

Treaty between Australia and the European Community on Certain Aspects of Air Services

Introduction

- 9.1 The proposed treaty, known as the Horizontal Agreement, was devised after the European Court of Justice found, in 2002, that certain provisions regarding ownership and control of European Union (EU) airlines within bilateral agreements between EU Member states and third party countries were incompatible with European Community (EC) law.
- 9.2 Australia holds air service agreements with fourteen Member States of the EC¹, which comprise similar clauses to those which had been deemed inconsistent with EC law. The purpose of the Horizontal Agreement, therefore, is to address these inconsistencies, and as such provide security from legal challenge for these air services agreements.²

1 Austria, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Malta, the Netherlands, Poland, Sweden and the United Kingdom.

2 Mr Iain Lumsden, *Transcript of Evidence*, 15 September 2008, p. 10.

Reasons for Australia to take treaty action

- 9.3 Within the EU, any EU Member State can designate any EU airline as an airline of its member state, even when that airline's original place of ownership is another Member State. The agreement clarifies these ownership and control stipulations within the EU.
- 9.4 The EC has prevented its Member States from negotiating further air services agreements with Australia until inconsistencies in the existing agreements are resolved through the negotiation of a Horizontal Agreement. The Committee notes that several EU Member States made it clear that signature of the Horizontal Agreement by Australia was required for negotiation of a comprehensive air services agreement with the EU.³ Such an agreement would replace and go beyond bilateral agreements Australia currently has in place with EU Member States.
- 9.5 The Horizontal Agreement was initialled in 2005, prior to which, Australia negotiated three conditions:
- that Australian carriers not be disadvantaged vis-à-vis European carriers;
 - that Australia could recommence bilateral negotiations with Member States; and
 - that the European Commission would seek a mandate from Member States to commence negotiations with Australia on a comprehensive air services agreement with the EC.⁴

Obligations

- 9.6 The Horizontal Agreement obliges Australia and relevant EU Member States to recognise the existence of a single EU market for air services between Australia and the EU.
- 9.7 Articles 2, 3 and 4 outline the stipulations with regards to designation, regulation and tariffs of air services of EU Member States, based on their EU status rather than Member State nationality. No new

3 NIA, para 9.

4 NIA, para 8.

legislation will be required to implement the amendments in Australia.

Designation

9.8 Article 2 of the Horizontal Agreement provides that an EU aircraft be designated according to its EU status, instead of its Member State nationality, allowing Member States access to rights under any air services agreement between Australia and an EU Member State.

9.9 While there are not reciprocal rights for Australian airlines under Article 2, it does however allow for Australia to stop EU airlines accessing rights that Australian airlines would not have.⁵

Regulatory Control

9.10 Article 3 states that, where one Member State designates an air carrier that remains under the regulatory control of a second Member State, the safety provisions of the Horizontal Agreement between Australia and the first Member State will equally apply to the air carrier of the second Member State.⁶

Tariffs

9.11 Article 4 stipulates Australian carriers are subject to EC law with respect to the air fares that can be charged on routes entirely within the EU.

Future Treaty Action

9.12 Under Article 6, the Horizontal Agreement may be amended or revised by Contracting Parties by mutual consent. Any amendment or revision will be subject to Australia's treaty action procedures and only enter into force once the Parties have notified each other in writing that domestic procedures have been completed.

5 NIA, para 13.

6 NIA, para 14.

Costs

- 9.13 Implementation of the Horizontal Agreement is not anticipated to have any direct financial costs for the Commonwealth Government. There are likewise no predicted financial implications for the States or Territories.

Withdrawal or denunciation

- 9.14 Annex I lists the air services agreements between Australia and Member States of the EU which had been concluded or are applied provisionally at the time of signature of the Horizontal Agreement.
- 9.15 Article 8 provides that at the time of termination of any agreements listed under Annex I, all provisions of the Horizontal Agreement which apply to the Annex I agreement are also terminated. Furthermore, should all Annex I agreements be terminated, the Horizontal Agreement itself is also terminated.⁷
- 9.16 Withdrawal from the agreement by Australia will be subject to our domestic treaty action procedures.

Other matters

Safety Regulations

- 9.17 The treaty has ramifications as to which Member State will be responsible for the safety oversight of a particular airline. The Committee heard in evidence that the treaty requires that the *designating Member State*, rather than the original origin Member State becomes responsible for the safety regulations of a designated airline.⁸

7 NIA, para 25.

8 Mr Iain Lumsden, *Transcript of Evidence*, 15 September 2008, p. 12.

Conclusion and recommendations

- 9.18 The Committee notes the necessity of this treaty to address inconsistencies in certain air services agreements between Australia and EU Member States and provide security from legal challenge. The Committee also recognises that the treaty will allow the negotiation of further air services agreements with EU Member States. The Committee therefore supports ratification of the Horizontal Agreement.

Recommendation 12

The Committee supports the *Agreement between the Government of Australia and the European Union on Certain Aspects of Air Services* and recommends that binding treaty action be taken.

Kelvin Thomson MP
Chair

