions about the transfer application of 12 August 2009. 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. V Australia is an established international carrier operating on the United States route and plans to commence operations on the Thailand route in the second half of November 2009 and the South Africa route in March 2010. 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 and continues to fully utilise the capacity under the determination which is the subject of the current application. Further, there is clearly no speculative element to the proposal. 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 approach sought by V Australia and Pacific Blue Australia through their complementary applications represents an efficient use of the limited available capacity on the Fiji route and the capacity transferred is intended to remain in continuous use.

2.5 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 214**

3.1 In accordance with section 25 of the Act, the Commission varies Determination [2008] IASC 129 as requested by Pacific Blue Australia by transferring from Pacific Blue Australia to V Australia the allocation of 1,260 seats of capacity per week made to Pacific Blue Australia under this determination.

Dated: 5 November 2009

John Martin  
Chairman

Philippa Stone  
Member

Ian Smith  
Member