

# DETERMINATION

**DETERMINATION:** IASC/DET/9816  
**THE ROUTE:** NEW ZEALAND  
**THE APPLICANT:** ANSETT AUSTRALIA LIMITED  
(ACN 004 209 410)  
**PUBLIC REGISTER FILES:** IASC/APP/98009

## 1 The application

1.1 On 19 June 1998, an application was received from Ansett Australia Limited (Ansett Australia) for an allocation of freight capacity between Australia and New Zealand. Ansett Australia is seeking the allocation of freight capacity to enable it to operate five scheduled B727 freight services per week between Sydney and Auckland.

1.2 The Commission published a notice inviting other applications for all or any part of the capacity and submissions from interested parties about the Ansett Australia application. A submission was received from the Australian and International Pilots Association (AIPA) opposing the application.

## 2 Provisions of relevant air services arrangements

2.1 The Australia - New Zealand Single Aviation Market (SAM) Arrangements of 19 September 1996 provide for airlines of the two countries, which meet the definition of a SAM airline, to operate services between Australia and New Zealand with such capacity for passenger and/or freight services as they each decide. Ansett Australia is a SAM airline.

## 3 Commission's assessment

3.1 Allocations of capacity are made by the Commission in accordance with the *International Air Services Commission Act 1992* (the Act), and the Minister's Policy Statement (No 3 of 23 April 1997) which was issued under section 11 of Act.

3.2 The Act and Policy Statement provide that if there are no competing applications, the relevant criteria for the Commission in considering an application for capacity are whether the applicant is reasonably capable of both obtaining the necessary approvals to operate on the route and of implementing its proposal. In circumstances where submissions are received about an application, the Commission may also apply the additional criteria set out in Paragraph 5 of the Policy Statement.

3.3 A feature of this application is that Ansett Australia proposes to operate the capacity utilising an aircraft wet leased from Kitty Hawk Air Cargo Inc, a US company. Ansett Australia has operated the service as a charter since July 1997 and now proposes to upgrade this to a scheduled service.

3.4 The AIPA opposed the Ansett Australia application on a number of grounds, including the detrimental impact that a foreign crewed and owned aircraft would have on employment opportunities for Australian aircrew and the Australian aviation industry. The AIPA argue that:

- a substantial B727 infrastructure already exists in Australia and this would be detrimentally affected by the use of foreign crewed and owned aircraft;
- the use of a US aircraft gives an unfair advantage to the US operator because the United States has a less restrictive regime for air freight regulation. The playing field is not level;
- the introduction of a US operator could adversely affect the freight market between Australia and New Zealand and could be expected to affect the Asian market; and
- there is an excess of flight engineers in Australia and the proposed operation will use US crews and provide no employment opportunities for Australian aircrew.

3.5 Ansett Australia responded to the claims of the AIPA, however, before considering Ansett Australia's response the Commission must determine whether there is sufficient in the AIPA claims to warrant the Commission proceeding to undertake a full public benefit analysis under Paragraph 5 of the Policy Statement.

3.6 The Commission notes that the New Zealand route has no capacity constraints and that Ansett Australia, as a SAM airline, is entitled to operate on the route as long as it holds an allocation of capacity from the Commission and the necessary operating authorisations. Wet leases are not an uncommon method of operation. Furthermore, this is not a new service. It has been operating as a charter service for over 12 months.

3.7 The Commission has considered each of the concerns expressed by the AIPA and concludes, on balance, that those concerns are insufficient to warrant a Paragraph 5 assessment.

3.8 In relation to necessary approvals, the Department of Transport and Regional Development advised the Commission that it expects that Ansett Australia is reasonably capable of obtaining any necessary approvals from the Department to permit it to operate freight services between Australia and New Zealand.

3.9 The Commission concludes that it is appropriate to make an allocation to Ansett Australia of unlimited freight capacity between Australia and New Zealand.

## 4 Other issues

4.1 Ansett Australia has sought a determination for five years from the date of the determination. The Commission will make such a determination.

4.2 Ansett Australia has not sought the right to use the capacity jointly with another carrier. The Commission will specify that the capacity is only to be used by Ansett Australia and that Ansett Australia cannot use the capacity by providing services jointly with any other carrier without the prior approval of the Commission.

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

## 5 Determination allocating shelf capacity on the New Zealand route to Ansett Australia (IASC/DET/9816)

5.1 The Commission makes a determination in favour of Ansett Australia, allocating unlimited freight capacity as provided for under the Australia - New Zealand air services arrangements.

5.2 The determination is for five years from the date of the determination.

5.3 The determination is subject to the following conditions:

- Ansett Australia is required to commence utilisation of the capacity no later than 1 September 1998 or such other date approved by the Commission;
- in accordance with section 15(2)(c) of the Act, Ansett Australia is not required to fully utilise the capacity on this route for the period of the determination but the allocation of capacity may be withdrawn if, for any period of six months after Ansett Australia commences utilisation of the capacity, it does not operate scheduled freight services on the route;
- only Ansett Australia is permitted to utilise the capacity;
- Ansett Australia 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 Australia are permitted except to the extent that any change:
  - results in the airline not meeting the definition of a SAM airline under the Australia - New Zealand Single Aviation Market (SAM) Arrangements;
  - 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 Australia or be in a position to exercise effective control of Ansett Australia, without the prior consent of the Commission; and
- changes in relation to the management, status or location of operations and Head Office of Ansett Australia are permitted except to the extent that any change would result in the airline not meeting the definition of a SAM airline under the Australia - New Zealand Single Aviation Market (SAM) Arrangements.

Dated: 12 August 1998

Russell V Miller  
Chairman

Michael L Lawriwsky  
Member

Stephen Lonergan  
Member