

TROPIC ISLE

16 July, 1998

The Productivity Commission
Telstra Tower Level 28
35 Collins Street
MELBOURNE VIC 3000

Dear Sir

Re: International Air Services Inquiry

We enclose our comments on the International Air Services Draft Report released by The Commission on Thursday 18th June 1998.

We agree with the findings contained within the report and make the following suggestions:

1. The way in which the International Air Services Commission applies the public benefit test is too rigid and all encompassing.
2. The IASC should not be involved in assessing the viability of airlines, or anticipating approvals by other government agencies.
3. In a contested application for new capacity, the airline proposing to use the capacity first should be deemed the initial new entrant.

Our detailed submission is attached.

Yours faithfully
TROPIC ISLE AIR

PETER S PHILLIPS
DIRECTOR

On 16th June 1993, the International Air Services Commission (IASC), made draft determinations on the allocation of new capacity on the Australia/Japan air route.

Draft Determination Numbers:

IASC/DDET/9306

IASC/DDET/9307

Public Register Files:

IASC/APP P/93002

IASC/COM/92001

ICAS/COM/92005

IASC/COM/93001

Capacity on the route was advertised on 7th January 1993. Tropic Isle Retail Stores Pty Ltd ACN No 010 482 845 and its subsidiary Tropic Isle Air, were applicants for capacity.

Other applicants were:

Ansett Transport Industries Limited ACN 004 216 291

Qantas Airways Limited ACN 009 661 901

Because the route was in the start-up phase, the criteria used by the IASC for assessing the public benefit included those set out in paragraph 4.1 of the Policy Statement issued by the Minister for Transport and Communications on 1 July 1992 and as amended on 7 December 1992.

The attention of the Productivity Commission is drawn to this draft determination.

1. It was determined by the IASC that public benefit would best be served by allocating new capacity to the other applicant, Ansett Transport Industries Limited, ACN 004 216 291. This determination effectively blocked Tropic Isle Air from commencing a regular public transport (RPT) service between Japan and the Whitsundays.

Our company believes that the recommendations of the Productivity Commission, if implemented at the time, may have changed the outcome of the company's application. We believe the way in which the IASC applies the public benefit test to be too rigid and all encompassing. From our experience as an applicant, it appears that the IASC can use its determination of what constitutes public benefit to eliminate a potential start-up airline.

We would suggest to the Commission that their draft recommendation 6.1 should be altered as follows:

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6.1 Contested capacity should continue to be allocated by the IASC using a public benefit test This best should recognise that a regional operator proposing service into a niche market should be given equal footing to a national operator.

2. We agree with draft recommendation 6.3 of the Productivity Commission

6.3 The IASC should not be involved in assessing the viability of airlines, or anticipating approvals by other government agencies.

An examination of the draft determination by the IASC demonstrates that the Commission was not convinced that Tropic Isle Air was reasonably capable of raising the necessary capital to commence operations. It is our view that it is not the place of the IASC to make this determination and it was used as a justification for denying capacity.

Tropic Isle Air had an undertaking from one of Japan's largest tour operators that they would enter into an agreement to provide the company's working capital and start-up funds to enable the airline to commence business. The agreement acknowledged that these funds would only become available after capacity was allocated. The IASC were unable to accept that the funds would be made available if capacity was granted.

3. We suggest that the following alteration should be made to Item 6.5

6.5 Submissions should not be called for unless a contested allocation is referred to the IASC.

This should be altered to read as follows:

6.5 Submissions should not be called for unless a contested allocation is referred to the IASC, In the case of a contested allocation of new air route capacity in the start up phase for service on a route, that airline proposing to use the capacity first should be deemed the initial new entrant

As specified in Paragraph 4.2 of the Policy Statement, the first task for the IASC is to determine, applying the criteria in paragraphs 2 and 3 of the Policy Statement, which of the potential new entrants should be selected as the initial new entrant for the purpose of applying 4.1 of the Policy Statement.

In its application to the IASC, Tropic Isle Air argued that since the capacity entitlements for Australian Carriers is split into two parts (Kansai and Non-Kansai capacity) the logical starting point in the process of determining the initial new entrant is to make that determination in relation to the first capacity that becomes available.

Under the Memorandum Of Understanding (MOU) between Japan and Australia, the first capacity available for allocation was 5.8 units per week of capacity to ports other

than Kansai. Tropic Isle claimed that by declining to apply for this capacity, Ansett Transport Industries Limited automatically forfeited its claim for initial new entrant status.

The Commission ruled that it was not consistent with the Policy Statement for the initial new entrant to be determined in the manner proposed by Tropic Isle Air.

Our proposed change to Draft Recommendation 6.5 will give clearer direction to the IASC when determining new applicants and will also prevent 'grandfathering' wherein the carrier with the allocation may never actually commence operations with that capacity or seek continuous deferral of the date by which it must use the capacity (e.g. Ansett to Malaysia, Qantas to South Africa, Australian World Airways to Greece).

We note that The Commission considers that a maximum period of two years for commencement of operations may provide greater consumer benefit¹. Tropic Isle believes that its proposed alteration to 6.5 will provide greater consumer benefit in that the expectation by an applicant that the IASC will allowing 'grandfathering' will be removed. Of equal importance, the proposed change will ensure and the route will be used at an earlier date.

¹ International Air Services Draft Report, Page 145