

DETERMINATION

RENEWAL OF DETERMINATION SCHEDULE C ALLOCATING CAPACITY TO NEW ZEALAND TO ANSETT INTERNATIONAL LIMITED (ACN 060 622 460)

Determination Number:
IASC/DET/9710

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Date: 3 March 1997

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1. The Determination subject to renewal

1.1. On 20 August 1992, the Minister issued Determination Schedule C (the determination) which allocated unlimited passenger and freight capacity to New Zealand to Ansett Transport Industries Limited which, by Decision IASC/DEC/9517 transferred the allocated capacity to Ansett International Limited ACN 060 622 460 (Ansett). The determination, issued under section 54 of the *International Air Services Commission Act 1992* (the Act) and effective from 1 July 1992, expires on 30 June 1997.

2. The application

2.1. Under the Act, the Commission must start its consideration of the renewal of a determination at least 12 months before its expiry. In accordance with its procedures, on 20 May 1996, the Commission invited Ansett to express its interest (or otherwise) in renewing the determination. On 20 May 1996, Ansett wrote to the Commission seeking a renewal of the determination.

2.2. On 21 June 1996, the Commission published a notice inviting submissions from any interested person about the renewal of the determination, and other applications for an allocation of all or part of the capacity that is subject to renewal. The closing date for submissions and other applications was 19 July 1996. There were no other applications and no submissions were received.

2.3. All non-confidential material supplied by the applicant is filed on the Register of Public Documents. Confidential material supplied by the applicant is filed on the Commission's confidential register.

3. Ansett services to New Zealand

3.1. The determination allocated to Ansett unlimited passenger and freight capacity to New Zealand. Ansett currently operates services between Sydney and Auckland.

3.2. Ansett has received approvals from the Commission to code-share on its New Zealand services with Aerolineas Argentinas, Royal Tongan Airlines and Air New Zealand: see Decisions IASC/DEC/9601, IASC/DEC/9604 and IASC/DEC/9701.

3.3. In response to a request by the Commission, Ansett has provided the Commission with information concerning its operations on the route including the cities served, any operational or regulatory problems (of which according to Ansett there were none) and current published fares. In particular no difficulties in relation to any of the code-share arrangements have been drawn to the attention of the Commission.

4. Provisions of the Australia-New Zealand Air

Services Agreement

4.1. The Australia-New Zealand Air Services Agreement and associated Memorandum of Understanding provides for multiple designation and unlimited capacity entitlements. There is unlimited capacity on the Register of Capacity.

4.2. On 1 November 1996 a Single Aviation Market (SAM) came into force between Australia and New Zealand. Under the SAM, unlimited capacity entitlements continue to apply, and airlines of each country have unrestricted rights to fly trans-Tasman services.

5. Legislative framework

5.1. Renewal of a determination is made in accordance with the *International Air Services Commission Act 1992*. The legislative framework for considering a renewal of a determination under the Act is set out in Attachment A.

5.2. Under section 11 of the Act, the Minister may make Policy Statements setting out matters relevant to the Commission's performance of its functions. The current Policy Statement (No.2) was issued by the Minister on 27 March 1995 and includes criteria to be applied by the Commission in considering the renewal of a determination.

5.3. The criteria for renewal in circumstances where capacity is not limited under a bilateral agreement are those set out in Attachment B. These criteria apply to this application.

6. Responses to the draft determination

6.1. The Commission issued a draft determination on 7 February 1997 and invited submissions on the draft, requesting comments by 25 February 1997. No submissions were received.

7. Commission's consideration of the renewal of the determination

7.1. Under the Policy Statement the criteria that has to be met by carriers seeking renewal of capacity in circumstances where capacity is not limited by a bilateral agreement are that carriers:

- (i) are reasonably capable of obtaining the necessary approvals to operate on the route; and
- (ii) are reasonably capable of implementing their proposals.

7.2. In this case Ansett is the only applicant and there have been no submissions in respect of the application for renewal. Ansett already holds all necessary approvals and currently operates a number of services on the route.

7.3. Ansett has recently announced losses for the first half of the current financial year. Based on confidential information provided by Ansett to the Commission and having regard to the Deed of Guarantee and Indemnity (see Decision IASC/DEC/9405) the Commission is satisfied that Ansett is reasonably capable of continuing to operate these services satisfactorily.

7.4. Accordingly, the Commission concludes that the renewal of Determination Schedule C allocating capacity to New Zealand to Ansett would be of benefit to the public.

8. Other issues

Terms and conditions of the fresh determination

8.1. Under section 19(3) of the Act, the Commission may make such changes (if any) to the terms and conditions included in the original determination as it is satisfied are warranted because of changes in circumstances since the original determination was made.

8.2. Since the original Section 54 Determination was made the Commission has had an opportunity to refine the terms and conditions which should apply to its determinations. In these circumstances the Commission believes that fresh determinations which renew original determinations should contain terms and conditions which are consistent with those applying to determinations currently issued by the Commission.

Period of the fresh determination

8.3. The Commission will grant Ansett a fresh determination for a period of 5 years effective from 1 July 1997.

Utilisation of the capacity

8.4. Because of the unlimited capacity available between Australia and New Zealand, the Commission would not propose to specify that Ansett be required to fully utilise the allocated capacity during the period of the fresh determination.

8.5. The Commission will specify conditions relating to the basis on which Ansett is permitted to operate services jointly with Aerolineas Argentinas, Royal Tongan Airlines and Air New Zealand respectively. The conditions are based on conditions which were applied when the Commission authorised the relevant joint services.

Ownership and control of the carrier

8.6. The Commission's view is that the determination should include the usual limitations on changes in the ownership and control of Ansett. These are specified below.

9. Determination for renewal of Determination Schedule C allocating to Ansett capacity on the New Zealand route (IASC/DET/9710)

9.1. The Commission finds a renewal of Determination Schedule C allocating capacity to Ansett on the Australia - New Zealand route would be of benefit to the public.

9.2. The Commission makes a fresh determination in favour of Ansett, allocating unlimited passenger and freight capacity between Australia and New Zealand under the Australia - New Zealand Air Services Agreement.

9.3. The determination is for 5 years from 1 July 1997.

9.4. The determination is subject to the following conditions:

- Ansett is not required to fully utilise the capacity on this route for the period of the determination;
- only Ansett is permitted to utilise the capacity;
- Ansett may use the capacity to provide services jointly with Aerolineas Argentinas, Royal Tongan Airlines, and Air New Zealand in accordance with the conditions specified below;
- Ansett is permitted to operate services jointly with Aerolineas Argentinas S.A in accordance with the Seat and Cargo Purchase Agreement dated 15 November 1996, as varied from time to time, except that variations relating to the following matters may only be made with the prior approval of the Commission:
 - extending the agreement beyond the term of the Ansett determination;
 - increasing the number of seats provided to Aerolineas Argentinas; and
 - changing the sectors covered by the Agreement.
- Ansett is permitted to operate services jointly with Royal Tongan Airlines in accordance with the Seat Capacity Purchase Agreement dated 20 March 1996, as varied from time to time, except that variations relating to the following matters may only be made with the prior approval of the Commission:

- extending the Agreement beyond the term of the Ansett determination;
 - increasing the number of seats provided to Royal Tongan Airlines; and
 - changing the sectors covered by the Agreement.
- Approval to operate services jointly with both Aerolineas Argentinas and Royal Tongan Airlines is given on the condition that if either of the above two carriers exercises fifth freedom traffic between Australia and New Zealand then to the extent that Ansett exercises the capacity to provide joint services with Royal Tongan Airlines and Aerolineas Argentinas respectively:
 - Ansett must not share or pool revenues with Royal Tongan Airlines or Aerolineas Argentinas ; and
 - Ansett must price and sell its services independently of both Royal Tongan Airlines and Aerolineas Argentinas.
- To the extent that Ansett exercises the capacity to provide joint services with Air New Zealand:
 - Ansett must price and sell services on the route independently;
 - Ansett must not share or pool revenues with Air New Zealand; and
 - Ansett must take all reasonable steps to ensure that all passengers are informed, at the time of ticket reservation, of the carrier who will actually be operating the flight.
- changes in relation to the ownership and control of Ansett are permitted except to the extent that any change:
 - results in the designation of the airline as an Australian carrier under the Australia - New Zealand Air Services Agreement 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 Ansett or be in a position to exercise effective control of Ansett, without the prior consent of the Commission, and
- changes in relation to the management, status or location of operations and Head Office of Ansett are permitted except to the extent that any change would result in the airline ceasing to be an airline designated by the Australian Government for the purposes of the Australia - New Zealand Air Services Agreement.

Dated: 3 March 1997

James K Bain
Chairman

Brian L Johns
Member

Russell V Miller
Member

A. Legislative Framework

1. Under subsection 17(1) of the Act, the Commission must start its consideration of the renewal of a determination at least 12 months before the end of the period during which the determination is in force.
2. Under subsection 17(2) of the Act, before starting its consideration, the Commission must, by notice, invite submissions about the renewal.
3. Under subsection 17(3), any person may make submissions to the Commission about the renewal.
4. Under subsection 8(1), the Commission may, at any time while a determination is in force, make a fresh determination allocating capacity to which the original determination relates.
5. Under subsection 8(2), the fresh determination:
 - (a) must make the same allocation of capacity as the original determination unless:
 - (i) the Commission is satisfied that that allocation is no longer of benefit to the public; or
 - (ii) the original determination is an interim determination; and
 - (b) comes into force immediately after the end of the period during which the original determination was in force.
6. Under subsection 8(3), if the fresh determination does not make the same allocation of capacity as the original determination, it must not make a different allocation of capacity unless the Commission is satisfied that that allocation would be of benefit to the public.
7. In assessing the benefit to the public of an allocation of capacity, the Commission must apply the criteria set out for that purpose in the Policy Statement dated 27 March 1995 made under section 11 of the Act. The criteria applicable to assessing benefit to the public for the purposes of renewal of determinations are those contained in paragraph 8 of the Policy Statement.
8. Subsection 19(1) of the Act relates to the contents of determinations made under section 8 of the Act. Subsection 19(2) specifies the period during which the determination is to be in force.
9. Under subsection 19(3), in including terms and conditions in the determination, the Commission may make such changes (if any) to the terms and conditions included in the original determination (including adding or deleting terms and conditions) as it is

satisfied are warranted because of changes in circumstances since the original determination was made.

10. Section 20 relates to notifications of determinations.

B. Relevant criteria under paragraphs 4, 6 and 8 of the Policy Statement

Paragraph 6.1 requirements

6. CRITERIA APPLICABLE IN PARTICULAR CIRCUMSTANCES

Capacity not limited

6.1 In circumstances where capacity is not limited under a bilateral arrangement, only the criteria in paragraph 4 are applicable.

Paragraph 4 requirements

4. GENERAL CRITERIA FOR ASSESSING BENEFIT TO THE PUBLIC

4.1 Subject to paragraph 6, the general criteria against which the benefit to the public is to be assessed by the Commission in considering the circumstances in relation to an allocation of capacity or the renewal or review of a determination allocating capacity to an Australian carrier are as set out below:

Use of Australian carrier entitlements

(a) Subject to (b), the use of the entitlements of Australian carriers under a bilateral arrangement is of benefit to the public.

Carrier Capabilities

4.1(b) It is not of benefit to the public for the Commission to allocate capacity to Australian carriers unless such carriers:

- (i) are reasonably capable of obtaining the necessary approvals to operate on the route; and
- (ii) are reasonably capable of implementing their proposals.

Paragraph 8 requirements

Paragraph 8 requires that Paragraph 6.1 must be taken into account.