



Australian Government

International Air Services Commission

RENEWAL DETERMINATION

Determination: [2011] IASC 131
Renewal of: [2009] IASC 131
The Route: Fiji
The Applicant: Pacific Blue Airlines (Aust) Pty Ltd
(Pacific Blue Australia) (ACN 097 892 389)
Public Register File: IASC/APP/201124

1 The application for renewal

1.1 On 5 November 2009, the Commission issued Determination [2009] IASC 131 allocating to V Australia 907 seats of capacity per week in each direction on the Fiji route. The Commission issued an interim (three year) rather than a five year determination. The Commission gave as its reason for issuing an interim determination concern about the possible effect on the balance of public benefits if circumstances changed materially, during the life of the determination, from those on which the Commission had based the determination.

1.2 The Determination was subsequently varied by Decision [2010] IASC 205, to transfer the capacity from V Australia to Pacific Blue Australia, and by Decision [2011] IASC 209, to enable V Australia to code share on Pacific Blue Australia's services between points in Australia and Nadi.

1.3 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 4 November 2012.

1.4 V Australia applied to the Commission on 7 October 2011 for a renewal of the Determination. The Commission published a notice on 20 October 2011 inviting submissions about the applications. No submissions were received.

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

2 Commission's consideration

2.1 Paragraph 8.2 of the Minister's policy statement states that on routes where the start up phase is over, as is the case on the Fiji route, the criteria for assessing the benefit to the public for the purposes of renewal of interim determinations are those set out in paragraphs 4 and 5.

2.2 The Commission notes that:

- Pacific Blue Australia has been servicing the route effectively; and
- there are no other applicants for the capacity.

2.1 As the capacity for which Pacific Blue Australia is seeking a renewal determination does not exceed that in their current determination, and as there were no other applicants for the capacity, the Commission does not consider that the criteria in paragraph 5 are relevant in this instance.

2.3 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. Pacific Blue Australia is an established international carrier and clearly satisfies the paragraph 4 criteria.

2.4 In these circumstances, the Commission concludes that the renewal of Determination [2009] IASC 131 would be of benefit to the public.

3 Determination for renewal of Determination [2009] IASC 131 allocating capacity on the Fiji route to Pacific Blue ([2011] IASC 131)

3.1 The Commission makes a determination in favour of Pacific Blue Australia allocating 907 seats of capacity per week in each direction on the Fiji route, in accordance with the Australia – Fiji air services arrangements.

3.2 The determination is for five years from 5 November 2012.

3.3 The determination is subject to the following conditions:

- Pacific Blue Australia is required to fully utilise the capacity;
- the capacity may be used by Pacific Blue Australia to provide services jointly with Virgin Australia;
- where the capacity is used to provide joint services on the route, nothing in this determination exempts Pacific Blue and Virgin Australia from complying with the Australian Consumer Law. The airlines are required to take all reasonable steps to ensure that passengers are informed, at the time of booking, of the carrier actually operating the flight;
- 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 – Fiji 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 – Fiji air services arrangements.

Dated 19 December 2011



Jill Walker
Chairperson



Stephen Bartos
Member

