

# DETERMINATION

**DETERMINATION:** [2000] IASC 114  
**THE ROUTE:** JAPAN  
**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) applied to the Commission seeking an allocation of 8.4 B767-200 units of capacity per week in each direction on the Japan route. Ansett International proposes to introduce daily services to Tokyo's Narita airport when landing slots become available.

1.2 Ansett International submits that Tokyo is the largest market in Japan, accounting for some 47% of all international departures, and is currently served from Australia by Qantas and Japan Airlines. Although there are no slots available at present, Ansett International submits that a second runway capable of taking B767 aircraft and scheduled for completion in July 2002 will increase airport capacity by about 50%.

1.3 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.

1.4 Submissions were received from the Australian Tourist Commission (ATC) and the Queensland and Victorian Governments supporting the allocation. The ATC noted the additional opportunity for joint marketing activity in Japan and commented on the difficulty faced by many agents in securing blocks of seats for groups. The Queensland and Victorian Governments drew attention to the benefits of increased competition on the route from approval of the application.

1.5 Qantas and Tropic Isle Retail Stores also made submissions. Qantas stated that it was in the process of evaluating plans for increasing capacity to Japan and expected to be seeking capacity not exceeding four units weekly in the near future. Tropic Isle stated that it had a continuing interest in applying for capacity to Osaka should capacity become available.

1.6 All non-confidential material supplied by the applicant and submitters is filed on the Register of Public Documents.

## 2 Provisions of relevant air services arrangements

2.1 Current capacity entitlements for Australian carriers are 79 B767-200 equivalent units.

2.2 Ansett has been allocated 14 B767-200 units of capacity and Qantas 52.6. According to the Register of Available Capacity, there are 12.4 units of capacity available for immediate allocation. Of the 12.4 units, 8.4 may be used for new services to Tokyo, Nagoya and/or Fukuoka.

### **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 the Act.

3.2 Under the Policy Statement (paragraph 4), the relevant criteria to be applied in deciding whether or not to allocate capacity, given that there is only one applicant and no submissions opposing the allocation, is whether Ansett International is reasonably capable of obtaining the necessary approvals and of implementing its proposals.

3.3 Ansett International is an established international carrier which has the technical and financial resources to implement its proposals and is already operating on the Australia- Japan route. Recent changes in the relevant interest of Air New Zealand in Ansett International do not impact on these matters.

3.4 A prerequisite to utilisation of capacity to Narita is the allocation to Ansett International of appropriate slots. Ansett International considers that capacity and slot allocation are separate issues and that the difficulty of gaining slots should not be an impediment to the allocation of available capacity to Ansett International. The Commission's view is that these are not necessarily entirely separate issues. If in a particular case there was no possibility of the slots or some other necessary approval for operations being obtained the Commission would have difficulty in determining that the applicant met the paragraph 4 requirement. That is not the case here. Slots do become available at Narita on an ad hoc basis and new slots will become available for allocation when a second 2180m runway is completed at Narita in July 2002. Being the holder of allocated capacity will also assist Ansett International in securing slots. In these circumstances, the Commission considers that Ansett International is reasonably capable of obtaining the necessary approvals and of implementing its proposals.

3.5 In its application Ansett International sought allocation for a period of 5 years from the date of the determination, or from the availability of slots at Narita, whichever is the later. The IASC Act precludes the allocation starting from any time other than the date of the determination.

3.6 In recognition of the uncertainties facing Ansett International in securing Narita slots the Commission is, however, prepared to require that the allocated capacity be fully utilised from 1 November 2002 or from the date of availability of slots at Narita

whichever date first occurs, or from such other date approved by the Commission. While this may appear to lock up capacity that otherwise might be available for allocation, the Commission believes that if slots are not available to Ansett International at Narita then it is highly unlikely, if generally accepted international scheduling procedures are followed, that they would be available at Narita to any other Australian carrier. The Commission, in arriving at this view, is also cognisant of paragraph 9.1 of the Policy Statement which states that, except in exceptional circumstances, the Commission should not specify a period exceeding three years for the full use of allocated capacity.

3.7 There is also the question of the length of the determination. The Commission would be concerned if Ansett International were not able to use the capacity within a three year period. In these circumstances, the Commission proposes to issue an interim determination for three years.

#### **4 Determination allocating capacity on the Japan route to Ansett International ([2000] IASC 114)**

4.1 The Commission makes an interim determination in favour of Ansett International, allocating 8.4 B767-200 units per week in each direction on the Japan route for new services to Tokyo in accordance with the Australia – Japan Air Services Agreement.

4.2 The determination is for three years from the date of this determination.

4.3 The determination is subject to the following conditions:

- Ansett International is required to fully use the capacity from 1 November 2002 or from when slots become available at Narita airport, whichever is earlier, or from such other date approved by the Commission;
- only Ansett International is permitted to utilise the capacity;
- 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 - Japan 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 – Japan Air Services Agreement.

Dated: 29 June 2000

Michael Lawriwsky  
Member

Stephen Lonergan  
Member