



Australian Government

International Air Services Commission

DETERMINATION

Determinations: [2008] IASC 115
The Route: Cook Islands
The Applicant: Pacific Blue Airlines (Australia) Pty Ltd
(Pacific Blue Australia) (ACN 097 892 389)
Public Register File: IASC/APP/200816

1 The application

1.1 On 18 July 2008, Pacific Blue Australia applied for an allocation of 180 seats per week of capacity on the Cook Islands route. The Commission understands that Pacific Blue Australia proposes to use the capacity to operate a third weekly service between Brisbane and Rarotonga using Boeing 737-800 aircraft with a capacity of 180 seats. The capacity is planned to be fully used by 1 November 2008.

1.2 The Commission published a notice on 24 July 2008 inviting other applications for all or any part of the capacity from interested parties. No applications were received.

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

2 Provisions of relevant air services arrangements

2.1 At the time of Pacific Blue Australia's application, the air services arrangements provided a capacity entitlement for Australian designated airlines totalling 500 seats per week. The Commission had previously allocated 360 seats per week to Pacific Blue Australia on the route. This meant there were only 140 seats per week of capacity for passenger services available for allocation to Australian carriers. In other words, there was insufficient capacity to satisfy Pacific Blue Australia's requirement for 180 seats per week.

2.2 However, subsequent to Pacific Blue Australia's application, an exchange of diplomatic notes increased the amount of capacity available on the route by 40 seats per week. As a result of this exchange, there are 180 seats per week of capacity available for allocation to Australian carriers. Accordingly, the proposed services by Pacific Blue Australia are consistent with air services arrangements between Australia and the Cook Islands.

3 Commission's assessment

3.1 Pacific Blue Australia 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. Under paragraph 4, the use of Australian entitlements by a carrier that is reasonably capable of obtaining the necessary approvals and of implementing its proposals is of benefit to the public. Pacific Blue Australia is an established international carrier which is clearly capable of obtaining the necessary approvals and of implementing the proposed operations. This means that there is public benefit arising from the use of the entitlements. 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 ([2008] IASC 115)

4.1 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 1 November 2008, 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: 12 September 2008

John Martin
Chairman

Philippa Stone
Member