



Australian Government

International Air Services Commission

RENEWAL DETERMINATION

Determination: [2005] IASC 118
Renewal of: [2003] IASC 125
The Route: Nauru
The Applicant: HeavyLift Cargo Airlines Pty Ltd
(ACN 102 571 746) (HeavyLift)
Public Register File: IASC/APP/200511

1 The application for renewal

1.1 On 12 December 2003, the Commission issued an interim Determination [2003] IASC 125 (the Determination) allocating one frequency per week with any aircraft type not exceeding the capacity of a B737 to HeavyLift on the Nauru route.

1.2 Under the *International Air Services Commission Act 1992* (the Act) the Commission must start its consideration of the renewal of a determination at least 12 months before the expiry of the determination. The Determination expires on 11 December 2006.

1.3 HeavyLift applied to the Commission for a renewal of the Determination. The Commission published a notice on 6 September 2005 inviting submissions or other applications for an allocation of the capacity subject to renewal. No submissions or other applications were received.

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

2 Commission's consideration

2.1 Under the Minister's Policy Statement (No. 5), of 19 May 2004, where capacity is limited under a bilateral arrangement, the criteria applicable to the renewal of interim determinations are set out in paragraph 8.2. This states that on routes where the start up phase still applies, the criteria set out in paragraph 7 apply. On routes where the start-up phase is over, the criteria set out in paragraphs 4 and 5 apply.

2.2 The original allocation of freight capacity to HeavyLift did not end the start-up phase on the route, because there was no other Australian carrier operating on the route.

Transpac Express had previously been allocated capacity on the Nauru route, but it never operated services. Accordingly, the criteria in paragraph 7 apply.

2.3 Paragraph 7.5 of the policy statement stipulates that where the Commission invites applications for capacity on a route during the start-up phase and none of the applications received are from new entrants, the applicable criteria in the circumstances of this case (only one applicant) are those set out in paragraph 4.

2.4 Under paragraph 4, the use of entitlements by an Australian carrier that is reasonably capable of obtaining the necessary approvals and of implementing its proposals is of benefit to the public. The Commission considers that HeavyLift is now an established international carrier and satisfies the paragraph 4 criteria. This means that there is public benefit arising from the use of the entitlements. In these circumstances, the Commission concludes that the renewal of Determination [2003] IASC 125 would be of benefit to the public.

2.5 The wording of the fresh determination below reflects the view of the Commission that determinations which renew original determinations should contain updated terms and conditions consistent with the Commission's current practice and current air services arrangements. Under the Act, the Commission may make changes to the terms and conditions included in the original determination where warranted by changes in circumstances since the original determination was made.

3 Determination for renewal of Determination [2003] IASC 125 allocating capacity on the Nauru route to HeavyLift ([2005] IASC 118)

3.1 The Commission makes a determination in favour of HeavyLift, allocating one frequency per week with any aircraft type not exceeding the capacity of a B737 in each direction on the Australia – Nauru route, in accordance with the Australia – Nauru air services arrangements.

3.2 The determination is for five years from 12 December 2006.

3.3 The determination is subject to the following conditions:

- HeavyLift is required to fully utilise the capacity;
- 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.

Dated: 7 November 2005

John Martin
Chairman

Vanessa Fanning
Member

Michael Lawriwsky
Member