



Australian Government

International Air Services Commission

DETERMINATION

Determination: [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/200513

1 The application

1.1 On 26 August 2005, Pacific Blue Australia applied for an allocation of 540 seats per week of capacity on the Tonga route. Pacific Blue Australia plans to operate three services per week from points in Australia to Tonga utilising 180 seat B737-800 aircraft.

1.2 The Commission published a notice on 31 August 2005 inviting other applications for the capacity. No applications were received. 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 –Tonga air services arrangements, the designated airlines of Australia may operate a total of 600 seats each way per week between Tonga and Australia. As no Australian carrier has previously been allocated capacity on the route all 600 seats per week are available for immediate allocation.

3 Delegate's consideration

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 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. Under paragraph 4, the use of entitlements by an Australian carrier that is reasonably capable of obtaining the necessary approvals and of implementing its proposals is of benefit to the public. For an established international carrier such as Pacific Blue Australia, this means that there is public benefit arising from the use of the entitlements.

3.3 The delegate concluded that an allocation of passenger capacity to Pacific Blue Australia on the Tonga route would be of benefit to the public.

4 Determination allocating capacity on the Tonga route to Pacific Blue Australia ([2005] IASC 109)

4.1 In accordance with section 27AA of the Act, the delegate, on behalf of the Commission, makes a determination in favour of Pacific Blue Australia, allocating 540 seats per week between Australia and Tonga under the Australia – Tonga 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 2005, 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 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: 8 September 2005

Roy McAndrew
Senior Adviser
Delegate of the IASC Commissioners