

# DETERMINATION

## AN ALLOCATION OF NEW CAPACITY ON THE JAPAN ROUTE TO ANSETT INTERNATIONAL LIMITED (ACN 060 622 460)

Determination Number:  
IASC/DET/9706

Public Register Files:  
IASC/APP/97002  
IASC/COM/92001

Date: 14 February 1997

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# 1. The application

1.1. The Commission gave notice on 9 January 1997 inviting applications for, and submissions about, an allocation of new capacity between Australia and Japan. An application was received from Ansett International Limited ACN 060 622 460 (Ansett). No other applications were received.

1.2. Ansett has applied for a total of 4.0 B767-200 units of capacity per week between Australia and Japan: 2.0 units from 30 March 1997 and an additional 2.0 units from 26 October 1997. When combined with its existing capacity allocation, the additional capacity would enable Ansett to operate a daily B747 service to Osaka from 26 October 1997.

1.3. A submission was received from the Queensland Office of Tourism (QOT) supporting Ansett's application.

1.4. All non-confidential material supplied by the applicant is filed on the Register of Public Documents.

# 2. Current services to Japan

2.1. Ansett has been allocated ten B767-200 units of capacity per week between Australia and Japan and fully utilises its capacity as follows:

- Sydney - Osaka - Brisbane - Sydney (five B747 services per week)

2.2. Qantas has been allocated 63.2 B767-200 units of capacity per week and fully utilises its capacity as follows:

- Sydney\* - Tokyo & v.v. (seven B747 services per week);
- Sydney\* - Cairns - Nagoya & v.v. (seven B747 services per week);
- Brisbane - Cairns - Tokyo & v.v. (six B747 services per week);
- Brisbane - Cairns - Tokyo - Brisbane (one B747 service per week);
- Sydney - Brisbane - Tokyo & v.v. (one B747SP service per week);
- Cairns - Fukuoka - Cairns - Melbourne (two B767-300 services per week);
- Cairns - Fukuoka - Cairns - Brisbane (one B767-300 service per week);
- Sydney - Cairns - Fukuoka - Cairns (one B767-300 service per week);
- Perth - Tokyo & v.v. (two B767-300 services per week);
- Perth - Tokyo - Darwin - Perth (one B767-300 service per week);
- Sydney - Cairns - Sapporo - Cairns (two B767-300 services per week);
- Cairns - Sapporo & v.v. (one B767-300 service per week);
- Sydney - Osaka - Brisbane - Sydney (five B767-300 services per week); and
- Melbourne - Osaka - Cairns - Melbourne (one B767-300 service per week).

\* A number of services originate in Melbourne, involving a change of aircraft at the Sydney International Terminal.

2.3. JAL operates the following services between Japan and Australia:

- Tokyo - Sydney & v.v. (seven B747 services per week);
- Tokyo - Cairns - Brisbane & v.v (seven B747 services per week);
- Osaka - Cairns - Sydney - Osaka (three B747 services per week); and
- Osaka - Brisbane - Sydney - Osaka (four B747 services per week).

2.4. All Nippon Airways operates the following services between Japan and Australia:

- Tokyo - Sydney & v.v. (four B747 services per week);
- Tokyo - Brisbane - Sydney - Tokyo (three B747 services per week); and
- Osaka - Brisbane - Sydney - Osaka (two B767 services per week).

2.5. Air New Zealand operates the following services between Australia and Japan:

- Auckland - Brisbane - Osaka & v.v (two B767 services per week).

### **3. Provisions of relevant air services agreements**

3.1. The Memorandum of Understanding of 9 December 1992 and the Australia - Japan Air Services Agreement of 27 April 1956 provide for the operation of air services between Australia and Japan, the multiple designation of Australian carriers, and for the operation of joint services between the designated airlines of each country.

3.2. Current capacity entitlements for Australian carriers under the MOU are 75.0 B767-200 equivalent units. This will increase to 77.0 units from 30 March 1997 and to 79.0 units from 26 October 1997.

3.3. Ansett has been allocated 10 B767-200 units of capacity and Qantas 63.2 units of capacity. There are 1.8 units of shelf capacity and 4.0 units of new capacity on the Register of Available Capacity. Of the new capacity, 2.0 units are available from 30 March 1997 and a further 2.0 units available from 26 October 1997.

3.4. Under the terms of the MOU the shelf capacity cannot be used to operate services to and from Osaka. The new capacity can be so used.

## 4. Legislative framework

4.1. Allocations of capacity are made in accordance with the *International Air Services Commission Act 1992*. Under section 11 of the Act, the Minister makes Policy Statements setting out matters relevant to the Commission's performance of its functions, including criteria to be applied by the Commission in assessing the benefit to the public. The current Policy Statement (No.2) was issued by the Minister on 27 March 1995. The legislative framework for making a determination allocating available capacity under the Act is set out in Attachment A.

4.2. The criteria applicable to assessing benefit to the public of an allocation of capacity, where there is only one applicant and submissions are received about, or opposing the allocation, are those set out in Attachment B. Those criteria apply to this application.

## 5. Characteristics of the Australia - Japan route

5.1. In the year ended 31 October 1996 traffic on the Australia - Japan route totalled approximately 1,876,700 passenger movements. Of these passenger movements 84% were passengers with a destination of either Australia or Japan, travelling directly between the two countries (direct traffic). A total of 8% of movements involved passengers travelling indirectly between the two countries (indirect traffic). The remaining 8% of the movements involved passengers travelling directly between Australia and Japan to and from countries beyond Japan or Australia (beyond traffic). Of this beyond traffic, 40% involved travel to or from the United Kingdom, 10% to or from China and 10% to or from the United States.

5.2. Details of the passenger movements on the route between the years ended 31 October 1993 and 31 October 1996 are summarised below.

**Australia - Japan Passenger Movements  
Years Ended 31 October 1993 - 31 October 1996**

	Year ending October				Average annual growth 1993 to 1996	Annual growth 1995 to 1996
	1993	1994	1995	1996		
Direct traffic	1,286,000	1,365,800	1,489,100	1,585,400	7.2%	6.5%
Indirect traffic	145,300	156,700	152,800	154,800	2.1%	1.3%
Beyond traffic	64,300	96,200	115,200	136,500	28.5%	18.5%
Total traffic	1,495,600	1,618,700	1,757,100	1,876,700	7.9%	6.8%

*Note: Data in this table have been derived from information supplied by the Australian Bureau of Statistics and includes both scheduled and charter traffic. Figures may not add to totals due to rounding.*

5.3. In the year ended 31 October 1996, Japanese residents comprised 95% of the direct passenger traffic. Australians visiting Japan did so mainly for business (36%) or a

holiday (26%). In the same year, Japanese visitors travelled to Australia mainly for a holiday (89%) or business (4%).

## **6. Commission's assessment of the applicant's claims**

6.1. Under the Policy Statement, the relevant criteria to be applied in assessing benefit to the public, given that there is only one applicant, is whether Ansett is reasonably capable of obtaining the necessary approvals and whether it is reasonably capable of implementing its proposals. In cases where submissions are received about the allocation of capacity to a particular carrier, the Commission may also apply the additional criteria for assessing benefits to the public specified in paragraph 5 of the Policy Statement. However, in this case, the only submission received supported the allocation of capacity and the Commission does not propose to apply the additional criteria.

6.2. Ansett already holds most of the necessary approvals and currently operates five services per week on the route. Also, it has demonstrated the technical ability to introduce new aircraft types to international operations.

6.3. Ansett has recently announced losses for the first half of the current financial year. Based on confidential information provided by Ansett to the Commission and having regard to the Deed of Guarantee and Indemnity (see Decision IASC/DEC/9405) the Commission is satisfied that Ansett is reasonably capable of continuing to operate these services satisfactorily and of implementing the two additional services covered by this application.

6.4.

6.5. The Commission concludes that Ansett is reasonably capable of implementing its proposal and will grant Ansett the capacity it has sought.

## **7. Other issues**

### **Commencement of operations**

7.1. Ansett proposes to commence utilisation of the capacity by no later than 30 June 1997. The Commission will specify that Ansett must commence utilisation of the capacity by 30 June 1997 or by such other date as approved by the Commission.

### **Period of the determination**

7.2. Ansett has requested a five year determination. The Commission will grant Ansett a determination for five years from the date of the determination.

## Utilisation of the capacity

7.3. Ansett has requested that it be required to fully utilise the capacity by no later than 31 December 1997. The Commission will specify that Ansett is required to fully utilise the capacity from 31 December 1997 or by such other date as approved by the Commission.

7.4. Ansett is not seeking the right to use the capacity to provide services jointly with any other carrier. The Commission will specify that:

- the capacity is only to be used by Ansett; and
- Ansett cannot use the capacity by providing services jointly with any other carrier without the prior approval of the Commission.

For this purpose, the Commission considers that joint services include *inter alia* code-sharing, seat exchanges, block space arrangements and revenue pooling.

## Ownership and control of the carrier

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

## 8. Determination allocating new capacity on the Japan route to Ansett (IASC/DET/9706)

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

8.2. The Commission makes a determination in favour of Ansett, allocating a total of 4.0 B767-200 units of capacity per week in each direction between Australia and Japan under the Australia - Japan Air Services Agreement as follows:

- 2.0 B767-200 units from 30 March 1997; and
- an additional 2.0 B767-200 units from 26 October 1997.

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

8.4. The determination is subject to the following conditions:

- Ansett is required to:
  - commence utilisation of the allocated capacity no later than 30 June 1997 or from such other date approved by the Commission; and

- fully utilise all of the allocated capacity from no later than 31 December 1997 or from such other date approved by the Commission.
- only Ansett is permitted to utilise the capacity;
- Ansett is not permitted to utilise the capacity to provide services jointly with another Australian carrier or any other person without the prior approval of the Commission;
- 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 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 must, from time to time, if requested to do so by the Commission in writing, provide evidence that Ansett has access on arms length terms to all of the goods, services and facilities necessary to undertake required operations on the route.
- changes in relation to the ownership and control of Ansett are permitted except to the extent that any change:
  - results in the designation of the airline as an Australian carrier under the Australia - Japan 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 or be in a position to exercise effective control of Ansett, without the prior consent of the Commission, and
- changes in relation to the management, status or location of operations and Head Office of Ansett 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 - Japan Air Services Agreement.

Dated: 14 February 1997

James K Bain  
Chairman

Brian L Johns  
Member

Russell V Miller  
Member

## **A. Legislative framework**

1. Subsection 7(1) of the Act allows the Commission to make a determination allocating available capacity.
2. Under section 12 of the Act, the Commission must, by notice, invite applications for and submissions about an allocation of new capacity.
3. Under subsection 12(3), any person may apply to the Commission for a determination allocating the capacity.
4. Subsection 7(2) requires that the determination:
  - (a) must not allocate available capacity unless the Commission is satisfied that the allocation would be of benefit to the public; and
  - (b) if more than one application was made relating to the allocation - must make the allocation that the Commission is satisfied, having regard to the applications made, would be of the greatest benefit to the public.
5. Under subsection 7(3), in assessing the benefit to the public of an allocation of capacity, the Commission must apply the criteria set out for that purpose in the policy statements made by the Minister under section 11.
6. The section 11 Policy Statement dated 27 March 1995, includes criteria to be applied by the Commission in assessing the benefit to the public of allocations of capacity. The criteria applicable to assessing benefit to the public of an allocation of shelf capacity where there is only one applicant and no submissions were received about, or opposing, the allocation, are those contained in paragraphs 4 and 6 of the Policy Statement.
7. Section 15 of the Act relates to the contents of determinations including the imposition of conditions relating to the use of capacity. Section 16 relates to notifications of determinations.

## **B. Relevant criteria under paragraphs 4 and 6 of the Policy Statement**

### **Paragraph 4 requirements**

#### **4. GENERAL CRITERIA FOR ASSESSING BENEFIT TO THE PUBLIC**

4.1 Subject to paragraph 6, the general criteria against which the benefit to the public is to be assessed by the Commission in considering the circumstances in relation to an allocation of capacity or the renewal or review of a determination allocating capacity to an Australian carrier are as set out below:

##### Use of Australian carrier entitlements

(a) Subject to (b), the use of the entitlements of Australian carriers under a bilateral arrangement is of benefit to the public.

##### Carrier capabilities

(b) It is not of benefit to the public for the Commission to allocate capacity to Australian carriers unless such carriers:

- (i) are reasonably capable of obtaining the necessary approvals to operate on the route; and
- (ii) are reasonably capable of implementing their proposals.

### **Paragraph 5 requirements**

#### **5. ADDITIONAL CRITERIA FOR ASSESSING BENEFIT TO THE PUBLIC**

5.1 The following additional criteria are applicable in assessing the benefit to the public in all circumstances other than as provided in relation to particular circumstances described in paragraph 6:

##### Tourism

(a) The extent to which proposals will promote tourism to and within Australia. The Commission should have regard to:

- 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).

#### Consumer Benefits

(b) The extent to which proposals will maximise benefits to Australian consumers. The Commission should have regard to:

- 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).

#### Trade Benefits

(c) The extent to which proposals will promote international trade. The Commission should have regard to:

- the availability of frequent, low cost, reliable freight services for Australian exporters and importers.

#### Competition Policy

(d) 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:

- 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.

#### Industry Structure

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

## Other Criteria

- (f) Such other criteria as the Commission considers relevant.

5.2 The Commission is not obliged to apply all the criteria set out in paragraph 5.1 if it is satisfied that the important criteria in the circumstances have been met.

## **Paragraph 6.2 requirements**

### 6. CRITERIA APPLICABLE IN PARTICULAR CIRCUMSTANCES

One applicant or sufficient available capacity

6.2 In circumstances where:

(a) there is only one applicant (or where more than one application is made but all applications except one are withdrawn) for allocation of capacity on a route; or

(b) there is more than one applicant but, subject to paragraph 7.3, the amount of available capacity is equal to or exceeds the total amount of capacity applied for

only the criteria in paragraph 4 are applicable. However, if submissions are received about, or opposing, the allocation of capacity to a particular carrier, the Commission may also apply the additional criteria in paragraph 5.