



Australian Government

International Air Services Commission

DETERMINATION

Determination: [2009] IASC 107
The Route: Indonesia
The Applicant: Pacific Blue Airlines (Aust) Pty Ltd
(ACN 097 892 389) (Pacific Blue Australia)
Public Register: IASC/APP/200906

1 The application

1.1 On 20 March 2009, Pacific Blue Australia applied for an allocation of 540 seats per week and three frequencies per week of passenger capacity beyond Indonesia under the Australia- Indonesia air services arrangements. The allocation was sought as Pacific Blue Australia proposes to operate three services per week beyond Denpasar, Indonesia. On 12 June 2009, the airline advised that the services would be operated between Denpasar and Phuket, Thailand.

1.2 Pacific Blue Australia advised that the services will be operated using Boeing 737-800 aircraft configured with 180 seats. The airline proposes to progressively introduce these services and fully utilise the capacity by 1 April 2010.

1.3 The Commission published a notice on 27 March 2009 inviting other applications for the capacity. No applications were received in response to the advertisement.

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

2 Provisions of relevant air services arrangements

2.1 The Register of Available Capacity shows that 16 frequencies per week utilising up to 5,401 seats weekly beyond Jakarta, Denpasar, an additional two points in Indonesia west of Denpasar to Singapore, points in Malaysia and a point in Thailand of passenger capacity are available for allocation. Of the 16 frequencies, three are available for services beyond Denpasar.

Thailand

2.2 Under the Australia- Thailand air services arrangements, Australian carriers are entitled to operate passenger services between Australia and Thailand via intermediate points in Indonesia. Pacific Blue Australia has separately applied for capacity on the Thailand route.

3 Delegate's consideration

3.1 In accordance with section 27AB of the *International Air Services Commission Act 1992* and regulation 3A of the *International Air Services Commission Regulations 1992*, the delegate of the Commission considers the Pacific Blue Australia application.

3.2 Pacific Blue Australia currently has unrestricted passenger capacity between authorised points in Indonesia and points in Australia, except Sydney, Melbourne, Brisbane and Perth. The airline also has a total allocation of 4,680 seats per week on the Indonesia route. While the application for capacity was filed on 20 March 2009, the airline provided formal advice that it proposes to use the capacity to operate between Denpasar and Phuket on 12 June 2009. The delegate was unable to finalise his assessment of the application until the airline provided this advice, resulting in a delay in considering the application. The airline does not require any additional allocation of capacity between Australia and Indonesia to operate the proposed services beyond Denpasar.

3.3 Under the Australia- Indonesia air services arrangements, no more than seven frequencies per week may be operated beyond Denpasar. Qantas has been allocated four frequencies per week beyond Denpasar. Implementation of this proposal by Pacific Blue Australia will result in the utilisation of the remaining three frequencies per week beyond Denpasar.

3.4 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 in this case. 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.

3.5 Pacific Blue Australia is an established international carrier which is clearly capable of obtaining the necessary approvals and of implementing its proposal. This means that there is public benefit arising from the use of the entitlements.

3.6 No airline currently operates direct services between Denpasar and Phuket. The airline's proposed services represent an innovative product as it will address a gap in the market by providing direct flights with passengers benefitting from shorter travel times and additional competition.

3.7 The delegate, on behalf of the Commission, will allocate to Pacific Blue Australia the capacity it has sought.

4 Determination allocating capacity on the Indonesia route to Pacific Blue Australia ([2009] IASC 107)

4.1 The delegate, on behalf of the Commission, makes a determination in favour of Pacific Blue Australia, allocating 540 seats per week in each direction and three frequencies per week of passenger capacity beyond Indonesia, all three of which may serve Denpasar, under 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 Australia is required to fully utilise the capacity from no later than 1 April 2010, 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 – 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 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 – Indonesia air services arrangements.

Dated: 15 June 2009

Michael Bird
Executive Director
Delegate of the IASC Commissioners