



**Australian Government**  

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**International Air Services Commission**

**DETERMINATION**

**Determination:** [2008] IASC 116  
**The Route:** Tonga  
**The Applicant:** Pacific Blue Airlines (Australia) Pty Ltd  
(ACN 097 892 389) (Pacific Blue Australia)  
**Public Register File:** IASC/APP/200822

**1 The application**

1.1 On 2 September 2008, Pacific Blue Australia applied for an allocation of capacity on the Tonga route. The capacity sought is 180 seats per week, which is proposed to be operated as a weekly service using a Boeing 737-800 aircraft with a capacity of 180 seats, adding to the twice weekly service currently operated on the route. In advice to the Commission subsequent to its application, Pacific Blue Australia indicated that the third weekly service would operate on a seasonal basis initially, but would be operated year-round by December 2009.

1.2 The Commission published a notice on 9 September 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 The proposed services by Pacific Blue Australia are consistent with the air services arrangements between Australia and Tonga. The Register of Available Capacity shows that there are 240 seats per week of capacity for passenger services available for allocation to Australian carriers on the Tonga route. The Commission has previously allocated a total of 360 seats per week on this route to Pacific Blue 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. 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 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 Tonga route to Pacific Blue Australia ([2008] IASC 116)**

4.1 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 Tonga route 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 31 December 2009, 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 – 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: 17 September 2008

Michael Bird  
Executive Director  
Delegate of the IASC Commissioners