



Australian Government

International Air Services Commission

DRAFT INTERIM DETERMINATION

Determination: [2013] IASC 129d
The Route: Papua New Guinea (PNG)
The Applicant: Pionair Australia Pty Ltd
(ACN 21 201 715 506)
Public Register File: IASC/APP/201311

The Commission proposes to make an interim determination allocating 18 tonnes of cargo capacity to Pionair on the Papua New Guinea route for three years.

1 The application

1.1 On 25 March 2013, Pionair Australia Pty Ltd, trading as Skyforce Aviation Pty Ltd, (Pionair) applied for an allocation of 18 tonnes of cargo capacity each way per week on the PNG route. Pionair has sought the allocation for five years. Pionair plans to use a Convair 580 aircraft with a payload capacity of six tonnes and a BAe-146-200 QC aircraft with a payload capacity of 12 tonnes for the services.

1.2 In accordance with section 12 of the *International Air Services Commission Act 1992* (the Act), the Commission published a notice on 5 April 2013, inviting other applications for the capacity.

1.3 On 28 March 2013, Alltrans Management Pty Ltd (trading as Chapman Freeborn) applied for freight capacity of 38 tonnes on the route and, on 18 April 2013, it withdrew its application. On 5 April 2013, Qantas applied for 27.5 tonnes of freight capacity on the route. Subsequently, after Chapman Freeborn withdrew its application, Qantas, on 22 April 2013, amended its application to increase the amount of capacity sought to 35 tonnes per week. Qantas was allocated the capacity on 20 May 2013 under Determination [2013] IASC 123.

1.4 All non-confidential material in relation to this determination is available on the Commission's website (www.iasc.gov.au). Confidential material is filed on the Commission's confidential register.

2 Current freight services on the route

2.1 Currently, Pacific Air Express (PAE) is the only airline operating dedicated freight services on the route, with two B737 freighter services per week between Brisbane and Port Moresby.

2.2 Qantas has informed the Commission that it plans to start twice weekly B737 freighter services, using aircraft from its wholly owned subsidiary, Express Freighters Australia, in May 2013 and to fully utilise the capacity by 30 April 2014. The routes will be Melbourne and Brisbane to Port Moresby and Cairns to Port Moresby.

3 Relevant air services arrangements

The Australia – PNG air services arrangements allow the designation of multiple airlines. According to the Register of Available Capacity, there are 42.5 tonnes of freight capacity per week in each direction available for allocation.

4 Relevant provisions of the Act and the Policy Statement

4.1 Under section 7 of the Act, the Commission may make a determination allocating available capacity. However, the Commission must not allocate available capacity unless it is satisfied that the allocation would be of benefit to the public and must not allocate available capacity contrary to any restrictions on capacity contained in a bilateral arrangement, or a combination of bilateral arrangements, permitting the carriage to which the capacity relates.

4.2 Subsection 7(3) provides 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 statements made by the Minister under section 11.

4.3 The Minister issued Policy Statement No. 5 dated 19 May 2004 (the Policy Statement) pursuant to section 11 of the Act. The Policy Statement sets out the range of criteria which the Commission is required to apply in assessing the benefit to the public of allocations of capacity.

4.4 Paragraph 4.1(b) states that it is not of benefit to the public 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.

4.5 Paragraph 6.2 states that where there is only one applicant, or there is more than one applicant, but the amount of available capacity is equal to or exceeds the total amount of capacity applied for, only the criteria in paragraph 4 are applicable.

4.6 In this case there were three applicants originally, but following the withdrawal by Chapman Freeborn of its application, there was sufficient available capacity for allocations of capacity to both of the remaining applicants, Qantas and Pionair. An allocation has already been made to Qantas. The task for the Commission now is to decide whether Pionair meets the paragraph 4 criteria.

5 Commission's assessment against the paragraph 4 criteria

Ability to obtain necessary approvals

5.1 As with any airline seeking to operate scheduled international services, Pionair must obtain an international airline licence from the Department of Infrastructure and Transport (the Department) before it can commence services. An airline must also be designated by Australia to bilateral partner countries to operate international services as an Australian national carrier. Although Pionair has previously been allocated capacity on the PNG route by the Commission, it never used the capacity and it has not operated international scheduled services. In line with its normal practice for potential new entrant airlines, the Commission sought advice from the Department on whether it considered Pionair to be reasonably capable of obtaining the licensing, designation and operational approvals necessary to operate scheduled services on the PNG and New Caledonia routes.

5.2 The Department provided a response on 3 May 2013. The Department advised that Pionair applied for an international airline licence on 25 March 2013. The Department requested on 3 and 16 April supplementary material to enable it to process the application. The Department also indicated that Pionair had been advised that its Air Operator's Certificate (AOC) needed to be upgraded to permit regular public transport operations and that its Transport Security Program needed to be updated to reflect changes in its proposed operations. The Department concluded that until the above issues were resolved and additional information received, it could not give an unqualified assurance to the Commission at this time that Pionair would be reasonably capable of obtaining the licensing, designation and operational approvals necessary to operate services on the specified routes.

Ability to implement its proposals

5.3 Pionair, trading as Skyforce Aviation Pty Ltd (Skyforce), has confirmed that Pionair is the applicant for the capacity as it holds the AOC and that since October 2011, Skyforce has been the commercial arm of Pionair. Skyforce/Pionair have provided the Commission, on a confidential basis, with financial statements for both Skyforce and Pionair, including balance sheets and cash flow forecasts for its proposed scheduled services and other activities.

5.4 Pionair has also provided letters of support from four companies, which the Commission has taken into account in its assessment of Pionair's claims.

5.5 On the basis of the information provided, the Commission remains to be convinced that Pionair has the financial resources or business plan to mount and sustain a scheduled freight service over the long term.

5.6 A further cause for concern for the Commission is that while Pionair was allocated 12 tonnes of capacity on the PNG route in September 2010, it never used that capacity in spite of being granted three extensions to fully utilise the capacity. The determination was subsequently revoked on 11 May 2012.

5.7 In Interim Determination [2010] IASC 110, allocating Pionair 12 tonnes of capacity on the PNG route for three years, the Commission concluded that the proposed scale of operations was modest and appeared well within the capabilities of Pionair. In its decision, the Commission expressed some concern in relation to the airline's financial position, which

as evidenced from the fact that the company was in administration, was not strong. The Commission considered, however, that the proposed operations could contribute to an improvement of the company's financial situation, noting in particular that the Administrator at that time had no objection to the proposal.

5.8 In relation to the current case, Pionair provided the Commission with a letter of support from its Chairman and major shareholder of Skyforce/Pionair, Mr Stephen Ferris. In the letter, Mr Ferris states that he purchased the business from the owners in 2011 and is fully committed to its success, and should the need arise, is willing to inject further funds.

6 Conclusion

6.1 As the Commission stated in its 2010 Determination, it is not necessary or possible for the Commission to be certain that a new carrier will be able to start and sustain services over the long term in order for an allocation to be made. The Commission need only be satisfied that the airline is 'reasonably capable' of obtaining the necessary approvals and of implementing its proposals. Having been allocated capacity by the Commission, an airline may, for regulatory or financial reasons, find that it is unable to commence services, or having begun services, may subsequently exit the market. Moreover, in the case of freight services, the consequences of airline failure for consumers are perhaps not as significant as they are for passenger services.

6.2 On the basis of the information available to it, the Commission proposes to allocate the capacity applied for by Pionair. The Commission proposes, however, not to allocate the capacity for five years, as requested by Pionair. 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 Commission notes that when the capacity is allocated to Pionair, there will only be 27.5 tonnes of freight capacity available on the route.

6.3 Pionair has not provided a date by which it will fully utilise the capacity. The Commission accepts that this is difficult given that Pionair does not know when it will obtain the regulatory approvals necessary for it to commence services. Nonetheless, paragraph 9.1 of the Policy Statement states that for the purposes of specifying when allocated capacity must be fully used, the Commission should specify as short a period as is reasonable having regard to the steps required to commence operations.

6.4 The Commission proposes to require Pionair to fully utilise its capacity by 31 December 2013. In the Commission's view, this timeframe should enable Pionair adequate time to obtain the approvals necessary to implement its planned services. Should Pionair not be able to fully utilise the allocated capacity by 31 December 2013, the Commission will allow an extension of this date only if Pionair is able to satisfy the Commission that delays in obtaining regulatory approval have occurred that are beyond its control.

7 Draft Interim Determination allocating capacity on the Papua New Guinea route to Pionair ([2013] IASC 129d)

7.1 The Commission proposes to make an interim determination in favour of Pionair, allocating 18 tonnes of capacity per week in each direction on the PNG route in accordance with the terms of the Australia – PNG air services arrangements.

7.2 The proposed determination would be for three years from the date of the determination.

7.3 The proposed determination would be subject to the following conditions:

- Pionair is required to utilise the capacity from no later than 31 December 2013, 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; and
- 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 – PNG 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.

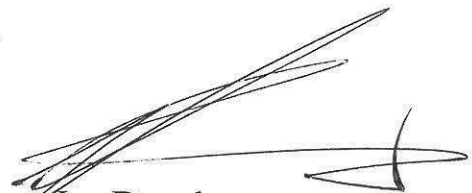
Dated: 3 June 2013



Jill Walker
Chairwoman



Stephen Bartos
Member



Ian Douglas
Member