



INTERNATIONAL AIR SERVICES COMMISSION

DECISION

DECISION:	[2002] IASC 206
REVOCAATION OF	IASC/DET/9822 AND IASC/DET/9905 (FIJI); IASC/DET/9808 (HONG KONG); IASC/DET/9733 AND [2001] IASC 105 (INDONESIA); [2001] IASC 109 (ITALY); IASC/DET/9805 AND [2000] IASC 114 (JAPAN); IASC/DET/9710 AND IASC/DET/9816 (NEW ZEALAND); IASC/DET/9820, IASC/DET/9904, IASC/DET/9920 AND [2000] IASC 113 (SINGAPORE); IASC/DET/9922 (SWITZERLAND); IASC/DET/9913 AND [2001] IASC 108 (THAILAND); IASC/DET/9903 (UNITED KINGDOM); AND [2001] IASC 111 (VIETNAM)
THE AIRLINE:	ANSETT INTERNATIONAL LIMITED (ADMINISTRATORS APPOINTED) (ANSETT INTERNATIONAL) (ACN 060 622 460)

1 Background

1.1 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.

1.2 Section 10(1) of the *International Air Services Commission Act 1992* (the Act) provides that the Commission "may, at any time, conduct a review of a determination if it believes that there may be grounds for varying, suspending or revoking the determination." The Commission therefore has a basis on which to review all of Ansett International's determinations.

1.3 The Commission issued a public notice on 10 January 2002 announcing that it would conduct a review of Ansett International's determinations on the Fiji, Hong Kong, Indonesia, Italy, New Zealand, Singapore, Switzerland, Thailand, United Kingdom and Vietnam routes.

1.4 The Commission had already, in October 2001, initiated a review of Ansett International's Japan determinations. The Commission found that the carrier was, or inevitably would be, in breach of all of its determinations on the Japan route. Accordingly, in Decision [2001] IASC 221 of 12 November 2001, the Commission suspended Ansett's Japan determinations and adjourned its review pending results of the slot allocation process for Japanese airports and developments with the sale of Ansett International. Subsequently, on 12 February 2002, the Commission issued Decision [2002] IASC 202, deciding not to renew Ansett International's Japan determination

IASC/DET/9706. The Commission has decided to reactivate its review of the remaining Japan determinations, in conjunction with its review of the determinations on the other routes set out above.

1.5 The Commission may confirm the capacity allocations in favour of Ansett International or, if Ansett International were found to be in breach of its determinations, vary, suspend or revoke the determinations. If the determinations were revoked, this would provide scope for capacity to be reallocated to another Australian carrier. Qantas Airways Limited (Qantas) has sought additional capacity on the Hong Kong, Japan, Switzerland and Thailand routes in the event Ansett International's determinations are revoked. Airfreight International Australia sought an allocation of capacity on the Japan route in the context of the review of Ansett International's Japan determinations.

2 Submissions received

2.1 Submissions about the review of Ansett International's determinations on routes other than Japan were received from the Administrators for Ansett International, Qantas and the Queensland Government. Submissions in relation to the review of the Japan determinations were summarised in Decision [2001] IASC 221.

2.2 Qantas submitted that, following the cessation of operations by Ansett International, the company no longer meets the requirements of paragraph 4 of the Minister's Policy Statement that it be reasonably capable of implementing its proposals and of obtaining the necessary approvals to operate on the route. Qantas considered that Ansett International's determinations should be revoked. As noted above, Qantas sought allocation of additional capacity on the Japan, Hong Kong, Switzerland and Thailand routes. Concurrently it sought revocation of existing Qantas determinations on the Switzerland and Thailand routes, if the new capacity was allocated as sought.

2.3 Most of the Administrators' submission of 8 February 2002 was confidential and is unable to be summarised here. The thrust of the submission was the possibility of the sale of the Ansett International business with a view to the capacity allocated to Ansett International being utilised. However, on 22 February 2002, the Administrators advised the Commission by electronic mail that "for various reasons, we do not believe that the sale of Ansett International towill complete".

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

3 Commission's assessment

3.1 Section 23(1) of the Act requires the Commission, having conducted a review pursuant to s.10(1), to make a decision confirming, varying, suspending or revoking a determination. Section 23(2) provides that the Commission may make a decision to

vary, suspend or revoke a determination only if it is satisfied that:

- a) a term or condition of the determination has been breached; or
- b) due to a change of circumstances, it is inevitable that a breach of such a term or condition will occur; or
- c) an Australian carrier that, under the determination, is to use capacity to which the determination relates no longer intends to use fully that capacity.

3.2 The general criteria against which the benefits to the public are assessed by the Commission in the circumstances of this review are set out in paragraph 4 of the Minister's Policy Statement.

3.3 The first issue for the Commission to decide is whether Ansett International is or will inevitably be in breach of any or all of its determinations, or no longer intends to fully use its capacity. If so, it has the discretion to revoke, suspend or vary the determinations.

3.4 The Commission finds that Ansett International is in breach of all determinations the subject of this review. The carrier ceased operations in mid-September 2001 and has not resumed operations since that time. The advice of 22 February 2002 from the Administrators makes it clear that Ansett International will not be able to restart services in the future. Ansett International is clearly in breach of the condition of its determinations that capacity be fully utilised.

3.5 Having found that Ansett International is in breach of all of its determinations, Section 23(2) of the Act requires the Commission to conclude that the determinations be revoked, varied or suspended.

3.6 The Commission will revoke all of Ansett International's determinations. The advice from the Administrators that a sale will not be concluded means that there is little or no prospect of Ansett International ever resuming operations. The collapse of negotiations for the sale of the Ansett domestic business, announced on 27 February 2002, reinforces this view.

3.7 The preferable course from a national interest perspective is to reallocate Ansett International's capacity to other Australian carriers which are seeking it and are in a position to use it. The Commission will therefore allocate to Qantas the capacity it has sought on the four routes set out above. The allocations to Qantas are the subject of separate determinations.

3.8 The Commission finds that Australian Airfreight International's proposal as it currently stands for capacity on the Japan route does not satisfy the paragraph 4 criteria in the Minister's Policy Statement because the proposed equipment is not consistent with the slots limitations at Tokyo Narita and therefore Australian Airfreight International is not reasonably capable of implementing its plans.

3.9 The Commission considers that the revocation of Ansett International's determinations will not preclude the re-emergence of another Australian international passenger airline. The return of a substantial proportion of Ansett International's capacity to the shelf means that there are significant opportunities on many routes, including the major Japanese route, to develop a network of international services. Furthermore, a new entrant will be able to approach the Commission for an allocation of rights, which are allocated free of charge, rather than having to purchase existing rights through a sales process.

4 Decision [2002] IASC 206

4.1 In accordance with Section 24 of the Act the Commission revokes Determinations IASC/DET9822 and IASC/DET/9905 (Fiji); IASC/DET/9808 (Hong Kong); IASC/DET/9733 and [2001] IASC 105 (Indonesia); [2001] IASC 109 (Italy); IASC/DET/9805 and [2000] IASC 114 (Japan); IASC/DET/9710 and IASC/DET/9816 (New Zealand); IASC/DET/9820, IASC/DET/9904, IASC/DET/9920 and [2000] IASC 113 (Singapore); IASC/DET/9922 (Switzerland); IASC/DET/9913 and [2001] IASC 108 (Thailand); IASC/DET/9903 (United Kingdom); and [2001] IASC 111 (Vietnam).

Dated: 19 March 2002

Ross Jones
Chairman

Stephen Lonergan
Member

Michael Lawriwsky
Member