



# INTERNATIONAL AIR SERVICES COMMISSION

## DETERMINATION

**DETERMINATION:** [2001] IASC 116  
**THE ROUTE:** JAPAN  
**THE APPLICANTS:** QANTAS AIRWAYS LIMITED  
(ACN 009 661 901) (QANTAS)

ANSETT INTERNATIONAL LIMITED  
(ADMINISTRATORS APPOINTED)  
(ACN 060 622 460) (ANSETT  
INTERNATIONAL)

**PUBLIC REGISTER FILES:** IASC/APP/200120

### 1 The applications

1.1 Qantas applied to the Commission on 6 June 2001 for an allocation of 2.4 units of capacity per week on the Japan route. In combination with 1.2 units of weekly capacity then recently allocated, Qantas proposed to operate three B767-300 weekly services between East Coast Australia and Japan from Northern Summer 2002 (coinciding with the opening of the second runway at Narita airport).

1.2 On 12 June 2001, the Commission published a notice inviting submissions from interested parties about the application.

1.3 Ansett International advised on 13 June 2001 its intention to make a submission about the Qantas application. On 29 June 2001, Ansett International applied for an allocation of 2.4 units of capacity per week on the Japan route. Ansett International proposed to add two weekly B767 services to the route, to be operated from a point on East Coast Australia other than Sydney, from the time the second runway at Narita opens.

1.4 A number of other parties lodged submissions about the applications (refer to section 6 for details).

1.5 In view of the competing applications for the same available capacity, the Commission decided to consider the proposals against the additional public benefit criteria set out in paragraph 5 of the Minister's Policy Statement. The applicants were invited to make further submissions addressing the paragraph 5 criteria. Submissions were received from Ansett International on 8 August 2001 and from Qantas on 10 August 2001.

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

## **2 Draft determination and recent developments**

2.1 The Commission considered the applications and submissions and on 5 September 2001 issued a Draft Determination [2001] IASC 116 proposing to allocate to Ansett International 2.4 B767-200 units of capacity per week on the Australia – Japan route.

2.2 On 12 September 2001 Voluntary Administrators were appointed to Ansett International. On 14 September 2001, following a decision by the Administrators, all Ansett International's services ceased.

2.3 In a circular to creditors of 13 September, the administrators advised that “the objectives of the Voluntary Administration process, as set out in the Corporations Act, are to:

- a) maximise the chances of the company, or as much as possible of its business, continuing in existence; or
- b) if it is not possible for the company or its business to continue in existence – result in a better return for the company's creditors and members than would result from an immediate winding up of the company”.

2.4 On 14 September 2001, Qantas responded to the Draft Determination. Qantas submitted that, in the light of developments with Ansett International, the Commission should award the 2.4 units of B767-200 weekly capacity to Qantas for a period of five years. Qantas contended that Ansett International was unable to meet the requirement in paragraph 4 of the Minister's Policy Statement that it be reasonably capable of implementing its proposals. Qantas stated that it was the only applicant remaining capable of meeting the paragraph 4 criteria.

2.5 There were no other submissions in relation to the Draft Determination. However, on 20 September 2001, Ansett International (Administrators Appointed) wrote to the Commission about the sale process for Ansett International. The administrators advised that they were reviewing all options for the business, including sale. They indicated that an orderly sale process was being conducted and to date had received numerous expressions of interest from seemingly genuine bidders. The administrators believed that, in the light of these developments and stakeholder issues, it was appropriate for the Commission to defer any decisions regarding the allocation of Ansett International's Japan determinations until the sale process had run its course.

2.6 On 24 October 2001, Ansett International (Administrators Appointed) again wrote to the Commission indicating that each of the bidding parties intended to operate key routes including Narita and Osaka. The Administrators stated that a purchaser will acquire the businesses of Ansett and Ansett International, including the existing infrastructure, distribution networks, operating systems and procedures. The successful bidding party would require a Commission approved transfer of the allocation of capacity held by Ansett International.

2.7 The Commission is placed in a difficult situation as a result of the confluence of the administrator's processes and the imminence of the slot co-ordination process for slots to enable access to runway B at Narita airport. The Commission understands that both Ansett International (Administrators Appointed) and Qantas made application, prior to the closing date of 8 October 2001, for slots at Narita Runway B on the basis of being allocated the 2.4 units in question. The Commission also understands that prior to the IATA schedule conference, scheduled to start on November 10, the Japanese slot coordinator is likely to seek to resolve any conflicting applications. The Commission feels compelled to decide the matter at this time to provide as firm a basis as possible for an Australian carrier to win allocation of Narita B slots.

2.8 In making a determination the Commission is required to consider all submissions including, in this case, some submissions which predated the appointment of Administrators to Ansett International on 12 September and the cessation of operations on 14 September. All submissions referred to in this Determination should be read on that basis.

### **3 Current services**

3.1 Currently, only Qantas and Japan Airlines operate direct services on the Japan route.

3.2 Qantas operates the following weekly services:

- 7xB747 Melbourne-Sydney-Tokyo and vv;
- 7xB747 Cairns-Tokyo and vv (Japan Airlines code shares);
- 3xB767-300 Perth-Tokyo and vv
- 4xB747 Sydney-Cairns-Nagoya-Cairns-Sydney; and
- 3xB747 Sydney-Nagoya-Cairns-Sydney.

3.3 Japan Airlines operates the following weekly services:

- 7xB747 Sydney-Tokyo and vv;
- 7xB747 Brisbane-Tokyo and vv (Qantas code shares); and
- 7xB747 Sydney-Osaka-Brisbane-Sydney (Qantas code shares).

3.4 Until 14 September 2001 Ansett International operated 7xB747 services Sydney-Osaka and vv (on which All Nippon code shared). All Nippon announced in late October that it is closing down its Australian marketing operations. Ansett used 14 B767-200 equivalent units to operate its Osaka services, 4 of these units can now be used at Narita.

3.5 Qantas currently has 7.2 B767-200 equivalent units of unused capacity per week, 4.8 units of which it proposes to use to Osaka from the start of the Northern Winter 2001 timetabling period and fully utilise two weeks after that. Qantas may transfer the use of this capacity to Narita.

3.6 In addition, Qantas and Ansett International hold unused capacity on the Japan route which is to be used from 1 November 2002 or when slots become available at Narita airport, whichever is earlier, or from such other date approved by the Commission. Qantas holds 1.2 B767-200 units per week (noted in paragraph 1.1) and Ansett International has 8.4 B767-200 units per week.

## **4 Provisions of relevant air services arrangements**

4.1 Operation of the capacity involved in each application is consistent with the provisions of the Australia-Japan air services arrangements.

## **5 Applicants' proposals**

5.1 Qantas proposes to operate at least three additional B767-300 weekly services from the opening of the second runway at Narita, expected to be during the Northern Summer timetabling period. Two of these services would utilise the 2.4 units of weekly capacity the subject of this application. The other service would use the 1.2 units of capacity allocated to Qantas in [2001] IASC 107. In its application of 6 June, Qantas advises that the exact routing of the proposed new services cannot be determined pending Japanese Government decision on operations from the second runway. However Qantas expects to be able to commence services in June 2002 subject, of course, to allocation of necessary slots.

5.2 Qantas submits that its application is consistent with the paragraph 4 criteria of the Minister's Policy Statement and that the requested variations would be of benefit to the public. Qantas also states that granting the application would be consistent with paragraph 3.6 of the Policy Statement. This provides that the Commission will have regard to the objective of providing reasonable growth in entitlements to all Australian carriers operating on the route in question.

5.3 Ansett International originally sought the 2.4 weekly units of capacity which, together with 8.4 units already allocated to it, would enable Ansett International to operate nine B767-300 weekly services to Tokyo (the Commission is separately reviewing the earlier allocation). The additional two weekly services would be operated to a point on the East Coast of Australia other than Sydney, to be advised once operational limitations are advised by the Japanese authorities. Ansett International will operate the other seven weekly services to Sydney. Ansett International submits that it satisfies the requirements of paragraph 4 of the Minister's Policy Statement.

## **6 Other submissions**

6.1 The Western Australian Tourism Commission (WATC) lodged a submission on 23 August 2001 in support of the Qantas proposal. The WATC support was based on concerns associated with capacity pressures at Narita. Recently, Qantas had proposed to reroute its Narita – Perth services via Sydney. This would have had a deleterious impact on Japanese visitor numbers to Perth. Qantas subsequently withdrew its proposal following lobbying by the WA Government and industry.

6.2 The WATC considered that if the Qantas proposal was rejected, this would place pressure on the Perth services if Qantas looked to reroute services from Sydney so as to be able to add capacity at Tokyo by increasing aircraft size, without increasing frequency.

6.3 The WATC noted that Qantas would not exercise the additional 2.4 units at Perth, but the additional capacity would enhance Qantas' ability to develop a broader range of destinations in Australia than Ansett International. Ansett International had indicated that it did not intend commencing any international services to Perth, other than those already operated to Denpasar which primarily carried outbound traffic.

6.4 On 23 August 2001, the State Development Department of the Queensland Government lodged a submission supporting the Ansett International application. The Queensland Government stated that 30% of Japanese arrivals to Australia spend the majority of their time in Queensland. It also understood that Ansett International was most likely to operate the two additional services to Brisbane. The Queensland Government considered that allocation of the capacity in question to Ansett International would provide the maximum benefit to the Queensland inbound tourist market.

6.5 The Brisbane Airport Corporation (BAC) made a submission on 24 August 2001, also supporting the Ansett International application. The BAC cited high seat factors on the Tokyo/Brisbane sector and noted that no Australian carrier served the city in its own right. The BAC understood that Ansett International was likely to serve Brisbane if it was successful in obtaining the additional capacity.

6.6 On 24 August 2001, both Qantas and Ansett International made brief additional submissions, on a confidential and commercial-in-confidence basis respectively. Each addressed an operational issue.

6.7 On 14 September 2001 Ansett International ceased operations following the appointment of voluntary administrators on 12 September 2001.

## **7 Commission's assessment**

### **Paragraph 4 issues**

7.1 Under paragraph 4 of the Minister's Policy Statement, 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.

7.2 At present, Ansett International (Administrators Appointed) is not capable of operating services to use the capacity sought. As the Commission proposed but did not allocate capacity to Ansett International, then Ansett International (Administrators Appointed) cannot seek to have the capacity transferred to a new entity since no capacity was allocated.

7.3 Qantas is an established international carrier and the Commission accepts that it is reasonably capable of obtaining the necessary approvals and of implementing its proposals. However, in two relatively recent cases on the Japan route, the Commission assessed there to be an element of uncertainty about whether the necessary approvals would be obtained. The uncertainty related to requirement for carriers to obtain airport slots in order to be able to operate the allocated capacity. However, the Commission did not find this to be a sufficient reason not to allocate the capacity to the applicant. Indeed, it considered that allocating the capacity would strengthen the carrier's prospects of obtaining the necessary slots in the IATA slot co-ordination process. Nevertheless, because there was comparatively less certainty than usual of the relevant carriers being able to obtain the necessary approvals, the Commission issued interim three year determinations in favour of Ansett International and Qantas ([2000] IASC 114 and [2001] IASC 107 respectively).

7.4 Qantas argued in its original submission and again in its submission of 14 September 2001 that the Commission should conclude that the determination in this case should be for five years (and should have reached this conclusion in [2001] IASC 107). Qantas says that consultations between Australian and Japanese aeronautical authorities have confirmed Australian carrier access to the second runway. The Commission is aware that provision has been made for Australian carrier access to the new runway in the arrangements between the aeronautical authorities. Nevertheless, carriers will still need to participate successfully in the IATA scheduling conference in order to secure slots.

7.5 In the circumstances, the Commission prefers to issue a three year determination. When the slot access position for all new capacity at Narita is resolved, the Commission will move quickly to consider extending all relevant determinations from three to five years.

## **Paragraph 5 issues**

7.6 Ansett International (Administrators Appointed) is not capable of operating the capacity sought in terms of paragraph 4 of the Minister's Policy Statement and therefore given Qantas is so capable, it is not necessary to apply paragraph 5 criteria to these applications.

## **Conclusion**

7.7 The Commission concludes that only Qantas is reasonably capable of implementing its plans at this time.

7.8 The Commission will allocate to Qantas 2.4 units of B767-200 of capacity per week on the Japan route. Qantas will be required to fully utilise the capacity from when slots become available at Narita airport, or no later than 1 November 2002.

## **8 Role of the ACCC**

8.1 The Policy Statement and its associated Explanatory Memorandum make it 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.

## **9 Determination allocating capacity on the Japan route to Qantas ([2001] IASC 116)**

9.1 The Commission makes an interim determination in favour of Qantas, allocating 2.4 B767-200 units of capacity per week in each direction on the Japan route under the Australia - Japan air services arrangements.

9.2 The determination is for three years from the date of the determination.

9.3 The determination is subject to the following conditions:

- Qantas 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 Qantas is permitted to utilise the capacity;
- changes in relation to the ownership and control of Qantas 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 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 Qantas 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 arrangements.

Dated: 7 November 2001

Ross Jones  
Chairman

Michael Lawriwsky  
Member

Stephen Lonergan  
Member