



Australian Government

International Air Services Commission

DETERMINATION

Determination: [2024] IASC 129
The Route: Hong Kong
The Applicant: Tasman Cargo Airlines
(Tasman Cargo) (ACN 073 412 272)
Public Register File: IASC/APP/202440

The Commission makes a determination allocating to Tasman Cargo Airlines unlimited freight capacity on the Hong Kong route. The determination is valid for 99 years from 9 December 2024.

1 The Application

1.1 On 14 November 2024, Tasman Cargo applied to the International Air Services Commission (the Commission) for an allocation of unlimited freight capacity on the Hong Kong route, to replace its existing determinations allocating freight capacity on the route.

1.2 Tasman Cargo's application is in response to changes agreed by the Government authorities of Australia and Hong Kong in November 2024, liberalising the air services arrangements between the two countries to permit the designated airlines of their respective countries to operate unrestricted frequencies for freight services between all points in Australia and Hong Kong.

1.3 Tasman Cargo has a total capacity allocation on the Hong Kong route of seven frequencies allocated under determinations [2023] IASC 130, [2024] IASC 119 and [2024] IASC 120. It operates freight services on the route using a combination of Boeing 777-200LRF or Boeing 777-300ERSF aircraft operated through a wet lease arrangement with Kalitta Air, and Boeing 767-3JHF aircraft operated by Tasman Cargo.

1.4 In its application, Tasman Cargo advised its intention to revoke determinations [2023] IASC 130, [2024] IASC 119 and [2024] IASC 120 once a determination allocating unlimited freight capacity has been issued by the Commission.

1.5 In accordance with section 12 of the *International Air Services Commission Act 1992* (the Act), on 18 November 2024, the Commission published Tasman Cargo's application on the Commission's website inviting other applications for capacity. No other applications were received.

1.6 All non-confidential material supplied by the applicant 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, Australian designated airlines are able to utilise unrestricted frequencies for freight services between all points in Australia and Hong Kong.

3 Commission's consideration

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 Tasman Cargo is seeking the allocation of unrestricted frequencies for the operation of freight services.

3.3 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's determination 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.

3.4 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.

3.5 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. The Policy Statement sets out the criteria which the Commission is required to apply in assessing the benefit to the public of allocations of capacity.

3.6 The Commission notes that there are no other applicants seeking capacity on the route and no opposition to the application. Section 12 of the Policy Statement provides, in part, that in circumstances where there is only one applicant for allocation of capacity on a route, and there is no opposition to the application, 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.

3.7 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.

3.8 The Commission notes that Tasman Cargo is an established international carrier which currently operates scheduled international freight services between Australia and Hong Kong. The Commission therefore finds that Tasman Cargo is reasonably capable of obtaining the necessary regulatory approvals to operate on the route and of using the proposed capacity allocation.

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

3.10 Subsection 15(1) of the Act empowers the Commission to include such terms and conditions as it thinks fit. Section 15 also provides for certain conditions to be included in a determination. In light of this, the Commission has decided to issue this determination subject to the conditions set out in Item 4 below.

3.11 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 Minister's 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.

3.12 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(2) and has decided that this determination is to be in force for a period of 99 years.

3.13 Paragraph 15(2)(c) of the Act requires a determination to include a condition that the capacity be fully used, except so far as the regulations otherwise permit.

3.14 Regulation 9 of the International Air Services Regulations 2018 provides that for the purposes of paragraph 15(2)(c)(ii) of the Act, a determination is not required to include a condition that capacity allocated by the determination be fully used if available capacity is not restricted by the bilateral arrangement or combination of arrangements, permitting the carriage to which the capacity relates.

3.15 In light of the liberalisation of the air services arrangements, the Commission considers that this application is within the scope of regulation 9 and has decided not to include a condition requiring the capacity to be fully utilised.

4 Determination allocating capacity on the Hong Kong route to Tasman Cargo Airlines ([2024] IASC 129)

4.1 In accordance with section 7 of the Act, the Commission makes a determination in favour of Tasman Cargo Airlines allocating unrestricted frequencies for the operation of freight services on the Hong Kong route, in accordance with the Australia-Hong Kong air services arrangements.

4.2 The determination is valid for 99 years from 9 December 2024.

4.3 The determination is subject to the following conditions:

- (a) Only Tasman Cargo Airlines is permitted to utilise the capacity.
- (b) Tasman Cargo Airlines is not permitted to utilise the capacity to provide code share or joint services with another Australian carrier or any other person unless approved by the Commission.
- (c) 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 – Hong Kong 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: 9 December 2024



GENEVIEVE BUTLER
Chairperson



JANE MCKEON
Commissioner