

DETERMINATION

AN ALLOCATION OF NEW CAPACITY TO PAPUA NEW GUINEA TO FLIGHT WEST AIRLINES PTY LIMITED (ACN 010 718 975)

**Determination Number:
IASC/DET/9711**

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Date: 14 March 1997

Members:

James K Bain Miller Chairman	Brian L Johns Member	Russell V Member
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1. The application

1.1. The Commission gave notice on 20 November 1996 inviting applications for, and submissions about, an allocation of new capacity between Australia and Papua New Guinea (PNG). An application was received from Flight West Airlines Pty Limited ACN 010 718 975 (Flight West). No other applications were received.

1.2. Flight West applied for capacity to initially operate four return services per week between Townsville, Port Moresby and Mt Hagen on F28 or F70 or BAe 146 aircraft with services expanding as new capacity comes on line. The Flight West application is for a total of 0.8 B747 equivalent units between northern Australia and PNG (see paragraph 4.2), increasing to 1.2 and then 1.7 B747 equivalent units as additional new capacity becomes available in October 1997 and October 1998 respectively. Flight West filed a well prepared and comprehensive application with the Commission.

1.3. All non-confidential material supplied by the applicant is filed on the Register of Public Documents. Confidential material supplied by the applicant is filed on the Commission's confidential register.

2. Submissions

2.1. The Commission received a submission from the Premier of Queensland which strongly supported the application. In addition, the Commission was provided with letters of support for the application, forwarded by Flight West, from Townsville Enterprise Limited, the Mayor of Townsville, the Mayor of Thuringowa, the Federal Airports Corporation, Townsville Grammar School, Currey (NQ) Pty Ltd, Harbourside Services Pty Ltd, Pac-Rim (Qld) Pty Ltd, Townsville Trade Waste Pty Ltd, Magnetic Island Tropical Resort, Kowari Motors, the Queensland Minister for Tourism, Small Business and Industry, and James Cook University.

3. Current services to PNG

3.1. Qantas operates a total of 7 services per week in its own right and 1 joint service with Air Niugini in each direction between Australia and PNG. Until 31 December 1996 Qantas also code shared on 5 inbound and 4 outbound services operated by Air Niugini. Air Niugini offers 12 services per week in each direction between Australia and PNG

3.2. Details of the direct services between Australia and PNG are at Attachment A.

4. Provisions of relevant Air Services Agreements

4.1. The Memorandum of Understanding (MOU) of 23 October 1996 and the Australia - PNG Air Services Agreement (ASA) of 8 December 1980 provide for the operation of international air services and multiple designation of Australian carriers.

4.2. The ASA and MOU provide for the following available capacity per week:

Between South East Australia and PNG:

- with immediate effect, 2.6 B747 equivalent units;
- from October 1998, an additional 0.9 units.

Between Northern Australia (defined in the MOU as points north of Brisbane but not including Brisbane) and PNG:

- with immediate effect, 2.6 B747 equivalent units of capacity ;
- from October 1997, an additional 0.4 units;
- from October 1998, an additional 0.5 units.

4.3. Qantas currently utilises 1.55 outbound units of capacity per week and 1.45 inbound units of capacity per week on the northern route, leaving 0.25 outbound units of shelf capacity per week, 0.35 inbound units of shelf capacity per week and 0.8 units of new capacity per week immediately available on the northern route.

5. Legislative framework

5.1. Allocations of capacity are made in accordance with the *International Air Services Commission Act 1992*. Under section 11 of the Act, the Minister makes Policy Statements setting out matters relevant to the Commission's performance of its functions, including criteria to be applied by the Commission in assessing the benefit to the public. The current Policy Statement (No.2) was issued by the Minister on 27 March 1995. The legislative framework for making a determination allocating available capacity under the Act is set out in Attachment B.

5.2. The criteria applicable to assessing benefit to the public of an allocation of capacity, where there is only one applicant and the amount of capacity is equal to or exceeds the total amount of capacity applied for, are those set out in Attachment C.

5.3. The criteria applicable to assessing applications during the start-up phase in relation to any route are set out in Attachment D.

6. Characteristics of the Australia - PNG route

6.1. In the year ended September 1996 traffic on the Australia - PNG route totalled approximately 186,600 passenger movements. Of these passenger movements 81% were passengers with a destination of either Australia or PNG, travelling directly between the two countries (direct traffic). A total of 8% of movements involved passengers travelling indirectly between the two countries (indirect traffic). The remaining 11% of the movements involved passengers travelling directly between Australia and PNG to and from countries beyond PNG or Australia (beyond traffic).

6.2. Details of the passenger movements on the route between the years ended September 1993 and September 1996 are summarised below.

**Australia - PNG Passenger Movements
Years Ended September 1993 - September 1996**

	Year ending September				Average annual growth 1993 to 1996	Annual growth 1995 to 1996
	1993	1994	1995	1996		
Direct traffic	139,400	145,800	146,100	151,600	2.8%	3.8%
Indirect traffic	13,000	12,500	13,500	13,900	2.3%	3.0%
Beyond traffic	18,300	19,900	22,500	21,100	4.7%	-6.3%
Total traffic	170,700	178,300	182,100	186,600	3.0%	2.5%

Note: Data in this table have been derived from information supplied by the Australian Bureau of Statistics and includes both scheduled and charter traffic. Figures may not add to totals due to rounding.

6.3. In the year ended September 1996, Australian residents comprised 47.4% of the direct passenger traffic. Australians visiting PNG did so mainly for business (36.3%) or employment (32.7%). In the same year, PNG visitors travelled to Australia mainly for holidays (43.5%) or visiting friends and relatives (15.8%).

7. Responses to the draft determination

7.1. The Commission issued a draft determination on 7 February 1997 and invited submissions on the draft, requesting comments by 25 February 1997. No submissions were received.

8. Commission's assessment of the applicant's claims

8.1. The Policy Statement specifies the criteria to be used in assessing benefit to the public in an allocation of capacity. Paragraph 4.1 states the general criteria for assessing benefits to the public and paragraph 7.1 specifies the criteria to be used for a route in the start-up phase.

Paragraph 4.1 requirements

8.2. Under paragraph 4.1, the relevant criteria to be applied in assessing benefit to the public, given that there is only one applicant, is whether Flight West is reasonably capable of obtaining the necessary approvals and whether it is reasonably capable of implementing its proposals. In cases where submissions are received about the allocation of capacity to a particular carrier, the Commission may also apply the additional criteria for assessing benefits to the public in Paragraph 5 of the Minister's Policy Statement. In this case, there has been a large number of submissions supporting the allocation of capacity to Flight West.

8.3. Flight West is an established airline which has been operating services since 1987 in Queensland and New South Wales. Flight West owns 25 turbine aircraft and leases two others. The Commission is satisfied that Flight West has the necessary facilities and technical experience to support its operations to Papua New Guinea.

8.4. Flight West currently holds an Air Operator Certificate (AOC) for Regular Public Transport operations within Australia. The Department of Transport and Regional Development (DoTRD) has advised that it is currently assessing an application from Flight West for an international airline licence. Subject to Civil Aviation Safety Authority approvals and to Flight West meeting ownership and control criteria, security and insurance requirements, DoTRD has indicated that it has no information that would prevent Flight West from receiving DoTRD approval to operate to PNG.

8.5. Flight West provided, on a confidential basis, a business plan and other financial information for the proposed services to PNG. The financial information includes forecasts of projected income and expenditure. After assessing this information, the Commission has formed the view that the revenue and cost projections in the Flight West business plan have reasonable prospects of being realised. Moreover, the level of funding available to Flight West appears to be consistent with its revenue and cost projections. Accordingly, the Commission is satisfied that Flight West is reasonably capable of implementing its proposals.

Paragraph 7.1 requirements

8.8. The Policy Statement specifies the allocation criteria to be applied by the Commission during the start-up phase on a route. The start-up phase applies on this route until a determination has been made allocating to an initial new entrant a "commercially sustainable level of capacity" as that term is defined in the Policy Statement.

8.9. Paragraph 7.1 states that, during the start-up phase on any route on which an Australian carrier is already operating scheduled international passenger services, the pre-eminent consideration is to introduce competition through the allocation to an initial new entrant of a level of international passenger services appropriate to the development of efficient, commercially sustainable passenger operations. In this case Qantas is the incumbent Australian carrier. Flight West is the prospective initial new entrant.

8.10. Although the pre-eminent consideration is as stated above, paragraph 7.1 of the Policy Statement contains four provisos that must be met before making an allocation of capacity to an initial new entrant. The Commission must be satisfied that:

- (a) *the level of capacity available and in prospect must be sufficient to support a level of passenger services necessary to permit the development of efficient, commercially sustainable operations by both a new entrant and an incumbent Australian carrier;*

8.11. The Commission has previously stated that it takes the term "commercially sustainable" to mean, for an airline operating efficiently, the minimum level of capacity necessary for long run commercial viability on the route in question after an allowance for a reasonable return on funds employed in undertaking the operation: see [Singapore Determination](#) (IASC/DET/9305). The Commission has also stated that this is not an issue to be approached in a theoretical manner. The task for the Commission is to undertake a practical assessment, on the facts of each case, to determine what might be regarded, in all of the circumstances, to be the required level of capacity necessary to satisfy paragraph 7.1. The level will vary between applicants and between routes and is likely to depend on factors such as the size of the network of the applicant and the incumbent airlines on the route, the degree of competition on the route, the nature of available passenger and freight traffic, the ability to match aircraft type with demand characteristics, and revenue and cost characteristics of the route. There will always be a degree of uncertainty in some of these factors, in particular the relationship between revenue and capacity.

8.12. The Commission has considered the confidential business plan of Flight West, and believes that the allocation of capacity applied for by Flight West is sufficient for the long term commercial viability of their services on the route.

8.13. The Commission has no reason to believe that the level of capacity available and in prospect is insufficient to permit the development of efficient, commercially sustainable operations by both the applicant and Qantas, the incumbent Australian carrier, which has been servicing the route for more than ten years.

(b) the proposed new carrier's tariff and service proposals enhance competition on the route;

8.15. The Commission considers that Flight West's proposal will result in some increased competition in direct services to PNG, creating potential tariff and service benefits for consumers. This application involves the opening of direct flights between Townsville and Papua New Guinea.

(c) approval would not result in a decrease in inbound tourism to Australia, Australian consumer benefits or trade;

8.16. Flight West has claimed that an allocation of capacity as requested would stimulate inbound tourism, and provide a greater range services, fares and packages. The Commission accepts these claims.

8.17. As the Premier of Queensland noted in his letter to the Commission:

The Queensland tourism industry will also be a beneficiary through the development of direct air services to a new destination in Queensland which has air-links to the 'outback'.

8.18. Letters of support attest to the benefits to students from PNG wanting to study in North Queensland, trade development benefits and, in particular, export benefits.

(d) the proposed new carrier is reasonably capable of obtaining the necessary approvals and commencing operations as proposed.

8.19. As discussed in paragraph 8.5, the Commission is satisfied that Flight West is reasonably capable of obtaining the necessary approvals and commencing operations as proposed.

8.20. The Commission finds that there would be public benefits, in terms of the criteria set out in the Policy Statement, in allocating Flight West the capacity it seeks.

9. Other issues

Commencement of operations

9.1. Flight West proposes to commence operations on 1 April 1997 or three months from the date of the Determination, whichever is the later. The Commission requires Flight West to commence operations by no later than 30 June 1997 or such other date approved by the commission.

Period of the determination

9.2. Flight West has sought a 5 year determination. The Commission will grant Flight West a determination for 5 years from the date of the determination.

Utilisation of the capacity

9.3. Flight West has indicated that it will operate four return services per week from the commencement of operations (a total of 0.8 B747 equivalent units). It will then increase services as new capacity comes available in October 1997 (a further 0.4 units) and October 1998 (a further 0.5 units). Accordingly, the Commission will require Flight West to fully utilise the 0.8 B747 equivalent units that are immediately available by 30 June 1997 and to fully utilise the remaining capacity as it becomes available or from such other date approved by the Commission.

9.4. In accordance with its usual practice the Commission will specify that:

- the capacity is only to be used by Flight West; and
- Flight West cannot use the capacity by providing services jointly with any other carrier without the prior approval of the Commission.

For this purpose, the Commission considers that joint services include *inter alia* code-sharing, seat exchanges, block space arrangements and revenue pooling.

Ownership and control of the carrier

9.5. The Commission's view is that the determination should include limitations on changes in the ownership and control of Flight West. These are specified below.

10. Determination allocating new capacity on the Papua New Guinea route to Flight West (IASC/DET/9711)

10.1. The Commission finds that an allocation of capacity to Flight West on the Northern Australia - Papua New Guinea route as sought would be of benefit to the public.

10.2. The Commission makes a determination in favour of Flight West, allocating 1.7 B747 equivalent units per week; 0.8 units immediately, a further 0.4 units in October 1997 and a further 0.5 units in October 1998 in each direction between Australia and Papua New Guinea on the Northern Australia - Papua New Guinea route under the Australia - Papua New Guinea Air Services Agreement.

10.3. The determination is for 5 years from the date of the determination.

10.4. The determination is subject to the following conditions:

- Flight West is required to:
 - fully utilise 0.8 units of capacity from no later than 30 June 1997 or from such other date approved by the Commission;
 - fully utilise an additional 0.4 units from 31 October 1997 or from such other date approved by the Commission; and
 - fully utilise an additional 0.5 units from 31 October 1998 or from such other date approved by the Commission.

- only Flight West is permitted to utilise the capacity;

- Flight West 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 Flight West 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 Agreement 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 Flight West or be in a position to exercise effective control of Flight West, without the prior consent of the Commission, and
- changes in relation to the management, status or location of operations and Head Office of Flight West 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 - Papua New Guinea Air Services Agreement.

Dated: 14 March 1997

James K Bain
Chairman

Brian L Johns
Member

Russell V Miller
Member

A Existing direct services between Australia and PNG

Northern Winter 1996-97

AIR NIUGINI	No. of flights	Aircraft type	Units of capacity	Seats	Route
INBOUND	2	A313	1	418	Port Moresby-Brisbane-Sydney
	1	A313	0.5	209	Port Moresby-Brisbane
	b) 1	A313	0.25	105	Port Moresby-Cairns
	3	F28	0.6	222	Port Moresby-Cairns
	a) 5	F28	0.5	185	Mt Hagen-Port Moresby-Cairns
TOTAL	12		2.85	1139	

- a) Qantas code shares on Air Niugini's flight
b) Joint services with Qantas

OUTBOUND	2	A313	1	418	Sydney-Brisbane-Port Moresby
	1	A313	0.5	209	Brisbane-Port Moresby
	b) 1	A313	0.25	105	Cairns-Port Moresby
	4	F28	0.8	296	Cairns-Port Moresby
	a) 4	F28	0.4	148	Cairns-Port Moresby-Mt Hagen
TOTAL	12		2.95	1176	

- a) Qantas code shares on Air Niugini's flight
b) Joint services with Qantas

QANTAS

INBOUND	3	B763	1.8	624	Port Moresby-Brisbane-Sydney
	b) 1	A313	0.25	104	Port Moresby-Cairns
	4	F28	0.8	296	Port Moresby-Cairns
	a) 5 *	F28	0.5	185	Mt Hagen-Port Moresby-Cairns
TOTAL	13		3.35	1209	

- a) Qantas code shares on Air Niugini's flight
b) Joint services with Air Niugini

OUTBOUND	3	B763	1.8	624	Sydney-Brisbane-Port Moresby
	b) 1	A313	0.25	104	Cairns-Port Moresby
	4	F28	0.8	296	Cairns-Port Moresby
	a) 4 *	F28	0.4	148	Cairns-Mt Hagen
TOTAL	12		3.25	1172	

- a) Qantas code shares on Air Niugini's flight
b) Joint services with Air Niugini

* Discontinued from 31/12/96

B. Legislative framework

1. Subsection 7(1) of the Act allows the Commission to make a determination allocating available capacity.
2. Under section 12 of the Act, the Commission must, by notice, invite applications for and submissions about an allocation of new capacity.
3. Under subsection 12(3), any person may apply to the Commission for a determination allocating the capacity.
4. Subsection 7(2) requires that the determination:
 - (a) must not allocate available capacity unless the Commission is satisfied that the allocation would be of benefit to the public; and
 - (b) if more than one application was made relating to the allocation - must make the allocation that the Commission is satisfied, having regard to the applications made, would be of the greatest benefit to the public.
5. Under subsection 7(3), 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 statements made by the Minister under section 11.
6. The section 11 Policy Statement dated 27 March 1995, includes criteria to be applied by the Commission in assessing the benefit to the public of allocations of capacity. The criteria applicable to assessing benefit to the public of an allocation of capacity where there is only one applicant are those contained in paragraphs 4 and 6 of the Policy Statement. However, if submissions are received about, or opposing, the allocation of capacity to a particular carrier, the Commission may also apply the additional criteria contained in paragraph 5 of the Policy Statement.
7. Section 15 of the Act relates to the contents of determinations including the imposition of conditions relating to the use of capacity. Section 16 relates to notifications of determinations.

C. Relevant criteria under paragraphs 4, 5 and 6 of the Policy Statement

Paragraph 4 requirements

4. GENERAL CRITERIA FOR ASSESSING BENEFIT TO THE PUBLIC

4.1 Subject to paragraph 6, the general criteria against which the benefit to the public is to be assessed by the Commission in considering the circumstances in relation to an allocation of capacity or the renewal or review of a determination allocating capacity to an Australian carrier are as set out below:

Use of Australian carrier entitlements

(a) Subject to (b), the use of the entitlements of Australian carriers under a bilateral arrangement is of benefit to the public.

Carrier capabilities

(b) It is not of benefit to the public for the Commission to allocate capacity to Australian carriers unless such carriers:

- (i) are reasonably capable of obtaining the necessary approvals to operate on the route; and
- (ii) are reasonably capable of implementing their proposals.

Paragraph 5 requirements

5. ADDITIONAL CRITERIA FOR ASSESSING BENEFIT TO THE PUBLIC

5.1 The following additional criteria are applicable in assessing the benefit to the public in all circumstances other than as provided in relation to particular circumstances described in paragraph 6:

Tourism

(a) The extent to which proposals will promote tourism to and within Australia. The Commission should have regard to:

- the level of promotion, market development and investment proposed by each of the applicants; and
- route service possibilities to and from points beyond the Australian gateway(s) or beyond the foreign gateway(s).

Consumer Benefits

(b) The extent to which proposals will maximise benefits to Australian consumers. The Commission should have regard to:

- the degree of choice (including, for example, choice of airport(s), seat availability, range of product);
- efficiencies achieved as reflected in lower tariffs and improved standard of services;
- the stimulation of innovation on the part of incumbent carriers; and
- route service possibilities to and from points beyond the Australian gateway(s) or beyond the foreign gateway(s).

Trade Benefits

(c) The extent to which proposals will promote international trade. The Commission should have regard to:

- the availability of frequent, low cost, reliable freight services for Australian exporters and importers.

Competition Policy

(d) The extent to which proposals will contribute to the development of a competitive environment for the provision of international air services. The Commission should have regard to:

- the need to develop strong Australian carriers capable of competing effectively with one another and the airlines of foreign countries;
- the number of Australian carriers using capacity on a particular route and the existing distribution of capacity.

Industry Structure

(e) The extent to which proposals will impact positively on the Australian aviation industry.

Other Criteria

(f) Such other criteria as the Commission considers relevant.

5.2 The Commission is not obliged to apply all the criteria set out in paragraph 5.1 if it is satisfied that the important criteria in the circumstances have been met.

Paragraph 6.2 requirements

6. CRITERIA APPLICABLE IN PARTICULAR CIRCUMSTANCES

One applicant or sufficient available capacity

6.2 In circumstances where:

(a) there is only one applicant (or where more than one application is made but all applications except one are withdrawn) for allocation of capacity on a route; or

(b) there is more than one applicant but, subject to paragraph 7.3, the amount of available capacity is equal to or exceeds the total amount of capacity applied for only the criteria in paragraph 4 are applicable. However, if submissions are received about, or opposing, the allocation of capacity to a particular carrier, the Commission may also apply the additional criteria in paragraph 5.

D. Relevant criteria under paragraph 7 of the Policy Statement

Paragraph 7 requirements

7.1 Subject to paragraph 6.1, during the start-up phase in relation to any route on which an Australian carrier is already operating scheduled international passenger services, the pre-eminent consideration is to introduce competition on the route through allocating to an initial new entrant a level of scheduled international passenger services appropriate to the development of efficient, commercially sustainable passenger operations. The Commission should allocate such capacity to an initial new entrant proposing passenger services on the route, providing it is satisfied that:

- (a) the level of capacity available and in prospect is sufficient to support a level of passenger services necessary to permit the development of efficient, commercially sustainable operations by both a new entrant and an incumbent Australian carrier; and
- (b) the proposed new carrier's tariff and service proposals would enhance competition on the route; and
- (c) approval would not result in a decrease in inbound tourism to Australia, Australian consumer benefits or trade; and
- (d) the proposed new carrier is reasonably capable of obtaining the necessary approvals and commencing operations as proposed.

7.2 An Australian carrier seeking an allocation of capacity, or which may be permitted to use capacity allocated to an incumbent Australian carrier, will not be taken to be a new entrant if it is a subsidiary or a holding company of an incumbent Australian carrier operating on the route or if there is some other substantial connection between the two carriers in relation to ownership and control.

7.3 Where there are applications for capacity on a route during the start-up phase by two or more prospective new entrants proposing scheduled international passenger services on the route, the criteria set out in 4 and 5 above are to be applied in selecting one of those applicants as the initial new entrant to be allocated the level of capacity referred to in 7.1.

7.4 Where the available capacity on the route exceeds the level of capacity referred to in 7.1, the criteria in 4 and, subject to 6.2, in 5 above are to be applied in considering the allocation of the balance of the capacity.

7.5 Where the Commission invites applications for capacity on a route during the start-up phase and none of the applications received are from prospective new entrants proposing scheduled international passenger services on the route, the criteria in 4 and, subject to 6.2, in 5 above are to be applied in considering an allocation.

7.6 In considering Determinations during the start-up phase, the Commission shall have particular regard to the possible use of interim determinations to facilitate the introduction of competition on the route without any unnecessary delay in the use of the capacity.