



Australian Government

International Air Services Commission

RENEWAL DETERMINATION

Determination: [2015] IASC 112
Renewal of: [2005] IASC 120
The Route: New Zealand
The Applicant: Tasman Cargo Airlines
(ACN 073 412 272)
Public Register File: IASC/APP/201517

The Commission makes a fresh determination allocating in favour of Tasman Cargo Airlines unlimited freight capacity on the New Zealand route valid for 10 years.

1 The application for renewal

1.1 On 7 November 2005, the Commission issued Determination [2005] IASC 120 (the Determination), renewing Determination [2001] IASC 113, which allocated unlimited freight capacity to Asian Express Airlines on the New Zealand route. The Determination was varied on 18 November 2008 to reflect the new name of the company, Tasman Cargo Airlines.

1.2 Under section 17 of 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 27 August 2016. In view of this, the Commission sent a letter to Tasman Cargo Airlines, inviting it to apply for renewal if it wished to renew the Determination. On 4 September 2015, Tasman Cargo Airlines applied to the Commission for the renewal of the Determination.

1.3 As required by sections 12 and 17 of the Act, the Commission published a notice on 7 September 2015 inviting other applications for the capacity. No applications were received.

1.4 All material supplied by the applicant is available on the Commission's website (www.iasc.gov.au).

2 Commission's consideration

2.1 Under section 8 of the Act, the Commission may make a fresh determination allocating the capacity to which the original determination relates. In considering an application for renewal, the Commission must make the same allocation of capacity as the original determination unless the Commission is satisfied that the allocation is no longer of benefit to the public. Section 26 requires that in assessing the benefit to the public of an allocation of capacity, the Commission must apply the criteria set out for that purpose in the policy statement made by the Minister under section 11 of the Act.

2.2 Under paragraph 6.1 of the Minister's Policy Statement (No. 5) of 19 May 2004 (the

Policy Statement), in circumstances where capacity is not limited under the relevant bilateral agreement, only the criteria in paragraph 4 of the Policy Statement are applicable.

2.3 Paragraph 4 provides that the use of entitlements by Australian carriers under a bilateral arrangement is of benefit to the public unless such carriers are not reasonably capable of obtaining the necessary approvals to operate on the route and of implementing their applications.

2.4 The Commission notes that Tasman Cargo Airlines is an established international carrier currently operating on the New Zealand route and is therefore reasonably capable of obtaining the necessary approvals and of implementing its application.

2.5 Under paragraph 8.1 of the Policy Statement, there is a presumption in favour of the carrier seeking the renewal which may only be rebutted, after the start-up phase, by applying the following criteria:

- whether the carrier seeking renewal has failed to service the route effectively; and
- whether the use of the capacity in whole or part by another Australian carrier that has applied for capacity would better serve the public having regard to both the criteria in paragraphs 4 and 5.

2.6 The Commission has no information that Tasman Cargo Airlines has failed to service the route effectively and since no other application was received, and in any event there are no capacity limits on the route, the Commission did not apply the paragraph 5 criteria.

2.7 In these circumstances, the Commission concludes that renewal of Determination [2005] IASC 120 would be of benefit to the public.

2.8 In its application, Tasman Cargo Airlines did not specify a period for which it is seeking a renewal. Consistent with the Policy Statement, the Commission issues determinations for a ten-year period on routes where capacity and route rights are unrestricted and it did so in Determination [2005] IASC 120. Accordingly, the Commission has decided to issue the renewal determination for a period of ten years.

3 Determination for renewal of Determination [2005] IASC 120 allocating capacity to Tasman Cargo Airlines on the New Zealand route ([2015] IASC 112)

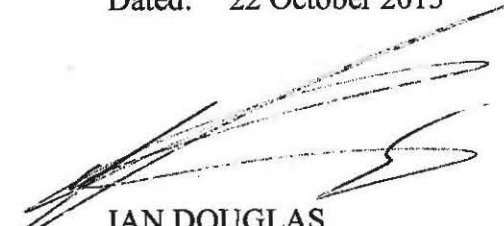
3.1 In accordance with section 8 of the Act, the Commission makes a fresh determination in favour of Tasman Cargo Airlines, allocating unlimited freight capacity on the New Zealand route in accordance with the Australia-New Zealand air services arrangements.

3.2 The determination is valid for ten years from 28 August 2016.

3.3 The determination is subject to the following conditions:

- Tasman Cargo Airlines is required to fully utilise the capacity;
- only Tasman Cargo Airlines is permitted to utilise the capacity;
- Tasman Cargo Airlines 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;
- Nothing in this determination exempts the airline from complying with the Australian Consumer Law; and.
- changes in relation to the ownership and control of Tasman Cargo Airlines are permitted except to the extent that any change:
 - results in the designation of the airline as an Australian carrier under the Australia-New Zealand 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 Airlines or be in a position to exercise effective control of Tasman Cargo Airlines, without the prior consent of the Commission.

Dated: 22 October 2015



IAN DOUGLAS
Presiding Commissioner



JOHN KING
Commissioner