



## Australian Government

### International Air Services Commission

#### RENEWAL DETERMINATION

**Determination:** [2011] IASC 111  
**Renewal of:** [2005] IASC 114  
**The Route:** Papua New Guinea  
**The Applicant:** HeavyLift Cargo Airlines Pty Ltd  
(ACN 102 571 746) (HeavyLift)  
**Public Register File:** IASC/APP/201120

#### 1 The application for renewal

1.1 On 7 November 2005, the Commission issued Determination [2005] IASC 114 (the Determination) allocating 60 tonnes of freight capacity per week to HeavyLift on the Papua New Guinea (PNG) route. This determination was subsequently varied by Decision [2006] IASC 201, to reduce the allocated capacity from 60 tonnes to 40 tonnes per week. A second variation was made to the determination in Decision [2011] IASC 204 to further reduce the allocated freight capacity to 22.5 tonnes per week. The Determination expires on 28 August 2011.

1.2 HeavyLift applied to the Commission for a renewal of the Determination on 9 August 2011. The Commission published a notice on 11 August 2011 inviting intentions to make a submission or application for an allocation of the capacity by 18 August 2011. The Commission received a submission from Sanko Bussan (PNG) in support of the application. No other applications for the capacity were received.

1.3 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 (the Policy Statement), where capacity is limited under a bilateral arrangement the relevant criteria for renewal of a determination are set out in paragraph 8.1. On routes where the start up phase is over, as is the case on the PNG route in relation to separate freight capacity, the applicable criteria are those set out in paragraphs 4 and 5.

2.2 As there were no other applicants for the capacity, the Commission does not consider the criteria in paragraph 5 to be relevant in this case. 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 notes that HeavyLift operated scheduled services in December 2009 and

January 2010, but has not operated scheduled services since. HeavyLift has received several extensions for the commencement of its services and in March 2011 complied with a Commission request to return 17.5 tonnes of capacity. This is reflected in Decision [2011] IASC 204. Following receipt of HeavyLift's application for renewal of the Determination the Commission sought additional advice on its ability to commence services within the time-frame indicated in its application. HeavyLift advised by email that there were several maintenance issues which were being addressed.

2.3 Under paragraph 8.1 of the Policy Statement there is a presumption in favour of the carrier seeking renewal, except in certain circumstances, including where the carrier seeking renewal has failed to service the route effectively. The Policy Statement makes it clear, however, that this of itself is not enough for the Commission to decline to renew the determination – the capacity must also be contested by another carrier which is not the case in this instance. The Commission concludes, therefore, that the renewal of the Determination would be of benefit to the public.

2.4 Under section 19(3) of the Act, the Commission may make changes to the conditions in the original determination (including adding conditions) where warranted by changes in circumstances since the original determination was made. The Commission considers that in the light of past experience in relation to the utilisation of allocated capacity by HeavyLift, this fresh determination should contain additional conditions; one specifying the date by which the capacity must be fully utilised and a second, possible action in the event that the first condition is not met.

### **3 Determination for renewal of Determination [2005] IASC 114 allocating capacity on the Papua New Guinea route to HeavyLift ([2011] IASC 111)**

3.1 The Commission makes a determination in favour of HeavyLift, allocating 22.5 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.

3.2 The determination is for five years from 29 August 2011.

3.3 The determination is subject to the following conditions:

- only HeavyLift is permitted to utilise the capacity;
- HeavyLift is required to fully utilise the capacity by 30 November 2011;
- If HeavyLift fails to fully utilise the capacity by 30 November 2011 the Commission may conduct a review in accordance with section 10 of the Act;
- HeavyLift is not permitted to use 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.

Dated: 25 August 2011



Jill Walker  
Chairwoman



Stephen Bartos  
Member