

# DETERMINATION

**DETERMINATION:** IASC/DET/9903  
**THE ROUTE:** UNITED KINGDOM  
**THE APPLICANT:** ANSETT INTERNATIONAL LIMITED  
(ACN 060 622 460)  
**PUBLIC REGISTER FILES:** IASC/APP/99017

## 1. The application

1.1. On 17 March 1999, Ansett International Limited (Ansett International) wrote to the Commission seeking an allocation of capacity on the United Kingdom route.

1.2. Ansett International is seeking an allocation of 350 seats per week in each direction on the United Kingdom route on flights to be operated by Singapore Airlines. The code share services would be operated pursuant to the Alliance Agreement with Singapore Airlines and Air New Zealand dated 17 December 1997 (the Alliance Agreement), authorised by the Australian Competition and Consumer Commission (ACCC), and in accordance with the code share agreement between Ansett International and Singapore Airlines of 2 September 1998, a copy of which has previously been lodged with the Commission, as extended by an attachment to the current application.

1.3. 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.

1.4. A summary of the code share agreement is available on the Commission's Register of Public Documents, together with all other non-confidential material supplied by the applicant. Confidential material supplied by the applicant is filed on the Commission's confidential register.

## 2. Current services to the United Kingdom

2.1. Direct services are offered between Australia and the United Kingdom by Qantas (14 flights per week) and British Airways (24 flights). Indirect services are provided by a large number of carriers of which the more significant in terms of passenger numbers are Singapore Airlines, Malaysian Airways, Cathay Pacific, Air New Zealand, Japan Airlines and KLM. Indirect carriers accounted for 54% of United Kingdom origin/destination traffic in the year ended 31 December 1998.

### **3. Provisions of relevant Air Services Agreements**

3.1. A Memorandum of Understanding (MOU) dated 14 November 1996 in relation to the Air Services Agreement covering the Australia - United Kingdom route provides for the operation of international air services and multiple designation of Australian carriers.

3.2. The MOU provides that the designated airline or airlines of Australia may operate up to 28 services per week with any aircraft type in each direction. The MOU also allows code sharing, blocked space or joint service arrangements and provides for the designated airline(s) of Australia to exercise fifth freedom rights between the United Kingdom and intermediate points, with the exception of those in the United States, Japan and China.

3.3. Under the MOU a designated airline or airlines of Australia may enter into code share arrangements with an airline or airlines of a third country to undertake services through blocked space arrangements up to a total of 1,320 seats per week in each direction.

### **4. Commission's assessment**

4.1. 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 Act.

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

4.3. Ansett International is an established international carrier which has the technical and financial resources to implement its proposal and is already marketing code share services on Singapore Airlines flights to Singapore. 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 350 seats of capacity to be operated by a carrier of a third country on the United Kingdom route would be of benefit to the public.

4.4. A carrier cannot use allocated capacity by providing services jointly with any other carrier without the prior approval of the Commission. The Act, as amended with effect from 25 January 1999, defines "joint international air services" as including, but not limited to, code sharing, blocked space arrangements, joint pricing, revenue and cost sharing, revenue and cost pooling, or the sale of capacity to another airline.

4.5. Ansett International asks that it be able to use the requested capacity in services jointly 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 (as extended by a supplied attachment).

4.6. The Commission normally determines whether or not a code-sharing proposal should be approved utilising the public benefit criteria contained in paragraph 5 of the Policy Statement. This is consistent with the objects set out in section 3 of the Act.

4.7. The Commission has previously assessed and approved this code share agreement in these terms in Determination IASC/DET/9820 which allocated capacity to Ansett International on the Singapore route. The nature of the market on the United Kingdom route, with a large number of carriers and a high level of competition, is such that the Commission considers that the public benefits previously identified in relation to this code share are also applicable to this route. The proposal will also enable Ansett International to enter the market and add to competition.

4.8. The Commission also notes that the Alliance Agreement of 17 December 1997, which was authorised by the Australian Competition and Consumer Commission (ACCC), explicitly provides for code sharing.

4.9. The Commission approves the capacity allocated to Ansett International in this determination on the United Kingdom route being used under a code share on Singapore Airlines operated services, subject to the conditions set out below.

4.10. The allocated capacity may be operated not only between Australia and the United Kingdom but also on fifth freedom sectors on the route in accordance with the Australia – United Kingdom Air Service Agreement, and as allowed by air services arrangements of other countries.

## **5. Role of the ACCC**

5.1. The Policy Statement and its associated Explanatory Memorandum make clear that the ACCC retains primary responsibility for competition policy matters. Nothing in the Commission's decision should be taken as indicating either approval or disapproval by the ACCC. The Commission's decision is made without prejudicing, in any way, possible future consideration by the ACCC of the code share agreement or operations under it.

## **6. Other issues**

### **Commencement of operations**

6.1. Ansett International proposes to commence utilisation of the requested capacity from 17 May 1999. The Commission will specify that Ansett International must commence utilising and fully utilise the capacity from the week commencing 17 May 1999, or from such other date as approved by the Commission

### **Other issues**

6.2. The Commission normally imposes conditions on the approvals for code share agreements to require the applicant to price and sell its services on the route independently and not to share or pool revenue. The Commission will include these conditions except to the extent that such practices may be permitted under the ACCC authorisation of the Alliance Agreement.

6.3. The Commission normally specifies that the applicant must take all reasonable steps to ensure that passengers are informed, at the time of booking, of the carrier actually operating the flight. The Commission will do so in this case.

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

6.5. 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.

## **7. Determination allocating capacity on the United Kingdom route to Ansett International (IASC/DET/9903)**

7.1. The Commission finds that an allocation of capacity to Ansett International on the United Kingdom route as sought would be of benefit to the public.

7.2. The Commission makes a determination in favour of Ansett International, allocating 350 seats per week in each direction on the United Kingdom route, in accordance with the Australia - United Kingdom Air Services Agreement, to be used under a code share arrangement with an airline of a third country.

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

7.4. The determination is subject to the following conditions:

- Ansett International is required to fully utilise the capacity from no later than the week commencing 17 May 1999, 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 United Kingdom route, whether or not it replaces the existing agreement, with the prior approval of the Commission;

subject to the following conditions:

- except to the extent authorised under the *Trade Practices Act*, Ansett International must price and sell its services on the route independently of Singapore Airlines and not share or pool revenue; 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;
- 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 – United Kingdom 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 – United Kingdom Air Services Agreement.

Dated: 14 April 1999

Russell Miller  
Chairman

Michael Lawriwsky  
Member

Stephen Lonergan  
Member