



Australian Government

International Air Services Commission

DETERMINATION

Determination: [2017] IASC 111
The Route: China
The Applicant: Pacific Air Express (Australia) Pty Ltd
(ACN 074 265 553) (Pacific Air Express)
Public Register File: IASC/APP/201725

The Commission's delegate makes a determination allocating in favour of Pacific Air Express unlimited capacity and frequency on the China route. The determination is valid for ten years from 13 June 2017.

1 The application

1.1 On 26 May 2017, the International Air Services Commission (the Commission) received an application from Pacific Air Express seeking an allocation of unlimited capacity to operate freight services on the China route.

1.2 In accordance with section 12 of the *International Air Services Commission Act 1992* (the Act), the Commission published the application on the Commission's website, on 26 May 2017, inviting other applications on the China route. No other application was received.

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

2 Air services arrangements

2.1 According to the Register of Available Capacity, designated airlines of Australia may determine the frequency of service, capacity and aircraft type to be operated between points in Australia and China. Likewise, there are no limitations in relation to frequency, capacity or aircraft type for dedicated cargo services between Australia and China.

2.2 Under the Australia-China air services arrangements, Australian designated carriers may enter into code share, blocked space or other cooperative marketing arrangements with another Australian airline(s), with a Chinese airline(s) or with airline(s) of a third country. The volume of capacity or service frequencies, which may

be sold by the marketing carrier under the code share arrangements, are not subject to limitations.

3 Delegate's consideration

3.1 Subsection 12(3) of the Act allows any person to apply to the Commission for a determination allocating capacity to enable an Australian carrier to operate international air services.

3.2 Subsection 7(1) of the Act empowers the Commission to make a determination allocating available capacity. Section 27AB of the Act and regulation 3A of the International Air Services Commission Regulations 1992, permits the application to be considered and decided by the Commission's delegate. (For purposes of this determination, references to the Commission include the delegate of the Commission.)

3.3 Subsection 7(2) of the Act requires, in part, that the Commission's determination must not allocate capacity unless the Commission is satisfied that the allocation would be of benefit to the public and would not be contrary to any restrictions on capacity contained in bilateral arrangements, or combination of bilateral arrangements.

3.4 Further, subsection 7(3) of the Act provides that in assessing the benefit to the public of an allocation of capacity, the Commission must apply the criteria set out in the policy statement made by the Minister pursuant to section 11 of the Act.

3.5 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.

3.6 Paragraph 6.1 of the Minister's Policy Statement provides, in part, that in circumstances where capacity is not limited under the relevant bilateral agreement, as in the case of the China 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.

3.7 The Commission consulted the Department of Infrastructure and Regional Development and the latter confirmed that Pacific Air Express is reasonably capable of obtaining the regulatory approvals, including the status as an Australian-designated carrier for purposes of the Australia-China air services arrangements.

3.8 The Commission notes that Pacific Air Express is an established international carrier which operates freight services to Papua New Guinea, Vanuatu and Nauru and,

as such, is reasonably capable of obtaining the necessary approvals to operate on the route and of implementing its proposed services.

3.9 Currently, Qantas is the only Australian carrier operating direct freight services on the China route (Sydney-Shanghai). Federal Express (Fedex) and Polar Air Cargo Worldwide also provide all-cargo services between points in Australia and China with connections to other cities like Los Angeles, Honolulu, Tokyo and Auckland.¹

3.10 Accordingly, the Commission's delegate considers that the use of the entitlements by Pacific Air Express to operate all-cargo services between Australia and China would be of benefit to the public and has decided to allocate the capacity sought by that carrier.

3.11 Section 15 of the Act provides that the Commission may include such terms and conditions as the Commission thinks fit. In light of this, the Commission decided to include certain conditions set out below.

4 Determination allocating capacity on the China route to Pacific Air Express ([2017] IASC 111)

4.1 In accordance with section 7 of the Act, the Commission's delegate makes a determination in favour of Pacific Air Express, allocating unlimited capacity and frequencies to operate all-cargo services between Australia and China in accordance with the Australia - China air services arrangements.

4.2 The determination is valid for ten years from 13 June 2017.

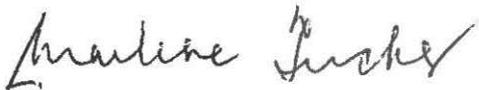
4.3 The determination is subject to the following conditions:

- 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;
- Pacific Air Express is required to utilise the capacity from 30 April 2018 or such other date approved by the Commission; and
- changes in relation to the ownership and control of Pacific Air Express are permitted except to the extent that any change:

¹ International Airlines Timetable, Northern Summer 2017, www.infrastructure.gov.au

- results in the designation of the airline as an Australian carrier under the Australia – China 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: 13 June 2017



Marlene Tucker
Executive Director
Delegate of the IASC Commissioners