



## **Australian Government**

### **International Air Services Commission**

#### **DETERMINATION**

**Determination:** [2005] IASC105  
**The Route:** United States  
**The Applicant:** HeavyLift Cargo Airlines Pty Ltd  
(ACN 102 571 746) (HeavyLift)  
**Public Register File:** IASC/APP/200502

#### **1 The application**

1.1 On 18 January 2005, HeavyLift applied for an allocation of capacity on the United States route. HeavyLift plans to operate a twice-weekly cargo service between the United States and Sydney and the United States utilising wet-leased Kalitta Air B747-200F aircraft. HeavyLift's application supersedes an August 2004 application from the airline for an allocation of freight capacity on the US route. The latest application was made concurrently with applications for capacity on the Netherlands and China routes. In the case of the Netherlands route, the HeavyLift application was the subject of a competing application from Qantas. The applications concerning the China and Netherlands routes are the subject of separate determinations.

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

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

2.1 Under the Australia – the United States air services arrangements governing all-cargo services there is unlimited capacity available, as the designated airlines of Australia may determine the frequency, capacity and aircraft type to be operated on the all-cargo route under the arrangements and may exercise traffic rights on the route. The air services arrangements between Australia and China and between Australia and the Netherlands also grant Australian carriers traffic rights consistent with the services proposed by HeavyLift.

#### **3 Commission's assessment**

3.1 Under paragraph 4 of the Minister's policy statement, the use of entitlements by an Australian 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. The Commission notes that HeavyLift has established itself as an international freight airline, having operated for some time now on routes in the south-west Pacific. The

airline has also provided additional information in support of its proposals to establish long-haul services.

3.2 The Commission considers that HeavyLift is reasonably capable of obtaining the necessary approvals and of implementing its proposals. Further discussion is contained in the Commission's determination concerning the competing applications from HeavyLift and Qantas on the Netherlands route.

3.3 Accordingly, the Commission will allocate unlimited capacity and frequency on the route, consistent with the description of the entitlements available under the air services arrangements between Australia and the United States.

3.4 The Commission has previously made interim (three year) determinations in favour of HeavyLift. Given that HeavyLift has demonstrated its ability to operate successfully and there is unrestricted freight capacity available on the United States route, the Commission proposes to make a ten year determination in favour of HeavyLift. The Commission will require HeavyLift to start services on the United States route by 1 November 2005. The Commission considers this provides sufficient lead time for HeavyLift to commence services, and is consistent with the Commission's approach of providing applicants entering new routes with reasonable flexibility to deal with any unforeseen circumstances in establishing services.

#### **4 Determination allocating capacity on the United States (All-Cargo) route to HeavyLift ([2005] IASC105)**

4.1 The Commission makes a determination in favour of HeavyLift, allocating unlimited all-cargo capacity and frequency on the United States (All-Cargo) route as described in Annex II of the Australia – United States Air Services Agreement.

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

4.3 The determination is subject to the following conditions:

- HeavyLift is required to utilise the capacity from no later than 1 November 2005;
- only HeavyLift is permitted to utilise the capacity;
- 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 – United States 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 - United States air services arrangements.

Dated: 16 May 2005

John Martin  
Chairman

Michael Lawriwsky  
Member

Vanessa Fanning  
Member