



Australian Government

International Air Services Commission

DECISION

Decision:	[2007] IASC 210
Variation of:	[2006] IASC 127
The route:	Indonesia
The applicant	Capitec Limited (ACN 008 137 559), trading as Airnorth (Airnorth)
Public Register File:	IASC/APP/200716

1 The application

1.1 On 26 July 2007, Airnorth applied for an allocation of 380 seats of capacity per week on the Indonesia route for operations on the Darwin – Denpasar and vice versa sector. Airnorth plans to operate twice-weekly Embraer ERJ170 services from October 2007, increasing to three services per week by June 2008. Further expansion to five services per week is planned, if demand warrants. Airnorth also sought authority from the Commission for Qantas to code share on Airnorth's services.

1.2 Following receipt of the application, the Commission advised Airnorth that the airline's existing allocation of capacity under Determination [2006] IASC 127 (the Determination) already provided a sufficient basis for the proposed services. The Determination allocates 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. Accordingly, no further allocation of capacity is required. However, authorisation was required for the proposed code share arrangements with Qantas.

1.3 Subsequently, on 7 August 2007, Airnorth amended its application to become only a request for variation of the Determination to permit code sharing by Qantas on Airnorth's planned new Darwin – Denpasar services. Airnorth advised that discussions were underway with Qantas on the formulation of the code share agreement. Airnorth also indicated that a copy of the agreement would be forwarded to the Commission once it was finalised.

1.4 The Commission published a notice on 13 August 2007 inviting submissions about the application. No submissions were received. All public material supplied by the applicant is filed on the Register of Public Documents.

2 Provisions of the relevant air services arrangements

2.1 The Australia – Indonesia air services arrangements provide that a designated airline of either Contracting Party may enter into co-operative marketing arrangements with an airline of the same Contracting Party, including blocked space arrangements.

3 Commission’s assessment

3.1 When considering applications to vary a determination, the Commission must decide whether the determination, as varied, would be of benefit to the public. Under section 6.3 of the Minister’s policy statement (No.5), where a carrier requests a variation of a determination to allow it flexibility in operating its capacity and no submission is received about the application, only the criteria in paragraph 4 of the policy statement are applicable. Under paragraph 4 of the Minister’s Policy Statement (No. 5), of 19 May 2004, 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. For an established international carrier such as Airnorth, this means that there is public benefit arising from the use of the entitlements.

3.2 Section 15(2)(e) of the Act requires the Commission to include a condition in determinations stating the extent to which the carrier may use allocated capacity in joint services with another carrier. The Minister’s policy statement indicates that the Commission would generally be expected to authorise code sharing. The Commission has previously authorised the use of capacity in joint services between Airnorth and Merpati on the Indonesia route and will do so in this case. The Commission understands that Qantas will be withdrawing its twice-weekly B737-800 services from the Darwin – Denpasar sector, with Airnorth’s services replacing these. The code share arrangements will maintain the participation of Qantas in the market, providing a limited degree of competition between Qantas and Airnorth that would be absent without the code share. The authorisation will be subject to the code share agreement between the two carriers being submitted to and approved by the Commission prior to the services commencing.

3.3 The Commission will vary the determination as requested by Airnorth.

4 Decision [2007] IASC 210

4.1 In accordance with Section 24 of the Act, the Commission varies Determination [2006] IASC 127 by:

adding the following conditions:

- “the capacity may be used by Airnorth to provide services jointly with Qantas in accordance with:
 - the finalised code share agreement, signed by Airnorth and Qantas, being approved by the Commission, with such additional conditions

(if any) as the Commission may require, prior to the code share services commencing;

- or any subsequent code share agreement between Airnorth and Qantas for operations on the Australia – Indonesia route with the prior approval of the Commission;
- under any code share agreement with Qantas:
 - Airnorth must price and sell its services on the route independently of Qantas;
 - Airnorth must not share or pool revenues on the route with Qantas;”

Dated: 31 August 2007

John Martin
Chairman

Philippa Stone
Member

Vanessa Fanning
Member