



Australian Government

International Air Services Commission

DETERMINATION

Determination: [2013] IASC 126
The Route: Nauru
The Applicant: Pacific Air Express (Australia) Pty Ltd
(ACN 074 265 553) (Pacific Air Express)
Public Register File: IASC/APP/201318

The Commission's delegate makes a determination allocating in favour of Pacific Air Express three services of freight capacity per week in each direction on the Nauru route effective for five years.

1 The application

1.1 On 12 April 2013, the International Air Services Commission (the Commission) received an application from Pacific Air Express for an allocation of three services of freight capacity per week in each direction on the Nauru route using a B737F aircraft.

1.2 The Commission published a notice on 15 April 2013 inviting other applications for the capacity sought by Pacific Air Express. No other applications were received.

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

2 Provisions of relevant air services arrangements

2.1 The Australia – Nauru air services arrangements permit the designation of a single Australian carrier on the Nauru route. According to the Register of Available Capacity, there are three frequencies per week of capacity (for both passenger and freight), not exceeding the capacity of B737 aircraft, available for allocation to an Australian carrier.

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 Regulations 1992*, the delegate of the Commission may consider the Pacific Air Express application. (For purposes of this decision, all references to the Commission include the delegate of the Commission).

3.2 In considering an application for allocating available capacity, section 7 of the Act

requires that the Commission must not allocate available capacity unless the Commission is satisfied that the allocation would be of benefit to the public. Section 7 further provides that the determination must not allocate available capacity contrary to any restrictions on capacity contained in a bilateral arrangement, or a combination of bilateral arrangements, permitting the carriage to which the capacity relates. 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), where there is only one applicant for allocation of capacity on a route (as in this case), the Commission is required only to apply the criteria in paragraph 4. Paragraph 4 effectively provides that the use of Australian entitlements by a carrier that is reasonably capable of obtaining the necessary approvals to operate on the route and of implementing its proposals contained in its application is of benefit to the public.

3.4 Pacific Air Express is an established international carrier, operating scheduled cargo services on the Papua New Guinea and Vanuatu routes. It is currently operating three B737F charter services weekly between Brisbane and Nauru, providing logistics support for the Nauru refugee processing centre. The carrier has been operating these charter services since mid-September 2012 and holds service contracts with Australian suppliers for airfreighting of general goods and food to the refugee processing centre.

3.5 Pacific Air Express proposes converting the three charter services each week from Brisbane to Nauru into three scheduled services each week. The carrier has informed the Commission that the capacity will be fully utilised immediately. As such, the Commission considers Pacific Air Express is clearly capable of obtaining the necessary approvals to operate on the Nauru route and of implementing its proposals. This means that there is public benefit arising from the use of the entitlements.

3.6 Under the circumstances, the delegate, on behalf of the Commission, will allocate to Pacific Air Express the capacity sought.

4 Determination allocating capacity on the Nauru route to Pacific Air Express ([2013] IASC 126)

4.1 The delegate, on behalf of the Commission, makes a determination in favour of Pacific Air Express, allocating three services of freight capacity per week in each direction on the Nauru route in accordance with the Australia – Nauru 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 immediately, 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; 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 – Nauru 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: 20 May 2013



Marlene Tucker
Executive Director
Delegate of the IASC Commissioners