



**Australian Government**  

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**International Air Services Commission**

**DETERMINATION**

**Determination:** [2021] IASC 103  
**The Route:** Hong Kong  
**The Applicant:** Tasman Cargo Airlines Pty Ltd  
(Tasman Cargo )  
(ACN 073 412 272)  
**Public Register:** IASC/APP/202101

**The Commission makes a determination allocating to Tasman Cargo five frequencies per week to operate dedicated freight services between points in Australia and Hong Kong. The determination is valid for five years from 23 March 2021.**

**1 The application for capacity**

1.1 On 19 February 2021, Tasman Cargo applied to the International Air Services Commission (the Commission) for five frequencies per week in each direction to operate all-cargo services between points in Australia and Hong Kong. In its application, Tasman Cargo proposes to operate five services per week in each direction between Melbourne and Hong Kong using a Boeing 767-300 freighter aircraft with a payload capacity of approximately 54 metric tonnes per flight subject to performance limitations.

1.2 In accordance with section 12 of the *International Air Services Commission Act 1992* (the Act), the Commission published, on 19 February 2021, Tasman Cargo's application on the Commission's website inviting other applications for capacity on the Hong Kong route. A notification was likewise sent by email to various stakeholders inviting other applications for capacity on the route. No other applications were received.

1.4 All non-confidential material supplied by Tasman Cargo is available on the Commission's website ([www.iasc.gov.au](http://www.iasc.gov.au)).

## **2 Relevant provisions of the air services arrangements**

2.1 Paragraph 7(2)(aa) of the Act provides that the Commission must not allocate available capacity contrary to any restrictions on capacity contained in a bilateral arrangement(s).

2.2 According to the Register of Available Capacity on the Hong Kong route, published by the Department of Infrastructure, Transport, Regional Development and Communications (the Department), there are 28 frequencies per week of passenger capacity between Sydney, Melbourne, Brisbane and Perth and Hong Kong. Additionally, there is one frequency per week to operate dedicated cargo services between Sydney, Melbourne, Brisbane and Perth and Hong Kong.

2.3 Under the Australia-Hong Kong air services arrangements, designated airlines of Australia may at their discretion freely convert and reconvert capacity for the operation of passenger and dedicated cargo services between Hong Kong and Sydney, Melbourne, Brisbane and Perth on the basis of one passenger frequency for one all-cargo frequency or vice versa.

## **3 Commission's consideration**

3.1 Tasman Cargo is seeking the allocation of five frequencies per week of freight capacity on the Hong Kong route which the airline plans to use to operate five weekly services between Melbourne and Hong Kong using a Boeing 767-300 freighter aircraft.

3.2 Subsection 7(1) of the Act empowers the Commission to make a determination allocating available capacity. Subsection 7(2) requires, in part, that the Commission's determination must not allocate capacity unless the Commission is satisfied that the allocation would be of benefit to the public and would not be contrary to any restrictions on capacity contained in bilateral arrangements, or combination of bilateral arrangements.

3.3 Further, subsection 7(3) of the Act provides that in assessing the benefit to the public of an allocation of capacity, the Commission must apply the criteria set out in the policy statement made by the Minister pursuant to section 11 of the Act

3.4 Under section 11 of the Act, the Minister made the *International Air Services Commission Policy Statement 2018* (the Policy Statement) which came into effect on 28 March 2018. The Policy Statement sets out the criteria which the Commission is required to apply in assessing the benefit to the public of allocations of capacity.

3.5 Section 12 of the Policy Statement provides that where the Commission has received an application for capacity and does not receive any submissions opposing the allocation, the Commission is to have regard to the reasonable capability criterion and need not have regard to any other matter.

3.6 Under the reasonable capability criterion in section 8 of the Policy Statement, the Commission is required to assess the extent to which all Australian carriers that are,

or would be, permitted to use the capacity allocated under a determination are reasonably capable of: (a) obtaining any licences, permits or other approvals required to operate on and service the route to which the determination relates; and (b) using the capacity allocated under the determination.

3.7 The Commission notes that Tasman Cargo is an established carrier operating scheduled international freight services between Australia and New Zealand. Further, since Tasman Cargo is a new provider of scheduled international air service on the Australia-Hong Kong route, the Commission sought advice from the Department on whether the carrier is reasonably capable of obtaining the necessary licences, permits or other approvals required to operate on and service the route and of using the capacity allocated on the Hong Kong route. On 19 March 2021, the Department advised the Commission that Tasman Cargo is a designated Australian airline under the Australia-Hong Kong air services agreement (ASA). The Department further advised that under the ASA, Australian airlines can collectively operate up to 70 frequencies per week for passenger services between Hong Kong and Sydney, Melbourne, Brisbane and Perth and two frequencies per week for all-cargo services. These services can be freely converted between passenger and cargo services on a one-to-one basis. The Commission was further informed that Tasman Cargo has an Australian International Airline Licence and holds the relevant safety and security approvals.

3.8 In light of the foregoing, the Commission finds that Tasman Cargo is reasonably capable of obtaining the relevant licences, permits and other approvals required to operate on the Australia-Hong Kong route and using the capacity sought to be allocated under the determination and that allocating the capacity in favour of Tasman Cargo would be of benefit to the public.

3.9 Paragraph 15(2)(a) of the Act requires a determination to specify the period during which it is to be in force. Subsection 15(3) of the Act effectively provides that if the Minister's Policy Statement sets out how the period of validity of the determination is to be fixed, then the period of validity is as so fixed. In any other case, an interim determination is to be in force for three years while a determination that is not an interim determination is to be in force for five years.

3.10 Section 20 of the Policy Statement sets out how the Commission is to fix the period during which a determination is to be in force. The Commission considers that this application is within the scope of subsection 20(4) and has decided that this determination is to be in force for a period of five years.

#### **4 Determination allocating capacity on the Hong Kong route to Tasman Cargo ([2021] IASC 103)**

4.1 In accordance with section 7 of the Act, the Commission makes a determination in favour of Tasman Cargo allocating five frequencies per week in each direction of capacity to operate dedicated freight services between Sydney, Melbourne, Brisbane and Perth and Hong Kong in accordance with the Australia – Hong Kong air services arrangements.

4.2 The determination is valid for five years from 23 March 2021.

4.3 The determination is subject to the following conditions:

- (a) Tasman Cargo is required to utilise the capacity from no later than 31 August 2021 or such other date approved by the Commission.
- (b) Only Tasman Cargo is permitted to utilise the capacity.
- (c) Tasman Cargo is not permitted to utilise the capacity to provide code share or joint services with another carrier or any other person unless approved by the Commission.
- (d) Changes in relation to the ownership and control of Tasman Cargo are permitted except to the extent that any change:
  - results in the designation of the airline as an Australian carrier under the Australia – Hong Kong 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 Tasman Cargo or be in a position to exercise effective control of the airline, without the prior consent of the Commission.

Dated: 23 March 2021



IAN DOUGLAS  
Chairperson



KAREN GOSLING  
Commissioner