



Australian Government

International Air Services Commission

DETERMINATION

Determination: [2009] IASC 109
The Route: Fiji
The Applicant: Pacific Blue Airlines (Australia) Pty Ltd
(ACN 097 892 389) (Pacific Blue Australia)
Public Register File: IASC/APP/200917

1 The application

1.1 Pacific Blue Australia applied on 29 June 2009 for an allocation of unlimited capacity between points in Australia other than Sydney, Melbourne, Brisbane and Perth and authorised points in Fiji, on the Fiji route. The capacity is proposed to be operated using Boeing 737-800 aircraft with a capacity of 180 seats. It will be used progressively from the date of the Commission's determination.

1.2 The Commission published a notice on 30 June 2009 inviting other applications for the capacity from interested parties. No applications were received. 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 Fiji. The Register of Available Capacity shows that the designated airlines of Australia may determine the frequency of service, capacity and aircraft type to be operated on the specified routes to or from points in Australia other than 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 Amendment Regulations 2003 (No.1)*, the delegate of the Commission considers the Pacific Blue application.

3.2 The delegate understands that the capacity will initially be used to cater for Pacific Blue Australia services between Adelaide and Fiji. The delegate will require the capacity to be exercised from no later than 31 October 2009.

3.3 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 capacity it has sought.

4 Determination allocating capacity on the Fiji route to Pacific Blue Australia [2009] IASC 109

4.1 The delegate, on behalf of the Commission, makes a determination in favour of Pacific Blue Australia allocating unrestricted passenger capacity in each direction on the Fiji route between points in Australia other than Sydney, Melbourne, Brisbane and Perth and authorised points in Fiji in accordance with the terms of the Australia – Fiji 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 utilise the capacity from no later than 31 October 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 – 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: 9 July 2009

Michael Bird
Executive Director
Delegate of the IASC Commissioners