



Australian Government

International Air Services Commission

RENEWAL DETERMINATION

Determination:	[2020] IASC 102
Renewal of:	[2015] IASC 103
The Route:	Papua New Guinea (PNG)
The Applicant:	Pacific Air Express (Australia) Pty Ltd (Pacific Air Express) (ACN 074 265 553)
Public Register:	IASC/APP/202016

The Commission's delegate makes a fresh determination allocating to Pacific Air Express 17.5 tonnes of capacity per week on the Papua New Guinea route. The determination is valid for five years from 5 April 2021.

1 The application for renewal

1.1 Section 17 of the *International Air Services Commission Act 1992* (the Act) requires the International Air Services Commission (the Commission) to start its consideration of the renewal of a determination at least 12 months before the expiry of the Determination. Determination [2015] IASC 103 is due to expire on 4 April 2021. In view of this, the Commission sent, on 8 May 2020, a letter to Pacific Air Express inviting it to apply for renewal if it wished to renew the Determination.

1.2 On 19 April 2020, the Commission received an application from Pacific Air Express seeking to renew Determination [2015] IASC 103 (the Determination) allocating, in favour of Pacific Air Express, 17.5 tonnes per week of freight capacity on the Papua New Guinea route for a further five-year period from 5 April 2021.

1.3 As required by sections 12 and 17 of the Act, the Commission published a notice on its website inviting other applications for the capacity. No other applications were received.

1.4 All non-confidential material supplied by Pacific Air Express is available on the Commission's website (www.iasc.gov.au).

2 Relevant provisions of the air services arrangements

2.1 Paragraph 7(2)(aa) of the Act provides that the Commission must not allocate available capacity contrary to any restrictions on capacity contained in a bilateral arrangement(s). Any variation made to an existing allocation of capacity should also not be contrary to any restrictions on capacity contained in a bilateral arrangement(s).

2.2 The Australia-Papua New Guinea air services arrangements provide for a total of 130 tonnes per week of capacity entitlements which may be allocated to Australian carriers for the provision of freight services between Australia and Papua New Guinea. Pacific Air Express has been allocated 52.5 tonnes of freight capacity leaving 77.5 tonnes available for immediate allocation.

3 Delegate's consideration

3.1 Section 8 of the Act provides that the Commission may, at any time while a determination is in force, make a fresh determination allocating the capacity to which the original determination relates. The fresh determination 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.

3.2 Under section 11 of the Act, the Minister made the *International Air Services Commission Policy Statement 2018* (the Policy Statement) which came into effect on 28 March 2018. The Policy Statement sets out the criteria which the Commission is required to apply in assessing the benefit to the public of allocations of capacity.

3.3 In accordance with section 27AB of the Act and regulation 10 of the International Air Services Commission Regulations 2018, 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).

3.4 Section 14 of the Policy Statement provides that there is a presumption of making the same allocation of capacity in favour of the carrier seeking a renewal. However, the Commission may consider that an allocation of capacity is no longer of benefit to the public if the carrier has failed to service the route effectively; and there are other applications for some or all of the capacity; and the Commission having regard to the reasonable capability criterion (in section 8 of the Policy Statement) and any of the additional criteria (set out in section 9 of the Policy Statement) is satisfied that a different allocation of the capacity would be of greater benefit to the public.

3.5 Under the 'reasonable capability criterion' in section 8 of the Policy Statement, in assessing the public benefit of an application, the Commission is to have regard to the extent to which all Australian carriers that are, or would be, permitted to use the capacity allocated under a determination are reasonably capable of: (a) obtaining any licences, permits or other approvals required to operate on and service the route to

which the determination relates; and (b) using the capacity allocated under the determination.

3.6 The Commission's delegate notes that there are no other applicants seeking capacity on the route and there is no information to suggest that Pacific Air Express has failed to service the route effectively. For this reason, the Commission's delegate decided to only apply the reasonable capability criterion under section 8 of the Policy Statement and did not consider it necessary to assess the application against the additional criteria in section 9 of the Policy Statement.

3.7 The Commission's delegate notes that Pacific Air Express is an established carrier operating scheduled international freight services between Australia and Papua New Guinea and finds that the carrier is reasonably capable of obtaining the necessary regulatory approvals and of using the capacity allocated on the Papua New Guinea route. In light of this, the Commission's delegate is satisfied that renewing the capacity allocation in favour of Pacific Air Express would be of benefit to the public.

3.8 Subsection 15(1) of the Act allows a determination to include such terms and conditions as the Commission thinks fit. Subsection 19(3) of the Act provides that, in including terms and conditions in the fresh determination, the Commission may make such changes to the terms and conditions included in the original determination sought to be renewed, including adding or deleting terms and conditions, where warranted by changes in circumstances since the original determination was made. The wording of the fresh determination below reflects the view of the Commission's delegate that determinations which renew original determinations should contain updated terms and conditions consistent with the legislative requirements and current air services arrangements.

4 Determination for renewal of [2015] IASC 103 allocating capacity on the Papua New Guinea route to Pacific Air Express ([2020] IASC 102)

4.1 The Commission's delegate allocates to Pacific Air Express, pursuant to section 8 of the Act, 17.5 tonnes per week of freight capacity on the Papua New Guinea route in accordance with the terms of the Australia – Papua New Guinea air services arrangements.


4.2 The determination is valid for five years from 5 April 2020.

4.3 The determination is subject to the following conditions:

- (a) Pacific Air Express is required to fully utilise the capacity from no later than 31 October 2021 or such other date approved by the Commission;
- (b) Only Pacific Air Express is permitted to utilise the capacity.

- (c) Pacific Air Express is not permitted to utilise the capacity to provide code share or joint services with another carrier or any other person unless approved by the Commission.
- (d) 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 – Papua New Guinea 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 the airline or be in a position to exercise effective control of the airline, without the prior consent of the Commission.

Dated: 6 May 2020



Marlene Tucker
Executive Director
Delegate of the IASC Commissioners