



Australian Government

International Air Services Commission

RENEWAL DETERMINATION

Determination: [2017] IASC 109
Renewal of: [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/201719

The Commission's delegate makes a determination allocating in favour of Pacific Air Express unlimited freight capacity per week in each direction on the Nauru route effective for ten years from 19 May 2018.

1 The application

1.1 On 20 May 2013, the delegate of the International Air Services Commission (the Commission) issued Determination [2013] IASC 126 (the Determination) allocating, in favour of Pacific Air Express, three services of freight capacity per week in each direction on the Nauru route. The Determination was subsequently varied by Decision [2015] IASC 203 reducing the capacity to one weekly service of freight capacity in each direction.

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 18 May 2018. In view of this, the Commission sent, on 15 May 2017, a letter to Pacific Air Express inviting it to apply for renewal if it wished to renew the Determination. Pacific Air Express subsequently applied on 24 May 2017 for a renewal of the determination and sought to increase the capacity allocation to 'unlimited freight capacity' consistent with the revised air services arrangements between Australia and Nauru.

1.3 In accordance with sections 12 and 17 of the Act, the Commission published a notice on 24 May 2017 inviting other applications for the capacity sought by Pacific Air Express. No other applications were received.

1.4 All non-confidential 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 multiple Australian carriers on the Nauru route. Australian-designated airlines are permitted to operate an unrestricted number of cargo services between Australia and Nauru.

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 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 Pursuant to section 11 of the Act, then Minister for Transport and Regional Services, the Hon. John Anderson MP issued Policy Statement No. 5 (hereinafter referred to as the Minister’s Policy Statement) dated 19 May 2004. The Minister’s Policy Statement sets out the range of criteria which the Commission is required to apply in assessing the benefit to the public of allocations of capacity. It also provides other guidance to the Commission in performing its functions.

3.4 Under paragraph 6.2 of the Minister’s 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.

3.5 The Commission’s delegate notes that there are no other applicants on the route and Pacific Air Express is an established international carrier, operating cargo services on the Nauru, Papua New Guinea and Vanuatu routes.

3.6 Under paragraph 8.1 of the Minister’s Policy Statement, there is a presumption in favour of the carrier seeking the renewal.

3.7 In light of the above, the Commission’s delegate has decided to renew the capacity allocation to Pacific Air Services and grant its request to increase the allocation to ‘unlimited frequencies’ consistent with the Australia-Nauru air services arrangements.

3.8 Additionally, the Commission’s delegate has decided to include certain conditions in accordance with subsection 15(1) of the Act which empowers the Commission to include such terms and conditions as it thinks fit.

4 Determination allocating capacity on the Nauru route to Pacific Air Express ([2017] IASC 109)

4.1 In accordance with sections 7 and 8 of the Act, the Commission's delegate makes a determination in favour of Pacific Air Express, allocating unrestricted frequencies 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 ten years from 19 May 2018.

4.3 The determination is subject to the following conditions:

- Pacific Air Express is required to utilise the capacity from the date this determination comes into effect or from 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: 9 June 2017



Marlene Tucker
Executive Director
Delegate of the IASC Commissioners

