



Australian Government

International Air Services Commission

DETERMINATION

Determination: [2004] IASC 110
The Route: Indonesia
The Applicant: Capiteq Limited
(ACN 008 137 559) trading as Airnorth Regional
(Airnorth)
Public Register: IASC/APP/200412

1 The application

1.1 On 28 May 2004, Airnorth applied for an allocation of 150 seats per week on the route between Darwin and Kupang, Indonesia. Airnorth proposes to initially operate twice weekly services using a 30 seats Brasilia aircraft. It is proposed that the services will be conducted under a code share arrangement with Merpati Nusantara Airlines of Indonesia (Merpati). Airnorth is seeking sufficient capacity to operate up to five services per week.

1.2 Merpati used to operate on the Darwin-Kupang route but ceased operations in 2001 after the aircraft that it used on the route no longer complied with the applicable noise regulations.

1.3 Capiteq is an established aviation company operating domestic scheduled services under the names Airnorth Regional, Airlines of South Australia and Emu Airways. It is also an experienced operator of international services. Since 1999, Airnorth has been operating up to three international non-scheduled services per day between Darwin and Dili, under approvals from the Department of Transport and Regional Services (the Department). These flights have been operated as non-scheduled services because there are no formal air services arrangements between Australia and East Timor. Accordingly, there has been no role for the Commission in allocating capacity for these services. Airnorth has not required an International Airline Licence to conduct these non-scheduled services. It does, however, hold an international Air Operator's Certificate from the Civil Aviation Safety Authority (CASA).

1.4 On 4 June 2004, the Commission published a notice inviting applications from interested parties for some or all of the capacity sought by Airnorth. No applications were received.

1.5 All material supplied by the applicant is filed on the Commission's Register of Public Documents. Commercial in confidential material supplied by the applicant is filed on the Commission's Confidential Register.

2 Provisions of relevant air services arrangements

2.1 Under the arrangements with Indonesia, designation of multiple airlines is permitted and there is unlimited capacity available to Australian carriers for operations between points in Australia, except Sydney, Melbourne, Brisbane and Perth and authorised points in Indonesia of which Kupang is one such point.

2.2 Code share operations between airlines of Australia and Indonesia are permitted.

3 Commission's consideration

Overview

3.1 Under paragraph 6.1 of the Minister's Policy Statement (No.5), of 19 May 2004, where capacity is not limited under a bilateral agreement, only the criteria in paragraph 4 are applicable.

3.2 Under paragraph 4, the use of entitlements by an Australian carrier that is reasonably capable of obtaining the necessary approvals to operate on the route (4(b)(i)) and of implementing its application (4(b)(ii)) is of benefit to the public. In relation to obtaining the necessary approvals, Airnorth must be designated and obtain a licence from the Department and obtain safety approvals from CASA before it has authority to commence services.

3.3 The Commission makes its own assessment of whether the applicant is reasonably capable of implementing its proposals, having regard to various matters including the applicant's experience, business plan and other information provided to the Commission by the applicant.

Necessary approvals

3.4 In line with its normal practice for new entrant airlines, the Commission sought advice from the Department as to whether it considered Airnorth to be reasonably capable of obtaining the approvals necessary to operate on the Indonesia route. The Department advised that it considers Airnorth to be reasonably capable of doing so.

Ability to implement proposals

3.5 As indicated above Capiteq operates a number of domestic aviation services and has operated non-scheduled international services since 1999. Furthermore, Airnorth already has an international AOC permitting operations to Kupang as well as Dili and some other nearby points.

3.6 Airnorth has provided the Commission with commercial in confidence material supporting its claim that it is capable of implementing international services. This

information includes projected traffic levels on the route, fare levels and marketing expenditure as well as profit and loss projections.

3.7 Airnorth requested an interim three year allocation of capacity.

Joint Services

3.8 Section 15(2)(e) of the Act specifies that the Commission must include a condition in determinations stating the extent to which the carrier may use that capacity in joint services with another carrier. Airnorth has stated that the capacity will be used to code share with Merpati.

3.9 The proposed joint services provide for Airnorth to recoup any outlays up to the point of break even income and then to share profits. All flight operations are to be under the control of Airnorth with Merpati providing ground handling in Kupang and sales, marketing and reservation services in Indonesia and Australia.

3.10 The proposed joint services arrangements facilitate the re-introduction of services on the route through the use of Airnorth's aircraft and Merpati's sales, marketing and reservations infrastructure.

3.11 Airnorth has provided the Commission with draft copies of the joint services agreements.

Conclusion

3.12 The information provided by Airnorth satisfies the Commission that the carrier has the financial capability, resources, skills and experience necessary to implement its application.

3.13 The Commission is also satisfied that Airnorth is reasonably capable of obtaining the necessary approvals and of implementing its application.

3.14 The Commission concludes that an allocation of capacity to Airnorth on the Indonesia route would be of benefit to the public.

3.15 The Commission will authorise the use of the capacity in joint services, provided that the joint services agreement is materially consistent with the draft versions provided to the Commission on 1 June 2004 and that the final joint services agreement is submitted to the Commission as soon as practicable.

4 Determination allocating capacity on the Indonesia route to Capiteq Limited ([2004] IASC 110)

4.1 The Commission makes an interim determination in favour of Capiteq Limited trading as Airnorth Regional (Airnorth), allocating capacity for operations between points in Australia, except Sydney, Melbourne, Brisbane and Perth and authorised points in Indonesia.

4.2 The determination is for three years from the date of this determination.

4.3 The determination is subject to the following conditions:

- Airnorth is required to utilise the capacity from no later than 31 July 2004, or from such other date approved by the Commission;
- only Airnorth is permitted to utilise the capacity;
- the capacity may be used by Airnorth to provide services jointly with Merpati in accordance with:
 - the joint services agreement supplied to the Commission on 1 June 2004 and the finalised joint services agreement, which must be provided to the Commission as soon as practicable, including such additional conditions (if any) as the Commission may require;
 - or any subsequent joint services agreement between Airnorth and Merpati for operations on the Australia-Indonesia route with the prior approval of the Commission; and
- under any joint services agreement with Merpati:
 - Airnorth must price and sell its services on the route independently of Merpati;
 - Airnorth must not share or pool revenues on the route with Merpati other than as set out in the joint services agreement;
- to the extent that the capacity is used to provide joint services on the route, Airnorth must take all reasonable steps to ensure that passengers are informed of the carrier actually operating the flight at the time of booking;
- changes in relation to the ownership and control of Airnorth are permitted except to the extent that any change:
 - results in the designation of the airline as an Australian carrier under the Australia – Indonesia air services arrangements 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 Airnorth or be in a position to exercise effective control of Airnorth, without the prior consent of the Commission, and
- changes in relation to the management, status or location of operations and Head Office of Airnorth 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 – Indonesia air services arrangements.

Dated: 15 June 2004

John Martin
Chairman

Stephen Lonergan
Member

Michael Lawriwsky
Member