



## Australian Government

### International Air Services Commission

#### DETERMINATION

**Determination:** [2005] IASC 111  
**The Route:** Cook Islands  
**The Applicant:** Pacific Blue Airlines (Australia) Pty Ltd  
(ACN 097 892 389) (Pacific Blue Australia)  
**Public Register File:** IASC/APP/200517

#### 1 The application

1.1 On 26 September 2005, Pacific Blue Australia applied for an allocation of 180 seats of capacity per week on the Cook Islands route. Pacific Blue Australia plans to add a second weekly service between Australia and the Cook Islands, commencing from the end of October 2005. The flights are proposed to be operated using B737-800 aircraft with a seating capacity of 180 seats.

1.2 The Commission published a notice on 30 September 2005 inviting applications for some or all of the capacity sought by Pacific Blue Australia. 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 The proposed services are consistent with the air services arrangements between Australia and the Cook Islands. The Register of Available Capacity shows that there are 320 seats of passenger capacity per week available for allocation to the designated airlines of Australia for operation by any aircraft type and with no limitation on frequency.

#### 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 Australia application.

3.2 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. For an established international carrier such as Pacific Blue, 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 180 seats of capacity per week it has sought.

#### **4 Determination allocating capacity on the Cook Islands route to Pacific Blue Australia ([2005] IASC 111)**

4.1 In accordance with section 25 of the Act, the delegate, on behalf of the Commission, makes a determination in favour of Pacific Blue Australia, allocating 180 seats of capacity per week in each direction on the Cook Islands route under the Australia – Cook Islands 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 31 October 2005, 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 –Cook Islands 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 –Cook Islands air services arrangements.

Dated: 13 October 2005

Michael Bird  
Executive Director  
Delegate of the IASC Commissioners