



## DETERMINATION

**DETERMINATION:** [2001] IASC 108  
**THE ROUTE:** THAILAND  
**THE APPLICANT:** ANSETT INTERNATIONAL LIMITED  
(ACN 060 622 460)  
(ANSETT INTERNATIONAL)  
**PUBLIC REGISTER FILE:** IASC/APP/200117

### 1 The application

1.1 On 30 May 2001, Ansett International applied for an allocation of capacity on the Thailand route. Ansett International is seeking an allocation of 9 B747 units of third country code share capacity in the inbound direction. Ansett International intends to code share on Singapore Airlines services between Thailand and Singapore. Ansett International already code shares on 25 outbound and 10 inbound services operated by Singapore Airlines between Australia and Thailand.

1.2 The Commission published a notice on 5 June 2001 inviting other applications for all or any part of the capacity and submissions from interested parties about the Ansett International application. A submission was received from the Ansett Pilots Association (APA) on 18 June 2001. The APA states that while it supports the application it wished to reiterate its previously expressed view that the long term use of code share on the Australia – Thailand route will not make Ansett International an effective competitor and is not in the public interest. Further, the future employment and well being of APA members depends upon the future of Ansett International as a vibrant carrier and not a virtual airline.

1.3 All non-confidential material supplied by the applicant is filed on the Register of Public Documents. Any confidential material supplied by the applicant is filed on the Commission's confidential register.

### 2 Provisions of relevant air services arrangements

2.1 The Australia - Thailand Air Services Agreement of 26 February 1960 (ASA) and the Memorandum of Understanding (MOU) of 24 February 1998 provide for designated carriers to operate services in accordance with agreed capacity entitlements.

2.2 The MOU also provides that the designated airlines of each country, while operating along agreed routes, may enter into code sharing arrangements as the non-operating airline with any airline of a third country. There are, however, limitations specified in the MOU on the number of services which may be used in such code shares. Currently there are 15 weekly services in an inbound direction for third party code share services available on the register for allocation.

### **3 Commission's assessment**

3.1 In considering Ansett International's proposal, the Commission noted the concern of the APA about the use of Australian capacity on a code share basis.

3.2 Under paragraph 6.2 of the Minister's Policy Statement, in the absence of submissions about or opposing an application, the Commission is required only to apply the criteria in paragraph 4 of the Policy Statement. Under paragraph 4 the use of Australian entitlements by a carrier that is reasonably capable of obtaining the necessary approvals and of implementing its proposals is of benefit to the public. For an established international carrier such as Ansett International this means that there is public benefit arising from the use of the entitlements. Therefore, the Commission concludes that an allocation to Ansett International of 9 B747 units services in the inbound direction of third country code share capacity ~~in the inbound direction~~ on the Thailand route would be of benefit to the public.

3.3 Section 15(2)(d) 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. Ansett International has stated that the capacity would be used in a code share arrangement with Singapore Airlines. The Commission has previously approved the operation of capacity by Ansett International in joint services with Singapore Airlines and will do so in this case, subject to its usual conditions.

### **4 Determination allocating capacity on the Thailand route to Ansett International ([2001] IASC 108)**

4.1 The Commission makes a determination in favour of Ansett International, allocating 9 B747 units services in the inbound direction of third country code share capacity ~~in the inbound direction~~ under the Australia - Thailand air services arrangements.

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

4.3 The determination is subject to the following conditions:

- Ansett International is required to fully utilise the capacity from no later than 1 August 2001 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-Thailand 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;
- for so long as the Commission requires, Ansett International will provide within 30 days of the end of each calendar quarter, a report on the number of the seats the subject of this determination sold by Ansett International in that quarter;
- if the air services arrangements between Australia and Thailand are amended to express code share capacity in units other than services, Ansett International is required to return any capacity excess to its requirements;
- 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 – Thailand air services arrangements 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 – Thailand air services arrangements.

Dated: 19 June 2001

Ross Jones  
Chairman

Stephen Lonergan  
Member

Michael Lawriwsky  
Member