



Australian Government

International Air Services Commission

RENEWAL DETERMINATION

Determination:	[2005] IASC 120
Renewal of:	[2001] IASC 113
The Route:	New Zealand
The Applicant:	Asian Express Airlines (ACN 073 412 272)
Public Register File:	IASC/APP/200511

1 The application for renewal

1.1 On 28 August 2001 the Commission issued Determination [2001] IASC 113 (the Determination) allocating unlimited freight capacity to Asian Express Airlines on the New Zealand route.

1.2 Under the *International Air Services Commission Act 1992* (the Act) the Commission must start its consideration of the renewal of a determination as soon as practicable after the determination is made. The Determination expires on 27 August 2006.

1.3 Asian Express Airlines applied to the Commission on 29 August 2005 for a renewal of the Determination. The Commission published a notice on 6 September 2005 inviting submissions or other applications for an allocation of the capacity subject to renewal. No submissions or other applications were received.

1.4 All material supplied by the applicant is filed on the Register of Public Documents.

2 Commission's consideration

2.1 Under the Minister's Policy Statement (No. 5), of 19 May 2004, there is a rebuttable presumption in favour of the carrier seeking the renewal. The Commission notes that:

- Asian Express Airlines has been utilising the relevant capacity;
- there are no other applicants seeking capacity on the route,

- according to the Register of Available Capacity there is unlimited freight capacity available for immediate allocation to Australian carriers on the New Zealand route; and
- there is no evidence that Asian Express Airlines has failed to service the route effectively.

2.2 In these circumstances, the Commission concludes that the renewal of Determination [2001] IASC 113 would be of benefit to the public.

2.3 The wording of the fresh determination below reflects the view of the Commission that determinations which renew original determinations should contain updated terms and conditions consistent with the Commission's current practice and current air services arrangements. Under the Act, the Commission may make changes to the terms and conditions included in the original determination where warranted by changes in circumstances since the original determination was made. Relevant to this case is the fact that the Minister's policy statement now allows the Commission to make determinations for a ten year period on routes where capacity and route rights are unrestricted. The Commission will issue a 10 year determination.

3 Determination for renewal of Determination [2001] IASC 113 allocating capacity on the New Zealand route to Asian Express Airlines ([2005] IASC 120)

3.1 The Commission makes a determination in favour of Asian Express Airlines, allocating unlimited freight capacity on the New Zealand route under the Australia - New Zealand air services arrangements.

3.2 The determination is for 10 years from 28 August 2006.

3.3 The determination is subject to the following conditions:

- Asian Express Airlines is required to utilise the capacity;
- only Asian Express Airlines is permitted to utilise the capacity;
- Asian Express Airlines is not permitted to utilise the capacity to provide services jointly with another Australian carrier or any other person without the approval of the Commission;
- changes in relation to the ownership and control of Asian Express Airlines are permitted except to the extent that any change:
 - results in the designation of the airline as an Australian carrier under the Australia - New Zealand 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 Asian Express Airlines or be in a position to exercise effective control of Asian Express Airlines, without the prior consent of the Commission, and
- changes in relation to the management, status or location of operations and Head Office of Asian Express Airlines are permitted except to the extent that any change would result in the airline ceasing to be an airline designated by the Australian Government for the purposes of the Australia - New Zealand air services arrangements.

Dated: 7 November 2005

John Martin
Chairman

Vanessa Fanning
Member

Michael Lawriwsky
Member