



Australian Government

International Air Services Commission

DETERMINATION

Determination: [2004] IASC 109
The Route: New Zealand
The Applicant: Norfolk Jet Express Pty Ltd
(Incorporated on Norfolk Island,
Registration Number 8/97) (Norfolk Jet)
Public Register: IASC/APP/200408

1 The application

1.1 On 3 May 2004, Norfolk Jet applied for an allocation of unlimited capacity on the New Zealand route. Norfolk Jet proposes to operate twice weekly services between Norfolk Island and Auckland using Fokker 100 aircraft leased from Alliance Airlines.

1.2 Norfolk Jet has operated flights to Norfolk Island since May 1997. Over several years Norfolk Jet has wet leased Air Nauru's B737-400 aircraft and more recently Alliance Airlines' Fokker F100 aircraft.

1.3 Norfolk Jet offers up to 10 services per week between Sydney, Melbourne and Brisbane and Norfolk Island with connections to other points in mainland Australia. Qantas code shares on these services and Qantas Frequent Flyers can both earn and redeem points on Norfolk Jet services. Air New Zealand is currently the sole operator on the Auckland to Norfolk Island route, offering twice weekly B737-300 services.

1.4 On 7 May 2004, the Commission published a notice inviting applications from interested parties for some or all of the capacity sought by Norfolk Jet. No applications were received. Although submissions were not invited, consistent with recent changes to the regulatory arrangements governing the operations of the Commission, two submissions were received.

1.5 The first submission was from Endeavour Airlines of Norfolk Island. Endeavour Airlines stated that it was in the process of setting up an airline to offer indigenous air services for the benefit of Norfolk Island. Endeavour requested that the Commission delay its consideration of Norfolk Jet's application. It also objected to Norfolk Jet's application for a 10 year determination.

1.6 A submission was also received from the Administration of Norfolk Island, raising concerns about the long term viability of having two operators on the Norfolk Island to Auckland route. The Administration also raised concerns about Norfolk Jet's level of indebtedness to the Administration as a result of landing fees incurred. The

Administration submitted that Norfolk Jet had entered into an arrangement with the Administration to make regular payments for amounts owing and to pay on going fees upon presentation of fortnightly invoices. The Administration was concerned that an increase in passenger numbers would increase the airline's landing fee obligations to the Administration, which is not prepared to be as lenient as in the past. The Administration considered that apparent cash flow difficulties which led to the current situation could be exacerbated by the new services. In summary the Administration wished to put the views of the Norfolk Island Government before the Commission and encourage a full examination of the financial capacity of Norfolk Jet to carry out the proposed extra services.

1.7 All material supplied by the applicant and submitter is filed on the Commission's Register of Public Documents. Commercial in confidence material supplied by the applicant is filed on the Commission's Confidential Register.

2 Provisions of relevant air services arrangements

2.1 Under the arrangements with New Zealand, designation of multiple airlines is permitted and there is unlimited capacity available to Australian carriers which may be used between any points in Australia and any points in New Zealand.

3 Commission's consideration

Overview

3.1 Under paragraph 6.1 of the Minister's Policy Statement (No.5), of 19 May 2004, where capacity is not limited under a bilateral agreement, only the criteria in paragraph 4 are applicable.

3.2 Under paragraph 4, the use of entitlements by an Australian carrier that is reasonably capable of obtaining the necessary approvals to operate on the route (4(b)(i)) and of implementing its application (4(b)(ii)) is of benefit to the public. In relation to obtaining the necessary approvals, Norfolk Jet must be designated and obtain a licence from the Department of Transport and Regional Services (the Department) and must obtain safety approvals from the Civil Aviation Safety Authority (CASA) before it has authority to commence services.

3.3 The Commission makes its own assessment of whether the applicant is reasonably capable of implementing its proposals, having regard to various matters including the applicant's experience, business plan and other information provided to the Commission by the applicant.

Necessary approvals

3.4 In line with its normal practice for new entrant airlines, the Commission sought advice from the Department as to whether it considered Norfolk Jet to be reasonably capable of obtaining the approvals necessary to operate on the New Zealand route. The Department advised that it considers Norfolk Jet to be reasonably capable of doing so.

Ability to implement proposals

3.5 Norfolk Jet has been providing services between mainland Australian ports and Norfolk Island for approximately seven years. These domestic operations are conducted using wet leased aircraft from Air Nauru and Alliance Airlines and operate out of the international terminals in Sydney, Melbourne and Brisbane..

3.6 The proposal before the Commission is to extend, in effect, the applicant's current domestic operations, using the Alliance Airlines aircraft, to Auckland. The Commission notes that Alliance Airlines already has an AOC (Air Operators Certificate) that permits some international operations

3.7 Norfolk Jet has provided the Commission with commercial in confidence material supporting its claim that it is capable of implementing international services. This information includes projected traffic levels on the route, fare levels and marketing expenditure as well as profit and loss projections.

3.8 In relation to the New Zealand route, evidence is presented of declining visitor numbers from New Zealand over the period 1993 to 2003 whilst traffic from Australia has continued to grow over the same period. However, Norfolk Jet projects that it will generate significant new traffic, as well as diverting some traffic from the Air New Zealand services, through offering more convenient travel times and fares. In particular, it will be able to market packages to visitors to Australia involving Norfolk Island, Auckland and Sydney, Melbourne or Brisbane.

3.9 Norfolk Jet has extensive experience in marketing Norfolk Island and has acquired a detailed understanding of the traffic to and from the island and its projected traffic and revenue levels are based on its detailed knowledge of the Norfolk Island visitor and resident market. The Commission considers that the airline's forecasts are reasonable, although may be somewhat optimistic depending on the extent of any competitive responses from Air New Zealand.

3.10 The Commission has noted the concerns of the Norfolk Island Administration. The Commission considers that Norfolk Jet's financial situation could be stronger, but notes that its financial circumstances have improved considerably since Alliance Airlines withdrew from the route to the Australian mainland. The Commission notes that the airline is an experienced, established operator and is satisfied that Norfolk Jet is reasonably capable of implementing its planned services to New Zealand. The Act encourages the use of capacity available to Australian carriers which are reasonably

capable of implementing its services, and the object of the Act is to promote economic efficiency through competition in the provision of international air services. The continued operation on the route of Air New Zealand, a large established international carrier, seem unlikely to be threatened by the entry of Norfolk Jet.

3.11 Norfolk Jet requested a 10 year allocation of capacity. Under paragraph 11.1(b) of the Minister's policy statement where capacity and route rights are unrestricted the Commission may make either an interim determination for three year or a 10 year determination. In this case, the Commission sees no reason not to make a ten year determination.

3.12 In relation to the concerns of Endeavour Airlines about the allocation of capacity to Norfolk Jet, the Commission notes that capacity is not limited on the route. This means that an allocation of capacity to Norfolk Jet does not preclude Endeavour Airlines from applying for and being granted capacity on the New Zealand route.

Conclusion

3.13 The information provided by Norfolk Jet satisfies the Commission that the carrier has the financial capability, resources, skills and experience necessary to implement its application.

3.14 The Commission is also satisfied that Norfolk Jet is reasonably capable of obtaining the necessary approvals and of implementing its application.

3.15 The introduction of competition on the Auckland – Norfolk Island route is likely to lead to increased visitor numbers from New Zealand to Norfolk Island as a result of improved service levels and price competition. The Commission concludes that an allocation of capacity to Norfolk Jet on the New Zealand route would be of benefit to the public.

4 Determination allocating capacity on the New Zealand route to Norfolk Jet ([2004] IASC 109)

4.1 The Commission makes a determination in favour of Norfolk Jet, allocating capacity on the New Zealand route.

4.2 The determination is for 10 years from the date of this determination.

4.3 The determination is subject to the following conditions:

- Norfolk Jet is required to utilise the capacity from no later than 30 September 2004, or from such other date approved by the Commission;
- only Norfolk Jet is permitted to utilise the capacity;

- Norfolk Jet 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 Norfolk Jet are permitted except to the extent that any change:
 - results in the designation of the airline as an Australian carrier under the Australia – New Zealand 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 Norfolk Jet or be in a position to exercise effective control of Norfolk Jet, without the prior consent of the Commission, and
- changes in relation to the management, status or location of operations and Head Office of Norfolk Jet 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 – New Zealand air services arrangements.

Dated: 17 June 2004

John Martin
Chairman

Stephen Lonergan
Member

Michael Lawriwsky
Member