

National Interest Analysis [2010] ATNIA 57

with attachment on consultation

**Air Services Agreement between
the Government of Australia and the Government of the Republic of Turkey,
done at Ankara on 28 April 2010**

[2010] ATNIF 37

NATIONAL INTEREST ANALYSIS: CATEGORY 2 TREATY

SUMMARY PAGE

**Air Services Agreement between
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Nature and timing of proposed treaty action

1. The treaty action proposed is to bring into force the *Air Services Agreement between the Government of Australia and the Government of the Republic of Turkey* (the Agreement).
2. The Agreement was signed on 28 April 2010.
3. Pursuant to Article 20, the Agreement will enter into force when the Parties have notified each other in writing that their respective requirements for the entry into force have been satisfied. Subject to the Joint Standing Committee on Treaties' (JSCOT) issuing a report recommending the treaty action, the Australian Government will provide its notification to the Government of the Republic of Turkey (Turkey) after the Agreement has been tabled in both houses of Parliament for 15 sitting days.
4. The Agreement will establish for the first time a treaty level air services relationship between Australia and Turkey. It will allow the respective airlines of Australia and Turkey to develop international air services between the two countries.
5. The Agreement was preceded by aviation arrangements of less than treaty status, in the form of Memorandums of Understanding (MOUs) signed in 2006 and 2010. In accordance with established Australian and international practice these MOUs applied the provisions of the Agreement on a non-legally binding basis until the Agreement enters into force.

Overview and national interest summary

6. The purpose of this Agreement is to provide a binding legal framework to support the operation of air services between Australia and Turkey. The Agreement will facilitate trade and tourism between the two countries and will provide greater opportunities for airlines to develop expanded air travel options for consumers.

Reasons for Australia to take the proposed treaty action

7. This Agreement grants access for Australian airlines to the Turkish aviation market and allows for the establishment of air services between the two countries. The Agreement will enable Australian and Turkish airlines to establish services between any point in Australia and any point in Turkey, based on capacity levels decided from time to time between the aeronautical authorities of the Parties.

8. Australian travellers and Australian businesses, particularly in the tourism and export industries, will benefit from this Agreement through the opening of increased opportunities.

Obligations

9. Australia and Turkey are both Parties to the *Convention on International Civil Aviation* ([1957] ATS 5) (the Chicago Convention), which opened for signature at Chicago on 7 December 1944. The Agreement was made in accordance with and pursuant to the Chicago Convention.

10. The Agreement obliges Australia and Turkey to allow designated airlines of each country to operate scheduled air services carrying passengers and cargo between the two countries on specified routes in accordance with the provisions of the Agreement. To facilitate these services, the Agreement also includes reciprocal provisions on a range of aviation-related matters such as safety, security, customs regulations, user charges and the commercial aspects of airline operations, including the ability to establish offices in the territory of each Party and to sell fares to the public.

11. Article 2 of the Agreement grants each Party the right to designate as many airlines as it wishes to operate air services between the two Parties within the agreed capacity, provided that, amongst other things, the airline is incorporated and has its principal place of business in the territory of the Party designating it. Either Party has the right to revoke or limit the operating authorisations of any airline that fails to meet certain conditions including conditions for ownership, principal place of business, safety or security as outlined in the Agreement.

12. Under Article 3 of the Agreement, each Party grants airlines of the other Party the right to fly across its territory without landing and to make stops in its territory for non-traffic purposes. Article 3 also provides the right for designated airlines to operate services on routes specified in the Route Schedule for the purpose of taking on board and discharging passengers, cargo and mail.

13. Article 4 of the Agreement confirms the application of local laws, regulations and rules relating to the admission to or departure from its territory of passengers, crew and cargo, as well as the operation and navigation of aircraft when entering, within or leaving the territory of that Party. Article 4 applies each Party's laws and regulations relating to, for example, aviation security, immigration, immigration and customs to the passengers, crew, baggage, cargo and mail carried by the aircraft. In applying their laws, the Parties are prevented from giving preference to its own or to any other airline. Article 4 also requires the Parties to allow passengers, baggage or cargo in direct transit through the territory of the other Party to be subject to examination for customs or security purposes.

14. Under Article 5, each Party shall recognise certificates of airworthiness, competency and licences issued or rendered valid by the other Party, provided the standards under which such documents were issued conform to the standards established by the International Civil Aviation Organization (ICAO). This requirement does not apply to the Party's own nationals or to its registered aircraft by the other Party. Each Party may request consultations with the other Party at any time concerning the safety standards maintained by the other Party. If required, the other Party shall be informed of necessary actions to be undertaken to conform with the minimum safety standards. Each Party is authorised to search an aircraft of the other Party while in their own territory, provided that the search does not cause unreasonable delay in the operation of the aircraft. Each Party is entitled to suspend the operating authorisation of the other Party's airlines if they consider urgent action is required to ensure the safety of airline operation. In the event of non-compliance, the complaining Party should advise the Secretary-General of the ICAO.

15. Under Article 6, both Parties are required to protect the security of civil aviation against acts of unlawful interference and, in particular, to act in conformity with multilateral conventions relating to aviation security. A Party may require the designated airlines of the other Party to observe the Party's aviation security provisions for entry into, departure from or while within the territory of that Party and shall ensure that adequate measures are applied to protect the aircraft and to inspect passengers, crew, carry-on items, baggage, cargo and aircraft stores prior to and during boarding or loading. The Parties shall assist each other in the event of an incident or threat of an incident. Each aeronautical authority may request to conduct a security assessment in the other Party's territory. Such assessments are to be conducted in accordance with arrangements agreed between the aeronautical authorities without delay.

16. Article 7 requires that each Party encourage those responsible for airport, airport environmental, air navigation and aviation security facilities and services to not levy charges that are unreasonable, inequitable or discriminatory.

17. Under Article 8 provides that a Party may request statistics from the other Party's designated airlines.

18. Article 9 lists the equipment and stores used in the operation of the agreed services that the Parties are required, in accordance with international practice, to exempt from import restrictions, customs duties, excise taxes and similar fees and charges.

19. Article 10 allows designated airlines to set their own fares, and provides that airlines do not need to file fares with either Party for approval unless required by national laws and regulations. Parties must endeavour to settle disagreements as to fares levels through consultations.

20. Under Article 11, both Parties are obliged to ensure that there is a fair and equal opportunity for the designated airlines of both Parties to operate the agreed services. The capacity that can be operated between the two countries shall be decided between the aeronautical authorities before the services commence; capacity may be reviewed and revised from time to time by the authorities. The capacity was initially settled in an MOU signed in

January 2010, as specified in paragraph 5 above. These capacity arrangements are intended to continue once the Agreement enters into force.

21. Article 12 provides a framework that allows designated airlines of one Party to conduct business in the territory of the other Party. The framework includes provisions allowing designated airlines to establish offices, bring in and employ their own staff, sell and market air transportation to the public, freely convert and move currency, perform its own ground handling and utilise leased aircraft which meet all applicable operating and safety standards. Designated airlines may also enter into code share arrangements with any other appropriately authorised airline. All business must be conducted in accordance with local laws and regulations. Each Party is required to provide the airlines of the other Party with access to airports and the allocation and grant of time slots on a non-discriminatory basis and in accordance with local laws and regulations.

22. Article 13 confirms that the competition laws of each Party apply to the activities of designated airlines within their respective jurisdictions. Consultations may occur if one Party considers their airlines are subject to unfair practices in the territory of the other Party. When undertaking consultations on matters of discrimination and unfair practice, both Parties are required to coordinate their actions with relevant authorities, consider alternative options and take into account the views and international obligations of the other Party.

23. Article 14 provides that each Party may request consultations on the implementation, compliance or amendments to the Agreement.

24. Article 15 provides for dispute resolution, including an option for mediation. Any dispute between the two Parties, with the exception of any disputes concerning air fares or the application of national competition laws, which cannot be settled through mediation shall, at the request of either Party, be submitted to an arbitral tribunal. Awards of the arbitral tribunal are binding. If and for so long as a Party fails to comply with an award, the other Party may limit, suspend or revoke any rights or privileges granted pursuant to the Agreement.

25. The Annex to this Agreement contains a route schedule which specifies the routes that may be operated by designated airlines.

Implementation

26. The Agreement is to be implemented through existing legislation, including the *Air Navigation Act 1920* and the *Civil Aviation Act 1988*. The *International Air Services Commission Act 1992* provides for the allocation of capacity to Australian airlines. No amendments to these Acts or any other legislation are required for the implementation of the Agreement.

Costs

27. No direct financial costs to the Australian Government are anticipated in the implementation of the Agreement. There are no financial implications for State or Territory Governments.

Regulation Impact Statement

28. The Office of Best Practice Regulation, Department of Finance and Deregulation, has been consulted and confirms that a Regulation Impact Statement is not required.

Future Treaty Action

29. Article 14 provides for consultations between the Parties. Any amendments to the Agreement following consultation will come into force when both Parties have notified each other by diplomatic note that their requirements for entry into force of the amendments have been met.

30. Any amendment to the Agreement will be subject to Australia's domestic treaty-making process, including tabling in Parliament and consideration by JSCOT.

Withdrawal or denunciation

31. Article 16 provides for termination of the Agreement. Either Party may give notice in writing at any time to the other Party of its decision to terminate the Agreement and must also lodge a notice of termination with ICAO. The Agreement shall terminate one year after the date of receipt of the notice of termination by the other Party, unless the notice is withdrawn by the mutual determination of both Parties before the termination date.

32. Any notification of withdrawal from the Agreement by Australia will be subject to Australia's domestic treaty-making process, including tabling in Parliament and consideration by JSCOT.

Contact details

Aviation Industry Policy Branch
Aviation and Airports Business Division
Department of Infrastructure and Transport

ATTACHMENT ON CONSULTATION

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CONSULTATION

33. It is the practice ahead of air services negotiations for the Department of Infrastructure and Transport to consult government and non-government bodies that may have an interest in the outcome and to take into account their views in developing a negotiating position for the Minister's approval.

34. Prior to the negotiation of the Agreement, extensive consultations were held with industry and Commonwealth and State and Territory government agencies. The following stakeholders were advised by letter and/or email of the proposal to negotiate an Agreement between Australia and Turkey and invited to comment on issues of importance to them:

Commonwealth Government Agencies

- Attorney-General's Department
- Austrade
- Australian Competition and Consumer Commission
- Australian Customs and Border Security Service
- Australian Quarantine and Inspection Service
- Civil Aviation Safety Authority
- Department of Finance and Deregulation
- Department of Foreign Affairs and Trade
- Department of Immigration and Citizenship
- Department of Resources, Energy and Tourism
- Department of the Prime Minister and Cabinet
- Department of the Treasury
- International Air Services Commission
- Tourism Australia

State Government Agencies

- ACT Government Chief Minister's Department
- Department of Primary Industries and Resources of South Australia
- NSW Government Department of State and Regional Development
- NSW Ministry of Transport
- NT Government Department of Planning and Infrastructure
- Qld Government Aviation Secretariat
- SA Government Department for Transport, Energy & Infrastructure
- Tas Government Department of Infrastructure, Energy and Resources
- Tourism New South Wales
- Tourism NT
- Tourism Queensland

- Tourism Tasmania
- Tourism Victoria
- Tourism Western Australia
- Vic Government Department of Infrastructure
- Vic Government Department of Innovation, Industry and Regional Development
- WA Government Department of Transport

Industry

- Adelaide Airport Limited
- Air Freight Council of NSW Inc
- Air Freight Council of Queensland Ltd
- Alice Springs Airport Pty Ltd
- Association of Australian Convention Bureaux
- Australian Airports Association
- Australian and International Pilots Association
- Australian Capital Tourism
- Australian Federation of International Forwarders Ltd
- Australian Federation of Travel Agents (AFTA)
- Australian Local Government Association
- Australian Tourism Export Council
- Australia's North West Tourism
- Avalon Airport Australia Pty Ltd
- Aviation and Tourism Management Pty Ltd
- Aviation Australia
- Board of Airline Representatives of Australia
- Brisbane Airport Corporation Ltd
- Broome International Airport Holdings
- Burnie Airport
- Burnie Airport Corporation Pty Ltd
- Cairns International Airport
- Canberra International Airport
- Chamber of Commerce Northern Territory
- Essendon Airport
- Gold Coast Airport Ltd
- Hobart International Airport
- Launceston Airport
- Melbourne Airport
- Mildura Airport
- Moorabbin Airport
- National Food Industry Strategy Ltd
- National Jet Systems Pty Ltd
- National Tourism Alliance
- Newcastle Airport Ltd
- Northern Territory Airports Pty Ltd
- Overnight Airfreight Operators Association
- Perishables Taskforce to the Victorian Airfreight Council
- Perth Airport
- Queensland Airports Ltd
- Queensland Tourism Industry Corporation

- Queensland Transport
- Regional Aviation Association of Australia
- South Australia Freight Council Inc
- SkyAirWorld
- South Australian Tourism Commission
- Sydney Airport Corporation Ltd
- Tasmanian Freight Logistics Council
- Tourism and Transport Forum (TTF) Australia
- Tourism Task Force
- Tourism Top End
- Tourism Tropical North Queensland
- Townsville Airport
- Townsville Enterprise Ltd
- Virgin Blue
- WA Tourism Commission

35. Comments were received from: Australian Customs and Border Protection Service, the Department of Immigration and Citizenship, the Northern Territory Government, Qantas, the Department of Resources, Energy and Tourism, the South Australian Department for Transport, Energy and Infrastructure, Sydney Airport Corporation Ltd, the Department of the Treasury and Tourism Victoria.

36. All stakeholders were broadly supportive toward negotiations of a new Agreement to open market access for designated airlines of both Parties.

37. The NT Government indicated they would like adequate code sharing and interline provisions for designated airlines to be included in the Agreement.

38. Qantas were supportive of negotiations and were seeking to negotiate arrangements for reciprocal third country code sharing, fifth freedom rights and aircraft leasing.

39. The Department of Resources, Energy and Tourism were focussed on the impact that the negotiations could have on potential growth in the inbound tourism market from Turkey, and were supportive of the most liberal arrangements possible.

40. The South Australian Department for Transport, Energy and Infrastructure indicated they would like full bilateral third country code sharing and the Regional Benefits Package to be included.

41. The Sydney Airport Corporation were focussed on the possibility of an unrestricted capacity Agreement, with market factors to determine potential routes for designated carriers.

42. The Department of the Treasury indicated they would like to see enhanced competition through many designated airlines and flexible arrangements for code sharing.