

DETERMINATION

DETERMINATION: IASC/DET/9904
THE ROUTE: SINGAPORE
THE APPLICANT: ANSETT INTERNATIONAL LIMITED
(ACN 060 622 460)
PUBLIC REGISTER FILES: IASC/APP/99018

1 The application

1.1 On 19 March 1999, Ansett International Limited ACN 060 622 460 (Ansett International) wrote to the Commission seeking an allocation of 429 seats of capacity per week in each direction on the Singapore route.

1.2 Ansett International proposes to utilise the capacity under a code share arrangement on Singapore Airlines operated services. 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 Provisions of relevant Air Services Agreements

2.1 The Australia - Singapore Air Services Agreement provides for multiple designation of Australian carriers.

2.2 The air services arrangements between Australia and Singapore permit code sharing, including on services operated by third country carriers, with any capacity used under a code share arrangement to count as not less than 25% of the seats available on the aircraft used for each code share service.

2.3 The Register of Available Capacity shows 1,902 seats a week available for allocation with immediate effect. This does not take into account 2,000 seats handed

back by Qantas on 3 March 1999 as a result of Decision IASC/DEC/9901. There are currently allocations on this route to Ansett International (4,238 seats), Qantas (14,740 seats) and National Jet Systems (320 seats).

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, as amended on 9 March 1999) which was issued under section 11 of Act.

3.2 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 other submissions, is whether Ansett International is reasonably capable of obtaining the necessary approvals and whether it is reasonably capable of implementing its proposals.

3.3 Ansett International is an established international carrier which has the technical and financial resources to implement its proposal and is already operating on this route. 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 429 seats per week in each direction on the Singapore route would be of benefit to the public.

3.4 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.

3.5 Ansett International asks that it be able to use the 429 seats of 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).

3.6 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.

3.7 The Commission has previously assessed and approved this code share agreement in these terms in Determination IASC/DET/9820 which allocated 4,238 seats of capacity to Ansett International on the Singapore route for use on Singapore Airlines operated services. 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.

3.8 The Commission approves the 428 seats on the Singapore route allocated to Ansett International in this determination being used under a code share on Singapore Airlines operated services, subject to the conditions set out below.

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

4 Other issues

4.1 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.

4.2 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.

4.3 Ansett International proposes to commence using 227 seats from the date of this determination and 202 seats from 1 July 1999. The Commission will require Ansett International to fully utilise all of the allocated capacity from 31 July 1999.

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

4.5 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.

4.6 As the minimum capacity utilisation under the Australia-Singapore air services arrangements on code share services is 25 per cent of the available seats per flight, there is a prospect that Ansett will not, in practical terms, utilise the capacity in an optimal manner.

4.7 Information concerning the utilisation of capacity by Ansett International on the Singapore route will usually be available to the Commission through the Department of Transport and Regional Services. In the event that satisfactory information is not available, the Commission may require Ansett International to advise the Commission from time to time of the number of seats utilised each week between points in Australia and Singapore under the Code Share Agreement.

4.8 In the event that the air services arrangements between Singapore and Australia are amended to express code share capacity in units other than a minimum of 25 per

cent of the available seats on the aircraft the Commission will require Ansett International to return any capacity excess to its requirements.

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 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 of the code share agreement or operations under it.

6 Determination allocating shelf capacity on the Singapore route to Ansett International (IASC/DET/99xx)

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

6.2 The Commission makes a determination in favour of Ansett International, allocating 429 seats per week in each direction on the Singapore route in accordance with the Australia – Singapore Air Services Agreement.

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

6.4 The determination is subject to the following conditions:

- Ansett International is required to fully utilise the capacity from no later than 31 July 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 Australia-Singapore 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;
- if the air services arrangements between Singapore and Australia are amended to express code share capacity in units other than a minimum of 25% of the available seats on the aircraft, Ansett International is required to return any capacity excess to its requirements;
- if and for so long as the Commission requires, Ansett International will provide quarterly reports on the number of the seats which are the subject of this Determination, sold by Ansett International within 30 days of the end of each quarter;
- 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 - Singapore 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; 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 – Singapore Air Services Agreement.

Dated: 14 April 1999

Russell Miller
Chairman

Michael Lawriwsky
Member

Stephen Lonergan
Member