

DECISIONS

DECISION: IASC/DEC/9826
VARIATION OF: IASC/DET/9814
THE ROUTE: PAPUA NEW GUINEA
THE APPLICANT: LESSBROOK PTY LIMITED (TRADING AS
TRANSAIR)
(ACN 010 855 875)
PUBLIC REGISTER FILE: IASC/APP/98021

DECISION: IASC/DEC/9827
VARIATION OF: IASC/DET/9728 AND 9815
THE ROUTE: PAPUA NEW GUINEA
THE APPLICANT: DOSKITE PTY LIMITED (TRADING AS
QWESTAIR)
(ACN 009 630 380)
PUBLIC REGISTER FILE: IASC/APP/98021

1 The applications

1.1 These applications come about because of changes in the method of describing capacity and route entitlements under the Australia–Papua New Guinea (PNG) air services arrangements. The primary purpose of the applications is to update the description of freight only capacity already allocated to each applicant to accord with the new method of describing freight only capacity under those arrangements.

Transair

1.2 On 13 October 1998, Lessbrook Pty Limited (trading as Transair) applied to the Commission to vary the capacity already allocated to it in terms which accord with the new method of describing capacity under the Australia-PNG Memorandum of Understanding signed on 18 August 1998 (the August 1998 MOU).

Qwestair

1.3 On 20 October 1998, Doskite Pty Limited (trading as Qwestair) applied to the Commission to vary the capacity already allocated to it in terms which accord with the new method of describing capacity under the August 1998 MOU.

2 Provisions of relevant Air Services Agreements

2.1 The August 1998 MOU provides for the operation of international air services and designation of multiple Australian carriers. The air services arrangements also provide for the operation of joint services between designated airlines.

2.2 Under the arrangements in place at the time of issuing the relevant determinations to Qwestair and Transair, capacity entitlements were expressed in terms of B747 units per week, and separate route structures were in place between Northern Australia and PNG and between South East Australia and PNG.

2.3 Under the arrangements effective from 18 August 1998, separate freight-only capacity entitlements (tonnes per week) became available and a single route structure is now in place.

3 Commission's consideration

3.1 Variations to determinations are made by the Commission in accordance with the *International Air Services Commission Act 1992* (the Act) and the Minister's Policy Statement (no 3 of 23 April 1997) which was issued under section 11 of the Act.

3.2 Under section 24 of the Act, the Commission must either make a decision confirming the determination or varying the determination in a way that gives effect to the variation requested in the application.

Transair

3.3 Transair has sought the approval of the Commission for its determination to be amended to reflect a capacity allocation of 10 tonnes per week in each direction with immediate effect and an additional 10 tonnes per week in each direction with effect from March 1999. Transair's existing capacity allocation is 0.4 B747 units per week in each direction.

3.4 Transair has indicated that 20 tonnes per week in each direction will be sufficient to accommodate its current and planned operations on the route.

Qwestair

3.5 Qwestair has sought the approval of the Commission for its determinations to be amended to reflect a capacity allocation of 10 tonnes per week in each direction with immediate effect and an additional 10 tonnes per week in each direction with effect the end of March 1999. Qwestair's existing capacity allocations total 0.8 B747 units per week in each direction.

3.6 Qwestair has indicated that 20 tonnes per week in each direction will be sufficient to accommodate its planned operations on the route.

4 Other issues

Route structure

4.1 The Commission will vary the relevant determinations to reflect the revised route structure under which Australian carriers can now operate between Australia and PNG.

Capacity utilisation

4.2 The Commission will vary the relevant determinations to give effect to the revised capacity utilisation dates as indicated in each of the applicant's applications.

5 Decision (IASC/DEC/9826) – Transair

5.1 In accordance with section 24 of the Act, the Commission varies Determination IASC/DET/9814 to give effect to the request by Transair by:

replacing paragraph 7.2 with the following:

“7.2 The Commission makes a determination in favour of Transair, allocating 20 tonnes of freight capacity per week in each direction between Australia and Papua New Guinea under the Australia - Papua New Guinea Air Services Agreement.”;

and

replacing the first dot point of paragraph 7.4 with the following:

- “Transair is required to fully utilise:
 - 10 tonnes of freight capacity per week in each direction from 30 November 1998 or from such other date approved by the Commission; and
 - 20 tonnes of freight capacity per week in each direction from 1 April 1999 or from such other date approved by the Commission.”

5.2 The text of Determination IASC/DET/9814 as amended by this Decision is set out in Attachment A.

6 Decision (IASC/DEC/9827) – Qwestair

6.1 In accordance with section 24 of the Act, the Commission varies the following determinations to give effect to the request by Qwestair:

in Determination IASC/DET/9815 by

replacing paragraph 8.2 with the following:

“8.2 The Commission makes a determination in favour of Qwestair, allocating 20 tonnes of freight capacity per week in each direction between Australia and Papua New Guinea under the Australia - Papua New Guinea Air Services Agreement.”;

and

replacing the second dot point of paragraph 8.4 with the following:

- “Qwestair is required to fully utilise:
 - 10 tonnes of freight capacity per week in each direction from 30 November 1998 or from such other date approved by the Commission; and
 - 20 tonnes of freight capacity per week in each direction from 1 April 1999 or from such other date approved by the Commission.”

and

in Determination IASC/DET/9728 by

reducing the capacity allocated from 0.4 B747 units of capacity per week in each direction to nil.

6.2 The text of Determinations IASC/DET/9815 and 9728 as amended by this Decision are set out in Attachments B and C respectively.

Dated: 6 November 1998

Russell V Miller
Chairman

Michael L Lawriwsky
Member

Stephen Lonergan
Member

A. Determination IASC/DET/9814 as amended by Decision IASC/DEC/9826

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

7.2 The Commission makes a determination in favour of Transair, allocating 20 tonnes of freight capacity per week in each direction between Australia and Papua New Guinea under the Australia - Papua New Guinea Air Services Agreement.

7.3 The determination is for five years from the date of the determination.

7.4 The determination is subject to the following conditions:

- Transair is required to fully utilise:
 - 10 tonnes of freight capacity per week in each direction from 30 November 1998 or from such other date approved by the Commission; and
 - 20 tonnes of freight capacity per week in each direction from 1 April 1999 or from such other date approved by the Commission;
- only Transair is permitted to utilise the capacity;
- Transair 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 Transair 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 Transair or be in a position to exercise effective control of Transair, without the prior consent of the Commission; and
- changes in relation to the management, status or location of operations and Head Office of Transair 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.

B. Determination IASC/DET/9815 as amended by Decision IASC/DEC/9827

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

8.2 The Commission makes a determination in favour of Qwestair, allocating 20 tonnes of freight capacity per week in each direction between Australia and Papua New Guinea under the Australia - Papua New Guinea Air Services Agreement.

8.3 The determination is for five years from 1 October 1998.

8.4 The determination is subject to the following conditions:

- the Deed of Guarantee dated 24 October 1997 between Pel-Air Aviation Pty Limited and DJH Services Pty Limited remaining in effect for the term of the determination;
- Qwestair is required to fully utilise:
 - 10 tonnes of freight capacity per week in each direction from 30 November 1998 or from such other date approved by the Commission; and
 - 20 tonnes of freight capacity per week in each direction from 1 April 1999 or from such other date approved by the Commission;
- only Qwestair is permitted to utilise the capacity;
- Qwestair 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 Qwestair 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 Qwestair or be in a position to exercise effective control of Qwestair, without the prior consent of the Commission; and
- changes in relation to the management, status or location of operations and Head Office of Qwestair 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.

C. Determination IASC/DET/9728 as amended by Decision IASC/DEC/9827

8.2 The Commission makes a determination in favour of Qwestair, allocating nil capacity on Route I(a) between South East Australia and Papua New Guinea under the Australia - Papua New Guinea Air Services Agreement.

8.3 The determination is for five years from the date of the determination.