



Australian Government

International Air Services Commission

DETERMINATION

Determination: [2004] IASC 114
The Route: Cook Islands
The Applicant: Pacific Blue Airlines (Australia) Pty Ltd
(ACN 097 892 389) (Pacific Blue Australia)
Public Register File: IASC/APP/200422

1 The application

1.1 On 3 September 2004, Pacific Blue Australia applied for an allocation of 180 seats per week on the Cook Islands route. Pacific Blue Australia planned to operate a once weekly service between Australia and the Cook Islands, commencing in November 2004. The flights are proposed to be operated using a B737-800 aircraft with a seating capacity of 180 seats. The services would involve an intermediate stop at Christchurch in New Zealand. Pacific Blue Australia has commenced discussions with the Department of Transport and Regional Services with a view to being designated as an Australian carrier under the Australia – Cook Islands air services arrangements.

1.2 The Commission published a notice on 9 September 2004 inviting applications for some or all of the capacity sought by Pacific Blue Australia. 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 Under the Australia – Cook Islands air services arrangements, the designated airlines of Australia are entitled to operate capacity for passenger services of up to 500 seats per week in each direction on the specified routes, using any aircraft and without limitation on frequency. Australian airlines may exercise unrestricted fifth freedom traffic rights at any of five intermediate points. The Australia - New Zealand air services arrangements permit the designated airlines of Australia to operate to any points in New Zealand and beyond.

2.2 The Register of Available Capacity shows that there are 500 seats of passenger capacity per week available for allocation to the designated airlines of Australia.

3 Delegate's assessment

3.1 In accordance with section 27AB of the *International Air Services Commission Act 1992* (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.

3.2 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. 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. The Pacific Blue Group has since established international services, with Pacific Blue (New Zealand) operating services between Australia and New Zealand and Pacific Blue Australia has recently commenced services to Fiji and Vanuatu in September 2004.

3.3 The delegate is satisfied that Pacific Blue Australia is reasonably capable of obtaining the necessary approvals and of implementing its proposals. An allocation of capacity to Pacific Blue Australia on the Cook Islands route would therefore be of benefit to the public. The delegate, on behalf of the Commission, will allocate to Pacific Blue Australia the 180 seats of capacity per week it has sought.

4 Determination allocating capacity on the Cook Islands route to Pacific Blue Australia ([2004] IASC 114)

4.1 In accordance with section 25 of the Act, the delegate, on behalf of the Commission, makes a determination in favour of Pacific Blue Australia, allocating 180 seats of capacity per week in each direction on the Cook Islands route under the Australia – Cook Islands air services 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:

- Pacific Blue Australia is required to fully utilise the capacity from no later than 30 November 2004, or from such other date approved by the Commission;
- 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 –Cook Islands 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 –Cook Islands air services arrangements.

Dated: 20 September 2004

Michael Bird
Executive Director
Delegate of the IASC Commissioners