

# DETERMINATION

**DETERMINATION:** IASC/DET/9920  
**THE ROUTE:** SINGAPORE  
**THE APPLICANT:** ANSETT INTERNATIONAL LIMITED  
(ACN 060 622 460)  
**PUBLIC REGISTER FILES:** IASC/APP/99032

## 1 The application

1.1 On 9 September 1999, Ansett International Limited ACN 060 622 460 (Ansett International) wrote to the Commission seeking an allocation of 624 seats of capacity per week in each direction on the Singapore route. The Commission has previously made two Determinations, IASC/DET/9820 and IASC/DET/9904, allocating capacity to Ansett International on the Singapore route to be utilised under the same code share arrangement with Singapore Airlines.

1.2 Ansett International proposes to utilise the capacity under a code share arrangement on Singapore Airlines operated services. Ansett International currently code shares on all 58 Singapore Airlines services to Australia and has sought the allocation of seats due to the introduction of four additional services to Perth, one to Adelaide and three to Sydney from 1 November 1999.

1.3 The code share services would be operated pursuant to the Alliance Agreement with Singapore Airlines and Air New Zealand dated 17 December 1997 (the Alliance Agreement), authorised by the Australian Competition and Consumer Commission (ACCC), and in accordance with the code share agreement between Ansett International and Singapore Airlines of 2 September 1998, a copy of which has previously been lodged with the Commission, as extended by an attachment to the current application.

1.4 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.

1.5 A summary of the code share agreement is available on the Commission's Register of Public Documents, together with all other non-confidential material supplied by the applicant. Confidential material supplied by the applicant is filed on the Commission's confidential register.

## 2 Provisions of relevant Air Services Agreements

2.1 The Australia - Singapore Air Services Agreement 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. Any capacity used under a code share arrangement counts as not less than 25% of the seats available on the aircraft used for each code share service.

2.3 The Register of Available Capacity shows 2,937 seats a week available for allocation with immediate effect. There are currently allocations on this route to Ansett International (4,667 seats) and Qantas (15,596 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, as amended on 9 March 1999) 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.

3.3 Ansett International is an established international carrier which has the technical and financial resources to implement its proposal and is already operating on this route. 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 624 seats per week in each direction on the Singapore route would be of benefit to the public.

3.4 A carrier cannot use allocated capacity by providing services jointly with any other carrier without the prior approval of the Commission. The Act, as amended with effect from 25 January 1999, defines "joint international air services" as including, but not limited to, code sharing, blocked space arrangements, joint pricing, revenue and cost sharing, revenue and cost pooling, or the sale of capacity to another airline.

3.5 Ansett International asks that it be able to use the 624 seats of requested capacity in services jointly with Singapore airlines pursuant to the Alliance Agreement dated 17 December 1997, as authorised under the Trade Practices Act, and in accordance with the code share agreement dated 2 September 1998 (as extended by supplied attachments).

3.6 The Commission normally determines 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.

3.7 The Commission has previously assessed and approved this code share agreement in these terms in Determination IASC/DET/9820 which allocated 4,238 seats of capacity to Ansett International on the Singapore route for use on Singapore Airlines operated services. The Commission also notes that the Alliance Agreement of 17 December 1997, which was authorised by the Australian Competition and Consumer Commission (ACCC), explicitly provides for code sharing.

3.8 There is no suggestion that any of the factors which led the Commission to approve the original application have changed or that they are inapplicable to the current application.

3.9 Accordingly, the Commission approves the 624 seats on the Singapore route allocated to Ansett International in this determination being used under a code share on Singapore Airlines operated services.

3.10 The allocated capacity may be operated on all sectors of the Singapore route in accordance with the Australia – Singapore Air Services Agreement, and as allowed by air services arrangements of other countries.

## **4 Other issues**

4.1 The Commission will impose conditions on this determination consistent with its earlier determinations allocating capacity on this route.

4.2 Ansett International proposes to commence using all 624 seats from 1 November 1999. The Commission will require Ansett International to fully utilise all of the allocated capacity from 1 December 1999.

4.3 Information concerning the utilisation of capacity by Ansett International on the Singapore route will usually be available to the Commission through the Department of Transport and Regional Services. In the event that satisfactory information is not available, the Commission may require 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.

4.4 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 capacity on the Singapore route to Ansett International (IASC/DET/9920)

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

6.2 The Commission makes a determination in favour of Ansett International, allocating 624 seats per week in each direction on the Singapore route in accordance with 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 1 December 1999, 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 under 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 as 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:

- except to the extent authorised under the *Trade Practices Act*, Ansett International must price and sell its services on the route independently of Singapore Airlines and not share or pool revenue; 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: 18 October 1999

Russell Miller  
Chairman

Michael Lawriwsky  
Member

Stephen Lonergan  
Member