

DETERMINATIONS

AN ALLOCATION OF SHELF CAPACITY
ON THE PAPUA NEW GUINEA ROUTE TO

DOSKITE PTY LIMITED (ACN 009 630 380)
(TRADING AS QWESTAIR)

AND

LESSBROOK PTY LIMITED (ACN 010 855 875)
(TRADING AS TRANSAIR)

Determination Numbers:

IASC/DET/9814

IASC/DET/9815

Public Register Files:

IASC/APP/97025

Date: 30 June 1998

Members:

James K Bain
Chairman

Russell V Miller
Member

Michael L Lawriwsky
Member

CONTENTS

	Page
1 The applications.....	3
2 Current scheduled services to Papua New Guinea	4
3 Provisions of relevant Air Services Agreements	4
4 Legislative framework	5
5 Commission's assessment of the applicant's claims.....	5
6 Other issues.....	7
Commencement of operations	7
Period of the determination	7
Utilisation of the capacity	8
Ownership and control of the carriers.....	8
7 Determination allocating shelf capacity on the Papua New Guinea route to Transair (IASC/DET/9814)	9
8 Determination allocating shelf capacity on the Papua New Guinea route to Qwestair (IASC/DET/9815)	10

ATTACHMENTS

A. Legislative framework.....	12
B. Relevant criteria under paragraphs 4, 5 and 6 of the Policy Statement	13

1 The applications

1.1 On 5 August 1997, Doskite Pty Limited ACN 009 630 380 (trading as Qwestair), a wholly owned subsidiary of Pel-Air Aviation, wrote to the Commission seeking an allocation of shelf capacity to Papua New Guinea (PNG).

1.2 In accordance with the requirements of the *International Air Services Commission Act 1992* (the Act), on 11 August 1997 the Commission published a notice inviting other applications for, and submissions about, an allocation of shelf capacity to PNG. The closing date for applications and submissions was 25 August 1997.

1.3 Additional applications were received from Qantas Airways Limited ACN 009 661 901 (Qantas), Janlin Pty Limited ACN 000 627 010 (trading as Cape York Air) and Lessbrook Pty Limited ACN 010 855 875 (trading as Transair). Cape York Air subsequently withdrew its application.

1.4 Qantas sought an allocation of 0.05 B747 units of capacity in a southbound direction on the Northern Australia - PNG route, to be used on code share services operated by Air Niugini. In October 1997, on advice from the Department of Transport and Regional Development that increments of 0.05 units of capacity could only be utilised via a code share service, and given that Qantas was the only applicant proposing to code share, the Commission issued Decision IASC/DEC/9719 varying Determination IASC/DET/9724 from 1.55 to 1.6 B747 equivalent units per week as requested by Qantas.

1.5 The Commission now has to assess the applications from Qwestair and Transair. Each of the applicants have sought an allocation of the following capacity for freight only services:

- on the South East Australia - PNG route: the equivalent of 0.4 B747 units per week in each direction for services between Brisbane and Port Moresby; and
- on the Northern Australia - PNG route: the equivalent of 0.5 B747 units per week in a northbound direction, and 0.3 B747 units per week in southbound direction, for services between Cairns and Port Moresby.

1.6 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 Current scheduled services to Papua New Guinea

2.1 Qantas currently operates the following scheduled passenger services:

- Sydney - Brisbane - Port Moresby & v.v. (three B767 services per week); and
- Cairns - Port Moresby & v.v. (code sharing on six A310 services per week operated by Air Niugini).

2.2 Air Niugini currently operates the following scheduled passenger services:

- Port Moresby - Brisbane & v.v. (three A310 services per week);
- Port Moresby - Cairns & v.v. (six A310 services per week, code shared with Qantas);
- Port Moresby - Cairns (four F28 services per week);
- Mount Hagen - Port Moresby - Cairns (three F28 services per week);
- Cairns - Mount Hagen (four F28 services per week); and
- Cairns - Port Moresby (three F28 services per week).

3 Provisions of relevant Air Services Agreements

3.1 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 between the two countries and for multiple designation of Australian carriers.

3.2 The MOU and an exchange of letters (17 and 22 April 1997) provide for the following capacity per week:

Between South East Australia and PNG:

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

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

- with immediate effect, 3.5 B747 units of capacity; and
- from October 1998, an additional 0.5 B747 units.

3.3 On the South East Australia - PNG route, Qantas and Qwestair have been allocated 1.8 and 0.4 B747 units of capacity per week in each direction, respectively. Accordingly, the Register of Available Capacity shows that on the South East Australia - PNG route there is 0.4 B747 units of capacity per week available with immediate effect and an additional 0.9 B747 units of capacity per week with effect from October 1998.

3.4 On the Northern Australia - PNG route, Flight West Airlines has been allocated 2.1 B747 units of capacity per week (including the 0.5 B747 units per week available from October 1998) in each direction while Qantas has been allocated 1.4 B747 units of capacity per week in a northbound direction and 1.6 B747 units of capacity per week in a southbound direction. Accordingly, the Register of Available Capacity shows that on the Northern Australia - PNG route there is, with immediate effect, 0.5 B747 equivalent units of capacity per week available in a northbound direction and 0.3 B747 units of capacity per week available in a southbound direction.

3.5 The aircraft substitution formula contained in the air services arrangements states that a service operated with an aircraft smaller than a BAe-146 or F28 utilises 0.1 B747 units of capacity per week.

4 Legislative framework

4.1 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. 3) was issued by the Minister on 23 April 1997. The legislative framework for making a determination allocating available capacity under the Act is set out in Attachment A.

4.2 The criteria applicable to assessing benefit to the public of an allocation of capacity are those set out in Attachment B.

5 Commission's assessment of the applicant's claims

5.1 Qwestair and Transair have applied for an allocation of capacity on both the South East Australia - PNG and Northern Australia - PNG routes.

5.2 On the Northern Australia - PNG route, there is insufficient capacity available to meet the requirements of both applicants and the Commission will need to assess these competing applications against the relevant public benefit criteria contained in paragraph 5 of the Policy Statement. The Commission has therefore decided that it would be appropriate if such an assessment were the subject of a separate determination.

5.3 In relation to the South East Australia - PNG route, both applicants originally applied for an allocation of the capacity that was immediately available. However, Qwestair subsequently advised the Commission that it would have no objection to being allocated the capacity which becomes available with effect from October 1998.

Accordingly, the Commission can assess the applications using the general public benefit criteria contained in paragraph 4 of the Policy Statement.

Transair

5.4 Transair has sought 0.4 B747 units of capacity per week on the South East Australia - PNG route to enable it to operate four weekly overnight freight services between Brisbane and Port Moresby. The airline has advised that its services would initially be operated with a Metro 23 aircraft with a capacity of 1,800 kilograms.

5.5 Transair is an established airline which operates services, including contract services and charters to major corporations, both within Australia and overseas. Transair has a mixed fleet of aircraft for both passenger and freight services, including aircraft based in PNG with a wholly owned subsidiary company.

5.6 As to approvals, Transair currently holds an Air Operator Certificate authorising charter operations within Australia and between Australia and PNG. The Department of Transport and Regional Development (DoTRD) has advised that it is currently in the process of assessing Transair's application for an International Airline Licence. Subject to approvals from the Civil Aviation Safety Authority and to Transair meeting insurance requirements, DoTRD has no information to suggest that Transair is not reasonably capable of obtaining the necessary approvals for issuance of an International Airline Licence. Accordingly, the Commission is satisfied that Transair is reasonably capable of obtaining the necessary approvals for operations to PNG.

5.7 Transair provided, on a confidential basis, a business plan and other financial information for the proposed services to PNG. The information included forecasts of projected income and expenditure. After assessing the information, the Commission has formed the view that the revenue and cost projections in the Transair business plan have reasonable prospects of being realised on the South East Australia - PNG route. In addition, the level of funding available to Transair appears to be consistent with its revenue and cost projections for that route. Accordingly, the Commission is satisfied that Transair is reasonably capable of implementing its proposals.

Qwestair

5.8 Qwestair already has an allocation of 0.4 B747 units of capacity per week on the South East Australia - PNG route and has sought an additional 0.4 B747 units of capacity per week to enable it to expand services between Brisbane and Port Moresby. Qwestair has advised that its services would be operated by Westwind aircraft with a capacity of 2,000 kilograms.

5.9 In Determination IASC/DET/9728, the Commission made a detailed assessment of Qwestair's earlier application for 0.4 B747 units of capacity per week and concluded that the company was reasonably capable of obtaining the necessary approvals and of implementing its proposals as long as Qwestair had the guaranteed support of its parent company Pel-Air Aviation Pty Limited (Pel Air).

5.10 Pel Air has signed a deed of guarantee in a form acceptable to the Commission under which Pel-Air agrees to guarantee Qwestair's debts. An assessment of the more

recent financial information supplied by the airline in relation to its current application supports the Commission's earlier findings.

5.11 Qwestair subsequently obtained all necessary approvals and commenced scheduled services between Brisbane and Port Moresby on 27 November 1997. However, its services were suspended on 2 December 1997 by the PNG aeronautical authorities pending the PNG Government reviewing its interpretation of the Australia - PNG air services arrangements. Qwestair's suspension was subsequently lifted on 26 May 1998, enabling the airline to plan a resumption of its services.

Conclusion

5.12 The Commission concludes that an allocation of 0.4 B747 units of capacity per week available with immediate effect on the South East Australia - PNG route to Transair, and an allocation of 0.4 B747 units of capacity per week available from October 1998 on the South East Australia - PNG route to Qwestair, would be of benefit to the public.

6 Other issues

Commencement of operations

6.1 Transair proposes to commence operations within 60 days of the date of the determination. The Commission will require Transair to commence operations by no later than 31 August 1998.

6.2 The Commission will require Qwestair to commence operations in the seven day period commencing on 1 October 1998.

Period of the determination

6.3 Each applicant has requested a five year determination. The Commission will grant Transair a determination for five years from the date of the determination and Qwestair a determination for five years from 1 October 1998.

Utilisation of the capacity

Transair

6.4 The Commission will require Transair to fully utilise the allocated capacity from 31 August 1998.

6.5 The Commission will specify that:

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

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

Qwestair

6.7 The Commission will require Qwestair to fully utilise the allocated capacity from the date on which it commences operations.

6.8 The Commission will specify that:

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

6.9 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 carriers

6.10 The Commission's view is that the proposed determinations should include limitations on changes in the ownership and control of the companies. These are specified below.

7 Determination allocating shelf capacity on the Papua New Guinea route to Transair (IASC/DET/9814)

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 0.4 B747 units of capacity per week in each direction available with immediate effect on Route I(a) between South East 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:
 - commence utilisation of the allocated capacity no later than 31 August 1998 or from such other date approved by the Commission; and
 - fully utilise all of the allocated capacity from no later than 31 August 1998 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.

8 Determination allocating shelf capacity on the Papua New Guinea route to Qwestair (IASC/DET/9815)

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 proposes to make a determination in favour of Qwestair, allocating 0.4 B747 units of capacity per week in each direction available from October 1998 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 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:
 - commence utilisation of the allocated capacity within the seven day period commencing on 1 October 1998 or from such other date approved by the Commission; and
 - fully utilise all of the allocated capacity from commencement of the service 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.

Dated: 30 June 1998

James K Bain
Chairman

Russell V Miller
Member

Michael L Lawriwsky
Member

A. Legislative framework

1 Subsection 7(1) of the Act allows the Commission to make a determination allocating available capacity.

2 Under section 13 of the Act, the Commission must, by notice, invite applications for and submissions about an allocation of shelf capacity.

3 Under subsection 13(4), 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 23 April 1997, 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.

B. 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 Benefits

- (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 Benefits

- (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
 - the extent to which applicants are proposing to provide capacity on aircraft they will operate themselves as, in the long term, operation of capacity on own aircraft is likely to result in more competitive outcomes;
 - the provisions of any commercial agreement between an applicant and another airline affecting services on the route but only to the extent of determining comparative competition benefit between competing proposals; and
 - any determinations made by the Australian Competition and Consumer Commission or the Australian Competition Tribunal in relation to a carrier operating or proposing to operate on all or part of the route; and

- any decisions on notifications made by the Australian Competition and Consumer Commission in relation to a carrier operating or proposing to operate on all or part of the route.

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 7.4, 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.