



Australian Government

International Air Services Commission

DETERMINATIONS

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| Determinations: | [2003] IASC 125, [2003] IASC 126, [2003] IASC 127 and [2003] IASC 128 |
| The Routes: | Nauru, France (Route 3 – New Caledonia), Solomon Islands and Vanuatu |
| The Applicant: | HeavyLift Cargo Airlines Pty Ltd (ACN 102 571 746) (HeavyLift) |
| Public Register File: | IASC/APP/200326 |

1 The application

1.1 On 3 November 2003, the Commission published a notice calling for submissions about a review of determinations made in favour of Transpac Express Pty Ltd (Transpac) including determinations allocating freight capacity to Transpac on the Nauru, France Route 3 – New Caledonia, Solomon Islands and Vanuatu routes. The notice also called for applications for, or submissions about allocation of all or part of the capacity that is the subject of the review in anticipation of the Commission possibly revoking the determinations.

1.2 The Commission issued the following Determinations in favour of Transpac on 10 September 1999; IASC/DET/9917 allocating one B737 equivalent on the Nauru route, IASC/DET/9918 allocating one B737 freighter on France Route 3 - New Caledonia, IASC/DET/9916 allocating 50 tonnes of freight capacity on the Solomon Islands route, and IASC/DET/9919 allocating 25 tonnes of freight capacity on the Vanuatu route.

1.3 On 19 November 2003, HeavyLift applied for an allocation of one frequency using an aircraft not exceeding the capacity of a B737 on the Nauru route, a B737 or equivalent once per week on the New Caledonia route and 25 tonnes per week on each of the Solomon Islands and Vanuatu routes. HeavyLift was the only applicant for the freight capacity on the routes.

1.4 On 28 November 2003, the Commission issued Draft Decision [2003] IASC 215 proposing to revoke all of Transpac's determinations. On 12 December 2003, having received no submissions on the Draft Decision, the Commission finalised Decision [2003] IASC 215 revoking all of Transpac's determinations.

1.5 All material supplied by the applicant is filed on the Register of Public Documents

2 Provisions of relevant air services arrangements

2.1 Air services arrangements between Australia and Nauru 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. Transpac was the designated Australian carrier on the route.

2.2 HeavyLift proposes to use B727-100 aircraft with a maximum capacity of 22 tonnes on the Nauru route. Advice from the Department of Transport and Regional Services (the Department) indicates that capacity of a B727-100 is normally 2 tonnes greater than that of a B737 which has a 20 tonnes capacity. A similar point arises on the New Caledonia route where freight capacity is described in terms of B737 aircraft equivalents.

2.3 The Commissions view is that operation of a B727-100 aircraft up to the capacity equivalent of a B737 aircraft is consistent with the relevant air services arrangements and therefore the Commission may allocate capacity expressed in terms of B737 equivalents.

2.4 The air services arrangements with the Solomon Islands allow for multiple designation of carriers. Currently 50 tonnes of capacity for freight services remain available for allocation on this route. HeavyLift already has an allocation of 50 tonnes of capacity per week and is now seeking a further 25 tonnes. Heavylift has advised that it proposes to operate a total of 76 tonnes per week using two B727-100 services (two by 22 tonnes) and one Shorts Belfast service (32 tonnes) per week. Heavylift will need to apply at a later date for an additional allocation of one tonne in order to operate the proposed services without saleable capacity restrictions or the need to receive ad hoc approvals.

2.5 The Australia – Vanuatu air services arrangements allow multiple designation of carriers on the Vanuatu route. There are 75 tonnes of freight capacity per week available for allocation, comprising 50 tonnes already on the shelf and 25 tonnes from the revoked Transpac determination. HeavyLift already has an allocation of 25 tonnes per week and is now seeking a further 25 tonnes per week so that it may operate two B727-100 services per week, substituting the Belfast aircraft when larger loads need to be moved.

3 Commission's assessment

3.1 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, HeavyLift must be designated and obtain a licence from the Department and safety approvals from relevant aeronautical safety authorities before it has authority to commence services. The Commission makes its own assessment of whether the applicant is reasonably capable of implementing its proposals, having regard to a range of factors including the applicant's experience, business plan and other detailed commercial information

provided to the Commission.

3.2 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.

3.3 The Commission recently (July 2003) conducted a detailed assessment of HeavyLift's business plan and finances. HeavyLift has already provided detailed implementation plans for the Solomon Islands, Vanuatu and Papua New Guinea routes where it has already been allocated capacity. HeavyLift has subsequently shown in practice its ability to implement services by operating a number of charter services on the Nauru, Papua New Guinea and Solomon Islands routes. Regular scheduled services are planned to commence in December 2003.

3.4 The Commission is satisfied that there are reasonable prospects of HeavyLift being able to implement services on all routes. Allocations of capacity to HeavyLift would therefore be of benefit to the public.

3.5 The Commission's only concern relates to the lack of aircraft substitution criteria in the air services arrangements. The Commission may only allocate capacity in the terms set out in the Register of Available Capacity, that is, consistent with rights available under the relevant air services arrangements. Thus, on the Nauru and New Caledonia routes the Commission must allocate in terms of B737 aircraft and not in terms of saleable capacity on other aircraft types. The Commission would hope that the respective aeronautical authorities can negotiate arrangements in due course so that aircraft marginally similar in capacity to a B737 can be fully utilised on the Nauru and New Caledonia routes

3.6 Consistent with its earlier allocation to HeavyLift on the PNG, Solomon Islands and Vanuatu routes, the Commission proposes to issue an interim (three year) determination. Should the HeavyLift exercise its capacity in accordance with the conditions of the determinations, it will have the opportunity to obtain a full five year determination at the renewal stage.

4 Interim Determination allocating capacity on the Nauru route to HeavyLift Cargo Airlines Pty Ltd (HeavyLift) ([2003] IASC 125)

4.1 The Commission makes an interim determination in favour of HeavyLift, allocating one frequency with any aircraft type not exceeding the capacity of a B737 under the Australia - Nauru air services arrangements.

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

4.3 The determination is subject to the following conditions:

- HeavyLift is required to fully utilise the capacity from no later than 30 November 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 – 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 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 – Nauru air services arrangements.

5 Interim Determination allocating capacity on the France Route 3 – New Caledonia route to HeavyLift Cargo Airlines Pty Ltd (HeavyLift) ([2003] IASC 126)

5.1 The Commission makes an interim determination in favour of HeavyLift, 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 arrangements.

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

5.3 The determination is subject to the following conditions:

- HeavyLift is required to fully utilise the capacity from no later than 31 March 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 – 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 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 – France air services arrangements.

6 Interim Determination allocating capacity on the Solomon Islands route to HeavyLift Cargo Airlines Pty Ltd (HeavyLift) ([2003] IASC 127)

6.1 The Commission makes an interim determination in favour of HeavyLift, allocating 25 tonnes of freight capacity per week in each direction on the Australia – Solomon Islands route, in accordance with the Australia – Solomon Islands air services arrangements.

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

6.3 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 – 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 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 – Solomon Islands air services arrangements.

7 Interim Determination allocating capacity on the Vanuatu route to HeavyLift Cargo Airlines Pty Ltd (HeavyLift) ([2003] IASC 128)

7.1 The Commission makes an interim determination in favour of HeavyLift, allocating 25 tonnes of freight capacity per week in each direction on the Australia – Vanuatu route, in accordance with the Australia – Vanuatu air services arrangements.

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

7.3 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 – Vanuatu 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 – Vanuatu air services arrangements.

Dated: 12 December 2003

John Martin
Chairman

Michael Lawriwsky
Member

Stephen Lonergan
Member