



Australian Government

International Air Services Commission

DETERMINATION

Determination: [2009] IASC 106
The Route: Indonesia
The Applicant: Pacific Blue Airlines (Aust) Pty Ltd
(ACN 097 892 389) (Pacific Blue)
Public Register File: IASC/APP/200909

1 The application

1.1 On 1 May 2009, Pacific Blue applied to the Commission for an allocation of unlimited capacity on the Indonesia route. Pacific Blue proposes to utilise this allocation to operate services between points in Australia, other than Sydney, Melbourne, Brisbane and Perth, and authorised points in Indonesia.

1.2 The Commission published a notice on 8 May 2009 inviting other applications for an allocation of the capacity. No other 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 The air services arrangements between Australia and Indonesia permit the designation of multiple Australian airlines. According to the Register of Available Capacity, there is unrestricted capacity for designated Australian carriers to operate scheduled passenger services between authorised points in Indonesia and points in Australia except Sydney, Melbourne, Brisbane and Perth.

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 Regulations 1992*, the delegate of the Commission considers the Pacific Blue application.

3.2 Under the Minister's Policy Statement (No.5) of 19 May 2004 (the Policy Statement), where capacity is not limited under a bilateral arrangement, the criteria in

paragraph 4 of the Policy Statement apply. 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 is an established international carrier which is clearly capable of obtaining the necessary approvals and of implementing its proposals. This means that there is public benefit arising from the use of the entitlements.

3.3 The delegate considers that the allocation of unrestricted capacity between smaller Australian points and Indonesia will give Pacific Blue the flexibility to operate in response to growth in demand for travel. The delegate notes the strong growth in demand on the Indonesia route, which had the highest annual passenger growth rate of Australia's top 20 international markets for the year ending March 2009, with an annual growth of 24.4%.

3.4 Under paragraph 11.1(b) of the Policy Statement, where capacity and routes are unrestricted, Commission determinations are to be for a period of ten years, unless the determination is an interim determination, in which case the duration is to be for a three year period. Under the Australia-Indonesia air services arrangements, capacity is unrestricted only between Indonesian points and Australian points excluding the four largest cities, namely, Sydney, Melbourne, Brisbane and Perth. The duration of the determination will therefore be for five rather than 10 years because unrestricted capacity may be operated only on sectors between Indonesia and the smaller Australian points.

3.5 The delegate, on behalf of the Commission, will allocate to Pacific Blue the capacity sought.

4 Determination allocating capacity on the Indonesia route to Pacific Blue ([2009] IASC 106)

4.1 The delegate, on behalf of the Commission, makes a determination in favour of Pacific Blue, allocating unrestricted passenger capacity in each direction on the Indonesia route between points in Australia, except Sydney, Melbourne, Brisbane and Perth and authorised points in Indonesia in accordance with the terms of the Australia – Indonesia 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 is required to utilise the capacity from no later than 1 April 2010, or from such other date approved by the Commission;
- only Pacific Blue is permitted to utilise the capacity;
- Pacific Blue 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 are permitted except to the extent that any change:
 - results in the designation of the airline as an Australian carrier under the Australia – Indonesia 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 or be in a position to exercise effective control of Pacific Blue, 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 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 – Indonesia air services arrangements.

Dated: 27 May 2009

Dilip Mathew
Acting Executive Director
Delegate of the IASC Commissioners