



Australian Government

International Air Services Commission

DETERMINATION

Determination:	[2023] IASC 130
The Route:	Hong Kong
The Applicant:	Tasman Cargo Airlines (Tasman Cargo) (ABN 073 412 272)
Public Register File:	IASC/APP/202357

The Commission makes a determination allocating to Tasman Cargo Airlines five (5) frequencies per week to operate dedicated freight services on the Hong Kong route. The determination is valid for five years from 7 September 2023.

1 The application

1.1 On 16 August 2023, Tasman Cargo applied to the International Air Services Commission (the Commission) for an allocation of five (5) frequencies per week in each direction to operate all-cargo services on the Hong Kong route. Tasman Cargo proposes to operate five (5) services per week in each direction between Sydney and Hong Kong using Boeing 767-300 freighter aircraft wet leased from DHL Air UK, with a payload capacity of approximately 54 metric tonnes per flight subject to performance limitations.

1.2 On 23 March 2021, the Commission issued Determination [2021] IASC 103 granting Tasman Cargo an allocation of five (5) frequencies per week in each direction to operate all-cargo services between points in Australia and Hong Kong. Tasman Cargo was unable to commence these services as originally planned due to the COVID-19 pandemic.

1.3 On 20 December 2021, the Commission issued Resolution [2021] IASC R09 extending the time for Tasman Cargo to utilise the capacity issued under Determination [2021] IASC 103 to no later than 31 October 2022. On 20 June 2022, Tasman Cargo applied to the Commission to revoke its existing determination on the Hong Kong route due to operating restrictions associated with the ongoing pandemic. On 6 July 2022, the Commission issued Decision [2022] IASC 202 revoking Determination [2021] IASC 103 effective immediately.

1.4 In accordance with section 12 of the *International Air Services Commission Act 1992* (the Act), on 21 August 2023, the Commission published Tasman Cargo's application on the Commission's website inviting other applications for capacity on the Hong Kong route. A notification was likewise sent by email to stakeholders inviting other applications for capacity on the route. No other applications were received. 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, published by the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (the Department), there are two (2) frequencies per week available for all-cargo services between Sydney, Melbourne, Brisbane and Perth and Hong Kong, and 41 frequencies per week available for passenger services between Sydney, Melbourne, Brisbane and Perth and Hong Kong.

2.3 Under the Australia-Hong Kong air services arrangements, designated airlines of Australia may at their discretion freely convert and reconvert capacity for the operation of passenger services and all-cargo services between Sydney, Melbourne, Brisbane and Perth and Hong Kong on the basis of one passenger frequency for one all-cargo frequency or vice versa.

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 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.

3.3 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. 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.

3.5 Tasman Cargo is seeking the allocation of five (5) frequencies per week of freight capacity on the Hong Kong route. Tasman Cargo plans to operate five (5) weekly services between Sydney and Hong Kong using a Boeing 767-300 freighter aircraft wet leased from DHL Air UK.

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 licenses, 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 already operating scheduled international freight services between Australia and New Zealand and Australia (Melbourne) and Singapore. The Commission also notes that Tasman Cargo wet leases aircraft from DHL Air UK to operate the Melbourne to Singapore services.

3.9 The Department has advised that, under the Australia-Hong Kong air services arrangements, Australian airlines may collectively operate up to 70 frequencies per week for passenger services, and two (2) frequencies per week for all-cargo services between Sydney, Melbourne, Brisbane and Perth and Hong Kong. These services can be freely converted between passenger and all-cargo services on a one-to-one basis.

3.10 The Department has also advised the Commission that Tasman Cargo is a designated Australian airline under the Australia-Hong Kong air services arrangements, and that Tasman Cargo has an Australian International Airline Licence and holds the relevant safety and security approvals.

3.11 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.

3.12 Subsection 15(1) of the Act empowers the Commission to include such terms and conditions as it thinks fit. The Commission has decided to issue this determination subject to the conditions set out in Item 4 below.

3.13 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.

3.14 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(4) and has decided that this determination is to be in force for a period of five years.

4 Determination allocating capacity on the Hong Kong route to Tasman Cargo Airlines ([2023] IASC 130)

4.1 In accordance with section 7 of the Act, the Commission makes a determination in favour of Tasman Cargo Airlines allocating five (5) frequencies per week in each direction to operate dedicated freight services on the Hong Kong route in accordance with the Australia-Hong Kong air services arrangements.

4.2 The determination is valid for five years from 7 September 2023.

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 required to fully utilise the capacity no later than 31 March 2024 or such other date approved by the Commission.
- (c) Tasman Cargo Airlines is not permitted to utilise the capacity to provide code share or joint services with another carrier or any other person unless approved by the Commission.
- (d) 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 the airline, without the prior consent of the Commission.

Dated: 7 September 2023



Genevieve Butler
Chairperson



Jane McKeon
Commissioner