



Australian Government

International Air Services Commission

RENEWAL DETERMINATION

Determination: [2014] IASC 106
Renewal of: [2009] IASC 134
The Route: Papua New Guinea (PNG)
The Applicant: Pacific Air Express (Australia) Pty Ltd (Pacific Air Express)
(ACN 074 265 553)
Public Register File: IASC/APP/201443

The Commission's delegate makes a fresh determination allocating Pacific Air Express 17.5 tonnes of freight capacity per week on the PNG route for five years.

1 The application for renewal

1.1 On 17 December 2009, the Commission issued Determination [2009] IASC 134 (the Determination) allocating 17.5 tonnes of freight capacity per week in each direction to Pacific Air Express on the PNG route. The Determination was for five years. The capacity is currently being used by Pacific Air Express in conjunction with two other allocations of 17.5 tonnes per week (Determinations [2010] IASC 105 and [2011] IASC102) to operate three weekly B737-300 freighter services on the route.

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 16 December 2014. In view of this, the Commission sent, on 5 December 2013, a letter to Pacific Air Express inviting it to apply for renewal if it wished to renew the Determination.

1.3 Pacific Air Express applied to the Commission on 2 April 2014 for a renewal of the Determination for five years.

1.4 As required by sections 12 and 17 of the Act, the Commission published a notice on 4 April 2014 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 Delegate's consideration

2.1 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 Pacific Air Express' application. (For purposes of this determination, all references to the Commission include the delegate of the Commission).

2.2 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.

2.3 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.

2.4 The Commission notes that:

- there are no other applicants seeking capacity on the route; and
- Pacific Air Express is an established international carrier operating scheduled freight services on the PNG route and is therefore reasonably capable of obtaining the necessary approvals to operate on the route and of implementing its application.

2.5 Under paragraph 8.1 of the Policy Statement, there is a presumption in favour of the carrier seeking the renewal.

2.6 In these circumstances, the Commission is satisfied that renewal of Determination [2009] IASC 134 would be of benefit to the public.

3 Determination for renewal of Determination [2009] IASC 134 allocating capacity on the PNG route to Pacific Air Express ([2014] IASC 106)

3.1 In accordance with section 8 of the Act, the delegate, on behalf of the Commission, makes a determination in favour of Pacific Air Express, allocating 17.5 tonnes of freight capacity per week in each direction on the PNG route, in accordance with the Australia – PNG air services arrangements.

3.2 The determination is for five years from 17 December 2014.

3.3 The determination is subject to the following conditions:

- Pacific Air Express is required to fully utilise the capacity from the date of issue of this instrument;
- 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; 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 – PNG 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: 15 April 2014



Marlene Tucker
Executive Director
Delegate of the IASC Commissioners