



## Australian Government

### International Air Services Commission

#### DETERMINATION

**Determination:** [2009] IASC 102  
**The Route:** Indonesia  
**The Applicant:** Sky Air World Pty Ltd  
(ACN 121 705 646) (Sky Air World)  
**Public Register File:** IASC/APP/200831

### 1 The application

1.1 On 29 December 2008, Sky Air World applied to the Commission for an allocation of unlimited capacity on the Indonesia route. Sky Air World proposes to introduce services between Darwin and Denpasar from 16 February 2009. Sky Air World will operate the services using Embraer 170 and Embraer 190 aircraft. The airline advised the Commission subsequent to its application that it proposes to operate up to 14 services per week on this sector. Sky Air World advised that the services will not be provided jointly with another carrier.

1.2 The Commission published a notice on 9 January 2009 inviting other applications for an allocation of the capacity. No other applications were received.

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

### 2 Provisions of relevant air services arrangements

2.1 The air services arrangements between Australia and Indonesia permit the designation of multiple Australian airlines. According to the Register of Available Capacity, there is unrestricted capacity for designated Australian carriers to operate scheduled passenger services between authorised points in Indonesia and points in Australia other than Sydney, Melbourne, Brisbane and Perth.

### 3 Delegate's consideration

3.1 In accordance with section 27AB of the Act and regulation 3A of the *International Air Services Commission Regulations*, the delegate of the Commission considers the Sky Air World application.

3.2 Under the Minister's Policy Statement (No.5) of 19 May 2004, where capacity is not limited under a bilateral arrangement, the criteria in paragraph 4 of the policy statement apply.

3.3 Under paragraph 4, the use of Australian entitlements by a carrier that is reasonably capable of obtaining the necessary approvals (4(b)(i)) and of implementing its proposals (4(b)(ii)) is of benefit to the public. Sky Air World has operated scheduled international services on the Solomon Islands route for some time, as well as international charter flights and domestic scheduled and charter services. It is clearly capable of obtaining the necessary approvals and of implementing the proposed operations. This means that there is public benefit arising from the use of the entitlements. The delegate, on behalf of the Commission, will allocate to Sky Air World the capacity sought.

3.4 Under paragraph 11.1(b) of the Minister's policy statement, where capacity and routes are unrestricted, Commission determinations are to be for a period of ten years, unless the determination is an interim determination, in which case the duration is to be for a three year period. Under the Australia-Indonesia air services arrangements, capacity is unrestricted only between Indonesian points and Australian points excluding the four largest cities, namely, Sydney, Melbourne, Brisbane and Perth. The duration of the determination will therefore be for five rather than 10 years because the routes on which the unlimited capacity may be operated are restricted.

#### **4 Determination allocating capacity on the Indonesia route to Sky Air World ([2009] IASC 102)**

4.1 The delegate, on behalf of the Commission, makes a determination in favour of Sky Air World, allocating unrestricted passenger capacity in each direction on the Indonesia route between points in Australia, except Sydney, Melbourne, Brisbane and Perth and authorised points in Indonesia in accordance with the terms of the Australia – Indonesia air services arrangements.

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

4.3 The determination is subject to the following conditions:

- Sky Air World is required to utilise the capacity from no later than 28 February 2009, or from such other date approved by the Commission;
- only Sky Air World is permitted to utilise the capacity;
- Sky Air World 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;
- changes in relation to the ownership and control of Sky Air World 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 Sky Air World or be in a position to exercise effective control of Sky Air World, without the prior consent of the Commission; and
- changes in relation to the management, status or location of operations and Head Office of Sky Air World 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: 22 January 2009

Michael Bird  
Executive Director  
Delegate of the IASC Commissioners