



## Australian Government

### International Air Services Commission

#### DETERMINATIONS

<b>Determinations:</b>	<b>[2003] IASC 123 and [2003] IASC 124</b>
<b>The Route:</b>	<b>Papua New Guinea</b>
<b>The Applicants:</b>	<b>Pacific Air Express (Australia) Pty Ltd (Pacific Air Express) (ACN 074 265 553) and HeavyLift Cargo Airlines Pty Ltd (ACN 102 571 746) (HeavyLift)</b>
<b>Public Register File:</b>	<b>IASC/APP/200322</b>

#### 1 The applications

1.1 On 17 October 2003, Pacific Air Express applied for an allocation of 20 tonnes of capacity per week on the Papua New Guinea (PNG) route. Pacific Air Express plans to operate all-cargo services between Lae and Brisbane. It intends to use an Antonov AN-12 aircraft, which has a freight capacity of 12.5 tonnes. Services are planned to commence on a once weekly basis, increasing to two services per week some months later.

1.2 In response to Pacific Air Express' application, the Commission published a notice on 23 October 2003 inviting other applications for all or any part of the capacity sought by Pacific Air Express. Submissions about the application were also invited. A competing application was received from HeavyLift Cargo Airlines (HeavyLift) on 6 November 2003. HeavyLift sought an allocation of 20 tonnes of capacity per week. HeavyLift proposed to use the capacity to operate services between Brisbane and Port Moresby, using either a B727 (22 tonne) aircraft or a Shorts Belfast (32 tonne) aircraft. HeavyLift simultaneously made a submission on 6 November 2003 about the Pacific Air Express application. Submissions about the Pacific Air Express application were also received from World-Link International on 30 October 2003 and from MAPS Tuna on 7 November 2003.

1.3 In response to requests from the Commission, additional material was supplied by HeavyLift on 12 November 2003 and by Pacific Air Express on 20 November 2003. HeavyLift clarified its operational plans for the use of capacity. Pacific Air Express amended the amount of capacity sought in its application to 12.5 tonnes per week. It also responded in detail to HeavyLift's application of 6 November, addressed the paragraph 5 criteria in the Minister's policy statement, and provided confidential information sought by the Commission.

1.4 All public material supplied by the applicants and by submitters is filed on the Register of Public Documents. Commercial in confidence material provided by the applicants is filed on the Commission's Confidential Register.

## **2 Current services and unused allocations**

2.1 The PNG route is served by:

2.2 Air Niugini, which flies:

- four B767-300 passenger services per week between Port Moresby and Brisbane;
- two B767-300 passenger services per week between Port Moresby and Brisbane/Sydney; and
- 12 F28 passenger services per week between Port Moresby and Cairns.

2.3 Qantas code shares on all of the Air Niugini services.

2.4 Transair operates four Metro all-cargo services (about two tonnes per flight) per week between Cairns and Port Moresby.

2.5 HeavyLift has an existing allocation of 60 tonnes of cargo capacity per week and has operated charter services on the PNG route, while awaiting approvals from the PNG authorities to commence scheduled services. The airline aims to commence scheduled services in December 2003 principally using B727 all-cargo (22 tonne) aircraft. Two services per week are planned between Brisbane and Lae.

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

3.1 The air services arrangements between Australia and PNG permit multiple designation of airlines. There are 100 tonnes per week of freight capacity available to Australian designated airlines. Of this, 20 tonnes per week has been allocated to Transair and 60 tonnes per week to HeavyLift. There are 20 tonnes per week of capacity remaining available for allocation.

## **4 Summary of submissions received**

4.1 The submission from HeavyLift was in addition to the carrier's application for capacity. HeavyLift noted that it had been designated and licensed for services on the PNG route. The airline is conducting charter operations pending receipt of approval from the PNG authorities. Services would be operated in November 2003 using a Shorts

Belfast (32 tonnes) aircraft, to be replaced with a B727 (22 tonnes) during December. Those flights would operate on the Brisbane – Lae sector.

4.2 HeavyLift stated that it had reached agreements with two PNG companies, MAPS Tuna and WorldLink to carry fresh tuna from Lae which is destined for fresh fish markets in Japan. HeavyLift said that the Shorts Belfast and B727 both take 2.5 hours to reach Brisbane. The B727 has temperature control facilities for the tuna. HeavyLift stated that there is very limited cargo volume between Australia and Lae, other than tuna and related cargo. HeavyLift stated that it has long term contracts with MAPS Tuna and WorldLink for the carriage of the tuna and considered that Pacific Air Express could not find other demand sufficient to make its operations profitable. HeavyLift also argued that Pacific Air Express' aircraft is unsuitable for the carriage of tuna from Lae, as the flight takes about six hours, the aircraft is not temperature controlled and has a capacity of 12.5 tonnes while 15 tonnes of tuna is expected for each flight.

4.3 HeavyLift argued that there were almost no public benefits associated with Pacific Air Express' proposal. It claimed that products other than tuna could be accommodated on the services of HeavyLift, leaving insufficient cargo for a second operator. HeavyLift also contended that international trade would not be promoted by Pacific Air Express' services as there is no excess demand and the two dominant freight companies would use HeavyLift to carry their products. HeavyLift argued that there would be no competition benefits from a second carrier in such a small market. HeavyLift considered that further competition should not be introduced as HeavyLift had not yet had the opportunity to demonstrate its service. The airline also claimed that there would be a detrimental impact on the Australian aviation industry as both operators could not survive. HeavyLift concluded that the use of the capacity by it on the Brisbane – Port Moresby sector was economically sustainable, compared with the alternative of two operators (HeavyLift and Pacific Air Express) competing on the Brisbane – Lae sector.

4.4 HeavyLift lodged with the Commission a supplementary letter on 12 November. HeavyLift outlined its planned use of the additional 20 tonnes per week sought together with the balance of its capacity, after committing 44 tonnes of its current 60 tonnes to a twice weekly B727 service between Brisbane and Lae. HeavyLift stated that it planned to operate either two B727 services per week between Brisbane and Port Moresby or one Shorts Belfast aircraft. Combined with the 44 tonnes committed to the Lae sector, this would require a total of 88 tonnes (for the B727) or 76 tonnes (for the Shorts Belfast).

4.5 The submission from MAPS Tuna stated that it did not have an arrangement with Pacific Air Express for the carriage of fresh tuna. MAPS Tuna said that it had used Pacific Air Express for some charter flights but found the Antonov AN-12 aircraft too small and slow for the carriage of time-sensitive cargo. The company had reached an agreement with HeavyLift for the carriage of all of its tuna from Lae. HeavyLift's jet aircraft would take about 2.5 hours to connect with a flight to Japan and provide temperature and pressure controlled conditions for the tuna. MAPS Tuna would also

provide other cargo to HeavyLift, but considered there was not significant other cargo on the route other than tuna.

4.6 World-Link International stated that it and MAPS Tuna control 90% of the import of cargo and the export of fresh tuna. The company advised that it had a three-way agreement with MAPS Tuna of Lae and HeavyLift for the carriage of local (PNG) import requirements and the export of 15 tonnes of tuna per week from Lae to Brisbane. World-Link said that it had reached a long-term agreement with HeavyLift to carry the freight on a B727 cargo aircraft which has sufficient capacity to meet demand, and flies between Brisbane and Lae in under three hours. This compared with the aircraft proposed to be used by Pacific Air Express (an Antonov AN-12) which does not have the same speed or capacity, and is not temperature or pressure controlled.

4.7 In its 20 November submission, Pacific Air Express responded to a number of matters raised in submissions by HeavyLift and other submitters. Pacific Air Express noted that HeavyLift's initial business plan was based on serving Brisbane – Port Moresby. Pacific Air Express argued that HeavyLift showed an interest in serving Lae only after the route was pioneered by Pacific Air Express with charter services. It questioned whether HeavyLift would maintain a long term interest in servicing Lae if its contract with MAPS Tuna was lost. Pacific Air Express stated that HeavyLift's Belfast aircraft has a block speed equivalent to Pacific Air Express' Antonov-12 (about six hours) and therefore offers no time advantage. Pacific Air Express stated that the block time for the B727 would be 3 hours 25 minutes for the Brisbane – Lae sector. Pacific Air Express had received support from large freight forwarders (TNT and Strang International) for its services – letters of general support were provided. Pacific Air Express argued that the freight shipments that would be provided by these companies would exceed those of WorldLink and MAPS Tuna.

4.8 Pacific Air Express made a number of further points. It stated that MAPS Tuna's shipments averaged 36% of the total cargo carried by Pacific Air Express on its 11 charter flights on the Brisbane – Lae sector, while an average of 60% of the total cargo was tuna shipped by Neptune. Pacific Air Express stated that Neptune had given an assurance that it did not have an agreement with any company for airfreight of its product from Lae. Pacific Air Express chose the AN-12 to operate its services because of its versatility in handling smaller runways in the region. In particular, the aircraft meets the PNG authorities regulatory requirements for operations from Lae's 30 metre wide runway. Pacific Air Express said that it rejected HeavyLift's presentation of itself as an incumbent carrier and stated public benefit would arise from the implementation of Pacific Air Express' services in accordance with its business plan.

4.9 Pacific Air Express responded to the submission from WorldLink. It reiterated a number of earlier points. Additional points were that Pacific Air Express pioneered the development of freighter services on the Brisbane – Lae sector, that the AN-12 was only required to observe the same night noise curfew restrictions at Australian airports as apply to jet aircraft including HeavyLift's B727 and there were no curfews at Brisbane or Cairns, and that Pacific Air Express had not implied in its application that it had any agreement with MAPS Tuna or any other company. Pacific Air Express intended to

operate a service open to all shippers and would not be dependent on tuna contracts for the viability of the services.

4.10 In responding to the MAPS Tuna submission, Pacific Air Express again reiterated some earlier points. It also stated that the AN-12 aircraft had proved to be reliable and cost effective and well suited to perishable cargo such as tuna. Pacific Air Express said, that at the time, MAPS Tuna had advised that it was happy with the AN-12 performance and its tuna sale price had increased while using the aircraft.

## **5 Summary of applicants' claims against the paragraph 5 criteria**

5.1 In its application, HeavyLift addressed the paragraph 5 criteria of the Minister's policy statement. The Commission invited Pacific Air Express to also address the paragraph 5 criteria. The claims of the two applicants against the paragraph 5 criteria are as follows:

### *Overview*

5.2 HeavyLift noted that two of the five criteria in the Minister's policy statement – those relating to tourism and consumer benefits – were not immediately relevant to the application, as only cargo carriage is involved. Pacific Air Express adopted a similar approach, addressing the other three criteria in the policy statement. Pacific Air Express also claimed that its proposal would contribute to the social capital of the region.

### *Trade benefits*

#### HeavyLift

5.3 New all-cargo capacity would be added to the route. Current cargo capacity is limited to underfloor space on passenger services. Cargo rates would be lower than currently, arising from the lower costs of HeavyLift's operation. The lower costs to exporters and importers would enhance the competitiveness of Australian businesses. HeavyLift could offer flexibility through the ability to substitute the larger Shorts Belfast aircraft for the B727, allowing a greater range of cargo to be carried. Dangerous goods, not suitable for carriage on passenger aircraft could be carried. Risks for shippers in being unable to find space on passenger aircraft for time sensitive cargo would be removed.

#### Pacific Air Express

5.4 The business plan provides a low cost reliable freighter service for exporters and importers. Pacific Air Express is experienced, has a proven track record of developing services in the south-west Pacific region and understands the work required to develop a new route.

### *Competition benefits*

## HeavyLift

5.5 An additional allocation to HeavyLift would enable it to compete more effectively with Air Niugini, the only operator on the (Brisbane – Port Moresby) route. The Brisbane – Port Moresby sector has potential to be a large cargo market and the introduction of jet services provides a choice of carrier. The only other operator on the PNG route flies between Cairns and Port Moresby. The capacity HeavyLift provides is by aircraft owned and operated by HeavyLift, thus minimising costs and allowing benefits to flow to users of the cargo services.

## Pacific Air Express

5.6 The development of the proposed service would allow the company to compete effectively with other airlines planning to operate on the same route. Pacific Air Express has already developed the Brisbane – Lae sector with its weekly charter service in mid-2003. Customers have offered good support and there are opportunities for the growth of low cost services for cargo, including through opportunities for direct airfreighting of mining and agricultural equipment and parts into Australia for repair and overhaul.

## *Industry structure*

### HeavyLift

5.7 The growth of an Australian owned and operated cargo airline aiming to develop dedicated scheduled freight services in the south-west Pacific must have a positive impact on the Australian aviation industry. The additional capacity would allow HeavyLift to pursue its original plans to serve Port Moresby, in addition to using some of its current capacity for the Brisbane – Lae route for the large fresh tuna market. The ability to maximise utilisation of the aircraft would assist in ensuring the long-term viability of the airline.

### Pacific Air Express

5.8 The allocation of capacity would allow Pacific Air Express to provide cargo services in a market where there is presently no dedicated cargo operation. There appears to be opportunity for expansion. The addition of these services to the wider group's existing freighter services would generate economies of scale assisting in the maintenance of long term competitive and reliable services. Pacific Air Express expects to provide training to Pacific Air Express (PNG) which will be establishing a freight handling and storage facility in Lae.

## *Other criteria*

5.9 Pacific Air Express also claimed that its service would add to the group's generation of social capital in the region, noting that it supports aid projects in Timor and the Solomon Islands.

## **6 The draft determinations**

6.1 On 28 November 2003 the Commission issued draft interim (three year) determinations proposing to allocate 12.5 tonnes of capacity per week to Pacific Air Express and six tonnes of capacity per week to HeavyLift. The Commission invited submissions about the draft determinations. No submissions were received.

## **7 Commission's assessment**

### Introduction

7.1 Pacific Air Express is the third prospective new entrant to apply for freight only capacity on the PNG route. Transair is an established freight-only operator on the PNG route and the Commission has previously made a determination allocating freight-only capacity to HeavyLift, the initial new entrant on the route in terms of paragraph 7 of the Minister's policy statement. This means that the initial new entrant provisions do not apply to other prospective new freight-only carriers, such as Pacific Air Express. Under paragraph 6.2 of the Minister's policy statement, where there are other applications or submissions received about or opposing a proposal, the Commission may apply the additional criteria in paragraph 5 of the policy statement, as well as the paragraph 4 criteria. The Commission will apply both the paragraph 4 and 5 criteria in this case.

### **Paragraph 4 assessment**

7.2 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, Pacific Air Express must be designated and obtain a licence from the Department of Transport and Regional Services (the Department) and safety approvals from the Civil Aviation Safety Authority (CASA) before it can commence services. The Commission makes its own assessment of whether the applicant is reasonably capable of implementing its proposals, taking account of the applicant's experience, business plan and other information provided to the Commission by the applicant.

### Necessary approvals

7.3 Consistent with its normal practice for new entrant airlines, the Commission sought advice from the Department as to whether it considered Pacific Air Express to be reasonably capable of obtaining the necessary approvals. The Department advised on 24 November 2003 that it considers Pacific Air Express to be reasonably capable of doing so.

7.4 In relation to HeavyLift, the Commission is satisfied that the carrier is reasonably capable of obtaining the necessary approvals. The Commission has

previously received advice from the Department advising that it considered that HeavyLift was capable of obtaining the approvals for operations on this route.

#### Ability to implement proposals

7.5 A threshold issue for the Commission is the fact that HeavyLift would be unable to make full use of the 20 tonnes of capacity which it has sought. This is because the capacity of the aircraft proposed to be used and the services planned are inconsistent with the capacity remaining for allocation.

7.6 HeavyLift has firm plans to operate two B727 services per week between Brisbane and Lae using a total of 44 tonnes of its existing capacity allocation. These services are largely related to the contracts for carriage of tuna and other cargo between HeavyLift and other companies. The balance of HeavyLift's capacity allocation of 60 tonnes - 16 tonnes - together with the additional 20 tonnes sought, is insufficient to operate its proposed twice weekly B727 services between Brisbane and Port Moresby. A further 28 tonnes would be needed and only 20 tonnes is available for allocation. If HeavyLift was to operate just a once weekly B727 per week, an additional six tonnes per week is needed. Should HeavyLift wish to operate a once weekly Shorts Belfast service, HeavyLift's alternative operational proposal, an additional 16 tonnes per week would be required.

7.7 Pacific Air Express has modified its original application for 20 tonnes of capacity to 12.5 tonnes per week of capacity, sufficient to operate its Antonov AN-12 aircraft once per week. Pacific Air Express recognised that the 20 tonnes of capacity sought would be insufficient to support a twice per week service, its preferred frequency. Pacific Air Express has indicated it would seek a further 12.5 tonnes of freight capacity per week if HeavyLift does not fully use its capacity by the end of March 2004 as required by the Commission. If Pacific Air Express was able to obtain additional capacity in this way, it would then be in a position to operate its intended second weekly service. The Commission notes that Pacific Air Express' original application stated an intention to start services on a once per week basis in any case, and that the second weekly service was planned for some months later. Should Pacific Air Express achieve additional capacity in future, this would enable it to implement its original plans more or less to the planned timetable.

7.8 There is a range of practical options open to the Commission to resolve this situation.

- allocate no capacity to either carrier (if neither was found to be capable of implementing its proposals – this is unlikely);
- allocate sufficient capacity for Pacific Air Express to operate one service per week (12.5) tonnes and none to HeavyLift, leaving 7.5 tonnes unallocated;
- allocate sufficient capacity for HeavyLift to operate either one B727 service per week (six tonnes) or one Shorts Belfast service per week (16 tonnes) and none to Pacific Air Express, leaving either 14 or four tonnes unallocated; or,

- allocate sufficient capacity for Pacific Air Express to operate one service per week (12.5 tonnes) and for HeavyLift to operate one B727 service per week (six tonnes), leaving 1.5 tonnes unallocated.

7.9 The Commission's approach in this case will be first to assess whether the carriers have the ability to implement services. If both carriers are assessed as capable of doing so, the Commission will apply the paragraph 5 criteria to determine the allocation of capacity which is likely to deliver the greatest benefit to the public.

7.10 Consistent with its approach in previous cases, in relation to paragraph 4 the Commission considers that, for cargo-only operations, it does not need to satisfy itself to the same degree of certainty as it does when assessing prospective passenger operators' ability to implement their proposals.

7.11 The Commission recently (July 2003) conducted a detailed assessment of HeavyLift's business plan and finances. The additional capacity sought in the current application would be used on a sector (Brisbane – Port Moresby) for which the airline has already provided a detailed implementation plan. HeavyLift has subsequently shown in practice its ability to implement services. HeavyLift has entered into contractual arrangements for services to Lae which would underpin the viability of flights on that sector. These are contracts which have been achieved since HeavyLift made its original application for capacity on the PNG route. Charter services are under way pursuant to those contracts and regular scheduled services are planned to commence in December 2003. HeavyLift is also operating charter services to the Solomon Islands and Nauru. The Commission is satisfied that HeavyLift is reasonably capable of implementing services on the Port Moresby – Brisbane sector, with either the B727 or Shorts Belfast aircraft.

7.12 As a prospective new Australian scheduled operator, the Commission has undertaken an assessment of Pacific Air Express' business plan and financial arrangements. Pacific Air Express provides ground handling services and acts as a General Sales Agent for Pacific Air Express (Solomon Islands). Pacific Air Express has not previously operated scheduled air services as an Australian designated airline. However, between July and September 2003, it operated 11 all-cargo charter services to PNG on the Brisbane – Lae sector, the proposed routing for its scheduled services. The principal personnel associated with Pacific Air Express have also been involved with Pacific Air Express (Solomon Islands).

7.13 The Commission notes that contracts for carriage of a significant share of tuna and related cargo from Lae is already in the hands of HeavyLift. As noted above this airline is now operating charter services to Lae, pending approvals from the PNG authorities for scheduled services. Nevertheless, it does appear that scope remains for Pacific Air Express to attract other tuna contracts, as well as to carry other cargo on the route, including freight which currently moves by sea.

7.14 On the face of it, the market picture for the carriage of cargo to and from PNG by air does not seem encouraging. Only about 3,000 tonnes of freight is exported to the

whole of PNG by air. There is a small volume of imports from PNG by air (a little over 400 tonnes), most of which is seafood. Gold is the dominant import by value but constitutes only about 80 tonnes per annum. However, the Commission notes that there is little dedicated air freight capacity to PNG (Transair operates Cairns – Port Moresby), with other cargo travelling in the holds of Air Niugini aircraft. If a larger all-cargo aircraft, such as Pacific Air Express' 12.5 tonne Antonov AN-12 aircraft, were to enter the market, there may be scope for bulkier cargo, currently carried by ship and unsuitable for passenger bellyhold carriage, to travel by air. One of the shippers supporting Pacific Air Express' supplementary submission indicates that this may be the case.

7.15 The Commission's view is that Pacific Air Express' projections for services on the Lae route would be challenging to achieve in the presence of services by HeavyLift. However, Pacific Air Express is looking to operate only once weekly with a considerably smaller capacity aircraft than that operated by HeavyLift. Accordingly, Pacific Air Express requires a smaller share of traffic than HeavyLift to make its services viable. Pacific Air Express has satisfied the Commission that it has access to sufficient funding to support operations for some time in the event that revenues fall short of projections.

7.16 Pacific Air Express' principal personnel appear to have sufficient relevant experience to implement the planned operations. Pacific Air Express will be drawing on the resources and expertise of Pacific Air Express (Solomon Islands). This airline has lengthy experience in the south-Pacific region. The effectiveness of Pacific Air Express' marketing and promotion (particularly in attracting new carriage away from shipping services), cost efficiency, and competitiveness of cargo rates and competitor responses will also be important factors in determining the success of the operation.

7.17 On balance, the Commission considers that Pacific Air Express is likely to be capable of implementing a once per week service. Whether its services are sustainable in the longer term will depend on a range of factors, including the impact of competition from HeavyLift if that carrier introduces scheduled services as planned.

## **Paragraph 5 assessment**

7.18 The Commission's comparative assessment of the respective proposals against the paragraph 5 criteria in the Minister's policy statement is set out below. The Commission has excluded from its assessment the tourism and consumer benefits criteria, as these have little or no relevance to a consideration of public benefits associated with freight-only operations.

### *Trade Benefits*

*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.*

7.19 The Commission considers that a new once weekly service by HeavyLift between Brisbane and Port Moresby would have the potential to bring substantial public benefit. There is only a small amount of dedicated capacity operated on the PNG route, provided by Transair between Cairns and Port Moresby. A new dedicated weekly freight service by HeavyLift would have the potential to provide substantial benefits, mainly to Australian exporters (the volume of trade between the two countries is dominated by exports from Australia). HeavyLift's services would compete directly for cargo with the services operated by Air Niugini between these two points. Existing shippers would have a choice of carrier for the first time.

7.20 Further, the large carrying capacity of the Shorts Belfast aircraft and the B727 provide scope for the export of cargo which has not been suitable for carriage in the hold of current passenger aircraft and currently travels by sea. A significant amount of cargo appears to be amenable to carriage by air, such as a range of machinery and equipment (general industrial, electrical and power generating) and unclassified other commodities). Some exporters by sea would, perhaps for the first time, have the option of sending cargo by air on HeavyLift's aircraft. This can be expected to lead to an expansion of trade by air between Australia and PNG and would deliver a substantial saving in delivery time over sea transport. Only a modest proportion of this sea cargo would need to be diverted to air to ensure the viability of services.

7.21 The introduction of services between Brisbane and Lae by Pacific Air Express would generate some trade benefits. It would introduce a choice of direct carrier on the sector. As with HeavyLift, the introduction of specialist aircraft opens up possibilities for new carriage by air and the prospect of cheaper rates. Exporters and importers have the opportunity to ship products direct, rather than transshipping through Port Moresby.

### *Competition Benefits*

*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 applications 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;*

- *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.*

7.22 The Commission notes that Pacific Air Express and HeavyLift plan to add capacity to different sectors of the PNG route, being Brisbane – Lae and Brisbane – Port Moresby respectively. The Commission needs to assess the competitive impacts of three scenarios - one or the other or both of the carriers introducing a weekly service. In HeavyLift's case, the Commission also needs to consider the alternative competitive impacts of allocating capacity sufficient for HeavyLift to operate the 32 tonne Shorts Belfast aircraft, or enough to operate the smaller (22 tonne) B727 aircraft.

7.23 The Commission sees considerable competition gains associated with the operation of a weekly service by HeavyLift between Port Moresby and Brisbane. The introduction of services on this sector would introduce direct competition for Air Niugini the only incumbent operator. While the B767 aircraft provide substantial capacity to carry palletised cargo, shippers have no choice of carrier and no scope to ship non-palletised or bulk cargo. The entry of a dedicated all-cargo carrier would be expected to introduce price pressure on cargo rates, particularly for less time sensitive cargo which does not require the higher frequency of the Air Niugini services. HeavyLift would achieve higher utilisation for its aircraft, spreading fixed costs and improving its ability to compete for PNG market share and generate additional revenue. This should contribute to the development of HeavyLift as a strong carrier, capable of competing effectively with Air Niugini.

7.24 The entry of Pacific Air Express onto the Brisbane – Lae sector would be likely to precipitate strong competition on rates, benefiting industry participants which transport goods by air, or plan to do so in future. The scope which both Pacific Air Express and HeavyLift appear to have to expand the existing air cargo market should assist both to be viable, although pressure on margins is likely to be intense as they compete for market share.

7.25 The Commission considers that the greatest overall competition gains will be delivered through the introduction of services by HeavyLift on the Brisbane – Port Moresby sector. These benefits would be largely achieved through the introduction of B727 services, although there may be an incremental gain with the operation of the Shorts Belfast with the extra capacity that would make available to shippers. The Commission considers that this incremental benefit may be exceeded by benefits which would arise from the addition of a weekly service by Pacific Air Express on the Brisbane – Lae route. Pacific Air Express' entry would add 12.5 tonnes of weekly capacity to the PNG route, compared with an additional 10 tonnes with the Shorts Belfast relative to the B727. Pacific Air Express would also add competition to a second sector, benefiting shippers to/from Lae as well as to/from Port Moresby.

7.26 In summary, the Commission concludes that the greatest competition gains would be achieved through HeavyLift having scope to introduce a weekly B727 service on the Port Moresby sector, and Pacific Air Express having the ability to start a weekly AN-12 service to Lae. This would involve a total allocation of 18.5 tonnes per week (12.5 to Pacific Air Express and six to HeavyLift) of the 20 tonnes available for allocation, the most that can be allocated under any scenario. The Commission also notes that the object of the Act was amended in June 2003 to strengthen the focus on competition benefits and therefore considers that it should give greater weight to the public benefits associated with competition gains, relative to the other criteria. The Commission considers that the allocation of capacity to both carriers will deliver greater competition gains than allocating capacity to just one of the two applicants.

### *Industry Structure*

*The extent to which proposals will impact positively on the Australian aviation industry.*

7.27 The Commission considers that the entry of both carriers would have a positive impact on the Australian aviation industry.

### Conclusion

7.28 The Commission considers that both HeavyLift and Pacific Air Express are reasonably capable of obtaining the necessary approvals and of implementing their proposals. The Commission notes that both carriers have already operated charters on the PNG route. The Minister's policy statement makes it clear that use of capacity by Australian carriers is of benefit to the public. The Commission finds public benefit is likely to be maximised by the entry of both carriers on to the PNG route. Accordingly, the Commission will allocate capacity to both carriers. Pacific Air Express will have sufficient capacity to implement its proposal for a once weekly AN-12 service. HeavyLift will have the ability to operate a once weekly B727 service to Port Moresby. While HeavyLift would prefer a larger allocation, the Commission notes that HeavyLift has already made a commercial decision to divert existing capacity allocations away from Port Moresby to Lae. It would have the flexibility to reallocate capacity to Port Moresby if either or both of its planned two services per week to Lae do not prove sustainable. Pacific Air Express would have the same flexibility. The air services arrangements with PNG allow Australian carriers to serve any points in PNG.

7.29 The Commission will issue a determination proposing to make the following allocations of capacity on the Papua New Guinea route:

- to Pacific Air Express – 12.5 tonnes of freight capacity per week in each direction; and
- to HeavyLift six tonnes of freight capacity per week in each direction.

7.30 The Commission notes that both carriers plan to implement their proposals before the end of 2003. As the Commission issued a draft determination in late November which required a period of comment before this final determination, it is unlikely that either carrier could commence services until 2004. The Minister's policy statement gives the Commission discretion in specifying a period within which a carrier must fully utilise allocated capacity. In line with the Commission's practice of providing some flexibility for new entrants in fully utilising allocated capacity, the Commission will require both HeavyLift and Pacific Air Express to fully utilise their allocated capacity by 31 March 2004.

7.31 Consistent with its earlier allocation to HeavyLift on the PNG route, the Commission proposes to issue an interim (three year) determination to both carriers. Should the carriers exercise their capacity in accordance with the conditions of the determinations, they will have the opportunity to obtain a full five year determination at the renewal stage.

7.32 The Commission notes that HeavyLift may need to consider its position in the light of receiving an allocation less than it had sought. Should HeavyLift decide not to take up the allocation of six tonnes of capacity under this determination, the Commission would expect it to apply to revoke the determination. Further, the Commission notes that if HeavyLift does not operate to Port Moresby, it is likely to mean that HeavyLift will have unused capacity under its existing 60 tonne allocation. As noted above, HeavyLift's plan to operate a twice weekly B727 service between Brisbane and Lae would leave it with 16 tonnes of its current 60 tonne allocation unused. If HeavyLift proceeds on this basis, the Commission would expect HeavyLift to apply to vary Determination [2003] IASC 114 to return the unused capacity. Such capacity would then become available for allocation to other Australian carriers.

## **8 Interim Determination allocating capacity on the Papua New Guinea route to Pacific Air Express (Australia) Pty Ltd [2003] IASC 123**

8.1 The Commission makes an interim determination in favour of Pacific Air Express (Australia) (Pacific Air Express), allocating 12.5 tonnes of freight capacity per week in each direction on the Australia – Papua New Guinea route, in accordance with the Australia – Papua New Guinea air services arrangements.

8.2 The determination is for three years from the date of the determination.

8.3 The determination is subject to the following conditions:

- Pacific Air Express is required to fully utilise the capacity from no later than 31 March 2004 or from such other date approved by the Commission;
- only Pacific Air Express is permitted to utilise the capacity;

- Pacific Air Express 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 Pacific Air Express 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 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 Pacific Air Express or be in a position to exercise effective control of Pacific Air Express, without the prior consent of the Commission; and
- changes in relation to the management, status or location of operations and head office of Pacific Air Express 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 arrangements.

## **9 Interim Determination allocating capacity on the Papua New Guinea route to HeavyLift Cargo Airlines Pty Ltd (HeavyLift) [2003] IASC 124**

9.1 The Commission makes an interim determination in favour of HeavyLift Cargo Airlines (HeavyLift), allocating six (6) tonnes of freight capacity per week in each direction on the Australia – Papua New Guinea route, in accordance with the Australia – Papua New Guinea air services arrangements.

9.2 The determination is for three years from the date of the determination.

9.3 The determination is subject to the following conditions:

- HeavyLift is required to fully utilise the capacity from no later than 31 March 2004 or from such other date approved by the Commission;
- only HeavyLift is permitted to utilise the capacity;
- HeavyLift 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 HeavyLift 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 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 HeavyLift or be in a position to exercise effective control of HeavyLift, without the prior consent of the Commission; and

changes in relation to the management, status or location of operations and head office of HeavyLift 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 arrangements.

Dated 12 December 2003

John Martin  
Chairman

Stephen Lonergan  
Member

Michael Lawriwsky  
Member