



## Australian Government

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### International Air Services Commission

#### **COMMISSION GUIDELINES FOR CONSIDERING APPLICATIONS FROM PROSPECTIVE NEW AIRLINES ON A SUBJECT TO FINANCE BASIS**

The Commission has finalised its review of procedures for considering applications from prospective new carriers in situations where the applicant seeks an allocation of capacity on a subject-to finance basis. The Commission will amend its current procedures relating to the financial viability testing of new applicants for capacity. The amended procedures will incorporate guidance about the limited circumstances in which the Commission may consider giving approval to applications on a subject to finance basis.

The Commission notes its obligation under the Minister's policy statement to allocate capacity only to carriers which it considers reasonably capable of implementing its proposals and of receiving the approvals necessary to operate. The revised procedures will be consistent with that obligation.

The key prerequisite for consideration of proposals on a subject to finance basis will be that the applicant must present a strong and credible business plan in support of its application. This must include a convincing explanation of its firm plans to secure finance where this has not already been achieved. The applicant must also demonstrate that in all other respects it is reasonably capable of receiving the approvals necessary to operate such as designation and licensing as an Australian international airline and the necessary operational authority from the Civil Aviation Safety Authority. The application and business plan and any other supporting information provided must together satisfy the Commission that the applicant is reasonably capable of implementing its proposals.

The Commission will not precisely prescribe the circumstances in which subject to finance applications would be considered, as not all situations can be foreseen. However, they would most likely involve applications for allocations of capacity under air services arrangements which provide for the designation of multiple Australian carriers, together with a generous amount of capacity available for allocation. The ability to designate multiple carriers combined with the availability of ample capacity would serve to ensure that allocations of capacity to a new carrier on a subject to finance basis would be unlikely to inhibit the reasonable ambitions of qualified carriers seeking capacity.

The Commission cannot prevent an applicant from applying for capacity on a subject to finance basis. However, such an application would be unlikely to succeed in a contested situation on a route with constrained capacity with either an established carrier or another prospective new international carrier with demonstrated financial backing. The Commission would generally anticipate deciding such a case without needing to consider proposals against the more detailed paragraph 5 criteria set out in the Minister's policy statement.

Applications for all-cargo capacity or for passenger capacity on a subject to finance basis may be considered. However, because of the Commission's concern to protect the interests of consumers, a prospective passenger carrier would need to demonstrate that it had adequate consumer protection measures in place in the event of financial failure. The Commission would also make it a condition of determinations in favour of such a carrier that pre-sale of tickets to the public would be permitted only once the carrier had demonstrated to the Commission's satisfaction that the planned financial backing proposed in the application had been contractually committed to within an acceptable time frame, or had been received.

In making subject-to-finance allocations, the Commission would also limit the scope for carriers to hold capacity unused for lengthy periods. The Commission would generally impose a requirement that the carrier must fully utilise the allocated capacity within six months from the date of the determination. Given this, the Commission expects that a prospective applicant would not apply for capacity until it was in a strong position to demonstrate the commercial and operational credibility of its proposals. The Commission would most likely require a successful applicant to report regularly to the Commission on its progress towards commencing operations. Requests for an extension of time to utilise the capacity would generally be countenanced only in exceptional circumstances, such as unforeseen issues outside the control of the applicant.

The Minister's policy statement requires the Commission to specify a period of three, five or ten years for determinations, depending on whether capacity and routes are unrestricted. In making allocations on a subject to finance basis the Commission would envisage continuing its usual practice of making three-year interim determinations for new carriers. However, where a carrier applies in writing requesting that a determination be for a lesser period, the policy statement allows the Commission to specify a lesser period. The Commission would generally expect to look favourably upon such requests.

These guidelines should be treated only as a general indication as to the Commission's likely approach to considering applications on a subject to finance basis. They are intended to be flexible and not prescriptive. The Commission would take account of the circumstances of the case before deciding whether or not to make a subject-to-finance determination. It reserves the right to make determinations on whatever basis it considers appropriate consistent with the requirements of the *International Air Services Commission Act 1992* and the Minister's policy statement.

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