

DETERMINATION

DETERMINATION: IASC/DET/9820
THE ROUTE: SINGAPORE
THE APPLICANT: ANSETT INTERNATIONAL LIMITED
(ACN 060 622 460)
PUBLIC REGISTER FILES: IASC/APP/98016
IASC/COM/92001

1 The application

1.1 On 29 July 1988, Ansett International Limited ACN 060 622 460 (Ansett International) wrote to the Commission seeking an allocation of shelf capacity to Singapore.

1.2 Ansett International proposes to code share, on a free sale basis, on 52 Singapore Airlines services involving 3,890 seats from 28 September 1998, increasing to 55 services involving 4,238 seats from 24 October 1998.

1.3 Ansett International stated that the application was conditional on the Australian Competition and Consumer Commission (ACCC) authorising an alliance agreement dated 17 December 1997 between Ansett Australia Limited, Ansett International Limited, Air New Zealand and Singapore Airlines (the Alliance Agreement) coming into effect. A copy of the Alliance Agreement was provided to the Commission. The Alliance Agreement includes the co-ordination and establishment of a network of flights between Australia and South East Asia and within Australia, including code sharing on domestic services provided by Ansett Airlines. The Agreement also includes agreeing on joint and individual fares and rates for passenger and freight services on the network comprising all on line points for each Alliance carrier worldwide.

1.4 The ACCC decided to grant an authorisation under the *Trade Practices Act* but the authorisation was suspended when an appeal was lodged with the Trade Practices Tribunal by a third party. The Application was subsequently dismissed by the Tribunal and the authorisation is now in effect.

1.5 Consequently, Ansett International is now seeking a determination that enables it to provide services jointly with Singapore Airlines, subject to the condition that the services are operated under the Alliance Agreement as authorised by the ACCC.

1.6 Ansett International provided the Commission with a copy of the code share agreement with Singapore Airlines dated 2 September 1998 (Code Share Agreement) on a commercial-in-confidence basis. A summary of a draft of the agreement was provided for the Commission's Register of Public Documents. All other 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.

1.7 The Commission published a notice inviting other applications for all or any part of the capacity and submissions from interested parties about the Ansett International application. No applications or submissions were received. Advice was received from the ACCC that its authorisation of the Alliance Agreement took account of the proposed code sharing operations between Ansett International and Singapore Airlines.

2 Provisions of relevant Air Services Agreements

2.1 The Australia - Singapore Air Services Agreement (ASA) provides for multiple designation of Australian carriers.

2.2 The air services arrangements between Australia and Singapore permit code sharing, including on services operated by third country carriers on the basis that any use of capacity under a code share arrangement is deemed to count as not less than 25% of the seats available on the aircraft used for each code share service.

2.3 The Department of Transport and Regional Development (DoTRD) has advised that the Ansett International/Singapore Airlines proposal is consistent with the ASA and air services arrangements.

2.4 According to the Register of Available Capacity, there are 6,140 seats a week available for allocation with immediate effect. Qantas currently has an allocation equivalent to 16,740 seats per week and National Jet Systems an allocation equivalent to 320 seats.

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 Under the Policy Statement, the relevant criteria to be applied in deciding whether or not to allocate capacity, given that there is only one applicant and no other submissions, is whether Ansett International is reasonably capable of obtaining the necessary approvals and whether it is reasonably capable of implementing its proposals. The Commission is not required to assess the application against the broader public interest criteria.

3.3 Ansett International is an established international carrier which has the technical and financial resources to implement its proposal. The Commission concludes that Ansett International is reasonably capable of obtaining the necessary approvals and of implementing its proposal and that the allocation to Ansett International of 4,238 seats per week in each direction between Australia and Singapore would be of benefit to the public.

3.4 The second matter which the Commission must decide is whether it should approve the code share agreement with Singapore Airlines. This is because, sub-section 15(2)(e) of the International Air Services Commission Act 1992 requires the Commission to include conditions in determinations stating the extent (if any) to which the applicant may use allocated capacity by providing international air services jointly with any other person. For this purpose the Commission has previously decided that joint services include, inter alia, code-sharing: See IASC/DET/9616.

3.5 The Commission will normally determine whether or not a code-sharing proposal should be approved utilising the public benefit criteria contained in paragraph 5 of the Policy Statement. This is consistent with the objects set out in section 3 of the Act.

3.6 The Commission has assessed the Code Share Agreement utilising its Draft Pro Forma Assessment of Code Share Agreements and also considered the findings of the ACCC in its decision on the authorisation application. In that regard the Commission notes the ACCC view that:

“ public benefits will arise from increased competition, a stronger Ansett International, new products, more efficient use of resources (eg ground handling, information technology), the facilitation of seamless services and enhanced frequent flyer programs”.

3.7 The code sharing is explicitly provided for in the Alliance Agreement and was before the ACCC when it made its decision on the authorisation. Although the views expressed by the ACCC relate to the Alliance Agreement rather than the specific Code Share Agreement presently before the Commission, the ACCC conclusions appear equally applicable to the proposed code share on the Australia-Singapore route.

3.8 In addition, the Commission’s assessment of the code share supported the ACCC view. No submissions to the contrary were lodged with the Commission.

3.9 Overall, the ACCC concluded that “the public benefits arising from the issues listed above will outweigh the public detriment arising from the price fixing and exclusionary provisions of the Alliance Agreement.”

3.10 The Commission agrees with the ACCC conclusion and will give approval to the Code Share Agreement subject to the conditions set out below.

4 Other issues

4.1 The Commission would normally impose conditions on the approvals for code share agreements to require the applicant to price and sell its services on the route independently and not to share or pool revenue. The Commission proposes to include these conditions except to the extent that such practices may be permitted under the ACCC authorisation of the Alliance Agreement.

4.2 The Commission normally specifies that the applicant must take all reasonable steps to ensure that passengers are informed, at the time of booking, of the carrier actually operating the flight. The Commission will do so in this case.

4.3 Ansett International proposes to commence operating the capacity from 28 September 1998. The Commission will require Ansett International to fully utilise the capacity from 24 October 1998.

4.4 The Commission will make a determination for five years from the date of the determination.

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

4.6 As the minimum capacity utilisation under the Australia-Singapore air services arrangements per flight is 25 per cent of the available seats, there is a prospect that Ansett will not, in practical terms, utilise the capacity in an optimal manner.

4.7 Information concerning the utilisation of capacity by Ansett International on the Singapore route will usually be available to the Commission through DoTRD. In the event that satisfactory information is not available, the Commission may require the Ansett International to advise the Commission from time to time of the number of seats utilised each week between points in Australia and Singapore under the Code Share Agreement.

4.8 In the event that the air services arrangements between Singapore and Australia are amended to express code share capacity in units other than a minimum of 25 per cent of the available seats on the aircraft the Commission will require Ansett International to return any capacity excess to its requirements.

5 Role of the ACCC

5.1 The Policy Statement and its associated Explanatory Memorandum make clear that the ACCC retains primary responsibility for competition policy matters. Nothing in the Commission's decisions should be taken as indicating either approval or disapproval by the ACCC. The Commission's decisions are made without prejudicing, in any way, possible future consideration by the ACCC of the code share agreement or operations under it.

6 Determination allocating shelf capacity on the Singapore route to Ansett International (IASC/DET/9820)

6.1 The Commission finds that an allocation of capacity to Ansett International on the Australia – Singapore route as sought would be of benefit to the public.

6.2 The Commission makes a determination in favour of Ansett International, allocating 4,238 seats per week in each direction between Australia and Singapore under the Australia – Singapore Air Services Agreement.

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

6.4 The determination is subject to the following conditions:

- Ansett International is required to fully utilise the capacity from no later than 24 October 1998 or from such other date approved by the Commission;
- only Ansett International is permitted to utilise the capacity;
- the capacity may be used by Ansett International to provide joint services with Singapore Airlines pursuant to the Alliance Agreement dated 17 December 1997 as authorised pursuant to the *Trade Practices Act* and in accordance with:
 - the Code Share Agreement dated 2 September 1998 between Ansett International and Singapore Airlines as extended or as amended with respect to Appendix A;
 - the Code Share Agreement otherwise amended with the prior consent of the Commission; or
 - any new joint service agreement between Ansett International and Singapore Airlines for operations on the Australia-Singapore route, whether or not it replaces the existing agreement, with the prior approval of the Commission;

subject to the following conditions:

- Ansett International must price and sell its services on the route independently of Singapore Airlines and not share or pool revenue except to the extent authorised under the *Trade Practices Act*; and
- Ansett International must take all reasonable steps to ensure that passengers are informed, at the time of booking, of the carrier actually operating the flight;
- if the air services arrangements between Singapore and Australia are amended to express code share capacity in units other than a minimum of

25% of the available seats on the aircraft, Ansett International is required to return any capacity excess to its requirements;

- if and for so long as the Commission requires, Ansett International will provide quarterly reports on the number of the seats which are the subject of this Determination, sold by Ansett International within 30 days of the end of each quarter;
- 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 - Singapore 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; and
- 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 would result in the airline ceasing to be an airline designated by the Australian Government for the purposes of the Australia – Singapore Air Services Agreement.

Dated: 8 September 1998

Russell V Miller
Chairman

Michael L Lawriwsky
Member

Stephen Lonergan
Member