

DETERMINATION

DETERMINATION: IASC/DET/9822
THE ROUTE: FIJI
THE APPLICANT: ANSETT INTERNATIONAL LIMITED
(ACN 060 622 460)
PUBLIC REGISTER FILES: IASC/APP/98023
IASC/COM/92001

1 The application

1.1 On 19 September 1998, an application was received from Ansett International Limited (Ansett International) for an allocation of capacity between Australia and Fiji. Ansett International is seeking an allocation of 410 seats per week in each direction between Australia and Fiji to enable it to operate one B767-200 and one A320-200 aircraft from 24 November 1998, increasing to twice weekly B767-200 services once the route is established or to meet seasonal demand.

1.2 The Commission published a notice inviting other applications for all or any part of the capacity and submissions from interested parties about the Ansett International application. No applications or submissions were received.

2 Provisions of relevant Air Services Agreements

2.1 The Australia – Fiji Air Services Agreement of 24 March 1982 and the Memorandum of Understanding (MOU) of 10 March 1998 provide for designated carriers to operate services in accordance with agreed capacity entitlements.

2.2 Under the MOU, the designated airlines of Australia are entitled to operate up to a total of 2,100 seats per week with immediate effect and up to a total of 2,400 seats per week from October 1999. Currently, Qantas Airways Limited has an allocation of 4 B747s which is equivalent to around 1,600 seats per week.

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) which was issued under section 11 of the Act.

3.2 The Act and Policy Statement provide that if there are no competing applications or submissions, the relevant criteria for the Commission in considering an application for capacity are whether the applicant is reasonably capable of both obtaining the necessary approvals to operate on the route and implementing its proposal.

3.3 Ansett International is an established international carrier which has the technical and financial resources to implement its proposal. 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 410 seats per week in each direction between Australia and Fiji would be of benefit to the public.

4 Other issues

4.1 Ansett International proposes to commence operating the capacity from 24 November 1998. The Commission will require Ansett International to fully utilise the capacity from 31 March 1999.

4.2 The Commission will make a determination for five years from the date of the determination.

4.3 The Commission's view is that this determination should include the usual limitations on changes in the ownership and control of Ansett International. These are specified below.

5 Determination allocating shelf capacity on the Fiji route to Ansett International (IASC/DET/9822)

5.1 The Commission finds that an allocation of capacity to Ansett International on the Australia - Fiji route as sought would be of benefit to the public.

5.2 The Commission makes a determination in favour of Ansett International, allocating 410 seats per week in each direction between Australia and Fiji under the Australia - Fiji Air Services Agreement.

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

5.4 The determination is subject to the following conditions:

- Ansett International is required to commence utilisation of the capacity from no later than 24 November 1998 or from such other date approved by the Commission;

- Ansett International is required to fully utilise the capacity from no later than 31 March 1999 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 - Fiji 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;
- 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 - Fiji Air Services Agreement;
- no reduction may take place in the extent of the liability of any person or persons as guarantor under the Deed of Guarantee and Indemnity of 18 July 1994 between Ansett Australia Holdings Limited (formerly Ansett Transport Industries Limited), Ansett Australia Limited (formerly Ansett Transport Industries (Operations) Pty Limited) and Permanent Trustee Australia Limited without the prior written consent of the Commission: (the Commission's approval may be deemed to have been given in certain circumstances in accordance with the relevant terms of the Deed);
- no retirement, or replacement, of the Trustee under the Deed of Guarantee and Indemnity may take place without the Commission's prior written consent;
- the guarantors shall not, without the prior written consent of the Commission, give notice to terminate the Deed of Guarantee and Indemnity;

- no amendments to the Deed of Guarantee and Indemnity may take place without the prior written consent of the Commission; and
- Ansett International must, from time to time, if requested to do so by the Commission in writing, provide evidence that it has access on arms length terms to all of the goods, services and facilities necessary to undertake required operations on the route.

Dated: 16 October 1998

Russell V Miller
Chairman

Michael L Lawriwsky
Member

Stephen Lonergan
Member