



## DETERMINATION

<b>DETERMINATIONS:</b>	<b>[2003] IASC 114, 115 AND 116</b>
<b>THE ROUTES:</b>	<b>PAPUA NEW GUINEA, VANUATU, SOLOMON ISLANDS</b>
<b>THE APPLICANT:</b>	<b>HEAVYLIFT CARGO AIRLINES PTY LTD (ACN 102 571 746) (HEAVYLIFT)</b>
<b>PUBLIC REGISTER FILE:</b>	<b>IASC/APP/200310 and IASC/APP/200316</b>

### 1 The application

1.1 On 4 June 2003, HeavyLift applied for an allocation of capacity on each of the Papua New Guinea (PNG), Vanuatu and Solomon Islands routes. A further application for additional capacity on the PNG route was made on 26 June 2003, together with an amended proposed start date for PNG operations. Capacity sought is as follows:

- PNG – 60 tonnes of cargo capacity per week in each direction (25 tonnes in the 4 June application, with an additional 35 tonnes in the 26 June application), planned to commence from September 2003 (originally March 2004);
- Vanuatu – 25 tonnes of cargo capacity per week in each direction, planned to commence from 1 November 2003; and
- Solomon Islands – 50 tonnes of cargo capacity per week in each direction, scheduled to commence from 1 October 2003.

1.2 HeavyLift has also expressed interest in applying for capacity on the Nauru and New Caledonia routes, should the current situation on those routes change. While capacity is available on the Nauru route, Transpac, which holds an allocation of capacity, is designated on the route, although it has not operated. The air services arrangements permit designation of only one Australian carrier. On the New Caledonia route, Transpac holds allocations of capacity for both passenger and all-cargo services, and has until 31 October 2003 to fully exercise this capacity. HeavyLift has expressed interest in using all of the capacity presently allocated to Transpac, should that become available for reallocation.

1.3 HeavyLift plans to operate all services to and from Brisbane. It intends to use a B727 aircraft, which meets the necessary noise standards, as its primary aircraft. Acquisition of this aircraft was planned to be completed by 9 June 2003. The plane has a freight capacity of 22 tonnes. A Shorts SC-5 Belfast aircraft with a freight capacity of 32 tonnes would be used if oversized loads were involved.

1.4 In response to HeavyLift's initial application of 4 June, the Commission published a notice on 17 June 2003 inviting other applications for all or any part of the capacity from interested parties in relation to the PNG, Vanuatu and Solomon Islands routes. Submissions about the application in respect of these routes, and about HeavyLift's interest in the Nauru and New Caledonia routes were also invited. Submissions were received from Air Nauru, the designated airline of Nauru, and from Virgin Blue. A further notice was published on 1 July 2003 in relation to the additional PNG capacity sought by HeavyLift in its 26 June application. Notification of an intention to make a submission was received on 8 July 2003 from Air Niugini, the designated airline of PNG. However, no submission was received.

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 and unused allocations**

2.1 The PNG route is served by 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.

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

2.3 Qwestair holds an unused allocation of 20 tonnes of cargo capacity and the relevant determination expires on 1 October 2003.

2.4 On the Vanuatu route, Air Vanuatu operates:

- five B737 passenger services per week between Sydney and Port Vila;
- three B737 passenger services per week between Brisbane and Port Vila.

2.5 Qantas code shares on Air Vanuatu's services.

2.6 Transpac Express has an allocation from the Commission of 25 tonnes of freight capacity per week but has not yet used the capacity. Transpac is required to fully use the capacity by 31 October 2003.

2.7 On the Solomon Islands route, Solomon Airlines operates two B737-300 passenger services per week between Honiara and Brisbane.

2.8 Transpac Express has an allocation from the Commission of 50 tonnes of freight capacity per week but has not yet used the capacity. Transpac is required to fully use the capacity by 31 October 2003.

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

3.1 The proposed operations by HeavyLift are consistent with the air services arrangements between Australia and PNG, Vanuatu and the Solomon Islands respectively.

3.2 Under the arrangements with Papua New Guinea, designation of multiple airlines is permitted and there are 60 tonnes of dedicated freight capacity per week available to Australian carriers. HeavyLift has sought 60 tonnes per week – 25 tonnes in its initial application and the balance in its subsequent application.

3.3 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. HeavyLift has sought 25 tonnes per week.

3.4 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 has sought 50 tonnes of capacity per week.

### **4 Summary of submissions received**

4.1 A submission from Air Nauru was received on 30 June 2003. Air Nauru opposed any allocation of cargo capacity to HeavyLift. Air Nauru operates a B737-400 aircraft between Melbourne/Brisbane and Nauru. It stated that it carried an average amount of 22,461 kilograms of cargo per month. Air Nauru also said that it carries some Australia – Nauru cargo via Fiji. The airline argued that no additional services are required to meet demand. It noted that most demand for cargo on the route was on services inbound to Australia.

4.2 Air Nauru opposed any allocation of capacity to HeavyLift on the basis that Air Nauru provides adequate cargo capacity to service the requirements of Nauru. It considered that any new operator would divert traffic from Air Nauru but not expand the market. Air Nauru also considered that a price war between carriers could have a longer term negative impact on the economy of Nauru.

4.3 Virgin Blue made a submission on 30 June 2003. This recorded Virgin Blue's interest in serving the New Caledonia market, which it had flagged in earlier discussions with the Commission's secretariat and the Department of Transport and Regional Services. The airline indicated its intention to apply for any capacity that becomes available on the New Caledonia route in the near future. Virgin Blue expressed its view that there was little likelihood that more capacity would become available through bilateral negotiation.

4.4 Air Niugini advised an intention to make a submission in relation to HeavyLift's application of 26 June for additional PNG capacity. However, no submission was received. HeavyLift provided a response on 1 August 2003 to the concerns implied in Air Niugini's intention to make a submission about the HeavyLift application. HeavyLift advised that the PNG Government had authorised weekly freight charter services between PNG and Brisbane by Pacific Air Express, a Solomon Islands based airline. The services are to be operated using a Ukrainian Antonov 12 turboprop aircraft with a capacity of 14 tonnes. HeavyLift noted that Pacific Air Express was seeking to operate a second weekly service. In HeavyLift's view, this demonstrated a demand for an Australian airline using oversized and jet aircraft to PNG and the Pacific islands.

## **5 Commission's assessment**

### Overview

5.1 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. The Commission will apply only the paragraph 4 criteria in this case. Although Air Niugini expressed an intention to make a submission, it did not do so. The two submissions that were received related to the New Caledonia and Nauru routes. These routes are not covered by this determination, as no allocation of capacity is involved.

5.2 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, HeavyLift 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 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 various matters including the applicant's experience, business plan and other information provided to the Commission by the applicant.

### Necessary approvals

5.3 In line with its normal practice for new entrant airlines, the Commission sought advice from the Department as to whether it considered HeavyLift to be reasonably capable of obtaining the approvals necessary to operate on the PNG, Vanuatu and Solomon Islands routes. The Department advised that it considers HeavyLift to be reasonably capable of doing so. HeavyLift has also provided to the Commission a copy of the Aircraft Operator's Certificate granted to HeavyLift by the Civil Aviation Safety Authority.

### Ability to implement proposals

5.4 HeavyLift is a newly registered company. It is part of a group of companies from which HeavyLift will draw aircraft and other resources and financial backing. Transpacific Pty Ltd owns and controls HeavyLift Cargo Airlines Limited, an overseas corporation. This company would lease the Shorts Belfast aircraft to HeavyLift Cargo Airlines Pty Ltd (HeavyLift). B727 aircraft owned by Transpacific will be leased to HeavyLift. The assets and liabilities of the group are principally associated with Transpacific and South Pacific GHS Pty Ltd, which is owned by Transpacific.

5.5 South Pacific GHS provides aircraft engineering, operations and/or ground handling services to a number of international and domestic airlines. HeavyLift has provided details of the contracts. This company would provide ground handling services for HeavyLift. The principals involved with HeavyLift collectively have substantial relevant experience in providing air cargo services in the domestic and international spheres.

5.6 HeavyLift has provided the Commission with commercial in confidence material supporting its claim that it is capable of implementing international services. HeavyLift's projections of likely carriage are, in the Commission's view, optimistic. The carrier plans to introduce a substantial level of capacity into the relevant markets. The prospect for route profitability in relation to the Solomon Islands appears doubtful, at least in the short term. While there now appear prospects for a return to political stability, cargo carriage on the route is strongly directional, with little demand for space from the Solomon Islands to Australia. The airline has sought a substantial quantum of capacity on the PNG route and achieving its projections on this route also appears to be a challenging task. However, the carrier considers that the introduction of main-deck freight aircraft on to these routes will open up the possibility of cargo currently travelling by ship being diverted to air carriage. The airline has engaged a General Sales Agent to assist in obtaining contracts for carriage for HeavyLift.

5.7 Whether or not HeavyLift is successful in fulfilling its projections will depend on factors such as the quality of HeavyLift's marketing and promotion (particularly in attracting new carriage away from shipping services), its cost efficiency, and competitiveness of cargo rates and competitor responses. In respect of the latter factor, the most significant variable is likely to be the potential impact of the entry of Transpac onto the Vanuatu and Solomon Islands routes. Transpac holds allocations of capacity for

both routes and the Commission understands that Transpac intends commencing services in line with its proposals to the Commission.

5.8 HeavyLift has satisfied the Commission that it has access to additional funding to support operations for some time in the event that revenues fall short of projections. The principal personnel appear to have sufficient relevant experience to implement the planned operations.

5.9 The Commission considers that for cargo-only operations, it does not need to satisfy itself to the same high degree of certainty as it does when assessing prospective passenger operators' capability of implementing their proposals. While there would be consequences for a range of parties from the commercial failure of an all-cargo operator, in this case the markets involved are relatively small and existing air operators already offer a service through bellyhold capacity on passenger aircraft. By comparison, the unexpected ending of passenger services may tend to have greater consequences for people with forward bookings, and those stranded by a sudden termination of services. Nevertheless, the Commission has a responsibility to allocate capacity only to carriers which it considers reasonably capable of implementing their proposals.

5.10 In this case, the Commission considers that HeavyLift is likely to be capable of implementing its proposals. Whether services are sustainable in the longer term will depend on a range of factors especially, as noted above, on HeavyLift's ability to divert cargo from sea carriage to its services fairly quickly and on whether Transpac introduces services. The entry of one or both of the new airlines would be likely to lead to strong competition on rates, benefiting industry participants which transport goods by air, or plan to do so in future.

5.11 While Air Niugini flagged its intention to make a submission about HeavyLift's 26 June application for an additional 35 tonnes of capacity on the PNG route, it did not do so. Nor did Air Niugini make a submission about HeavyLift's 4 June application in which 25 tonnes of capacity were sought. Any concerns Air Niugini may have about HeavyLift operating on the route have not been formally argued and are therefore not relevant to the Commission's consideration. As a general comment, the Commission would be unlikely to be sympathetic to the views of a foreign competitor airline about the allocation to Australian carriers of rights available to Australian carriers under mutually agreed air services arrangements.

### Conclusion

5.12 The information provided by HeavyLift satisfies the Commission that the carrier has the financial backing, resources, skills and experience necessary to implement its proposals. The Commission is also satisfied that HeavyLift is reasonably capable of obtaining the necessary approvals. The Minister's policy statement makes it clear that use of capacity by Australian carriers is of benefit to the public. Allocations of capacity to HeavyLift would therefore be of benefit to the public.

5.13 While the Commission does have some concerns about the ongoing viability of HeavyLift's services, it is not necessary for the Commission to be certain that a carrier

will maintain services over the long term. As far as foreign carrier concerns go, the Government has negotiated a certain amount of capacity for use by Australian carriers, in the expectation that it would be utilised. It is not in the public interest to allow capacity to remain idle when there are carriers wishing to use it, and with the likelihood of being capable of doing so.

5.14 The Commission will make the following allocations of capacity to HeavyLift:

- 60 tonnes of freight capacity on the Papua New Guinea route;
- 25 tonnes of freight capacity per week in each direction on the Vanuatu route; and
- 50 tonnes of freight capacity per week in each direction on the Solomon Islands route.

5.15 The Commission notes that HeavyLift proposes to commence services on the PNG route from 1 September 2003 (bringing forward the start date from the originally proposed 1 March 2004), on the Vanuatu route from 1 November 2003, and on the Solomon Islands route from 1 October 2003. 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 HeavyLift to fully utilise its capacity on all three routes by 31 March 2004.

5.16 As the Commission has some concerns about the ability of HeavyLift to attract levels of cargo sufficient to maintain commercially viable services over the longer term, it will issue a three year determination. Should the carrier exercise its capacity in accordance with the conditions of this determination, it will have the opportunity to obtain a full five year determination at the renewal stage.

## **6 Interim Determination allocating capacity on the Papua New Guinea route to HeavyLift Cargo Airlines Pty Ltd (HeavyLift) ([2003] IASC 114)**

6.1 The Commission makes an interim determination in favour of HeavyLift Cargo Airlines (HeavyLift), allocating 60 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.

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 – 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.

## **7 Interim Determination allocating capacity on the Vanuatu route to HeavyLift Cargo Airlines Pty Ltd (HeavyLift) ([2003] IASC 115)**

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.

## **8 Interim Determination allocating capacity on the Solomon Islands route to HeavyLift Cargo Airlines Pty Ltd (HeavyLift) ([2003] IASC 116)**

8.1 The Commission makes an interim determination in favour of HeavyLift, allocating 50 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.

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

8.3 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.

Dated: 29 August 2003

Michael Lawriwsky  
Member Presiding

Stephen Lonergan  
Member