



ELLIS & PARTNERS

legal practitioners

14 February 2023

The Chairperson

Transportation Commission of Namibia
Ministry of Works and Transport
Snyman Circle
Windhoek
Delivered by hand

Dear Sir,

OPPOSITION TO APPLICATION FOR GRANTING OF A SCHEDULED AIR TRANSPORT SERVICE LICENSE FILED BY MR WILLIAM AUPAPA EKANDJO

1. We act herein on behalf of FlyNamibia Aviation (Pty) Ltd ("Objector").
2. The Objector is the holder of Scheduled Air Transport Service License No. 00031, dated 28 March 1995.
3. In accordance with the provisions of section 6(1) of the Air Services Act 51 of 1949 (the "Act"), the Objector hereby lodges its opposition to the application filed by Mr William Aupapa Ekandjo (the "Applicant") on or about 9 January 2023, through which the Applicant is applying for the granting of a Scheduled Air Transport Service License (the "Application").
4. The Application was published in Government Gazette No. 8013 dated 24 January 2023 and bears application reference number 00A0109. For ease of reference, a copy of the said Government Gazette is annexed hereto as "A".
5. The Objector's grounds of opposition shall be advanced separately below under the following headings:

Philip Ellis (BA LL.B) (Stell) (Partner) | Shaun Ellis (B.Com LL.B) (Stell) (Partner)
Elda le Roux (LL.B) (Unisa) (Associate)

Katja Klein (B.Bus.Sci Hons LL.B) (UCT) (MBA) (IESE) (BA Chinese / Russian) (UNISA) (Consultant)

8 Sinclair Street, Windhoek || PO Box 91000, Klein Windhoek, Windhoek, Namibia || Tel + 264 (61) 309 111 || Fax + 264 (61) 309 222

enquiries@ellisandpartners.com

www.ellisandpartners.com

(Authorised and regulated by the Law Society of Namibia)

- 5.1 POINT IN LIMINE – PUBLICATION OF APPLICATION;
- 5.2 LACK OF FINANCIAL RESOURCES;
- 5.3 AIRCRAFT;
- 5.4 MAINTENANCE FACILITIES;
- 5.5 GROUND HANDLING SERVICES;
- 5.6 INSURANCE COVER; and
- 5.7 PERSONNEL.

POINT IN LIMINE – PUBLICATION OF APPLICATION

- 6. In the publication of the Application in the Government Gazette, the Applicant fails to publish any details under the headings *Frequency and timetable to which the service will be operated* and the *Proposed tariff of charges or fares*.
- 7. The Applicant merely states *N/A* (meaning not applicable) under the aforesaid headings.
- 8. The publication of the Application in the Government Gazette is substantially incomplete in that it does not reflect the minimum requirements posed by the Act and is thus defective.
- 9. On this basis, the Application cannot proceed.

LACK OF FINANCIAL RESOURCES

- 10. Section 4(1)(b) of the Act prescribes that every person who applies for the grant of a license (such as the Applicant in this case) shall furnish the Commission with proof, to the satisfaction of the Commission, that he has sufficient capital available for financing a safe, satisfactory and reliable air service, and a statement of the amount of such capital.
- 11. Section 5 of the application form (Annexure "A") furthermore requires the Applicant to convey the method by which he proposes to finance the air service or the various stages development, and proof, in terms of section 4(1)(b)¹, of the availability of sufficient capital for financing the enterprise or each stage of development, together with a statement of the amount of such capital.

¹ We note that the Applicant's application form erroneously refers to section 5(1)(b).



12. The Applicant merely states (in section 5 of the application form) that the capital will be sourced through “*long term bank loans and shareholders capital*”. He furthermore refers to an attached balance sheet, which actually comprises of a “projected” balance sheet for the Applicant’s first year of business. The values contained in the “projected” balance sheet are purely speculative and not based on any substantiated projections.
13. The aforesaid constitutes the sum total of the Applicant’s submissions on the financial capability matters prescribed under section 4(1)(b).
14. One would reasonably expect the Applicant to have put forth a detailed business plan, which confirms the viability of his intended complex and extensive airline. The Applicant merely refers to the performance of a now defunct airline, prior to the COVID-19 outbreak and its liquidation.
15. The Applicant fails (dismally, with respect) to comply with what is prescribed under 4(1)(b) of the Act and there is nothing on this aspect before the Commission which would allow it to evaluate whether the Applicant has sufficient capital available (or will obtain sufficient capital) for financing a safe, satisfactory and reliable air service.
16. Based this aspect alone, the Application should be dismissed.

AIRCRAFT

17. The Applicant, in the application, states the following:
 - 17.1 He (currently) owns:
 - 17.1.1 3 (three) Cessna Grand Caravans;
 - 17.1.2 3 (three) Beechcraft 1900s;
 - 17.1.3 3 (three) King Air 350s; and
 - 17.1.4 3 (three) Regional Turbo Prop – ATR 42-72 / Dash 8 / F-50.
 - 17.2 He intends leasing:
 - 17.2.1 3 (three) Airbus A330s;
 - 17.2.2 3 (three) Boeing 787s;
 - 17.2.3 3 (three) Airbus A320s; and



17.2.4 3 (three) Boeing 7373s.

17.3 He intends purchasing:

17.3.1 3 (three) Cessna Grand Caravans (valued at USD 2 million per aircraft)

17.3.2 3 (three) Beechcraft 1900s (valued at USD 3 million per aircraft);

17.3.3 3 (three) King Air 350s (valued at USD 4 million per aircraft);

17.3.4 3 (three) ATR 42s (valued at USD 3.7 million per aircraft);

17.3.5 2 (two) ATR 72s (valued at USD 9 million per aircraft);

17.3.6 3 (three) Dash 8s (valued at USD 3.9 million per aircraft);

17.3.7 2 (two) Dash 8 Q 400s (valued at USD 9 million per aircraft); and

17.3.8 2 (two) F-50s (valued at USD 3 million per aircraft).

18. To summarize the Applicant's current and future fleet of aircraft:

18.1 The Applicant currently owns 12 aircraft valued at (on his own admission) between **NAD 670 million and NAD 950 million** (at the exchange rate on the date of this letter).

18.2 The Applicant intends leasing 12 aircraft, whose monthly fixed rental (for the 12 aircraft combined) will amount to no less than USD 4,035,000.00 (approximately **NAD 74 million**). The aforesaid figure is derived from the following assumptions and monthly fixed rates of the 4 aircraft types:

18.2.1 A330-300 (assuming 6 years of age and RR engines) – USD 350,000.00 and USD 400,000.00;

18.2.2 B787-9 (assuming 3 years of age and GE engines) – USD 650,000.00 and USD 750,000.00;

18.2.3 A320 (assuming 12 years of age and IAE engines) – roughly USD 155,000.00; and

18.2.4 B737 (assuming 12 years of age) – USD 190,000.00 and USD 200,000.00.

18.3 The Applicant intends purchasing Aircraft to the value of roughly **NAD 1.6 billion**.



19. Our instructions are that the Applicant does not own the aircraft as alleged in his application.
- 19.1 The Applicant fails to include any proof of such ownership.
- 19.2 Should the Applicant be the owner of such aircraft, we kindly invite him to provide proof thereof (in the form of certificates of registration and bills of sale).
20. The Applicant alleges that he intends leasing 12 (large and costly) aircraft, yet he fails to include a single lease agreement in the Application.
21. In the premises, the Commission has no aircraft documentation, which would allow it to evaluate whether the Applicant has access to such aircraft and whether it can render a safe, satisfactory and reliable air service using such aircraft. We submit that the Honourable Commission's position, regarding an applicant's failure to prove that it has possession or access to aircraft whether through leases or whatever means, had previously been conveyed to the Objector, in that it rejects applications for the addition of scheduled routes where an applicant fails to prove that it is in possession of the aircraft to be used for such routes. We trust that the Honourable Commission shall treat this Application equally.

MAINTENANCE FACILITIES

22. Section 4(1)(f) of the Act prescribes that the Applicant should furnish the Commission with particulars concerning the availability of spare parts and of servicing, maintenance and repair facilities at terminal and intermediate points on the route over which the Applicant proposes to provide the service.
23. Under section 12(1)(iii) of the application form, the Applicant alleges that *Aviation Centre, Ethiopian Airline Maintenance, SAA Technical Service* and *Denel Aviation* will render aircraft maintenance services to the Applicant.
24. It is common practice for such an application to be accompanied by copies of written maintenance agreements with the maintenance organisations who will render aircraft maintenance services to the applicant.
25. The Applicant (allegedly) owns 12 aircraft, will lease 12 aircraft and will purchase a further 22 aircraft, yet the Applicant fails to attach a single maintenance agreement entered into between himself and the maintenance organisations listed in his Application.



26. As it stands, there is no proof before the Commission that these maintenance organisations have agreed to render maintenance services to the Applicant or even know of the Applicant.
27. The Applicant furthermore fails to state the facilities of such maintenance organisations, as required under section 12(1)(iii) of the application form.
28. The Applicant fails to comply with what is prescribed under 4(1)(f) of the Act and there is nothing on this score before the Commission which would allow it to evaluate whether the Applicant can render a safe, satisfactory and reliable air service.

GROUND HANDLING SERVICES

29. Section 12(b) of ANNEX A (the standard application form for the granting of an air services license) requires an application to provide the particulars of passenger and other traffic handling facilities which the applicant will provide himself and/or arrange with another organisation to supply.
30. The Applicant's application form fails to include the aforesaid section 12(b) and the Applicant therefore submits nothing on this score.
31. Most of the aircraft listed in the Application require substantial and complex ground handling equipment, which is rendered by third parties.
32. As it stands, there is no proof before the Commission that any ground handling suppliers have agreed to render ground handling services to the Applicant or even know of the Applicant.
33. In the premises, the Commission has no ground handling information or documentation, which would allow it to evaluate whether the Applicant can render a safe, satisfactory and reliable air service.
34. Further argument on this shall be advanced at the hearing of the Application.

INSURANCE COVER

35. Section 16 of the Act provides that every licensed air carrier shall insure and at all times remain insured in such sums or to such extent as may be prescribed in relation to the class of air service provided by such air carrier, against claims of a nature or class likewise so prescribed, may arise out of the use of aircraft by such air carrier under the authority conveyed by its licence.



36. Section 6 of the application form requires the Applicant to provide the particulars and nature and class of insurance cover which the Applicant has already provided or will provide in connection with his operations.

37. Under section 6 of the Applicant, the Applicant merely states the following:

AVIATION INSURANCE – CREW

AVIATION INSURANCE – AIRCRAFT

AVIATION INSURANCE – PASSENGERS

AVIATION INSURANCE - CARGO

38. The Applicant fails to even mention third-party liability insurance, which is prescribed by the Act and its regulations.

39. The Applicant's insurance submissions fail dismally when one has regard to what is prescribed under section 16 of the Act.

40. The Applicant furthermore fails to provide proof from an insurer that his intended airline, aircraft and, generally, his operations shall be duly insured against the risks and at such sums which can generally be expected from an airline of this magnitude.

41. In the premises, the Commission has no insurance information or documentation, which would allow it to evaluate whether the Applicant can render a safe, satisfactory and reliable air service and whether its intended operation will be duly insured.

PERSONNEL

42. Section 4(1)(g) of the Act prescribes that the Applicant shall furnish particulars concerning the personnel it is proposed to employ in connection with the air service, with particulars of the number of persons to be employed in each of the various classes of employment, the proposed rates of pay, travelling, subsistence and other allowances, benefits and privileges, normal hours of duty, and an estimate of the number of flying hours per month which each member of the crew of any aircraft will be required to complete.

43. Through the Application, the Applicant, *inter alia*, submits the following in relation to personnel:

43.1 the licenses of 7 pilots are enclosed, which pilots we assume the Applicant intends employing;



- 43.2 the licenses of about 28 cabin crew are enclosed, which cabin crew we assume the Applicant intends employing; and
 - 43.3 the licenses of 2 aircraft maintenance engineers are enclosed, which engineers we assume the Applicant intends employing.
44. In relation to the aforesaid pilot licenses, we point out that:
- 44.1 at least 3 of the 7 pilot licenses have expired;
 - 44.2 none of those pilots (whose ratings are visible in the application) are rated to fly the Cessna Grand Caravan, Beechcraft 1900, King Air 350, ATR 42, ATR 72, Dash 8 or F-50 (all of which are to be used by the Applicant); and
 - 44.3 the aforesaid pilots are rated to fly only 2 of the 12 aircraft types which the Applicant intends using in his fleet.
45. In relation to the aforesaid cabin crew licenses, we point out that:
- 45.1 all of these licenses have expired;
 - 45.2 none of these cabin crew (whose ratings are visible in the application) are rated to fly on the Beechcraft 1900, King Air 350, ATR 42, ATR 72, Dash 8 or F-50 (all of which are to be used by the Applicant); and
 - 45.3 the aforesaid cabin crew are rated to fly on only 2 of the 12 aircraft types which the Applicant intends using in his fleet.
46. In relation to the aforesaid aircraft maintenance engineers, we point out the following:
- 46.1 the first engineer, Mr Siyere, is rated to perform maintenance on A320s and B737s, which are 2 of the 12 aircraft which the Applicant intends using in his fleet; and
 - 46.2 the second engineer, Mr Ngonomo, holds no ratings on his license.
47. We doubt that the Applicant considered the substantial training costs which he will have to incur to reactivate the expired licenses, to convert the existing licenses and/or obtain initial type rate training for the intended personnel. We record some of the estimated costs which the Applicant will have to incur:
- 47.1 Reactivation training for cabin crew and pilots for intended aircraft:



- 47.1.1 NAD 45,000.00 per cabin crew member;
 - 47.1.2 NAD 112,593.00 per A330 or A320 pilot; and
 - 47.1.3 NAD 94,000.00 per B737 pilot.
- 47.2 Conversion/initial type rating costs per pilots on aircraft currently owned by Applicant:
- 47.2.1 NAD 268,899.00 for Dash 8;
 - 47.2.2 NAD 331,634.00 for ATR 42/72;
 - 47.2.3 NAD 117,587.00 for Cessna Grand Caravan; and
 - 47.2.4 NAD 190,069.00 for B1900/B350.
- 47.3 Recurrent training per pilot on aircraft currently owned by Applicant (to be performed every 6 months):
- 47.3.1 NAD 67,000.00 for Dash 8;
 - 47.3.2 NAD 110,000.00 for ATR 42/72;
 - 47.3.3 NAD 34,620.00 for Cessna Grand Caravan; and
 - 47.3.4 NAD 57,672.00 for B1900/B350.
- 47.4 Conversion costs per pilot for aircraft to be leased by Applicant:
- 47.4.1 NAD 433,501.00 for A330 or A320;
 - 47.4.2 NAD 483,179.00 for B787; and
 - 47.4.3 NAD 299,338.00 for B737.
- 47.5 Recurrent training per pilot on aircraft to be leased by Applicant (to be performed every 6 months):
- 47.5.1 NAD 112,593.00 for A330 or A320;
 - 47.5.2 NAD 120,000.00 for B787; and
 - 47.5.3 NAD 94,000.00 for B737.



- 47.6 Initial training costs for engineers shall amount to roughly N\$ 690,000.00 per engineer. The number of engineers which the Applicant allegedly intends appointing do not exist in Southern Africa, so the Applicant would have to provide initial training for the engineers.
48. The aforesaid costs are only some of the training costs to be incurred by the Applicant, yet he does not address any of these costs in the Application.
49. The Applicant fails to provide any proof that he has secured the services of a training organisation (or even engaged with a training origination) to render training to the Applicant and its extensive personnel.
50. In the premises, the Commission has no training information or documentation, which would allow it to evaluate whether the Applicant can render a safe, satisfactory and reliable air service and whether his personnel will be duly trained.

CONCLUSION

51. the Objector's objections can be summarised as follows:
- 51.1 the publication of the Application is defective;
- 51.2 the Applicant fails to provide any proof that he maintains or will even acquire sufficient capital to commence with such an extensive airline and thereafter render a safe, satisfactory and reliable air service;
- 51.3 the Applicant fails to prove access, possession and/or ownership to/of any of the aircraft which he intends using in his fleet;
- 51.4 the Applicant fails to provide any proof that his aircraft will be duly maintained and that the listed maintenance organisations have agreed to render maintenance services to the Applicant (or even know of the Applicant);
- 51.5 the Applicant fails to provide any proof that any ground handling suppliers have agreed to render ground handling services to the Applicant (or even know of the Applicant);
- 51.6 the Applicant fails to provide any proof that his intended airline will be sufficiently insured;



- 51.7 the majority of the licenses, of the pilots and cabin crew who the Applicant intends employing, have expired and such crew are not rated on the majority of the aircraft which the Applicant intends using in its fleet; and
- 51.8 the Applicant's intended personnel have to undergo extensive and costly training, none of which has been budgeted for by the Applicant and the Applicant has failed to prove that he maintains sufficient capital to fund such training.
52. At the outset of the hearing of the Application, the Objector shall make application to the Commission whereby it shall request the Commission to exercise its discretion under section 6(2) of the Act, in that the Applicant should be directed to confirm the allegations of fact, made by him in the Application, under oath.
53. The Application is furthermore incomplete, in that the Applicant fails to provide its intended fares or pricing over the intended routes. The Commission therefore has no information before it to determine whether the intended extensive airline is viable.
54. The Applicant has failed dismally to provide the Commission with sufficient proof that he will be able to render a safe, satisfactory and reliable air service in respect of continuity, regularity of operation, frequency, punctuality, reasonableness of charges and general efficiency.
55. In the premises, we humbly pray that the application be dismissed.

Yours faithfully,

ELLIS & PARTNERS

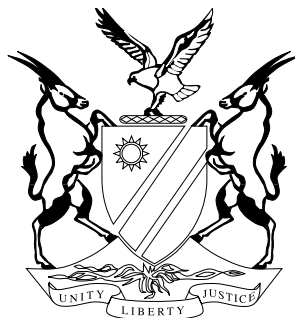


PER: MR SHAUN ELLIS

CC: Mr William Ekandjo

Via email: ekandjowil@gmail.com





GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

N\$8.00

WINDHOEK - 24 January 2023

No. 8013

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APPLICATION TO OPERATE AIR SERVICES

The following applications for Scheduled Air Transport Services, Non-scheduled Air Transport Services, Flying Training Air Services or Aerial Work Air Services indicate (1) reference number; (2) name of applicant and nature of application; (3) number and type of aircraft; (4) nature of proposed air service; and (5) routes over or area within which the proposed air services are to be rendered and are published in terms of section 5 of the Air Services Act, 1949 (Act No. 51 of 1949) as amended. Representations by interested parties in respect of the applications shall comply with the requirements of section 6 of the Air Services Act, 1949 (Act No. 51 of 1949) and shall be in ninefold in respect of each application and shall be delivered by hand or sent by registered post to the Secretary, Transport Commission of Namibia, Private Bag X12005, Windhoek to reach that office not later than 21 days after the date of publication of this *Gazette*.

WINDHOEK**00A0109****(c) Number and types of aircraft to be purchased by applicant and estimated cost of each aircraft****11 January 2023**

Application for the Grant of a Scheduled Air Services License in terms of the Air Services Act, 1949 (Act No. 51 of 1949) as amended.

1. Name and Address of applicant:

William Aupapa Ekandjo
P.O. Box 8855
Bachbrecht, Windhoek

2. Name under which the applicant will operate:

Fly Etosha Airways (Pty) Ltd
Registration No. 20220785

3. Area to be served:

Domestic, Regional and International

4. The route or routes and towns to be served:

Windhoek, Ondangwa, Katima Mulilo, Walvis Bay, Lüderitz, Rundu, Oranjemund, Victoria Falls, Johannesburg and Cape Town etc.

5. Base or bases of operation

Eros Airport
Windhoek Hosea Kutako International Airport

6. Types and classes of traffic to be conveyed and assessment of potential traffic available:

- (a) Passenger (Business and Economy class)
- (b) Baggage and freight
- (c) Dangerous Goods

7. Frequency and time-table to which the service will be operated:

N/A

8. Proposed tariff of charges or fares:

N/A

9. Aircrafts to be used:**(a) Number and types of aircraft owned by the applicant**

3 Cessna Grand Caravan
3 Beech 1900
3 King Air 350
3 Regional Turbo Prop-ATR 42 – 72/ Dash 8/
F-50

(b) Number and types of aircraft (other than those owned) leased or to be leased by the applicant

3 A330
3 B787
3 A320
3 B737

3 Cessna Grand Caravan	US 2.0 MIL
3 Beech 1900	US 3.0 MIL
3 King Air 350	US 4.0 MIL
3 ATR 42	US 3.7 MIL
2 ATR – 72	US 9.0 MIL
3 DASH	US 3.9 MIL
2 DASH 8 Q 400	US 9.0 MIL
2 F-50	US 3.0 MIL

10. Particulars of:**(a) Servicing, maintenance and repair facilities which the applicant will or does –****(i) himself provide:**

- In-house maintenance – Fly Etosha Airways (Pty) Ltd
- Line maintenance checks
- A check

(ii) *arrange with another organization to supply;

Maintenance Spare parts and to perform B, C, D check

(iii) *Name of such organization and its facilities etc. are to be given:

- Aviation Center
- Ethiopian Airline Maintenance
- SAA Technical Service
- Dannel Aviation

WINDHOEK**00A0110****11 January 2023**

Application for the Grant of Non-Scheduled Air Services License in terms of the Air Services Act, 1949 (Act No. 51 of 1949) as amended.

1. Name and Address of applicant:

William Aupapa Ekandjo
P.O. Box 8855
Bachbrecht, Windhoek

2. Name under which the applicant will operate:

Fly Etosha Airways (Pty) Ltd
Registration No. 20220785

3. Area to be served:

Domestic, Regional and International

4. The route or routes and towns to be served:

Windhoek, Ondangwa, Katima Mulilo, Walvis Bay, Lüderitz, Rundu, Oranjemund, Victoria Falls, Johannesburg and Cape Town etc.

5. Base or bases of operation

Eros Airport
Windhoek Hosea Kutako International Airport

(ii) *arrange with another organization to supply;

Maintenance Spare parts and to perform B, C, D check

6. Types and classes of traffic to be conveyed and assessment of potential traffic available:

- (a) Passenger (Business and Economy class)
- (b) Baggage and freight
- (c) Dangerous Goods

(iii) *Name of such organization and its facilities etc. are to be given:

- Aviation Center
- Ethiopian Airline Maintenance
- SAA Technical Service
- Dannel Aviation

7. Frequency and time-table to which the service will be operated:

N/A

8. Proposed tariff of charges or fares:

N/A

9. Aircrafts to be used:**(a) Number and types of aircraft owned by the applicant**

3 Cessna Grand Caravan
3 Beech 1900
3 King Air 350
3 Regional Turbo Prop-ATR 42 – 72/ Dash 8/
F-50

(b) Number and types of aircraft (other than those owned) leased or to be leased by the applicant

3 A330
3 B787
3 A320
3 B737

(c) Number and types of aircraft to be purchased by applicant and estimated cost of each aircraft

3 Cessna Grand Caravan	US 2.0 MIL
3 Beech 1900	US 3.0 MIL
3 King Air 350	US 4.0 MIL
3 ATR 42	US 3.7 MIL
2 ATR – 72	US 9.0 MIL
3 DASH	US 3.9 MIL
2 DASH 8 Q 400	US 9.0 MIL
2 F-50	US 3.0 MIL

10. Particulars of:**(a) Servicing, maintenance and repair facilities which the applicant will or does –****(i) himself provide:**

- In-house maintenance – Fly Etosha Airways (Pty) Ltd
- Line maintenance checks
- A check