



Australian Government

International Air Services Commission

DECISION

Draft Decision: [2013] IASC 212
Revocation of: [2009] IASC 117 and [2011] IASC 111 (Papua New Guinea);
[2008] IASC 130 (Solomon Islands); and
[2005] IASC 101 (New Zealand)
The Airline: HeavyLift Cargo Airlines (HeavyLift)
Public Register: IASC/APP/201305

1 Background

1.1 HeavyLift currently has the following determinations from the Commission:

Papua New Guinea route

- [2009] IASC 117, which allocates 16.5 tonnes of freight capacity; and
- [2011] IASC 111, which allocates 22.5 tonnes of freight capacity.

Solomon Islands route

- [2008] IASC 130, which allocates 25 tonnes of freight capacity.

New Zealand route

- [2005] IASC 101, which allocates unlimited freight capacity.

1.2 On 8 August 2012 the Commission was informed by the Department of Infrastructure and Transport that HeavyLift's International Airline Licence had been cancelled.

1.3 Under section 10 of the *International Air Services Commission Act 1992* (the Act), the Commission may, at any time, conduct a review of a determination if it believes there may be grounds for varying, suspending or revoking the determination. Because HeavyLift no longer has an International Airline Licence and therefore is not able to use any of its allocated capacity, the Commission decided to conduct a review of all HeavyLift's determinations.

1.4 Under subsection 22(1) of the Act, before conducting a review under section 10, the Commission must, by notice, invite submissions about the review of the determination.

1.5 The Commission's published procedures for handling a review of a determination state that before deciding to initiate a review, the Commission will inform the carrier to whom capacity has been allocated of the matters of concern to the

Commission and invite the carrier to show cause as to why a review should not be carried out. HeavyLift has ceased trading and is under external administration. The Commission informed the Administrators appointed for HeavyLift of the proposed review.

1.6 On 18 January 2013, in accordance with subsection 22 (1) of the Act, the Commission published a notice stating that it had decided to conduct a review of all the determinations allocating capacity to HeavyLift and invited submissions about the review. No submissions were received.

2 Commission's assessment

2.1 Subsection 23(1) of the Act requires the Commission, having conducted a review pursuant to subsection 10(1), to make a decision confirming, varying, suspending or revoking a determination. Subsection 23(2) states that the Commission may only make a decision to vary, suspend or revoke a determination if it is satisfied that:

- (a) a term or condition of the determination has been breached; or
- (b) due to a change of circumstances, it is inevitable that a breach of such a term or condition will occur; or
- (c) an Australian carrier that, under the determination, is to use capacity to which the determination relates no longer intends to use fully that capacity.

2.2 Under subsection 23(3), the Commission must not make a decision varying the determination in a way that varies, or has the effect of varying, an allocation of capacity unless the Commission is satisfied that the allocation, as so varied, would be of benefit to the public.

2.3 Under section 26 of the Act, in assessing the benefit to the public of a variation to an allocation of capacity the Commission must apply the criteria set out for that purpose in any policy statements made by the Minister under section 11.

2.4 Pursuant to section 11, the Minister issued Policy Statement No. 5 dated 19 May 2004 (the Policy Statement). Paragraph 4.1(b) of the Policy Statement states that it is not of benefit to the public for the Commission to allocate capacity to Australian carriers unless such carriers:

- (i) are reasonably capable of obtaining the necessary approvals to operate on the route; and
- (ii) are reasonably capable of implementing their applications.

2.5 As HeavyLift no longer has an International Airline Licence and is under external administration, it is clearly unable to satisfy these criteria.

2.6 In accordance with paragraph 15(2)(c) of the Act, each of the determinations under review includes a condition that the capacity be fully used. As HeavyLift is not using capacity allocated under any of its determination, the Commission finds that it is in breach of all its determinations. Moreover, the Commission finds that as HeavyLift

does not satisfy the criteria in paragraph 4 of the Policy Statement it is not of benefit to the public to allocate capacity to HeavyLift.

2.7 Having found that HeavyLift is in breach of all of its determinations, subsection 23(2) of the Act allows the Commission to make a decision varying, suspending or revoking the determinations. Accordingly, the Commission will revoke all of HeavyLift's determinations in accordance with subsection 23(1) of the Act.

3 Decision [2013] IASC 212

3.1 The Commission, in accordance with section 23 of the Act, revokes Determinations [2009] IASC 117 and [2011] IASC 111 (Papua New Guinea), [2008] IASC 130 (Solomon Islands) and [2005] IASC 101 (New Zealand).

Dated: March 2013



Jill Walker
Chairwoman



Stephen Bartos
Member



Ian Douglas
Member