



Australian Government

International Air Services Commission

DETERMINATION

Determination: [2009] IASC 133
The Route: Thailand
The Applicant: Pacific Blue Airlines (Aust) Pty Ltd
(Pacific Blue Australia) (ACN 097 892 389)
Public Register: IASC/APP/200910

1 The application

1.1 On 11 May 2009, Pacific Blue Australia applied for an allocation of seven frequencies per week of capacity on the Thailand route. The carrier advised that it proposed to introduce progressively daily services to Phuket using 180 seat B737-800 aircraft. The capacity is planned to be fully utilised by 1 April 2010. Pacific Blue Australia sought a five-year determination.

1.2 The Commission published a notice on 13 May 2009, inviting other applications for capacity. No applications were received. All material supplied by the applicant is filed on the Register of Public Documents.

2 Provisions of relevant air services arrangements

2.1 Under the Australia – Thailand air services arrangements, the designated airlines of Australia may operate services with any type of aircraft between points in Australia via intermediate points to points in Thailand. The Register of Available Capacity shows that there are the equivalent of 26.1 B747 weekly services available for allocation.

2.2 There is an aircraft substitution formula within the arrangements, but the formula does not make provision for the B737-800 aircraft type. The Department of Infrastructure, Regional Development and Local Government (the Department) has proposed to the Thai authorities that B737 (and A320) aircraft be inserted into the formula, with all versions of the B737, including the B737-800, to be 0.45 of a B747 unit of capacity.

2.3 Thai internal processes require parliamentary approval of this amendment and the Thai authorities have indicated that they are willing to approve Pacific Blue Australia's services for the Northern Winter season (end March 2010), anticipating that parliamentary acceptance of the proposed amendment would be granted by then, at which time permanent approvals could be given.

2.4 In the Department's view this appears to indicate that the Thai authorities have no in-principle objection to the inclusion in the aircraft substitution formula for the additional aircraft types, including the B737-800 used by Pacific Blue Australia. The Department has indicated that if the Commission decides to allocate capacity to Pacific Blue Australia using the formula proposed to the Thai authorities, it would approve the necessary

variations to Pacific Blue Australia's International Airline Licence and issue the necessary timetable approvals.

3 Delegate's consideration

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

3.2 Pacific Blue Australia is the only applicant for capacity. 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. 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. For an established carrier such as Pacific Blue Australia, this means that there is public benefit arising from the use of the entitlements.

3.3 Under the aircraft substitution arrangements, Pacific Blue Australia will require 3.15 B747 equivalent weekly services of capacity in order to operate the planned daily B737-800 services. The Commission will allocate the capacity sought to Pacific Blue Australia.

4 Determination allocating capacity on the Thailand route to Pacific Blue Australia ([2009] IASC 133)

4.1 The Commission makes a determination in favour of Pacific Blue Australia, allocating 3.15 B747 equivalent services of capacity per week in each direction on the Thailand route under the Australia – Thailand 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 – Thailand 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 – Thailand air services arrangements.

Dated: 11 November 2009

Dilip Mathew
Senior Adviser
Delegate of the IASC Commissioners