

DETERMINATION

DETERMINATION: [2000] IASC 113
THE ROUTE: SINGAPORE
THE APPLICANT: ANSETT INTERNATIONAL LIMITED
(ACN 060 622 460)
PUBLIC REGISTER FILES: IASC/APP/200013

1 The application

1.1 On 1 June 2000, Ansett International Limited ACN 060 622 460 (Ansett International) wrote to the Commission seeking an allocation of 532 seats of capacity per week in each direction on the Singapore route. The Commission has previously made three Determinations, IASC/DET/9820, IASC/DET/9904 and IASC/DET/9920, allocating a total of 5,359 seats to Ansett International on the Singapore route. The additional capacity being sought by Ansett would be utilised under the same code share arrangement with Singapore Airlines.

1.2 Singapore Airlines has recently increased services between Singapore and Sydney and between Singapore and Cairns and has made some equipment upgrades on the Singapore - Melbourne route. In order to code share on these new services and on the larger aircraft Ansett International is seeking an increase in its capacity allocation.

1.3 The code share services would be operated pursuant to the Alliance Agreement with Singapore Airlines and Air New Zealand of 17 December 1997 (the Alliance Agreement), as authorised by the Australian Competition and Consumer Commission (ACCC). They would also be operated 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 on 6 June 2000, inviting other applications for all or any part of the capacity and submissions from interested parties about the Ansett International application. No other applications were received. A submission supporting the application was received from the Queensland Government.

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.

2 Provisions of relevant air services arrangements

2.1 Under the air services arrangements between Australia and Singapore, 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.

2.2 The Register of Available Capacity shows 905 seats a week available for allocation with immediate effect and a further 2,500 seats from 1 October this year. Currently allocations on this route are: 5,359 seats to Ansett International and 17,936 seats to Qantas.

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 submission opposing the allocation, 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. Imminent changes of relevant interest of Air New Zealand in Ansett International do not impact on these matters. 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 532 seats per week in each direction on the Singapore route would be of benefit to the public.

3.4 Section 15(2)(e) of the Act specifies that the Commission must include a condition in determinations stating the extent to which the carrier may use that capacity in joint services with another carrier. 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 ACCC, explicitly allows for code sharing.

3.5 The Commission sees no material change in the factors that it considered in approving the original application.

4 Determination allocating capacity on the Singapore route to Ansett International ([2000] IASC 113)

4.1 The Commission makes a determination in favour of Ansett International, allocating 532 seats per week in each direction on the Singapore route in accordance with the Australia – Singapore Air Services Agreement.

4.2 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.

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

4.4 The determination is subject to the following conditions:

- Ansett International is required to fully utilise the capacity from no later than 1 November 2000, 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 of that agreement;
 - 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: 21 June 2000

Michael Lawriwsky
Member

Stephen Lonergan
Member