



Australian Government

International Air Services Commission

RENEWAL DETERMINATION

Determination: [2007] IASC 118
Renewal of: [2003] IASC 109
The Route: New Zealand
The Applicant: Pacific Blue Australia Ltd
(ACN 097 892 389) (Pacific Blue Australia)
Public Register File: IASC/APP/200715

1 The application for renewal

1.1 On 10 July 2003, the Commission issued Determination [2003] IASC 109 (the Determination) allocating to Virgin Blue unlimited passenger and freight capacity for operation on the New Zealand route in accordance with the terms of the Australia – New Zealand air services arrangements.

1.2 The Determination was subsequently varied by Decision [2004] IASC 207 to transfer to Pacific Blue Australia the capacity allocated to Virgin Blue under the Determination.

1.3 Under the *International Air Services Commission Act 1992* (the Act), the Commission must start its consideration of the renewal of a determination at least 12 months before the expiry of the Determination. The Determination expires on 9 July 2008.

1.4 Pacific Blue Australia applied to the Commission on 31 August 2007 for a renewal of the Determination. The Commission published a notice on 6 September 2007 inviting other applications for an allocation of the capacity subject to renewal. No other applications were received.

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

2 Delegate's consideration

2.1 In accordance with section 27AB of the Act and regulation 3A of the *International Air Services Commission Amendment Regulations 2003 (No. 1)*, the delegate of the Commission considers the Pacific Blue Australia application.

2.2 Under the Minister's Policy Statement (No. 5) of 19 May 2004, there is a rebuttable presumption in favour of the carrier seeking the renewal. The delegate notes that:

- Pacific Blue Australia has been utilising the relevant capacity;
- according to the Register of Available Capacity, there is unlimited capacity for designated Australian carriers to operate scheduled passenger services between Australia and New Zealand via, and beyond to, third countries for both passenger and freight services;
- there are no other applicants seeking capacity on the route; and
- there is no evidence that Pacific Blue Australia has failed to service the route effectively.

2.3 In these circumstances, the delegate concludes that the renewal of Determination [2003] IASC 109 would be of benefit to the public.

2.4 The wording of the fresh determination below reflects the view of the Commission that determinations which renew original determinations should contain updated terms and conditions consistent with the Commission's current practice and current air services arrangements. Under the Act, the Commission may make changes to the terms and conditions included in the original determination where warranted by changes in circumstances since the original determination was made.

3 Determination for renewal of Determination [2003] IASC 109 allocating capacity on the New Zealand route to Pacific Blue Australia ([2007] IASC 118)

3.1 The delegate, on behalf of the Commission, makes a determination in favour of Pacific Blue Australia, allocating unlimited passenger and freight capacity in each direction on the New Zealand route in accordance with the terms of the Australia – New Zealand air services arrangements.

3.2 The determination is for ten years from 10 July 2008.

3.3 The determination is subject to the following conditions:

- Pacific Blue Australia is required to fully utilise the capacity;
- only Pacific Blue Australia is permitted to utilise the capacity;
- Pacific Blue Australia 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 Pacific Blue Australia are permitted except to the extent that any change:
 - results in the designation of the airline as an Australian carrier under the Australia – New Zealand 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 Pacific Blue Australia or be in a position to exercise effective control of Pacific Blue Australia, without the prior consent of the Commission; and
- changes in relation to the management, status or location of operations and Head Office of Pacific Blue Australia 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 – New Zealand air services arrangements.

Dated: 11 October 2007

Michael Bird
Executive Director
Delegate of the IASC Commissioners