



Australian Government

International Air Services Commission

RENEWAL DETERMINATION

Determination: [2013] IASC 136
Renewal of: [2009] IASC 118
The Route: Vanuatu
The Applicant: Pacific Air Express (Australia) Pty Ltd
(ABN 26 074 265 553)
Public Register File: IASC/APP/201330

The Commission's delegate makes a fresh determination allocating 17.5 tonnes of freight capacity on the Vanuatu route for ten years.

1 The application for renewal

1.1 On 12 August 2009, the Commission's delegate issued Determination [2009] IASC 118 (the Determination) allocating to Pacific Air Express 35 tonnes of freight capacity on the Vanuatu route in accordance with the Australia – Vanuatu air services arrangements. The Determination was subsequently varied by Decision [2010] IASC 211 to reduce the amount of capacity allocated from 35 tonnes to 17.5 tonnes per week.

1.2 Under section 17 of the *International Air Services Commission Act 1992* (the Act), the Commission must start its consideration of the renewal of a determination at least 12 months before the expiry of the Determination. The Determination expires on 11 August 2014. In view of this, the Commission sent, on 12 August 2013, a letter to Pacific Air Express inviting it to apply for renewal if it wished to renew the Determination.

1.3 On 19 August 2013, PAE applied to the Commission for a renewal of the Determination for 10 years from 12 August 2014.

1.4 As required by sections 12 and 17 of the Act, the Commission published a notice on 20 August 2013 inviting other applications for the capacity. No applications were received.

1.5 All material supplied by the applicant is available on the Commission's website (www.iasc.gov.au).

2 Provisions of air services arrangements

2.1 The air services arrangements between Australia and Vanuatu permit the designation of multiple Australian airlines. According to the Register of Available

Capacity, there is unrestricted capacity for the operation of dedicated freight services on the route.

3 Delegate's assessment

3.1 In accordance with section 27AB of the Act and regulation 3A of the *International Air Services Commission Regulations 1992*, the delegate of the Commission may consider the Pacific Air Express application. (For purposes of this determination, all references to the Commission include the delegate of the Commission).

3.2 In considering an application for renewal of a determination under section 8 of the Act, the Commission must make the same allocation of capacity as the original determination unless the Commission is satisfied that the allocation is no longer of benefit to the public. In assessing the benefit to the public of an allocation of capacity, the Commission must apply the criteria set out for that purpose in the policy statement made by the Minister under section 11 of the Act.

3.3 Under paragraph 6.2 of the Minister's Policy Statement (No. 5) of 19 May 2004 (the Policy Statement), in circumstances where there is only one applicant for allocation of capacity on a route, only the criteria in paragraph 4 are applicable. Paragraph 4 provides that the use of entitlements by Australian carriers under a bilateral arrangement is of benefit to the public unless such carriers are not reasonably capable of obtaining the necessary approvals to operate on the route and are not reasonably capable of implementing their applications.

3.4 Further, under paragraph 8.1 of the Policy Statement, there is a presumption in favour of the carrier seeking the renewal which may be rebutted by applying the following criteria, where the start-up phase has concluded:

- whether the carrier seeking renewal has failed to service the route effectively; and
- whether the use of the capacity in whole or in part by another Australian carrier that has applied for the capacity would better serve the public having regard to the criteria set out in paragraphs 4 and 5.

3.5 The Commission notes that:

- there are no other applicants seeking capacity on the route;
- Pacific Air Express is an established international carrier and is therefore reasonably capable of obtaining the necessary approvals to operate on the route and of implementing its proposed services; and
- there is no evidence that Pacific Air Express has failed to service the route effectively.

3.6 Under paragraph 11.1(b), on routes where capacity is unrestricted, if the determination is not an interim determination the period for which a determination is to be in force is 10 years.

3.7 In these circumstances, the Commission is satisfied that renewal of Determination [2009] IASC 118 for 10 years would be of benefit to the public.

4 Determination for renewal of Determination [2009] IASC 118 allocating capacity on the Vanuatu route to Pacific Air Express Pty Ltd ([2013] IASC 136)

4.1 The delegate, on behalf of the Commission, makes a determination, under section 8 of the Act, in favour of Pacific Air Express Pty Ltd, allocating 17.5 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 ten years from 12 August 2014.

4.3 The determination is subject to the following conditions:

- Pacific Air Express is required to fully utilise the capacity;
- 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 any other person without the approval of the Commission; and
- 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.

Dated: 4 September 2013



Marlene Tucker
Executive Director
Delegate of the IASC Commissioners