



Australian Government

International Air Services Commission

DETERMINATION

Determination: [2009] IASC 118
The Route: Vanuatu
The Applicant: Pacific Air Express (Australia) Pty Ltd
(ACN 074 265 553) (Pacific Air Express)
Public Register File: IASC/APP/200925

1 The application

1.1 On 30 July 2009, Pacific Air Express applied for an allocation of 35 tonnes of freight capacity per week on the Vanuatu route. The carrier proposes operating twice weekly services using B737-300 freighter aircraft leased from Toll/Airwork. One weekly service is planned for introduction by 30 October 2009, with the capacity expected to be fully utilised by 30 March 2010. Pacific Air Express stated that it believes its application meets the paragraph 4 criteria of the Minister's policy statement.

1.2 The Commission published a notice on 3 August 2009 inviting other applications for an allocation of the capacity. No other applications were received.

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

2 Provisions of relevant air services arrangements

2.1 The Australia – Vanuatu air services arrangements permit the designation of multiple Australian carriers. According to the Register of Available Capacity, there are 75 tonnes per week of freighter capacity available for allocation to Australian carriers. The Commission has previously allocated 25 tonnes of freight capacity per week to HeavyLift Cargo Airlines.

3 Delegate's consideration

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

3.2 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 (4(b)(i)) and of implementing its proposals (4(b)(ii)) is of benefit to the public.

3.3 The delegate understands that the capacity of the B737-300F aircraft to be used by Pacific Air Express has a capacity of 17.5 tonnes. This is consistent with the 35 tonnes of capacity per week sought by Pacific Air Express, being sufficient to operate the twice weekly services proposed. The Commission has previously allocated capacity to Pacific Air Express, in that case on the Papua New Guinea route, although the carrier did not operate on the route for reasons outside its control. In August 2009, the Commission again found Pacific Air Express to be reasonably capable of obtaining the necessary approvals in relation to an application for capacity on the Papua New Guinea route, noting that the carrier retains an international airline licence and a foreign air operator's certificate. Given this recent assessment by the Commission, the delegate is satisfied that Pacific Air Express meets the paragraph 4 criteria in this case.

4 Determination allocating capacity on the Vanuatu route to Pacific Air Express ([2009] IASC 118)

4.1 The delegate, on behalf of the Commission, makes a determination in favour of Pacific Air Express, allocating 35 tonnes of freight capacity per week in each direction on the Vanuatu route under the Australia – Vanuatu 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 Air Express is required to utilise the capacity from no later than 30 March 2010, or such other date approved by the Commission;
- only Pacific Air Express is permitted to utilise the capacity;
- Pacific Air Express is not permitted to utilise the capacity to provide services jointly with another Australian carrier or person without the approval of the Commission;
- changes in relation to the ownership and control of Pacific Air Express are permitted except to the extent that any change:
 - results in the designation of the airline as an Australian carrier under the Australia – Vanuatu 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 Air Express or be in a position to exercise effective control of Pacific Air Express, without the prior consent of the Commission; and

- changes in relation to the management, status or location of operations and Head Office of Pacific Air Express 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 – Vanuatu air services arrangements.

Dated: 12 August 2009

Michael Bird
Executive Director
Delegate of the IASC Commissioners