

RENEWAL DETERMINATION

DETERMINATION NO: IASC/DET/9808
PUBLIC REGISTER FILES: IASC/APP/97026
IASC/COM/92001
RENEWAL OF: DETERMINATION IASC/DET/9313
THE ROUTE: HONG KONG
THE APPLICANT: ANSETT INTERNATIONAL LIMITED
(ACN 060 622 460)

1 The application for renewal

1.1 On 24 September 1993, the Commission issued Determination IASC/DET/9313 (the Determination). The Determination, as varied by Decisions IASC/DEC/9405 and IASC/DEC/9807, allocates 2,140 seats and 5 frequencies per week on the Hong Kong route to Ansett International Limited ACN 060 622 460 (Ansett International). The Determination expires on 23 September 1998.

1.2 Ansett International wrote to the Commission seeking renewal of the Determination. The Commission published a notice inviting other applications for an allocation of all or part of the capacity subject to renewal and submissions from any interested person about the renewal of the Determination. No other applications or submissions were received.

2 Commission's consideration of the renewal of the Determination

2.1 Under section 11 of the *International Air Services Commission Act 1992* (the Act), the Minister may make Policy Statements setting out matters relevant to the Commission's performance of its functions. Under the Policy Statement (No. 3), issued by the Minister on 23 April 1997, there is a rebuttable presumption in favour of the carrier seeking the renewal.

2.2 The Commission notes that:

- Ansett International has been fully utilising the relevant capacity;
- there are no other applicants seeking any part of this capacity on the route; and
- there is no evidence that Ansett International has failed to service the route effectively.

2.3 The Commission concludes that the renewal of Determination IASC/DET/9313 would be of benefit to the public.

2.4 The wording of the new determination below reflects the belief of the Commission that determinations which renew original determinations should contain updated terms and conditions consistent with the Commission's current practice. Under the Act, the Commission may make changes to the terms and conditions included in the original determination where warranted by changes in circumstances since the original determination was made.

3 Determination for renewal of Determination IASC/DET/9313 allocating capacity on the Hong Kong route to Ansett International (IASC/DET/9808)

3.1 The Commission finds a renewal of the Determination IASC/DET/9313 allocating 2,140 seats and 5 frequencies per week on the Australia - Hong Kong route to Ansett International would be of benefit to the public.

3.2 The Commission makes a determination in favour of Ansett International, allocating 2,140 seats and 5 frequencies per week in each direction between Australia and Hong Kong under the Australia - Hong Kong Air Services Agreement.

3.3 The Determination is for five years from 24 September 1998 and is subject to the following conditions:

- Ansett International is required to fully utilise the capacity from 24 September 1998;
- only Ansett International is permitted to utilise the capacity;
- Ansett International is not permitted to utilise the capacity to provide services jointly with another Australian carrier or any other person without the approval of the Commission;
- changes in relation to the ownership and control of Ansett International 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 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 International or be in a position to exercise effective control of Ansett International, without the prior consent of the Commission;
- changes in relation to the management, status or location of operations and Head Office of Ansett International are permitted except to the extent that any change results in the airline ceasing to be an airline designated by the Australian

Government for the purposes of the Australia-Hong Kong Air Services Agreement;

- no reduction may take place in the extent of the liability of any person or persons as guarantor under the Deed of Guarantee and Indemnity without the prior written consent of the Commission: (the Commission's approval may be deemed to have been given in certain circumstances in accordance with the relevant terms of the Deed);
- no retirement, or replacement, of the Trustee under the Deed of Guarantee and Indemnity may take place without the Commission's prior written consent;
- the guarantors shall not, without the prior written consent of the Commission, give notice to terminate the Deed of Guarantee and Indemnity;
- no amendments to the Deed of Guarantee and Indemnity may take place without the prior written consent of the Commission; and
- Ansett International must, from time to time, if requested to do so by the Commission in writing, provide evidence that it has access on arms length terms to all of the goods, services and facilities necessary to undertake required operations on the route.

Dated: 23 April 1998

James K Bain
Chairman

Russell V Miller
Member

Michael L Lawriwsky
Member