

DETERMINATIONS

ALLOCATIONS OF CAPACITY ON THE SOLOMON ISLANDS, NAURU, FRANCE (ROUTE 3) AND VANUATU ROUTES TO TRANSPAC EXPRESS PTY LTD (ACN 086 284 675)

Determination Numbers:

- IASC/DET/9916 (Solomon Islands)
- IASC/DET/9917 (Nauru)
- IASC/DET/9918 (France Route 3 - New Caledonia)
- IASC/DET/9919 (Vanuatu)

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1. The application

1.1. On 14 May 1999 Transpac Express Pty Ltd (Transpac) applied to the Commission for allocations of freight capacity on the following routes:

Solomon Islands:	50 tonnes in both directions per week;
Nauru:	one frequency per week with the equivalent capacity of one B737;
France Route 3 (New Caledonia):	the equivalent of one B737 freighter in each direction; and
Vanuatu:	25 tonnes in both directions.

1.2. Transpac proposes initially to use capacity on a B767-300 aircraft (23.9 tonnes) leased from Qantas, pending acquisition of its own A300 aircraft (23.5 tonnes).

1.3. The Commission published a notice inviting applications for the capacity or submissions from any interested persons about the Transpac application. Submissions were received from Sanwa Trading Co. Ltd. (Sanwa), Nauru Air Corporation (Air Nauru), Pacific Air Express Limited (PAE), and Qantas Airways Ltd (Qantas). An application for capacity on the same routes as applied for by Transpac was received from Pacific Air Freighters Pty. Ltd. but was subsequently withdrawn.

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

2. Current services

2.1. The only dedicated scheduled freight services on the routes concerned are provided by PAE which operates a B727-200 aircraft with a cargo capacity of up to 20 tonnes, utilising Solomon Islands capacity under the relevant bilateral agreement. PAE offers charter services as well as the following scheduled services:

3 services per week	Brisbane/Honiara/Brisbane
1 service per week	Brisbane/Nauru/Majuro/Honiara/Brisbane.

2.2. Freight capacity is also available in the holds of aircraft operating passenger services. Details of these services appear below:

Solomon Islands

Solomon Islands Airlines

3 B737-300 services per week Brisbane/Honiara/Brisbane

Nauru

Air Nauru

2 B737-400 services per week Brisbane/Nauru/Brisbane

New Caledonia

Qantas

2 B737-300 services per week Sydney/Noumea/Sydney

1 B737-300 service per week Brisbane/Noumea/Brisbane

Air Caledonie

4 B737-300 services per week Sydney/Noumea/Sydney

1 B737-300 service per week Brisbane/Noumea/Brisbane

AOM French Airlines

3 A340-200 services per week Sydney/Noumea/Brisbane

Vanuatu

Air Vanuatu

1 B737-300 service per week Port Vila/Melbourne/Port Vila

3 B737-300 service per week Port Vila/Brisbane/Port Vila

5 B737-300 service per week Port Vila/Sydney/Port Vila

3. Characteristics of the routes

3.1. Details of freight carried on scheduled air transport on the routes between Australia and the Solomon Islands, Nauru, New Caledonia and Vanuatu over the past four calendar years appear below.

Table.1: Freight carried on relevant routes for years ended 31 December 1995 to 31 December 1998 (tonnes).

Country	Year ended 31 December				Average freight per week in 1998 to and from Australia	
	1995	1996	1997	1998	Inbound	Outbound
Solomon Islands	446.2	357.3 (-19.9%)	426.9 (+19.5)	742.7 (+74.0%)	9.6	4.7
Nauru	708.3	361.7 (-48.9%)	220.4 (-39.0%)	197.8 (-10.3%)	0.3	3.5
New Caledonia	1113.3	1133.1 (+1.8%)	985.3 (-13.0%)	1066.3 (+8.2%)	3.1	17.4
Vanuatu	456.3	671.4 (+47.1%)	752.3 (+12.0%)	1457.8 (+93.8%)	13.3	14.7

Note: Data in the above table have been derived from scheduled air transport statistics published by the Department of Transport and Regional Services.

3.2. Having regard to the total inbound and outbound freight carried in 1998, it appears clear that any airline proposing to introduce substantial additional capacity on these routes would need to open up new freight markets in order to succeed.

4. Provisions of relevant Air Services Agreements

4.1. The Memorandum of Understanding of 1 April 1998, pursuant to the Exchange of Letters dated 2 and 19 November 1981, between Australia and the Solomon Islands provides for the multiple designation of Australian carriers. It also provides capacity entitlements for each country for dedicated freighter services amounting to 100 tonnes per week in each direction with any aircraft type and with no limitation on frequency.

4.2. Interim air services arrangements between Australia and Nauru were agreed by an Exchange of Letters dated 15 and 17 August 1995. The arrangements provide for the designation of a single carrier for each country with the designated airline of each side able to operate three frequencies per week with any aircraft type not exceeding the capacity of B737 aircraft for either passenger, freight or combination passenger and freight operations. Nauru's designated airline is Air Nauru.

4.3. The Memorandum of Understanding of 6 December 1996 between Australia and France and the Air Services Agreement of 13 April 1965 provide for the multiple designation of carriers and for capacity entitlements for Australian carriers amounting to 2.5 units of (passenger) capacity and one B737 freighter per week in each direction on Route 3 (New Caledonia). The Department of Transport and Regional Services (DOTRS) has advised the Commission that the operations proposed by Transpac are consistent with these air services arrangements.

4.4. The Memorandum of Understanding of 1 April 1998 between Australia and Vanuatu and the Air Services Agreement of 15 June 1993, provide for the multiple designation of carriers and for capacity entitlements for freighter services for Australian carriers amounting to 100 tonnes per week, with any aircraft type and no limitation on frequency in each direction.

4.5. There is presently no designated Australian freight carrier on any of the routes. Qantas is a designated carrier to New Caledonia operating combined passenger and freight services.

5. Submissions

5.1. Submissions in response to the application were received from Sanwa, Air Nauru, PAE and Qantas.

5.2. The submissions primarily addressed the feasibility of Transpac operating the services proposed. Issues raised included the entitlement of the IASC to award capacity to Transpac under the Act, access to cargo on the routes, suitability of airports for the

type of aircraft proposed, sustainability of the proposed services given the size of the markets and the impact of additional competition on existing carriers.

6. Draft determinations

6.1. On 19 July 1999, the Commission issued Draft Determinations IASC/DDET/9902, IASC/DDET/9903, IASC/DDET/9904 and IASC/DDET/9905 proposing to allocate the requested capacity. Comments were invited on the Draft Determinations by 5 August 1999. Submissions were received from PAE.

6.2. PAE submitted that the Transpac application should be assessed against the Minister's Policy Statement paragraph 5 criteria in recognition of the potential impact on Australian importers and exporters and the Pacific Island economies if PAE was not able to withstand the competition arising from an allocation of capacity to Transpac.

7. Commission's assessment

7.1. Allocations of capacity are made by the Commission in accordance with the *International Air Services Commission Act 1992* (the Act) and the Policy Statement (No 3 of 23 April 1997, as amended on 9 March 1999) which was issued under section 11 of the Act.

7.2. Under the Policy Statement the relevant criteria to be applied in deciding whether or not to allocate capacity when there is only one applicant is whether or not the applicant is reasonably capable of obtaining the necessary approvals and whether it is reasonably capable of implementing its proposals.

7.3. The Commission may also apply the criteria specified in paragraph 5 of the Policy Statement if submissions are received about or opposing the allocation of capacity.

7.4. One submission raised questions concerning the ability of the Commission to grant the capacity sought. The rationale for this claim is as follows:

- as Transpac does not have an AOC (it is wet leasing Qantas aircraft) it is not an airline;
- Article 2 of the ASA for the Solomon Islands permits each contracting party to designate an airline or airlines to operate the agreed services; and
- under Section 7 of the Act a determination must not allocate capacity contrary to any restrictions on capacity in a bilateral arrangement.

7.5. The Commission rejects these arguments. Its role is to make determinations allocating available capacity. Capacity is defined in section 4 of the Act to mean the amount of passengers or freight that an Australian carrier is permitted to carry by air,

under a bilateral arrangement between Australia and another country, between the two countries. The term “Australian carrier” is also defined in section 4. That definition is not limited to existing carriers. It envisages persons who, like Transpac, propose to conduct an international airline service and who *may* be permitted to do so.

Approvals and implementation of proposals

7.6. Transpac has provided, on a confidential basis, a business plan and other financial information for its proposed freight services. The financial information includes forecasts of projected income and expenditure. Although Transpac will need to generate significant new freight business to support the revenue projections it has provided to the Commission, the Commission is reasonably satisfied of Transpac’s ability to do so given its connection with an established shipping line serving the relevant countries and letters of support provided by prospective customers.

7.7. Turning to the question of net assets, the Commission’s general rule is that a new entrant airline should have sufficient cover for start up costs and six months operations without revenue. Although Transpac’s business plan does not meet this requirement, it will have equity of A\$1 million when share capital committed to by the shareholders is fully paid. In addition, Pacific Direct Line SARL (PDL), which holds 25% of the shares in Transpac, has evidenced its commitment to Transpac by providing a guarantee for the benefit of creditors of Transpac and by agreeing to Transpac notifying creditors of PDL support by an appropriate notice in business correspondence. Transpac also has a general sales agreement with PDL which will provide it with immediate access to an established customer base and marketing network. Under these circumstances and given that Transpac is proposing a dedicated freight (as against passenger) operation the Commission will not insist that Transpac have funding sufficient for six months operations without revenue.

7.8. The Commission is satisfied that the combination of the equity commitment, and the commitment of PDL to the venture, particularly through the guarantee of debts and access to PDL’s established agency and marketing network in the countries concerned, should enable Transpac to implement its proposals from a commercial perspective. The Commission also notes that senior personnel in Transpac have experience in the establishment and operation of airlines.

7.9. In order to operate the proposed services with the Airbus A300, Transpac will require an Air Operators Certificate (AOC) from the Civil Aviation Safety Authority (CASA) and an International Airline License from DOTRS. Some submissions suggested that there may be operational impediments to Transpac operating the type of aircraft it proposes on some of the proposed routes. These are matters to be dealt with by CASA and DOTRS as part of their approval processes. DOTRS has advised the Commission that Transpac appears to be reasonably capable of obtaining the necessary approvals to operate on the Solomon Islands, Nauru, New Caledonia and Vanuatu routes.

7.10. The Commission is satisfied that Transpac is reasonably capable of obtaining the necessary approvals and of implementing its proposals.

Paragraph 5 criteria

7.11. There remains the question of whether the Commission should subject the application to a full public benefit assessment under paragraph 5 of the Policy Statement. In this case, the Commission has decided that it is not necessary to do so.

7.12. In reaching this conclusion, the Commission notes that prior to the issue of the Draft Determinations the only submission on broader issues covered by paragraph 5, was a submission on behalf of PAE that the proposed services would result in destructive competition likely to adversely affect the economies of Nauru and the Solomon Islands as these thin routes could not support two operators.

7.13. PAE's submission in response to the Draft Determinations, that the paragraph 5 criteria should be invoked to take into account the impact on Australian importers/exporters and the Pacific Island economies should PAE succumb to competition from Transpac, raises no new matters. Accordingly the Commission does not see merit in proceeding with a paragraph 5 assessment in this case.

7.14. Under paragraph 4 of the Policy Statement, use of the entitlements of Australian carriers under a bilateral arrangement is of benefit to the public. The capacity in question is Australian capacity, presently unutilised, negotiated between Australia and the countries concerned on the basis that it is available to be used.

Conclusion

7.15. The Commission concludes that it should allocate capacity to Transpac, as requested, subject to the following conditions:

- Transpac is to provide evidence to the Commission that the A\$1 million share capital of the company is fully paid within three months of the date of these determinations, unless otherwise approved by the Commission;
- the share capital referred to above is to be used as working capital for Transpac and is not to be lent back to shareholders or otherwise made available to other businesses within the PDL SARL Group;
- PDL SARL is to maintain in effect the deed of guarantee forwarded to the Commission dated 9 September 1999 for the benefit of Transpac's creditors for the term of these determinations or until sooner released with the prior approval of the Commission; and
- the letterhead of all correspondence emanating from Transpac is to include notice that PDL is the guarantor of obligations of Transpac in accordance with the above guarantee.

7.16. The Commission would be prepared to consider in due course a request for termination of the above guarantee based on evidence that Transpac had traded

profitably for a substantial period and achieved a position of independent financial sustainability

8. Other issues

Commencement of operations

8.1. Transpac proposes to commence operations with a short lead time, initially using a wet leased Qantas aircraft. The Commission will specify that Transpac must commence utilisation of the capacity within three months of the date of the determinations, or from such other date approved by the Commission.

Period of the determination

8.2. Transpac has sought determinations for five years from the date of the determination. The Commission will grant Transpac determinations for five years from the date of the determinations.

Ownership and control of the carrier

8.3. The Commission will include in the determinations the usual limitations on changes in the ownership and control of the applicant. These are specified below.

9. Determination allocating capacity on the Solomon Islands route to Transpac (IASC/DET/9916)

9.1. The Commission finds that an allocation of capacity to Transpac on the Solomon Islands route as sought would be of benefit to the public.

9.2. The Commission makes a determination in favour of Transpac, allocating 50 tonnes of freight capacity per week in both directions on the Solomons Islands route in accordance with the Australia – Solomon Islands air services arrangements.

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

9.4. The determination is subject to the following conditions:

- Transpac is to provide evidence to the Commission that the A\$1 million share capital of the company was paid within three months of this determination, unless otherwise approved by the Commission;
- the share capital referred to above is to be used as working capital for Transpac and is not to be lent back to shareholders or otherwise made available to other businesses within the PDL SARL Group;

- PDL SAREL is to maintain in effect the deed of guarantee forwarded to the Commission dated 9 September 1999 for the benefit of Transpac's creditors for the term of this determination or until sooner released with the prior approval of the Commission; and
- the letterhead of all correspondence emanating from Transpac is to include notice that PDL is the guarantor of obligations of Transpac in accordance with the above guarantee.
- Transpac is required to commence and fully utilise the capacity within three months of the date of the determination, or from such other date approved by the Commission;
- only Transpac is permitted to utilise the capacity;
- Transpac 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 Transpac are permitted except to the extent that any change:
 - results in the designation of the airline as an Australian carrier under the Australia – Solomon Islands 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 Transpac or be in a position to exercise effective control of Transpac, without the prior consent of the Commission; and
- changes in relation to the management, status or location of operations and Head Office of Transpac 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 – Solomon Islands air services arrangements.

10. Determination allocating capacity on the Nauru route to Transpac (IASC/DET/9917)

10.1. The Commission finds that an allocation of capacity to Transpac on the Nauru route as sought would be of benefit to the public.

10.2. The Commission makes a determination in favour of Transpac, allocating one frequency per week with the equivalent capacity of one B737 on the Nauru route in accordance with the Australia – Nauru air services arrangements.

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

10.4. The determination is subject to the following conditions:

- Transpac is to provide evidence to the Commission that the A\$1 million share capital of the company was paid within three months of this determination, unless otherwise approved by the Commission;
- the share capital referred to above is to be used as working capital for Transpac and is not to be lent back to shareholders or otherwise made available to other businesses within the PDL SARL Group;
- PDL SARL is to maintain in effect the deed of guarantee forwarded to the Commission dated 9 September 1999 for the benefit of Transpac’s creditors for the term of this determination or until sooner released with the prior approval of the Commission; and
- the letterhead of all correspondence emanating from Transpac is to include notice that PDL is the guarantor of obligations of Transpac in accordance with the above guarantee.
- Transpac is required to commence and fully utilise the capacity, for freight services only, within three months of the date of the determination, or from such other date approved by the Commission;
- only Transpac is permitted to utilise the capacity;
- Transpac 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 Transpac are permitted except to the extent that any change:
 - results in the designation of the airline as an Australian carrier under the Australia – Nauru 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 Transpac or be in a position to exercise effective control of Transpac, without the prior consent of the Commission; and

- changes in relation to the management, status or location of operations and Head Office of Transpac 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 – Nauru air services arrangements.

11. Determination allocating capacity on the France Route 3 (New Caledonia) route to Transpac (IASC/DET/9918)

11.1. The Commission finds that an allocation of capacity to Transpac on the France Route 3 (New Caledonia) route as sought would be of benefit to the public.

11.2. The Commission makes a determination in favour of Transpac, allocating the equivalent of one B737 freighter per week in each direction on the France Route 3 (New Caledonia) route in accordance with the Australia – France Air Services Agreement.

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

11.4. The determination is subject to the following conditions:

- Transpac is to provide evidence to the Commission that the A\$1 million share capital of the company was paid within three months of this determination, unless otherwise approved by the Commission;
- the share capital referred to above is to be used as working capital for Transpac and is not to be lent back to shareholders or otherwise made available to other businesses within the PDL SARL Group;
- PDL SARL is to maintain in effect the deed of guarantee forwarded to the Commission dated 9 September 1999 for the benefit of Transpac’s creditors for the term of this determination or until sooner released with the prior approval of the Commission; and
- the letterhead of all correspondence emanating from Transpac is to include notice that PDL is the guarantor of obligations of Transpac in accordance with the above guarantee.
- Transpac is required to commence and fully utilise the capacity within three months of the date of the determination, or from such other date approved by the Commission;
- only Transpac is permitted to utilise the capacity;

- Transpac 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 Transpac are permitted except to the extent that any change:
 - results in the designation of the airline as an Australian carrier under the Australia – France 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 Transpac or be in a position to exercise effective control of Transpac, without the prior consent of the Commission; and
- changes in relation to the management, status or location of operations and Head Office of Transpac 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 – France Air Services Agreement.

12. Determination allocating capacity on the Vanuatu route to Transpac (IASC/DET/9919)

12.1. The Commission finds that an allocation of capacity to Transpac on the Vanuatu route as sought would be of benefit to the public.

12.2. The Commission makes a determination in favour of Transpac, allocating 25 tonnes of freight capacity per week in both directions on the Vanuatu route in accordance with the Australia – Vanuatu Air Services Agreement.

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

12.4. The determination is subject to the following conditions:

- Transpac is to provide evidence to the Commission that the A\$1 million share capital of the company was paid within three months of this determination, unless otherwise approved by the Commission;
- the share capital referred to above is to be used as working capital for Transpac and is not to be lent back to shareholders or otherwise made available to other businesses within the PDL SARL Group;
- PDL SARL is to maintain in effect the deed of guarantee forwarded to the Commission dated 9 September 1999 for the benefit of Transpac’s creditors

for the term of this determination or until sooner released with the prior approval of the Commission; and

- the letterhead of all correspondence emanating from Transpac is to include notice that PDL is the guarantor of obligations of Transpac in accordance with the above guarantee.
- Transpac is required to commence and fully utilise the capacity within three months of the date of the determination, or from such other date approved by the Commission;
- only Transpac is permitted to utilise the capacity;
- Transpac 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 Transpac are permitted except to the extent that any change:
 - results in the designation of the airline as an Australian carrier under the Australia – Vanuatu 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 Transpac or be in a position to exercise effective control of Transpac, without the prior consent of the Commission; and
- changes in relation to the management, status or location of operations and Head Office of Transpac 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 – Vanuatu Air Services Agreement.

Dated: 10 September 1999

Russell V Miller
Chairman

Michael L Lawriwsky
Member

Stephen Lonergan
Member