



## Australian Government

### International Air Services Commission

#### DETERMINATION

**Determinations:** [2009] IASC 116  
**The Route:** France - Route 3 (New Caledonia)  
**The Applicant:** Pacific Wings Pty Ltd  
(ACN 136 119 947) (Pacific Wings)  
**Public Register File:** IASC/APP/200923

#### 1 The application

1.1 On 22 July 2009, Pacific Wings applied for an allocation of 0.5 units of capacity per week on the France - Route 3 (New Caledonia) route. The applicant indicated that the capacity would be fully utilised by 1 November 2011 and sought a five year determination. Pacific Wings claimed that it meets the requirements of the paragraph 4 criteria in the Minister's policy statement.

1.2 The Commission published a notice on 23 July 2009 inviting other applications for all or any part of the capacity from interested parties. No applications were received.

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

#### 2 Provisions of relevant air services arrangements

2.1 The proposed operations by Pacific Wings are consistent with the air services arrangements between Australia and France. There are 0.5 units of passenger capacity per week available for allocation to Australian carriers on the New Caledonia route. This is sufficient capacity in order for Pacific Wings to operate two B737-300 services per week. The Commission has previously made allocations totalling 2.5 units of passenger capacity per week on this route, including 0.25 units per week to Pacific Wings.

#### 3 Commission's assessment

3.1 Pacific Wings is the only applicant for capacity. Under paragraph 6.2 of the Minister's policy statement (No. 5), of 19 May 2004, the Commission is required only to apply the criteria in paragraph 4 of the policy statement in this case. 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 On 27 July 2009, the Commission allocated Pacific Wings capacity on the New Caledonia route (see Determination [2009] IASC 112). The 0.25 units of capacity allocated was sufficient for the airline to operate a once weekly B737-300 service using aircraft wet-leased from Our Airline.

3.3 In that case, the Commission undertook a detailed assessment of the ability of Pacific Wings to meet the paragraph 4 criteria. The Commission is satisfied that Pacific Wings meets the criteria in this case, noting that the airline is proposing to use the additional capacity sought to add further services on the New Caledonia route.

3.4 The Commission notes that Pacific Wings has requested that the capacity not be required to be fully used until 1 November 2011. In the Commission's view, this is a lengthy period to hold the capacity unused in the circumstances of this case, which are that the 0.5 units per week sought by Pacific Wings is the only capacity remaining available for allocation on this route. This capacity was previously allocated to Ozjet, which held it for over 12 months but never exercised it. The Commission does not want the capacity to continue remaining idle for any longer than necessary.

3.5 The Commission will therefore not agree to all of the capacity being potentially unused for well over the two year period sought by Pacific Wings. However, the Commission is aware of Pacific Wings' plans for development of services on the New Caledonia route and is prepared to allow sufficient time for the airline to phase in the capacity consistent with those plans. The Commission will therefore allocate the capacity sought to Pacific Wings, but will require a minimum 0.25 units of the weekly capacity to be exercised by no later than 31 April 2010. This is the same date by which the airline is required to utilise the 0.25 units of weekly capacity allocated under Determination [2009] IASC 112. In effect, this means that Pacific Wings must introduce at least two B737-300 services per week by 31 April 2010. The Commission will authorise the remaining 0.25 units of capacity per week to be fully exercised by 1 November 2011 as sought by Pacific Wings.

3.6 As Pacific Wings has only recently been allocated capacity on the New Caledonia route, and that determination was an interim determination for three years, the Commission will allocate the capacity in this case for three years also.

#### **4 Determination allocating capacity on the France - Route 3 (New Caledonia) route to Pacific Wings ([2009] IASC 116)**

4.1 The Commission makes a determination in favour of Pacific Wings, allocating 0.50 units of capacity per week in each direction on the Australia - France Route 3 (New Caledonia) route, in accordance with the terms of the Australia – France air services arrangements.

4.2 The determination is for three years from the date of the determination.

4.3 The determination is subject to the following conditions:

- Pacific Wings is required to utilise at least 0.25 units per week of the capacity from no later than 31 April 2010, or from such other date approved by the Commission;
- Pacific Wings is required to fully utilise the capacity from no later than 1 November 2011, or from such other date approved by the Commission;
- only Pacific Wings is permitted to utilise the capacity;
- Pacific Wings is not permitted to utilise the capacity to provide joint services with another Australian carrier or any other person without the approval of the Commission;
- Pacific Wings must take all reasonable steps to ensure that passengers are informed of the carrier actually operating the flight at the time of booking;
- changes in relation to the ownership and control of Pacific Wings are permitted except to the extent that any change:
  - results in the designation of the airline as an Australian carrier under the Australia – France 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 Wings or be in a position to exercise effective control of Pacific Wings, without the prior consent of the Commission; and
- changes in relation to the management, status or location of operations and head office of Pacific Wings 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 – France air services arrangements.

Dated 6 August 2009

John Martin  
Chairman

Philippa Stone  
Member

Ian Smith  
Member