DETERMINATION

DETERMINATION:	**IASC/DET/9922**
THE ROUTE:	**SWITZERLAND**
THE APPLICANTS:	**ANSETT INTERNATIONAL LIMITED (ACN 060 622 460)** **QANTAS AIRWAYS LIMITED (ACN 009 661 901)**

1 The applications

1.1 On 24 August 1999, an application was received from Qantas Airways Limited (Qantas) for an allocation of code share capacity on the Switzerland route. Qantas is seeking an allocation of five third-country code share frequencies per week in each direction between Australia and Switzerland immediately, with a further two frequencies per week on the same route from 1 October 2000.

1.2 Qantas proposes to offer services between Australia and Switzerland by code sharing on British Airways flights between London and Geneva, with passengers travelling on Qantas flights between London and Australia.

1.3 Following receipt of the Qantas application, the Commission published a notice inviting applications for a determination allocating all or any part of the available capacity on the Switzerland route, or submissions about the Qantas application.

1.4 On 10 September 1999 an application was received from Ansett International for an allocation of code share capacity on the Switzerland route. Ansett International is seeking the same allocation as that sought by Qantas; that is, five third-country code share frequencies per week in each direction between Australia and Switzerland, but with effect immediately, with a further two frequencies per week from 1 October 2000.

1.5 Ansett International proposes to offer services between Australia and Switzerland by code sharing on Singapore Airlines flights between Australia and Zurich via Singapore. In its application, Ansett International addresses the criteria in paragraph 5 of the Minister's policy statement.

1.6 The amount of capacity sought by the applicants in total exceeds the amount of available capacity. In accordance with its procedures, the Commission gave each applicant the opportunity to submit further information in support of its application.

1.7 Qantas responded with additional information, including confidential business information, addressing the paragraph 5 criteria in the policy statement.

1.8 At the Commission's request, Qantas and Ansett International provided further information in relation to their submissions.

1.9 The Commission issued a draft determination (IASC/DDET/9906) proposing to allocate the capacity entirely to Ansett International. Submissions responding to the draft determination were lodged by Qantas and Ansett International.

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

2 Other submissions

2.1 In accordance with the Memorandum of Understanding between the Commission and the Australian Competition and Consumer Commission (ACCC), implemented to minimise duplication between the two bodies, the Commission sought the ACCC's view on the code share proposals.

2.2 The ACCC considers that neither proposal appears likely to lead to a lessening of competition within the meaning of the *Trade Practices Act 1974*. The ACCC notes that the matter of which proposal, or allocation outcome, will result in the greatest public benefit, include competition benefits, is a matter for the IASC's determination. The ACCC also made a submission on whether, as a condition of any determination, the successful applicant should be required to price independently.

3 Current services

3.1 Qantas and Swissair together provide three frequencies per week between Australia and Switzerland via Singapore. Each carrier code shares on the services of the other, with Qantas operating B747 services between Sydney and Singapore, and Swissair MD11 services between Singapore and Zurich.

3.2 There are numerous services connecting Australia and Switzerland. Services are offered principally via Singapore, Hong Kong, Bangkok and Kuala Lumpur in Asia, and Frankfurt, London and Athens in Europe.

4 Air Services Agreements

4.1 The Australia - Switzerland Air Services Agreement of 1 February 1993 and the Memorandum of Understanding (MOU) of 16 June 1998 provide for designated carriers to operate services in accordance with agreed capacity entitlements, including on a code share basis.

4.2 The Annex to the Air Services Agreement enables designated airlines of Australia to operate via intermediate points to three points in Switzerland. Under the MOU, the designated airlines of Australia are entitled to enter into code share arrangements as either the operating or non-operating airline with airlines of third countries for passenger services.

4.3 With effect from 1 October 1999, a total of five frequencies per week are available for such third-country code share passenger services. From 1 October 2000, a total of seven code share frequencies per week are available. Each code share service performed by a designated airline of Australia with an airline of a third country, whether as the operating or non-operating airline, counts as one frequency against this entitlement.

4.4 Additional capacity is available under the MOU to enable own aircraft operations, and/or code share services between the designated airlines of Australia and Switzerland (so called ‘bilateral code share’). This capacity is separate to that available for code sharing with third-country airlines.

4.5 With effect from 1 October 1999, a total of five frequencies per week are available, rising to seven frequencies per week from 1 October 2000. The Commission has previously allocated to Qantas 1.5 frequencies per week of capacity in each direction between Australia and Switzerland, in order to operate code share services with Swissair (see IASC/DET/9823). Under the MOU, each bilateral code share frequency is the equivalent of 0.5 of a frequency in terms of the capacity entitlements for the designated airlines of Australia. Accordingly, Qantas is operating three code share frequencies per week with Swissair.

5 Characteristics of the Australia-Switzerland route

5.1 Details of the passenger movements on the route between the years ended 30 June 1996 and 30 June 1999 are summarised below.

Australia – Switzerland Passenger Movements
Years Ended 30 June 1996 – 30 June 1999

Traffic category	Years ended June 1996	1997	1998	1999		Compound annual growth rate 1996-1999
Direct traffic	7,100	8,200	10,200	21,200	(18.7%)	44.0%
(Annual % change)		(+15.5%)	(+24.4%)	(+107.8%)		
Indirect traffic	87,100	92,000	92,400	89,200	(78.7%)	0.8%
(Annual % change)		(+5.6%)	(+0.4%)	(-3.5%)		
Beyond traffic	2,500	2,500	3,100	2,900	(2.6%)	5.1%
(Annual % change)		(+0.0%)	(+24.0%)	(-6.5%)		
Total traffic	96,800	102,800	105,600	113,300	(100.0%)	5.4%
(Annual % change)		(+6.2%)	(+2.7%)	(+7.3%)		

Note: Data in this table have been derived from information supplied by the Australian Bureau of Statistics. Figures may not add to totals due to rounding.

5.2 In the year ended 30 June 1999, Australian residents comprised less than 18% of the direct passenger market. By comparison, visitors from Switzerland to Australia constituted over 82% of the market.

5.3 The table illustrates that, while the total market is growing steadily, direct traffic has grown strongly, although from a small base. This appears to be related to the Qantas entry on the route and indicates that there are opportunities for additional direct Australian services.

6 Applicants' claims against the paragraph 5 criteria

6.1 Qantas argues that its proposal will:

- attract and generate traffic to Australia through the introduction of services opening a new gateway (Geneva) in Switzerland with stopover options in London and points in Asia, backed by a strong marketing, advertising and sales presence already in Switzerland;
- deliver benefits to consumers through improved service and choice and competitive air fares;
- improve the airline's competitive position against foreign carriers; and
- benefit the Australian aviation industry through commercial gains flowing from additional revenue generated.

6.2 Qantas reinforces it's original submission that it should be awarded all seven weekly code share frequencies, by submitting that

- Qantas is in a stronger position to effectively use the entitlements because of its sales and marketing presence in Switzerland. By contrast, Ansett International will rely on support offered by another carrier located outside Switzerland;
- most of the carriage under Qantas' proposal would be on its own services, whereas all carriage under the Ansett International proposal is on Singapore Airlines. Qantas' expansion of its London services is directly related to its European code share strategy, involving code share services to Berlin and Hamburg as well as Geneva, to strengthen the feed for its long haul services; and
- awarding the capacity to Ansett International would not enhance Ansett's platform for developing a more comprehensive competitive strategy for Europe. The Swiss market is small compared with other European markets and does not provide such a platform. Qantas questions Ansett International's commitment to developing a European codeshare network because the airline has not

introduced code share services to larger European destinations other than three weekly Singapore-Frankfurt services.

6.3 Turning to the possibility of Qantas increasing its code share services with Swissair, Qantas notes, first, that while another Australian carrier could only serve Switzerland with its own flights, this is true only if all the available frequencies are allocated to a single carrier. Secondly, allocation of all available capacity to Ansett International gives it the opportunity to code share with a range of carriers, an option which would be denied to Qantas. Thirdly, Qantas' ability to expand code share services with Swissair is a matter for the airline's commercial judgement, not the Commission's. Finally, while it is possible for Qantas to interline passengers without code sharing, the same is true for Ansett International.

6.4 Qantas submits that the Commission could consider, as a second option, splitting the capacity. Qantas argues that it is not necessary for all seven weekly frequencies to be allocated to Ansett International to achieve competition policy benefits and notes that the paragraph 5 criteria do not require preference to be given to a new entrant. Qantas submits that:

- alternative traffic rights remain available under the air services arrangements for carriers to operate their own flights;
- splitting the capacity would still enable Ansett International to offer some code share services to Zurich, overcoming the Commission's concern about the entry of a second carrier being effectively ruled out if all third country code share capacity was allocated to Qantas; and
- dividing the capacity would give Qantas a greater spread of code share partners, rather than being left with a single code share option with Swissair.

6.5 In terms of the level of public benefits were the capacity to be split, Qantas argues that:

- the greater the allocation to Qantas, the greater would be the public benefit. If the capacity were to be split, at least half of the available capacity (four frequencies in practice) should be awarded to Qantas; and
- a split allocation would enable Qantas to deliver the bulk of the competition and consumer benefits put forward in its earlier submissions, although there would be some reduction in benefits because lower frequencies would not enable Qantas to generate the same level of passengers as originally projected. However, a partial allocation to Ansett International would ensure any benefits associated with a second carrier entry would also be captured.

6.6 Ansett International submits that its proposal will:

- have a significant impact on tourism through the introduction of one-stop services by a second Australian carrier with good connections into the domestic market, supported by promotion and marketing effort;

- benefit consumers through frequent services with good connections to other services, particularly offering improved ‘travel solutions’ to corporate customers;

- increase competition on the Australia – Switzerland route and enhance Ansett International’s ability to compete generally in the Australian market;

- strengthen Ansett International’s position as an international carrier, contributing to maintaining a strong Australian aviation industry;

- compare favourably in public benefit terms because of its one stop routing, compared with the two stop routing offered by Qantas; and

- offer greater traffic potential than Qantas’s because Zurich has a population three times that of Geneva.

6.7 Ansett International also takes issue with several points made by Qantas. Ansett International:

- has not maintained a low level of code share frequency to Frankfurt by preference. It would prefer to increase services, but lack of space on Singapore Airlines services mitigates against selling on more than the current three services per week. Ansett International notes that it has operated at least daily code share services to a number of other destinations. The low frequency to Frankfurt does not imply this is a commercially adequate level of service for Ansett International, nor that it signifies a weak commitment to develop European services;

- reiterates earlier points about increasing its focus on European marketing to support the growth of Ansett International’s code share services. Staff in Ansett International’s European offices would receive extensive training in the sale of Switzerland services, if Ansett International is awarded the code share capacity;

- submits that Qantas’ arguments about own aircraft operations as part of its Switzerland services are not supported by the evidence, and that increases in Qantas’ London capacity in proportion to the proposed Geneva code share services appear spurious; and

- is entering the Switzerland market ahead of other possible European destinations which makes good commercial sense, noting that the Switzerland/Austria market is Ansett International’s second largest source of revenue in continental Europe. Ansett International also notes that Zurich is Singapore Airlines main European hub, providing potential to facilitate Ansett International’s future growth plans.

6.8 Ansett International claims that splitting the capacity between the two airlines would diminish significantly the potential to achieve competition objectives and therefore public benefit. Ansett International argues that:

- a high level of frequency (daily services) represents a significant competitive advantage in the business traveller market. High frequency also provides tour operators flexibility in offering packages of various lengths of stay. Ansett International states that its aim is to offer daily services on all the routes it serves, whether or not the services are code share flights; and

- it has no scope to work with a Swiss carrier on a bilateral code share basis, whereas Qantas has the ability to expand its existing code share services with Swissair. Greater overall public benefits would be delivered if Qantas were to expand services in this way, than if the third country code share were to be split between Ansett International and Qantas.

6.9 The ACCC and each of the airlines argued that, given relevant authorisations granted by the ACCC, the Commission should not impose a condition requiring the applicant to price and sell its services on the route independently of its code share partner and not to share or pool revenue,

7 Commission's assessment

7.1 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 the Act.

7.2 The Act and Policy Statement provide that if there are competing applications, the relevant criteria for the Commission to apply are contained in paragraphs 4 and 5 of the Policy Statement.

7.3 The Commission concurs with the view of both applicants that the start-up provisions in paragraph 7 of the Policy Statement are not applicable in this particular case. Free sale code share arrangements of the type proposed by both applicants do not involve own-aircraft operations and incur little or no cost for the carriers. Therefore, will rarely involve issues of efficient and commercially sustainable operations as embraced by paragraph 7.

Paragraph 4 issues

7.4 Under paragraph 4 of the policy statement, the relevant criteria to be applied in deciding whether or not to allocate capacity is whether Ansett International and Qantas are reasonably capable of obtaining the necessary approvals and of implementing their proposals.

7.5 Qantas is an established international carrier. It has an existing code share agreement with British Airways, its proposed code share partner for services to Switzerland via London, for the operation of a range of services. Qantas already operates code share services to Switzerland under an agreement with Swissair, the designated airline of Switzerland. The Commission concludes that Qantas is capable of obtaining the necessary approvals and of implementing its proposal.

7.6 Ansett International is also an established international carrier and is already marketing code share services on Singapore Airlines services beyond Singapore to a number of points. Singapore Airlines already operates the services to Zurich required for the code share. As noted earlier, the air services arrangements with Switzerland allow for code sharing on third country airlines. The Commission concludes that Ansett International is able to implement its proposals and is capable of obtaining the necessary approvals.

Paragraph 5 issues

7.7 Paragraph 5 of the policy statement sets out additional criteria to be applied by the Commission in assessing competing applications for available capacity.

7.8 Further, the Commission will normally use the paragraph 5 criteria in assessing whether to authorise the use of capacity on a code share basis. A carrier cannot use allocated capacity by providing joint international air services 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.

7.9 In this case, the situation is that the capacity being sought for allocation is specified in the Australia – Switzerland air services arrangements as code share capacity. In other words, the Commission does not need to analyse separately the public benefits of the allocation of capacity and the use of such capacity on a code share basis, as is usually the situation. Accordingly, the Commission’s assessment of the applications against the paragraph 5 criteria in this case takes account concurrently of the benefits associated with the exercise of the capacity and its use on a code share basis.

Detailed discussion of Paragraph 5 criteria

Tourism benefits

> *The extent to which proposals will promote tourism to and within Australia. The Commission should have regard to:*
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> - *the level of promotion, market development and investment proposed by each of the applicants, and*
> - *route service possibilities to and from points beyond the Australian gateway(s) or beyond the foreign gateway(s)*

7.10 Ansett International states that its sales staff in Zurich, Antwerp and London would promote the services and actively market fares and packages. Promotion of the Switzerland services would take place in the context of increased focus on marketing and promotion of Europe more generally. Details of Ansett International’s promotional budget for Europe were provided in confidence to the Commission. Promotion by Ansett International domestic staff would continue. The carrier states that its extensive domestic network would enable international visitors to gain access to tourist destinations beyond Ansett International’s Australian gateways. Ansett International expects there to be a significant positive impact on tourism from its proposed services.

7.11 Ansett International has provided the Commission with a confidential estimate of expected passenger carriage on its proposed services.

7.12 Qantas provided the Commission with commercial in confidence passenger carriage data in support of its claim to be able to attract and generate traffic to Australia from Switzerland.

7.13 Neither carrier's proposal involved a commitment to sell any particular number of seats. The projected passenger numbers under both proposals are relatively modest, although Qantas' expects to carry a greater number than Ansett International.

7.14 Qantas argues that it is uniquely suited to serve the Swiss market in terms of administrative and marketing support. Qantas has a significant sales and marketing presence in Switzerland with a sizeable number of staff in offices in Zurich and Geneva. British Airways would also be an active partner in supporting the development of tourist traffic via London to Australia. Qantas has provided the Commission with confidential information setting out its promotional budget to support its Switzerland code share services, both to Geneva and to Zurich. Additional funds are set aside for joint promotion with British Airways and the Australian Tourist Commission.

7.15 Qantas is targeting a new gateway in Switzerland (Geneva) to complement its existing services to Zurich. Geneva has a relatively low level of service by other carriers in comparison with services to and from Zurich. Qantas argues that London provides a hub for developing traffic to Australia, noting that Qantas and British Airways offer numerous connections to Australia from London.

7.16 Ansett International would be serving Zurich rather than opening a new gateway. However, Zurich offers greater potential for growth in Switzerland – Australia traffic, given its population and central location.

7.17 Both carriers provided the Commission, in confidence, with their proposed fares. Qantas states that its fares to/from Geneva will be set at the same levels as its fares to/from Zurich, but with the capacity to offer special rates to stimulate traffic flows from Geneva. Ansett International indicates it will offer a range of fare types and levels and may offer special rates from time to time depending on market circumstances.

7.18 The Commission accepts that Qantas has a strong sales and marketing presence which could devote considerable resources to promoting its proposed services to Geneva, as well as continuing to support the Zurich services. Qantas' claims to be able to develop the market are supported by evidence of additional inbound traffic to Australia that appears to have been associated with the introduction of its code share services with Swissair via Singapore.

7.19 The Commission recognises that Qantas is presently devoting more sales and marketing resources to the Switzerland route than Ansett International. However, this is to be expected given that Qantas is an established operator in the Switzerland market, and Ansett International is in the early stages of developing its European network.

7.20 The route associated with Qantas' proposed Geneva services is longer in distance than several other market options, although the Commission notes that the Qantas services are broadly competitive in terms of travel time and number of stops with existing services to Geneva, including via Zurich. There are variations in travel times between Geneva and different points in Australia with different carriers and depending on whether travel is from Geneva or vice versa. This is also the case when travel times on Qantas' Geneva services are compared with travel times on Ansett International's proposed Zurich services, plus estimated travel time between Zurich and Geneva.

7.21 Similarly, while some of Ansett International's proposed Zurich services have a shorter elapsed time than Qantas' existing Zurich services, others take longer. Again this depends on the Australian gateway involved and the direction of travel.

7.22 Taken as a whole, there is not a strong case to be made in favour of one proposal over the other in terms of travel time to tourists. The Commission also recognises that although elapsed time may be a factor in choice of carrier, other factors may have greater influence on passenger choice including air fares, service quality and stopover preferences, particularly on long haul journeys such as those involved here.

7.23 Both Qantas and Ansett International offer good connecting services for passengers wishing to travel domestically beyond their gateway destination.

Consumer Benefits

> *The extent to which proposals will maximise benefits to Australian consumers. The Commission should have regard to:*
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> - *the degree of choice (including, for example, choice of airport(s), seat availability, range of product);*
> - *efficiencies achieved as reflected in lower tariffs and improved standard of services;*
> - *the stimulation of innovation on the part of incumbent carriers; and*
> - *route service possibilities to and from points beyond the Australian gateway(s) or beyond the foreign gateway(s).*

7.24 Ansett International contends that its proposals would increase competition on the route and offer consumers a daily (by October 2000) one-stop service. Ansett International claims that it could offer improved 'travel solutions' to its corporate customers.

7.25 Qantas argues that its proposal would benefit consumers by increasing choice for traffic seeking to travel to and from Geneva, particularly in comparison with the well-served Zurich market. Travellers would also have the choice of multiple stop itineraries involving London and a choice of Asian stopover points. Promotion and limited duration sale fares would benefit consumers.

7.26 The Commission considers that the pre-eminent issue relevant to this criterion is the introduction of services by a second Australian carrier associated with the Ansett International proposal.

7.27 In the Commission's view, the commencement of services by a second Australian carrier in direct competition with an incumbent Australian carrier is likely to benefit consumers.

7.28 Although Ansett International does not have as strong case for the immediate consumer benefit of its services, as it would if it were entering a blocked seat arrangement, the Commission accepts that service choice would be increased and opportunities for consumer benefits will grow as its services expand.

7.29 The Qantas proposal has some merits from a consumer viewpoint because of the increased choice the services would provide in terms of route options, although the benefits to consumers are unlikely to be as great as those flowing from the additional choice associated with the entry of a second Australian carrier. The Commission also considers that a one stop service is generally more attractive to consumers than a two stop service.

7.30 As outbound travel from Australia accounts for only 18% of traffic on the route, there may be some growth opportunities for a carrier prepared to put resources into marketing Switzerland in Australia and offering competitive outbound fares. However, neither carrier has committed to sell any particular number of seats, nor does either proposal involve any particular innovation to stimulate outbound tourism.

Trade Benefits

> *The extent to which proposals will promote international trade. The Commission should have regard to:*
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> - *the availability of frequent, low cost, reliable freight services for Australian exporters and importers.*

7.31 Neither carrier has addressed this criterion because their proposals do not provide for the carriage of freight. The Commission agrees that the criterion is not relevant in this case.

Competition Benefits

> *The extent to which proposals will contribute to the development of a competitive environment for the provision of international air services. The Commission should have regard to:*
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> - *the need to develop strong Australian carriers capable of competing effectively with one another and the airlines of foreign countries;*
> - *the number of Australian carriers using capacity on a particular route and the existing distribution of capacity.*
> - *the extent to which applications are proposing to provide capacity on aircraft they will operate themselves as, in the long term, operation of capacity on own aircraft is likely to result in more competitive outcomes;*
> - *the provisions of any commercial agreement between an applicant and another airline affecting services on the route but only to the extent of*

determining comparative competition benefit between competing proposals;

- *any determinations made by the Australian Competition and Consumer Commission or the Australian Competition Tribunal in relation to a carrier operating or proposing to operate on all or part of the route; and*

- *any decisions on notifications made by the Australian Competition and Consumer Commission in relation to a carrier operating or proposing to operate on all or part of the route.*

7.32 Ansett International argues that its entry into the market will bring increased competition to the route. The code share arrangements, Ansett International contends, will raise Ansett International's international profile and enable it to compete more broadly in international markets. Traffic feed to Ansett International's domestic market will be increased.

7.33 Qantas argues that its code share services would strengthen Qantas' capacity to compete successfully against foreign carriers in the Swiss market. Qantas claims that it would be more difficult for it to respond to competition and to sustain and build its market presence in Switzerland without the profile offered by code share services.

7.34 The Commission is of the view that increased competition from a second Australian carrier on the Switzerland route is likely to have flow on benefits to Australian tourism and consumers. This is particularly so if price competition were to develop between an Ansett International/Singapore Airlines alliance and the existing Qantas/Swissair and Qantas/British Airways alliances.

7.35 A further point in favour of the Ansett International proposal, is that with Qantas already code sharing with Swissair, if Qantas were allocated all of the third country code share capacity the practical effect is likely to be that other Australian carriers could only enter the route with own aircraft operations. An allocation to Ansett International would leave available the opportunity for Qantas to expand its services with Swissair. Whether it chose to do so would be, as Qantas points out, a matter for its commercial judgement.

7.36 The Commission notes that, even if Qantas did not wish to take up the available code share capacity for operations with Swissair, Qantas has the option of competing effectively on the route by interlining with British Airways on the London/Geneva route. Benefits to consumers should be comparable to code shared services as travel would be on the same physical services, given the close relationship between Qantas and British Airways through their joint service agreement and membership of the OneWorld alliance.

7.37 Finally, in relation to this criterion, Qantas argued that its own aircraft services to London should be preferred over Ansett International using Singapore Airlines services on the entire route. The Commission is not persuaded that this is a matter which, in the circumstances of this particular case, outweighs other competition issues.

Industry Structure

The extent to which proposals will impact positively on the Australian aviation industry.

7.38 Ansett International states that its proposal would strengthen Ansett International's position as an international carrier by improving its capacity to compete more effectively against foreign carriers, thus contributing to the maintenance of a strong Australian aviation industry.

7.39 Qantas argues that its proposal would improve its competitive position with foreign airlines by retaining and increasing revenue. Qantas' proposal would also involve significant travel on its own aircraft, generating commercial benefits for the Australian carrier. Qantas maintains that its original application to code share on British Airways between London and Geneva was part of an integrated program of new services, including code sharing to other European points and an expansion of physical services between Australia and London.

7.40 The Commission accepts that the carriage of Switzerland as well as other continental Europe passengers on Qantas services between London and Australia contributes to additional long haul capacity being brought into operation earlier than might otherwise be the case.

7.41 On the other hand, the Commission recognises that, for Ansett International, the Switzerland services are an important element in the development of a European market presence.

7.42 While the Ansett International proposal is relatively modest in terms of traffic projections, given Ansett International's thus far limited route network in Europe, it represents a quite significant addition to Ansett International's European presence. If Ansett International is awarded this capacity, its platform from which to develop a more comprehensive competitive strategy for European services will be enhanced beyond its current code share services to Europe.

7.43 Given Ansett International's statements about its longer term European objectives, the carrier can be expected to commit significant resources and initiatives to building its Switzerland operations. In this context, the Commission notes that the Switzerland/Austria market is Ansett International's second largest source of revenue in Continental Europe and that Zurich is Singapore Airlines major European hub.

7.44 The Commission considers that an expansion of services by either carrier should have a positive impact on the Australian industry. Given the Commission's view on the importance of introducing another Australian carrier on the route, it gives preference to that consideration.

Splitting the capacity

7.45 Finally, the Commission has considered whether greater public benefits might be achieved, in terms of the Paragraph 5 criteria, were the Commission to split the capacity between the applicants as suggested by Qantas as a second alternative.

7.46 The Commission is not persuaded that this would be a satisfactory outcome in this case. It is not likely, in the Commission's view, that splitting the capacity would deliver greater public benefits. More likely, to do so would substantially weaken Ansett International on the route without necessarily providing Qantas with optimal capacity, to the detriment of increased competition.

Conclusion

7.47 The Commission concludes that the public interest is best served by allocation of all the capacity to Ansett International.

7.48 The Commission will allocate to Ansett International the five weekly frequencies available from 1 October 1999 and the further two weekly frequencies available from 1 October 2000.

8 Other issues

8.1 The Commission will require Ansett International to fully utilise five frequencies per week within 30 days of the date of this determination, or within such other period as approved by the Commission. The Commission will require Ansett International to fully utilise the two additional weekly frequencies allocated to it from 1 October 2000 from that date, or within such other period as approved by the Commission.

8.2 Ansett International has sought a determination for five years. The Commission will make such a determination.

8.3 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.

8.4 The Commission normally imposes a condition on approvals of code share agreements that requires the applicant to price and sell its services on the route independently and not to share or pool revenue. The Commission considered whether it should do so in this case in order to stimulate greater competition consequent upon Ansett International's entry on the route. The Commission does not accept the suggestion that, in the circumstances of this case, it lacks the power to impose such a condition. However, it has decided not to do so given the Commission's view that competition between an Ansett International/Singapore Airlines alliance and other operators is the most important factor.

8.5 In approving code share proposals, the Commission usually 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.

8.6 In accordance with the Commission's usual requirements, it will be a condition of the determination that Ansett International file with the Commission, before the commencement of services, a copy of the amendments to its existing code share agreement, and that the Commission approve the documentation before services commence.

[1] ACCC determination, page 81.

8.7 The Commission will monitor Ansett International’s performance in developing the route. Accordingly, the Commission will make it a condition of approval that Ansett International is to provide the Commission with quarterly written notification of the number of passengers carried by it on the code share services.

9 Role of the ACCC

9.1 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 Ansett International/Singapore Airlines and Qantas/British Airways code share agreements or operations under them.

10 Determination allocating capacity on the Switzerland route to Ansett International (IASC/DET/9922)

10.1 The Commission finds that an allocation of capacity to Ansett International on the Switzerland route would be of benefit to the public.

10.2 The Commission makes a determination in favour of Ansett International, allocating 5 third-country airline code share frequencies per week in each direction between Australia and Switzerland under the Australia –Switzerland air services arrangements, with immediate effect, with a further 2 weekly frequencies from 1 October 2000.

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

10.4 The determination is subject to the following conditions:

- Ansett International is required to fully utilise the initial 5 weekly frequencies from no later than 30 days from the date of this determination, and the further 2 weekly frequencies from 1 October 2000 or from such other date approved by the Commission;

- only Ansett International is permitted to utilise the capacity;

- Ansett International may use the capacity to provide services jointly with Singapore Airlines pursuant to the Alliance Agreement with Singapore Airlines dated 17 December 1997 as authorised under the *Trade Practices Act*, and in accordance with the code share agreement between Ansett International and Singapore Airlines dated 2 September 1998, as extended by Appendix A to that code share agreement in relation to services between Australia and Switzerland, as may be amended with the prior approval of the Commission.

- Ansett International must file copies of its revisions to the code share agreement and obtain the Commission’s approval prior to the commencement of operations.

- to the extent that the capacity is used to provide services jointly with Singapore Airlines, Ansett International must
  - take all reasonable steps to ensure that passengers are informed, at the time of booking, of the carrier operating the flight; and
  - file with the Commission within 30 days of the end of each quarter during the term of this determination, a statement of the number of seats occupied by Ansett International passengers on each flight operated under the code share agreement during the relevant 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 – Switzerland 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 – Switzerland Air Services Agreement.

Dated: 17 December 1999

Russell Miller Chairman	Michael Lawriwsky Member	Stephen Lonergan Member