



# INTERNATIONAL AIR SERVICES COMMISSION

## DETERMINATION

**DETERMINATION:** [2002] IASC 121  
**THE ROUTE:** FRANCE (ROUTE 3 – NEW CALEDONIA)  
**THE APPLICANT:** TRANSPAC EXPRESS PTY LTD (ACN 086 284 675) (TRANSPAC)  
**PUBLIC REGISTER FILE:** IASC/APP/200218

### 1 The application

1.1 On 3 September 2002, Transpac applied for an allocation of capacity on the New Caledonia route (France Route 3). Transpac requires an allocation of 0.75 units of capacity per week in each direction to enable it to operate three B737 passenger services per week between Australia and New Caledonia (two services between Brisbane and Noumea and one service between Sydney and Noumea). Services are proposed to commence in January 2003 using a wet-leased aircraft under a foreign aircraft operator's certificate. Transpac advised that it plans to move to a dry-lease operation within six months of services commencing.

1.2 Transpac also proposes to commence all-cargo services between Honiara (Solomon Islands) and Brisbane (three B737 services per week) and between Port Vila (Vanuatu) and Brisbane (one B737 service per week). Transpac would be exercising capacity allocated to it by the Commission in September 1999 for services on these routes but which has thus far been unused.

1.3 In addition, Transpac plans to operate Australian domestic services between Sydney and Norfolk Island (two passenger services per week) and between Brisbane and Norfolk Island (two passenger services and one freight service per week). Transpac does not require any approvals from the Commission to operate domestic services.

1.4 The Commission published a notice on 12 September 2002 inviting other applications for all or any part of the capacity and submissions from interested parties about the Transpac application. A submission was received on 18 September 2002 from Norfolk Jet Express. Transpac responded on 19 September 2002 to the Norfolk Jet Express submission.

1.5 All public material supplied by the applicant is filed on the Register of Public Documents. Commercial in confidence material provided by the applicant is filed on the Commission's Confidential Register.

### 2 Current services

2.1 Qantas and Air Caledonie International both operate services between Australia and New Caledonia. Qantas operates two B767 services and one B737 service per week between Sydney and Noumea, and one B737 service per week between Brisbane and Noumea. Air Caledonie International operates three B737 services and one A310 service per week between Sydney and Noumea, and two B737 services per week between Brisbane and Noumea. Each carrier code shares on the services of the other. Qantas and Air Caledonie International each code share on the operated services of the other.

2.2 During the Northern Winter 2002/3 scheduling period, Qantas and Air Caledonie International will increase services from December, with the number of services peaking during January 2003 (when about 60% more seats will be in the market than in November 2002). Operated capacity in February will reduce by about 18% over the January level, then decline further in March 2003 to about November 2002 levels.

### 3 Characteristics of the Australia – New Caledonia route

Australia – New Caledonia Passenger Movements

	1999	Change	2000	Change	2001	Change	2002	Change
January	9,660	13.5%	10,660	10.4%	na		11,054	
February	8,470	-13.8%	7,720	-8.9%	na		9,835	
March	4,240	-6.8%	4,970	17.2%	na		7,902	
April	5,260	1.9%	6,870	30.6%	na		6,656	
May	5,280	-1.7%	5,440	3.0%	na		8,064	
June	4,770	-10.7%	6,400	34.2%	na		6,545	
July	4,880	-15.1%	6,763	38.6%	7,462	10.3%	7,303	-2.1%
August	5,050	6.3%	6,111	21.0%	6,240	2.1%		
September	6,980	26.0%	7,204	3.2%	8,872	23.2%		
October	5,310	-9.5%	na		7,013			
November	6,670	15.2%	na		7,761			
December	6,790	0.4%	na		8,061			

*Note: Data in this table have been derived from information supplied by the Australian Bureau of Statistics and include both scheduled and charter traffic travelling via direct and indirect routing. It does not include traffic beyond New Caledonia. Data for the period October 2000 to June 2001 is not yet available.*

## **4 Provisions of relevant air services arrangements**

Under the Australia – France air services arrangements, the designated airlines of Australia are entitled to operate 2.5 units of capacity and one B737 freighter per week on France Route 3 (Australia – Noumea). Transpac holds an allocation from the Commission of one B737 freighter per week (IASC/DET/9918). Under three Commission determinations made in 2001 and 2002, Qantas has a total allocation of 1.75 units of capacity per week on France Route 3. Accordingly, 0.75 units of capacity remain available for immediate allocation on France Route 3. In the aircraft substitution formula under the air services arrangements between Australia and France, aircraft with a seating capacity of below 150 seats have a coefficient of 0.25 units. The B737 aircraft with which Transpac proposes to operate its three weekly services to New Caledonia is configured to a seating capacity of 142 seats, thus being equivalent to 0.25 units.

## **5 Summary of submissions received**

5.1 Norfolk Jet Express noted that the Commission has no jurisdiction over the route between mainland Australia and Norfolk Island. However, it indicated that it wished to comment on the basis that the overall Transpac proposal relies in part on the aircraft utilisation and financial performance on the Norfolk Island route. Norfolk Jet Express argued that Transpac was likely to be susceptible to financial failure because of inflated expectations about revenue that would be generated from the Norfolk Island route. It noted that the island was already serviced from Australia by itself, Alliance Airlines and Qantas and that the resulting airline capacity exceeds the accommodation supply on the island. Growth in the tourism industry was limited by the regulated requirements on building tourist accommodation on Norfolk Island. It was unlikely that a new entrant could attract sufficient market share to support four B737 services per week. There was no backlog of cargo, so the need for a dedicated freight service was questionable.

5.2 In responding to the Norfolk Jet Express submission, Transpac stated that it is the only current or proposed carrier that would offer services using the 300 series B737 aircraft, and that this appears to be an ideal aircraft to operate on the route. Transpac pointed out that there are only two operating airlines between Australia and Norfolk Island, with Qantas' presence being by virtue of code sharing on Norfolk Jet Express. Transpac claimed that its presence would bring needed certainty to the provision of air services and there is scope to facilitate growth on the route. Transpac pointed out that it will be targeting visitors who wish to make shorter than average stays on the island. It claimed that it will provide a competitive product via new distribution facilities.

5.3 In relation to cargo services, Transpac suggested that cargo rates may currently be excessive and capacity limited. It argued that demand for cargo services would increase with the dedicated services Transpac proposes to operate, in combination with economical rates, discounts for bulk consignments and other incentives to ship goods by air.

## 6 Commission's assessment

6.1 Under paragraph 6.2 of the Minister's Policy Statement, in the absence of submissions about or opposing an application, the Commission is required only to apply the criteria in paragraph 4 of the Policy Statement. Where there are submissions received about or opposing a proposal, the Commission may apply the additional criteria in paragraph 5 of the Policy Statement.

6.2 Under paragraph 4, the use of Australian entitlements by a carrier that is reasonably capable of obtaining the necessary approvals (4(b)(i)) and of implementing its proposals (4(b)(ii)) is of benefit to the public. In relation to obtaining the necessary approvals, as with any airline seeking to operate international services, Transpac must obtain a licence from the Department of Transport and Regional Services and safety approvals from the Civil Aviation Safety Authority (CASA) before it can commence services. Transpac is not an established international operator, so the ability to obtain such approvals cannot be assumed by the Commission. The Commission sought advice from the Department of Transport and Regional Services as to whether it considered Transpac to be reasonably capable of obtaining the necessary approvals. The Department has advised that it considers Transpac to be reasonably capable of doing so. In relation to whether Transpac is reasonably capable of implementing its proposals, this is a matter for the Commission to make its own assessment and this is set out as follows.

6.3 The Commission notes that Transpac has previously dealt with the Commission and obtained allocations of capacity in 1999 to operate all-cargo services on four south-west Pacific routes. Transpac has not exercised this capacity, despite being granted extensions of time by the Commission in which to do so. This failure to operate raised some concerns for the Commission about the capabilities of Transpac to mount services in dealing with a fresh application, in which Transpac has indicated its intention to exercise its previously allocated capacity on the Vanuatu and Solomon Islands routes. However, recent advice from Transpac has satisfied the Commission that reasons beyond Transpac's control were the cause of Transpac's inability to start services on those routes, and that those obstacles were no longer present.

6.4 The Commission notes the concerns raised by Norfolk Jet Express in its submission about the Transpac proposal. Norfolk Jet Express's views relate to domestic services between the Australian mainland and Norfolk Island. This is a domestic route and accordingly there is no role for the Commission in relation to capacity proposed to be operated on it. However, Norfolk Jet Express seeks to establish the relevance of this route to the Commission's deliberations by submitting that Transpac has inflated expectations about the Norfolk Island services which in turn would make the entire Transpac operation susceptible to financial failure. Transpac itself has addressed the Norfolk Jet Express comments on their merits, rather than seeking to argue they are not relevant to the Commission's deliberations.

6.5 The Commission notes that the domestic operations are an integral part of Transpac's business plan provided to the Commission. These services increase aircraft utilisation and generate cash flow. The Commission's analysis of the business plan has taken account of all operational aspects of the proposal because the New Caledonia

services (for which a capacity allocation is sought) are integrated with operations on other routes, including to Norfolk Island. It is not possible in this case for the Commission to analyse the likelihood of Transpac being reasonably capable of implementing its New Caledonia proposals without considering them in the context of the wider operations.

6.6 The Commission has assessed the detailed proposals and business plan set out by Transpac in its application. In relation to the New Caledonia route specifically, this route has shown solid growth in traffic in recent years. If this growth continues, it will provide scope for Transpac to capture new traffic, in addition to seeking to attract traffic from the incumbent carriers. However, Transpac's task will be a challenging one, with both Qantas and Air Caledonie International having scheduled substantial additional capacity in the January/February 2003 seasonal traffic peak, at the time at which Transpac is proposing to introduce services. The incumbent carriers can be expected to mount a multi-faceted competitive response to a new entrant (such as through price and marketing initiatives), in addition to adjusting capacity levels. However, Transpac considers itself well able to deal with competition from the incumbents.

6.7 Taken as a whole, Transpac's projections of passenger load factors are, in the Commission's view, optimistic. Maintaining forecast consistent load factors throughout the year against a background of sharply fluctuating seasonal traffic levels is likely to be a challenging task given operation of a constant level of capacity as proposed. However, the Commission cannot conclude that the projections are unrealistic nor unachievable. Success in achieving projections will depend on many factors including the quality of Transpac's marketing and promotion, fares and cargo rates and competitor responses, amongst others. In addition to the revenue side, financial viability will depend on cost structures, necessary financial backing being secured and the skills and experience of its management and staff. Transpac has provide detailed commercial in confidence information in its business plan on all of these matters.

6.8 As noted above, the financial viability of operations is not dependent solely on the success of the Australia – Noumea services, as the aircraft will also be used to operate cargo services to the Solomon Islands and Vanuatu, as well as passenger and cargo services on the domestic route between the Australian mainland and Norfolk Island. The operation of these other services will enable a high utilisation of the operating aircraft and spread the fixed costs in establishing and maintaining operations. Transpac's projections of cargo loads appears to be carefully developed having regard to the overall level and directionality of cargo demand. The Commission has considered the arguments advanced by Norfolk Jet Express and Transpac in relation to the viability of services to Norfolk Island and the impact this may have on the overall viability of Transpac's proposal. The Commission concludes that Transpac's projections for the route are soundly based and operation of these services is unlikely to jeopardise the financial viability of its operations as a whole.

6.9 Other aspects of Transpac's application suggest to the Commission that the carrier has the financial backing, resources, skills and experience necessary to implement its proposals. There are no other applicants for the capacity and there is sufficient capacity available to satisfy Transpac's requirements.

6.10 The Commission considers that Transpac is reasonably capable of implementing its proposals and its operations would accordingly deliver public benefits. The Commission notes that Transpac would be seeking to enter a route with two established incumbents which can be expected to offer vigorous competition for Transpac. However, it is not the Commission's role to assess whether a carrier will be able to maintain services over the long term. Indeed, making such an assessment would be impossible. In competitive markets, carriers may exit through choice or by virtue of financial failure (such as Ansett International) but may deliver public benefits for so long as they do operate. In this case, the Commission considers that the risk to consumers is low in the event that Transpac was to prove unsuccessful in maintaining its presence over a long time frame. Transpac's operations would be of a small scale and therefore few passengers would be affected directly in the event services ceased. Further, because the route is a short haul one with relatively low fares, the potential financial exposure to consumers is low. Finally, the presence of alternative carriers means that any stranded passengers could be readily accommodated in the event of Transpac ceasing services.

6.11 The Commission concludes that an allocation to Transpac of 0.75 units of capacity per week in each direction on France Route 3 would be of benefit to the public. Transpac's presence on the route will provide a competitive spur to the two incumbents. Qantas and Air Caledonie International are the only two operators on the route and, being code share partners are unlikely to compete vigorously against one another. Consumers and cargo shippers will benefit from the entry of Transpac through price competition, scheduling choice and product differentiation.

6.12 The Commission notes that Transpac proposes to commence services in January 2003 and that this allows limited time in which to have all necessary approvals in place. The Minister's Policy Statement gives the Commission discretion in specifying a period within which a carrier must fully utilise allocated capacity. In this case, the Commission will require Transpac to fully utilise its allocated capacity by 31 October 2003.

6.13 Because the viability of the services depends on there being adequate initial funding, the Commission will require Transpac to provide evidence that the advance of shareholder funds identified in the business plan has occurred prior to services commencing.

6.14 The Commission notes the intention of Transpac to commence cargo services on the Solomon Islands and Vanuatu routes, exercising capacity allocated by the Commission to Transpac in Determinations IASC/DET/9916 and IASC/DET/9919 respectively. By resolution, the Commission has previously granted Transpac extensions of time in which services were required to be commenced on these and other routes. To date, no services have been operated, although the Commission considers that previous obstacles to operations on these routes have now been removed. The Commission will issue a new resolution requiring that Transpac must commence services on the Solomon Islands and Vanuatu routes by the same deadline as for the new passenger services on the New Caledonia route.

## **7 Determination allocating capacity on the France Route 3 route to Transpac ([2002] IASC 121)**

7.1 The Commission makes a determination in favour of Transpac, allocating 0.75 units of capacity per week in each direction on the France Route 3 route under the Australia - France air services arrangements.

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

7.3 The determination is subject to the following conditions:

- Transpac is required to fully utilise the capacity from no later than 31 October 2003 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;
- Transpac must provide evidence satisfactory to the Commission that the commitment of shareholder funds identified in the business plan submitted to the Commission dated 3 September 2002 has occurred, prior to services commencing;
- 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 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.

Dated: 15 October 2002

Ross Jones  
Chairman

Stephen Lonergan  
Member

Michael Lawriwsky  
Member