



Australian Government

International Air Services Commission

DETERMINATION

Determination: [2010] IASC 110
The Route: Papua New Guinea
The Applicant: Pionair Australia Pty Ltd
(ACN 102 715 506) (Pionair)
Public Register File: IASC/APP/201009

1 The application

1.1 On 10 June 2010, Pionair applied for an allocation of eighteen tonnes of cargo capacity per week on the Papua New Guinea (PNG) route. Pionair subsequently reduced the amount of capacity sought to twelve tonnes of capacity per week. It plans to operate twice-weekly Convair 580 (six tonne capacity) services between Brisbane, Cairns and Port Moresby and other destinations in PNG. Pionair said that since 2008 it had operated this aircraft to a range of ports in PNG. It planned to commence services from July 2010 and for the capacity to be fully used by end July 2011. Pionair considers that it meets the relevant IASC requirements. At the Commission's request, Pionair subsequently provided additional confidential information in support of its application.

1.2 The Commission published a notice on 15 June 2010 inviting other applications for the capacity from interested parties. No applications were received.

1.3 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 Provisions of relevant air services arrangements

2.1 The proposed operations by Pionair are consistent with the air services arrangements between Australia and Papua New Guinea. Under the arrangements, designation of multiple airlines is permitted. The Register of Available Capacity shows that there are 12.5 tonnes of cargo capacity per week available for allocation. The Commission has previously allocated 82.5 tonnes of cargo capacity per week to HeavyLift and 35 tonnes of cargo per week to Pacific Air Express (Australia).

3 Commission's assessment

Overview

3.1 Pionair is the only applicant for capacity. Under paragraph 6.2 of the Minister's policy statement of 19 May 2004, where there is only one applicant for capacity on a route and sufficient available capacity, the Commission is required only to apply the

criteria in paragraph 4 of the policy statement.

3.2 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.

Ability to obtain necessary approvals

3.3 As with all applicants seeking to operate regular scheduled international services, Pionair must obtain an international airline licence from the Department of Infrastructure and Transport (the Department). An airline must also be formally designated by Australia to the relevant bilateral partner nation to operate international services as an Australian national carrier. Pionair is a prospective new carrier and, as such, has not previously operated international regular public transport services. In line with its normal practice for potential new entrant airlines, the Commission sought advice from the Department as to whether it considered Pionair to be reasonably capable of obtaining the approvals necessary to obtain a licence and to be designated.

3.4 The Department advised by letter of 8 July 2010 that it had commenced assessing Pionair's application for an international airline licence. Additional information had been sought from Pionair. The Department said that until that additional was provided, it could not provide an unqualified assurance that Pionair would be reasonably capable of obtaining the designation, licensing and operational approvals necessary to operate services on the route concerned. In view of the Department's advice, the Commission decided to defer consideration of the Pionair application until further advice was provided by the Department.

3.5 On 22 September 2010, the Department advised by letter that Pionair had now provided the additional information the Department had sought. Based on that information, the Department now saw no reason why Pionair would not be reasonably capable of obtaining the necessary approvals.

3.6 The Commission has considered the Department's advice, and the information provided directly to the Commission by Pionair. The Commission is satisfied that the airline is reasonably capable of obtaining the necessary approvals and therefore meets this aspect of the paragraph 4 requirements.

Ability to implement proposals

3.7 The Commission's assessment of whether an applicant is reasonably capable of implementing its proposals has regard to a range of factors including the applicant's aviation-related experience, financial data and other commercial information provided to the Commission. Pionair has provided the Commission with commercial-in-confidence material in support of its claims that it is capable of implementing international services successfully. The Commission has assessed this information in detail.

3.8 The Commission is aware that Pionair is currently the subject of a Deed of Company Arrangement (DoCA) and has an Administrator appointed. The Commission obtained advice from Pionair's Administrator advising that he has no objection to

Pionair making an application for capacity to the IASC and for that application to proceed in the normal way.

3.9 The information provided by Pionair in support of its application suggests to the Commission that the applicant has the resources, skills and experience necessary to implement its proposals. The airline is operational and has operated charter services to PNG. It is therefore familiar with the regulatory and operational environment in that country. The proposed scale of operations is modest and appears well within the capabilities of Pionair.

3.10 To the extent that the Commission has concerns about the proposal, these relate to the airline's financial position. It is evident from the fact that the company is in administration that its financial situation is not strong. However, the Commission considers that the proposed operations could contribute to an improvement of the company's financial situation, noting in particular that the Administrator has no objection to the proposal. The scale of operations is small and the airline already has the essential equipment to provide the services proposed. As the Commission has stated on past occasions, it is not necessary or even possible for the Commission to be certain that a new carrier will be able to maintain services over the long term. The Commission needs only to be satisfied that an applicant is reasonably capable of implementing its proposals. In competitive markets, carriers can implement their services successfully and deliver public benefits in doing so, but may subsequently exit for any number of reasons. This has been the case for several carriers which have received allocations from the Commission.

3.11 The entry of Pionair to the Papua New Guinea route will bring important new competition in the pure cargo market which is served currently by only one all-cargo carrier - Pacific Air Express (Australia) - although the Commission anticipates that HeavyLift Cargo Airlines will resume services within a relatively short period. Pionair's entry should be of benefit to trade between Australia and PNG.

3.12 Consistent with the Department's view, the Commission is satisfied that Pionair is reasonably capable of obtaining the necessary approvals. The Commission is also satisfied that Pionair is capable of implementing its proposals. It has a credible business plan and substantial operational experience including in the PNG freight market. An allocation of capacity to Pionair would therefore be of benefit to the public.

3.13 The Commission normally issues interim determinations for a duration of three years to new carriers, particularly where capacity is restricted, and will do so in this case. The capacity sought by Pionair is virtually all of the Australian freight capacity entitlement remaining available for allocation on the PNG route.

3.14 The Commission will require Pionair to fully utilise its capacity by 31 March 2011. This timeframe is to enable Pionair adequate time to achieve the approvals necessary to implement its planned services.

4 Interim Determination allocating capacity on the Papua New Guinea route to Pionair ([2010] IASC 110)

4.1 The Commission makes an interim determination in favour of Pionair, allocating twelve tonnes of capacity per week in each direction on the Papua New Guinea route in accordance with the terms of the Australia – Papua New Guinea air services arrangements.

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

4.3 The determination is subject to the following conditions:

- Pionair is required to utilise the capacity from no later than 31 March 2011, or from such other date approved by the Commission;
- only Pionair is permitted to utilise the capacity;
- Pionair is not permitted to utilise the capacity to provide joint services with another Australian carrier or any other person without the approval of the Commission;
- changes in relation to the ownership and control of Pionair 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 Pionair or be in a position to exercise effective control of Pionair, without the prior consent of the Commission; and
- changes in relation to the management, status or location of operations and head office of Pionair 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.

Dated 29 September 2010

Stephen Bartos
Member Presiding

Ian Smith
Member