



Australian Government

International Air Services Commission

DETERMINATION

Determinations: [2009] IASC 111 and [2009] IASC 112
The Route: New Zealand and France - Route 3 (New Caledonia)
The Applicants: Pacific Wings Pty Ltd
(ACN 136 119 947) (Pacific Wings)
Public Register File: IASC/APP/200912

1 The application

1.1 On 2 June 2009, Pacific Wings applied for allocations of capacity on the New Zealand route and the France - Route 3 (New Caledonia) route. Pacific Wings sought an allocation of unlimited capacity on the New Zealand route and 0.25 units of capacity per week to serve the New Caledonia route. The applicant indicated interest in obtaining an additional 0.5 units of capacity per week on the New Caledonia route, in the event that further capacity became available for allocation. Pacific Wings claimed that it meets the requirements of the paragraph 4 criteria in the Minister's policy statement.

1.2 Pacific Wings advised that it is a start-up international airline intending to operate to smaller international markets within the operating range of B737 aircraft. The company's services would be provided by 130-seat B737's wet-leased from Our Airline, the national carrier of Nauru which holds an Australian Air Operator's Certificate. Pacific Wings advised that it planned to serve various sectors on both the New Zealand and New Caledonia routes. Services were expected to commence from the beginning of the Northern Winter 2009 scheduling period, although flights could start before this if all approvals were received quickly enough to do so.

1.3 The applicant advised that Pacific Wings is 100% Australian owned and controlled with headquarters in Melbourne. Additional confidential material was provided in support of its application. This included information about the structure of the company's Board, profiles on its directors and management, the company's constitution, and its business plan.

1.4 Pacific Wings stated that the company is well capitalised and its business plan is solid. Start-up support had been negotiated with various partners. The wet-lease arrangement with Our Airline does not require up-front deposit payments, reducing the initial capital outlay. The directors and management have considerable experience in operating international airline services. The company said that it has extensive relationships with the travel industry and an e-commerce distribution capability which it claimed would enable it to be successful.

1.5 Pacific Wings advised that, concurrent with its application to the Commission, it had applied to the Department of Infrastructure, Transport, Regional Development and Local Government (the Department) to be designated as an Australian carrier, as well as submitting an application for an international airline licence.

1.6 The Commission published a notice on 10 June 2009 inviting other applications for all or any part of the capacity from interested parties. No applications were received.

1.7 All public material supplied by the applicant is filed on the Register of Public Documents. Commercial-in-confidence material provided by the applicant is filed on the Commission's Confidential Register.

2 Current services

2.1 The New Zealand route is served by nine operating carriers, together with a range of marketing airlines. Qantas, Air New Zealand, Pacific Blue and Emirates provide the most capacity. Extensive additional competition is provided by third-country airlines.

2.2 The New Caledonia route is served by Qantas and Air Calin. Qantas currently operates twice weekly B737 and once weekly B767 service between Sydney and Noumea, and one weekly B737 between Brisbane and Noumea. Air Calin operates twice weekly between Brisbane and Noumea and three times per week between Sydney and Noumea. Qantas code shares on Air Calin's Sydney services.

3 Provisions of relevant air services arrangements

3.1 The proposed operations by Pacific Wings are consistent with the air services arrangements between Australia and New Zealand and between Australia and France.

3.2 Under the arrangements with New Zealand, designation of multiple airlines is permitted. There is unlimited capacity available for allocation to Australian carriers for services to New Zealand.

3.3 Under the arrangements with France, designation of multiple airlines is permitted. There are 0.25 units of passenger capacity available for allocation to Australian carriers on the New Caledonia route. This is sufficient capacity in order for Pacific Wings to operate one B737-300 service per week. The Commission has previously made allocations totalling 2.25 units of passenger capacity per week on this route.

4 Commission's assessment

Overview

4.1 Pacific Wings is the only applicant for capacity on both routes under consideration. Under paragraph 6.1 of the Minister's policy statement of 19 May 2004, where capacity is not limited under a bilateral agreement (as is the case on the New Zealand route) and under paragraph 6.2, where there is only one applicant for capacity on a route, the Commission is required only to apply the criteria in paragraph 4 of the policy statement.

4.2 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.

Ability to obtain necessary approvals

4.3 As with any airline seeking to operate international services, Pacific Wings must obtain an international airline licence from the Department before it has authority to commence services. An airline must also be formally designated by Australia to bilateral partner nations to operate international services as an Australian national carrier. Pacific Wings is a prospective new carrier and, as such, has not previously operated international regular public transport services. In line with its normal practice for potential new entrant airlines, the Commission sought advice from the Department as to whether it considered Pacific Wings to be reasonably capable of obtaining the approvals necessary to obtain a licence and to be designated.

4.4 The Department provided an initial response on 2 July 2009 advising that Pacific Wings had applied for an international airline licence but that the Department had requested further information from the applicant. The Department indicated that Our Airline, which would provide wet-leased aircraft to Pacific Wings, holds a current Transport Security Program and Air Operator's Certificate but had not yet obtained approval for the amendments necessary to operate the proposed services. At that stage the Department was unable to give an unqualified assurance that Pacific Wings would be reasonably capable of obtaining the designation, licensing and operational approvals necessary to operate services on the routes concerned.

4.5 On 22 July 2009, the Department provided further written advice on this issue. The additional information sought from Pacific Wings had been received. The Department advised that it had commenced the process to designate Pacific Wings under both the France and New Zealand air services arrangements. The Department saw no reason why Pacific Wings would not be reasonably capable of obtaining the approvals necessary to operate on the specified routes.

4.6 The Commission has considered the Department's advice, and the information provided directly to the Commission by Pacific Wings. The Commission is aware that there are a number of approvals which will need to be obtained by the airline, including at the New Zealand and New Caledonia ends, before services can start. These may take some time to obtain. Nevertheless, the Commission is satisfied that the airline is

reasonably capable of obtaining the necessary approvals and therefore meets this aspect of the paragraph 4 requirements.

Ability to implement proposals

4.7 The Commission's assessment of whether an applicant is reasonably capable of implementing its proposals has regard to a range of factors including the applicant's aviation-related experience, business plan and other commercial information provided to the Commission. Pacific Wings has provided the Commission with detailed commercial-in-confidence material in support of its claims that it is capable of implementing international services successfully. The Commission has assessed this information in detail. The directors of Pacific Wings also made a presentation to the Commission on 8 July 2009 at which a number of issues were discussed.

4.8 Under the commercial arrangements between Pacific Wings and Our Airline, it is Our Airline which will provide and operate the B737 aircraft on both the New Zealand and New Caledonia routes under a wet-lease to Pacific Wings. Our Airline will also provide a number of related services through a management contract with Pacific Wings. Our Airline is an established carrier based in Brisbane with appropriate operational experience and administrative systems to provide the operational and support services commissioned by Pacific Wings through the parties' commercial agreement. The directors of Pacific Wings have considerable experience in the international airline business.

4.9 The information provided by Pacific Wings in support of its application suggests to the Commission that the applicant has the financial capacity, resources, skills and experience necessary to implement its proposals. The business plan demonstrates sound research and understanding of the markets to be served and uses appropriate analytical methodology.

Conclusion

4.10 The current economic environment is a difficult one even for established airlines. Pacific Wings is therefore likely to face even stronger challenges than a new entrant might in more normal economic circumstances. The New Zealand market in particular, is highly competitive, although the Commission expects that Pacific Wings will aim to avoid, as much as possible, head-to-head competition with incumbents. The success of its operation will depend greatly on the achievement of revenue yield and load factor projections.

4.11 As the Commission has stated on past occasions, it is not necessary or even possible for the Commission to be certain that a new carrier will be able to maintain services over the long term, in order for an allocation to be made. In competitive markets, it is a reality that carriers can implement their services but subsequently exit for any number of reasons. This is especially true in the current difficult economic environment when many airlines around the world, even well-established ones, have failed. Nevertheless even carriers which are not successful may deliver important public benefits for the period in which they operate. The entry of Pacific Wings to both the New Zealand and New Caledonia routes means additional competition, especially in the

smaller New Caledonia market. This should be of benefit to consumers and the tourism industry. The Commission has noted the consumer protection mechanisms which Pacific Wings has in place to protect passengers against financial loss, should the airline not be successful.

4.12 Consistent with the Department's view, the Commission is satisfied that Pacific Wings is reasonably capable of obtaining the necessary approvals. The Commission is also satisfied that Pacific Wings is capable of implementing its proposals. It has a credible business plan and substantial operational, marketing and other support through the commercial arrangements with Our Airline, an established international airline. An allocation of capacity to Pacific Wings would therefore be of benefit to the public.

4.13 The Commission normally issues interim determinations for a duration of three years to new carriers. It will do so in this case on the New Caledonia route where capacity is restricted. However, as capacity is unlimited on the New Zealand route, the Commission will issue a ten year determination in that case.

4.14 Given the relatively short time period until the planned commencement of services in October 2009, and the number of approvals which need to be obtained before services can commence, the Commission will grant Pacific Wings additional time by which it must use its allocated capacity. This is consistent with the flexibility granted to other airlines. The airline will be permitted until 31 April 2010 to utilise this capacity.

5 Determination allocating capacity on the New Zealand route to Pacific Wings ([2009] IASC 111)

5.1 The Commission makes a determination in favour of Pacific Wings, allocating unlimited passenger capacity in each direction on the New Zealand route in accordance with the terms of the Australia – New Zealand air services arrangements.

5.2 The determination is for ten years from the date of the determination.

5.3 The determination is subject to the following conditions:

- Pacific Wings is required to utilise the capacity from no later than 31 April 2010, or from such other date approved by the Commission;
- only Pacific Wings is permitted to utilise the capacity;
- Pacific Wings is not permitted to utilise the capacity to provide joint services with another Australian carrier or any other person without the approval of the Commission;
- Pacific Wings must take all reasonable steps to ensure that passengers are informed of the carrier actually operating the flight at the time of booking;

- changes in relation to the ownership and control of Pacific Wings are permitted except to the extent that any change:
 - results in the designation of the airline as an Australian carrier under the Australia – New Zealand 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 Wings or be in a position to exercise effective control of Pacific Wings, without the prior consent of the Commission; and
- changes in relation to the management, status or location of operations and head office of Pacific Wings 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 – New Zealand air services arrangements.

6 Determination allocating capacity on the France - Route 3 (New Caledonia) route to Pacific Wings ([2009] IASC 112)

6.1 The Commission makes an interim determination in favour of Pacific Wings, allocating 0.25 units of capacity per week in each direction on the Australia - France Route 3 (New Caledonia) route, in accordance with the terms of the Australia – France air services arrangements.

6.2 The determination is for three years from the date of the determination.

6.3 The determination is subject to the following conditions:

- Pacific Wings is required to fully utilise the capacity from no later than 31 April 2010, or from such other date approved by the Commission;
- only Pacific Wings is permitted to utilise the capacity;
- Pacific Wings is not permitted to utilise the capacity to provide joint services with another Australian carrier or any other person without the approval of the Commission;
- Pacific Wings must take all reasonable steps to ensure that passengers are informed of the carrier actually operating the flight at the time of booking;
- changes in relation to the ownership and control of Pacific Wings are permitted except to the extent that any change:
 - results in the designation of the airline as an Australian carrier under the Australia – France 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 Wings or be in a position to exercise effective control of Pacific Wings, without the prior consent of the Commission; and
- changes in relation to the management, status or location of operations and head office of Pacific Wings 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 – France air services arrangements.

Dated 27 July 2009

John Martin
Chairman

Philippa Stone
Member

Ian Smith
Member