



Australian Government

International Air Services Commission

RENEWAL DETERMINATION

Determination: [2006] IASC 127
Renewal of: [2004] IASC 110
The Route: Indonesia
The Applicant: Capitec Limited
(ACN 008 137 559) trading as Airnorth
(Airnorth)
Public Register File: IASC/APP/200616

1 The application for renewal

1.1 On 15 June 2004, the Commission issued interim Determination [2004] IASC 110 (the Determination) allocating unrestricted capacity and frequency to Airnorth for operations between points in Australia, except Sydney, Melbourne, Brisbane and Perth, and authorised points in Indonesia under the Australia – Indonesia air services arrangements.

1.2 Under the *International Air Services Commission Act 1992* (the Act), the Commission must start its consideration of the renewal of a determination at least 12 months before the expiry of the Determination. The Determination expires on 14 June 2007.

1.3 Airnorth applied to the Commission on 12 September 2006 for a renewal of the Determination. The Commission published a notice on 3 October 2006 inviting other applications for an allocation of the capacity subject to renewal. No other applications were received.

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

2 Delegate's consideration

2.1 In accordance with section 27AB of the Act and regulation 3A of the *International Air Services Commission Amendment Regulations 2003 (No.1)*, the delegate of the Commission considers the Airnorth application.

2.2 Under the Minister's Policy Statement (No. 5), of 19 May 2004, where capacity is not limited under a bilateral arrangement, as is the case in relation to

operations by Air North between Darwin and Indonesia, the criteria set out in paragraph 4 apply.

2.3 Under paragraph 4, the use of entitlements by an Australian carrier that is reasonably capable of obtaining the necessary approvals and of implementing its proposals is of benefit to the public. The delegate considers that Air North is now an established international carrier and satisfies the paragraph 4 criteria. This means that there is public benefit arising from the use of the entitlements.

2.4 In these circumstances, the delegate concludes that the renewal of Determination [2004] IASC 110 would be of benefit to the public and the determination is no longer to be treated as an interim determination. Although capacity is not restricted, the duration of the determination will be for five rather than 10 years because the routes on which the unlimited capacity may be operated are restricted.

2.5 The wording of the fresh determination below reflects the view of the Commission that determinations which renew original determinations should contain updated terms and conditions consistent with the Commission's current practice and current air services arrangements. Under the Act, the Commission may make changes to the terms and conditions included in the original determination where warranted by changes in circumstances since the original determination was made.

3 Determination for renewal of Determination [2004] IASC 110 allocating capacity on the Indonesia route to Airnorth ([2006] IASC 127)

3.1 The delegate, on behalf of the Commission, makes a determination in favour of Airnorth, allocating unrestricted capacity and frequency for the operation of combined passenger, cargo and mail services in each direction between points in Australia, except Sydney, Melbourne, Brisbane and Perth, and authorised points in Indonesia under the Australia – Indonesia air services arrangements.

3.2 The determination is for five years from 15 June 2007.

3.3 The determination is subject to the following conditions:

- Airnorth is required to fully utilise the capacity;
- only Airnorth is permitted to utilise the capacity;
- Airnorth is not permitted to utilise the capacity to provide services jointly with another Australian carrier or any other person without the approval of the Commission;
- the capacity may be used by Airnorth to provide services jointly with Merpati in accordance with:

- the code share agreement dated 27 May 2004;
- 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: 26 October 2006

Michael Bird
 Executive Director
 Delegate of the IASC Commissioners