



Australian Government

International Air Services Commission

DETERMINATION

Determination: [2023] IASC 117
The Route: Papua New Guinea
The Applicant: AERgO International Pty Ltd (AERgO)
(ACN 110 218 016)
Public Register File: IASC/APP/202311

The Commission makes a determination allocating to AERgO International Pty Ltd 45 tonnes of freight capacity per week on the Papua New Guinea route. The determination is valid for three years from 4 May 2023.

1 The application for capacity

1.1 On 13 February 2023, AERgO applied to the International Air Services Commission (the Commission) for an allocation of 45 tonnes of freight capacity per week on the Papua New Guinea route using Boeing 737-300 freighter aircraft wet leased from Nauru Airlines. AERgO stated in its application that it will commence one service per week from April 2023, with the intention to grow the frequency to twice weekly from September 2023, and three times a week from February 2024.

1.2 AERgO sought the capacity on the following basis:

- the allocation is requested for a period of three years from the date of the determination; and that
- the capacity will be fully utilised by 27 March 2024.

1.3 In accordance with section 12 of the *International Air Services Commission Act 1992* (the Act), on 15 February 2023, the Commission published AERgO's application on the Commission's website inviting other applications for capacity. No other applications were received.

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

2 Air services arrangements

2.1 Paragraph 7(2)(aa) of the Act provides that the Commission must not allocate available capacity contrary to any restrictions on capacity contained in a bilateral arrangement(s).

2.2 According to the Register of Available Capacity, there are 77.5 tonnes of freight capacity per week available for allocation to Australian designated airlines to operate freight services between Australia and Papua New Guinea.

3 Commission's consideration

Overview

3.1 Subsection 12(3) of the Act allows any person to apply to the Commission for a determination allocating capacity to enable an Australian carrier to operate international air services.

3.2 Subsection 7(1) of the Act empowers the Commission to make a determination allocating available capacity. Subsection 7(2) requires, in part, that the Commission must not allocate capacity unless the Commission is satisfied that the allocation would be of benefit to the public and would not be contrary to any restrictions on capacity contained in bilateral arrangements, or combination of bilateral arrangements.

3.3 Further, subsection 7(3) of the Act provides that in assessing the benefit to the public of an allocation of capacity, the Commission must apply the criteria set out in the policy statement made by the Minister pursuant to section 11 of the Act.

3.4 Pursuant to section 11 of the Act, the Minister issued the *International Air Services Commission Policy Statement 2018* (the Policy Statement) which came into effect on 28 March 2018.

3.5 The Commission notes that there are no other applicants seeking capacity on the route and no submissions were received opposing the application. Section 12 of the Policy Statement provides, in part, that in circumstances where there is only one applicant for an allocation of capacity on a route, and there is no opposition to the application and there is sufficient capacity available, the Commission is to have regard to the 'reasonable capability criterion' in section 8 of the Policy Statement and need not have regard to any other matter.

3.6 Under the reasonable capability criterion in section 8 of the Policy Statement, the Commission is required to assess the extent to which all Australian carriers that are, or would be, permitted to use the capacity allocated under a determination are reasonably capable of: (a) obtaining any licences, permits or other approvals required to operate on and service the route to which the determination relates; and (b) using the capacity allocated under the determination.

3.7 AERgO is a prospective new carrier and, as such, has not previously operated international regular public transport services. It is seeking the allocation of 45 tonnes of freight capacity per week in each direction on the Papua New Guinea route.

3.8 Under the proposed wet lease arrangement with Nauru Airlines, the Commission notes that AERgO is the economic operator and Nauru Airlines, as the carrier providing the aircraft, would not have any commercial rights to the services offered using the Australian capacity allocated to AERgO as the lessee (carrier obtaining the aircraft).

There is no revenue or cost sharing between the parties. AERgO will undertake the arrangements associated with the air transport of the freight, except for the operation of the flight itself.

3.9 As with any airline seeking to operate international regular public transport services, AERgO must obtain an international airline licence from the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (the Department) before it has authority to commence the proposed services. AERgO must also be formally designated by Australia under the air services arrangements with the relevant bilateral partner nation (Papua New Guinea) to operate international regular public transport services as an Australian carrier.

3.10 Further, under the wet lease arrangement between AERgO and Nauru Airlines, it is expected that Nauru Airlines, as the aircraft operator, would secure the necessary regulatory approvals to operate the services.

3.11 The Commission makes its own assessment of whether an applicant is reasonably capable of implementing its proposal, having regard to various matters including the applicant's experience, business plan and other information provided to the Commission by the applicant.

Ability to obtain necessary approvals

3.12 In line with its normal practice for potential new Australian carriers, the Commission sought advice from the Department as to whether it considered AERgO to be reasonably capable of obtaining the necessary licences, permits or other approvals required to operate on and service the route, and to be designated.

3.13 The Department advised, by letter dated 13 April 2023, that it does not foresee any reason why AERgO or Nauru Airlines, would not be able to secure the necessary regulatory approvals to operate the proposed services. The Department indicated that Nauru Airlines, which would provide wet-leased aircraft to AERgO, holds a current Transport Security Program and an Australian Air Operator's Certificate necessary to operate the proposed services. The Department further advised that while it had not commenced the process to designate AERgO under the Australia - Papua New Guinea air services arrangements, it has not identified any issues that would prevent AERgO from being designated under the relevant air services arrangements.

3.14 The Commission has considered the Department's advice, and the information provided directly to the Commission by AERgO.

3.15 The Commission notes that there are a number of approvals which will need to be obtained by the airline before services can start, such as designation. However, in light of the above, the Commission is satisfied that AERgO and Nauru Airlines are reasonably capable of obtaining the necessary approvals and therefore meeting this aspect of the section 8 requirements.

Ability to implement proposal

3.16 The Commission's assessment of whether an applicant is reasonably capable of

implementing its proposal includes a range of factors such as the applicant's aviation-related experience, financial data and other commercial information provided to the Commission. AERgO has provided the Commission with commercial-in-confidence material in support of its claims that it is capable of implementing the proposed services successfully. The Commission has assessed this information in detail. Directors and senior management of AERgO also made a presentation to the Commission on 27 April 2023 at which a number of issues were discussed.

3.17 The Commission notes that under the commercial arrangement between AERgO and Nauru Airlines, Nauru Airlines will provide and operate Boeing 737-300 freighter aircraft and a number of related services. The Commission also notes the long-standing relationship between AERgO and Nauru Airlines.

3.18 Nauru Airlines is an established air carrier, being the flag carrier airline of the Republic of Nauru, and operates scheduled international services to other Pacific Islands and Australia. It has the necessary resources to provide suitably skilled and qualified crew, aircraft and other services required for the operation of the flights on behalf of AERgO. Its primary place of business in Australia is Brisbane.

3.19 The Commission notes that while AERgO is a prospective new carrier, it has a significant track record operating as an aviation charter business since 2004. AERgO has several long-term Australian Commonwealth contracts for the organisation and provision of domestic and international charter services, including extensive experience in providing passenger and freight charter services to New Zealand, the Pacific region and the Middle East. AERgO also has considerable experience in providing air charter services to the mining and resources sector. The Commission notes that AERgO has also operated several non-scheduled freight services between Australia and Papua New Guinea utilising a wet lease arrangement with Nauru Airlines. The directors and management of AERgO have considerable relevant experience in the air freight segment and the Papua New Guinea market to draw on in implementing the planned operations.

3.20 The proposed allocation of capacity to AERgO would help meet demand on the Brisbane-Port Moresby route, noting that the route is currently not serviced by an Australian carrier operating dedicated freight services¹. The Commission notes that while a limited amount of cargo can be carried in the belly hold of a passenger aircraft, demand exists on the route for the priority transportation of dangerous goods, specialised and oversized cargo that is currently being transported by sea due to weight and size limitations.

3.21 AERgO has satisfied the Commission that it has access to appropriate funding to support operations for some time in the event that revenue falls short of projections.

3.22 The information provided by AERgO in support of its application suggests to the Commission that the applicant has the financial capacity, resources, skills and experience necessary to implement its proposal. The business plan demonstrates sound research and

¹ Qantas has been allocated 1,888 seats of capacity on the Papua New Guinea route to operate passenger services, which provide some ability to carry freight in the belly hold of its Boeing 737-800 aircraft on the Brisbane – Port Moresby route.

understanding of the market to be served.

3.23 The Commission notes that the proposed commercial arrangements between AERgO and Nauru Airlines are not contrary to any restrictions on capacity contained in relevant bilateral arrangements.

Conclusion

3.24 In making an allocation of capacity, it is not possible for the Commission to be certain that a new carrier will be able to maintain services over the long term. In competitive markets, it is a reality that carriers can implement their services but subsequently exit for any number of reasons. This is especially true in the current difficult economic environment where a range of factors, including the COVID-19 pandemic and geopolitical conflicts, have contributed to particularly challenging conditions for the aviation industry. In these circumstances, many airlines around the world, even well-established ones, have ceased operating.

3.25 It is possible that AERgO may face additional challenges than a new entrant might encounter in more normal economic circumstances. The success of its operation will depend greatly on the achievement of revenue yield and load factor projections.

3.26 Consistent with the Department's view, the Commission is satisfied that AERgO is reasonably capable of obtaining the necessary approvals required to operate on and service the route. The Commission is also satisfied that AERgO is capable of implementing its proposal. It has a credible business plan and substantial operational and other support through the commercial arrangements with Nauru Airlines. An allocation of capacity to AERgO would therefore be of benefit to the public.

3.27 Accordingly, the Commission has concluded that AERgO satisfies the criteria under section 8. The Commission, therefore, has decided to allocate the capacity as requested by AERgO.

3.28 Paragraph 15(2)(a) of the Act requires a determination to specify the period during which it is to be in force. Subsection 15(3) of the Act effectively provides that if the Policy Statement sets out how the period of validity of the determination is to be fixed, then the period of validity is as so fixed. In any other case, an interim determination is to be in force for three years while a determination that is not an interim determination is to be in force for five years.

3.29 Section 20 of the Policy Statement sets out how the Commission is to fix the period during which a determination is to be in force. The Commission considers that this application is within the scope of subsection 20(3) and has decided that this determination is to be in force for a period of three years as requested in the carrier's application.

3.30 Subsection 15(1) of the Act empowers the Commission to include such terms and conditions as it thinks fit. Subsection 15(2) requires the inclusion of certain conditions. Consistent with the legislative requirements, the Commission has decided to include certain conditions as set out in item 4 below.

4 Determination allocating capacity on the Papua New Guinea route to AERgO International Pty Limited ([2023] IASC 117)

4.1 In accordance with section 7 of the Act, the Commission makes a determination in favour of AERgO International Pty Limited, allocating 45 tonnes of freight capacity per week on the Papua New Guinea route in accordance with the Australia – Papua New Guinea air services arrangements.

4.2 The determination is valid for three years from the date of issue.

4.3 The determination is subject to the following conditions:

- (a) AERgO International Pty Limited is required to fully utilise the capacity no later than 27 March 2024, or from such other date approved by the Commission.
- (b) Only AERgO International Pty Limited is permitted to use the capacity.
- (c) AERgO International Pty Limited is not permitted to utilise the capacity to provide services jointly with another Australian carrier or any other person unless approved by the Commission.
- (d) Changes in relation to the ownership and control of AERgO International Pty Limited 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 AERgO International Pty Limited or be in a position to exercise effective control of AERgO International Pty Limited without the prior consent of the Commission.

Dated: 4 May 2023



Genevieve Butler
Chairperson



Jane McKeon
Commissioner