



Australian Government

International Air Services Commission

RENEWAL DETERMINATION

Determination:	[2009] IASC 130
Renewal of:	[2005] IASC 109
The Route:	Tonga
The Applicant:	Pacific Blue Airlines (Australia) Pty Ltd (ACN 097 892 389) (Pacific Blue Australia)
Public Register File:	IASC/APP/200930

1 The application for renewal

1.1 On 8 September 2005, the delegate of the Commission issued Determination [2005] IASC 109 (the Determination) allocating to Pacific Blue Australia 540 seats of capacity per week in each direction on the Tonga route. Decision [2008] IASC 207 reduced the amount of capacity allocated by the Determination to 360 seats per week.

1.2 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 7 September 2010.

1.3 Pacific Blue Australia applied to the Commission on 8 October 2009 for a renewal of the Determination. The Commission published a notice on 12 October 2009 inviting other applications for an allocation of the capacity subject to renewal. No other applications were received.

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

2 Commission's consideration

2.1 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 Commission notes that:

- Pacific Blue Australia has been fully utilising the relevant capacity;
- according to the Register of Available Capacity, for passenger services there are 60 seats per week of capacity available for allocation on the Tonga route;

- 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.

2.2 The Commission concludes that the renewal of Determination [2005] IASC 109 would be of benefit to the public.

2.3 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 [2005] IASC 109 allocating capacity on the Tonga route to Pacific Blue Australia ([2009] IASC 130)

3.1 The Commission makes a determination in favour of Pacific Blue Australia, allocating 360 seats of capacity per week in each direction on the Tonga route under the Australia – Tonga air services arrangements.

3.2 The determination is for five years from 8 September 2010.

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 – Tonga 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 – Tonga air services arrangements.

Dated: 12 October 2009

John Martin
Chairman

Philippa Stone
Member

Ian Smith
Member