National Interest Analysis [2013] ATNIA 15

with attachment on consultation

Air Services Agreement between the Government of Australia and the Government of the Republic of Serbia (Belgrade, 14 May 2013)

[2013] ATNIF 13

NATIONAL INTEREST ANALYSIS: CATEGORY 2 TREATY

SUMMARY PAGE

Air Services Agreement between the Government of Australia and the Government of the Republic of Serbia (Belgrade, 14 May 2013) [2013] ATNIF 13

Nature and timing of treaty action

1. The proposed treaty action is to bring into force the *Air Services Agreement between the Government of Australia and the Government of the Republic of Serbia*, done at Belgrade on 14 May 2013 (the proposed Agreement).

2. Pursuant to its Article 23, the proposed Agreement will enter into force when the Contracting Parties have notified each other by the exchange of diplomatic notes that they have fulfilled the conditions prescribed by their internal requirements for entry into force. The Australian Government will provide its notification to the Government of the Republic of Serbia (Serbia) as soon as practicable after the conclusion of the tabling process and receipt of recommendations from the Joint Standing Committee on Treaties (JSCOT).

3. The proposed Agreement will establish for the first time a treaty level air services relationship between Australia and Serbia. (The earlier *Agreement between the Government of Australia and the Government of the Socialist Federal Republic of Yugoslavia*, done at Belgrade on 3 April 1975, was terminated following the breakup of the former Yugoslavia.) It will allow the airlines of Australia and Serbia to develop international air services between the two countries.

4. The text of the proposed Agreement was settled in June 2012, having been largely negotiated by an exchange of correspondence between 2009 and 2011. The proposed Agreement was preceded by aviation arrangements of less than treaty status, in the form of a memorandum of understanding (MOU) signed in September 2011. In accordance with established Australian and international practice, the MOU applies the provisions of the proposed Agreement on an administrative, non-legally binding basis until the proposed Agreement enters into force. This means that the proposed Agreement is observed by the aeronautical authorities of Australia and Serbia pending its entry into force so as to allow airlines to access the rights made available to them as soon as possible.

5. Since the MOU was signed in September 2011, airlines of both countries, Virgin Australia International Airlines and Serbia's JAT Airways, have already utilised the rights available to them on an administrative basis to enter into code share arrangements with airlines of other countries to provide air services on routes between Australia and Serbia.

Overview and national interest summary

6. The key objective of the proposed Agreement is to provide a binding legal framework to support the operation of air services between Australia and Serbia. The proposed 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 treaty action

7. The proposed Agreement grants access for Australian airlines to the Serbian aviation market and allows for the establishment of air services between the two countries. The proposed Agreement will enable Australian and Serbian carriers to provide services between any point in Australia and any point in Serbia, based on capacity levels decided from time to time between the aeronautical authorities of the Contracting Parties.

8. Australian travellers and Australian businesses, particularly in the tourism and export industries, could potentially benefit from the proposed Agreement through the opening of increased commercial opportunities.

Obligations

9. Australia and Serbia are both Parties to the *Convention on International Civil Aviation*, done at Chicago on 7 December 1944 ([1957] ATS 5) (the Chicago Convention). The proposed Agreement was made in accordance with and pursuant to the Chicago Convention, which entered into force for Australia and generally on 4 April 1947.

10. The proposed Agreement is based on Australia's model air services agreement and obliges Australia and Serbia to allow the 'designated airlines' of each country to operate scheduled air services carrying passengers, baggage, cargo and mail between the two countries on specified routes in accordance with the provisions of the proposed Agreement. To facilitate these services, the proposed Agreement also includes reciprocal provisions on a range of aviation-related matters such as safety, security, competition laws, customs regulation and the commercial aspects of airline operations, including the ability to establish offices in the territory of each Contracting Party and to sell fares to the public.

11. Under Article 2 of the proposed Agreement, each Contracting Party grants the airlines of the other Contracting Party the right to fly across its territory without landing and to make stops in its territory for non-traffic purposes (such as refuelling). Article 2 also provides the right for designated airlines to operate on the routes specified in the Annex for the purpose of taking on board and discharging passengers, cargo and mail. The Article also precludes designated airlines from carrying purely domestic traffic (cabotage) within the territory of the other Contracting Party.

12. Article 3 of the proposed Agreement allows each Contracting Party to designate any number of airlines to operate the agreed services. Either Contracting Party may refuse authorisation of an airline's operations or impose conditions as necessary if the airline fails to meet, or operate in accordance with, the conditions prescribed in the proposed Agreement, including with respect to the airline's principal place of business, establishment, ownership and control. For the purposes of airline designation, Article 3 recognises that Serbia can designate airlines that are majority owned and controlled by individual States of the European

Common Aviation Area (ECAA), which reflects Serbia's international obligations under the ECAA agreement.

13. Article 4 of the proposed Agreement allows aeronautical authorities of either Contracting Party to revoke authorisation of an airline's operations or suspend the exercise of granted rights if the airline fails to meet, or operate in accordance with, the conditions prescribed in the proposed Agreement, including with respect to its principal place of business, establishment, ownership and control. Article 4 also allows the aeronautical authorities of Australia to prevent an airline designated by Serbia from exercising traffic rights granted under the proposed Agreement if the airline is already authorised to operate under a different bilateral agreement between Australia and another State party to the ECAA and the airline would not have those same traffic rights under that bilateral agreement.

14. Article 5 of the proposed Agreement confirms that each Contracting Party's domestic laws and regulations relating to the operation and navigation of aircraft apply to the designated airlines when they are entering, within or leaving the territory of that Contracting Party. Each Contracting Party's laws and regulations relating to entry and exit of passengers, crew, baggage, cargo and mail (for example, immigration, aviation security, customs and sanitary measures) must be complied with in the territory of that Contracting Party. This Article prevents either Contracting Party giving preference to any airline – including its own designated airlines – in applying any such laws. It also provides that passengers, baggage and cargo in direct transit may be subject to aviation security, narcotics control and immigration checks. Baggage and cargo in direct transit shall be exempt from customs duties and other similar taxes.

15. Under Article 6, each Contracting Party is required to recognise certificates of airworthiness, certificates of competency and licences issued or rendered valid by the other Contracting Party, provided the standards under which such documents were issued conform to the standards established by the International Civil Aviation Organization (ICAO). Each Contracting Party can, however, refuse to recognise certificates and licences held by its own nationals or airlines that have been issued by the other Contracting Party. The Article also provides for consultations between aeronautical authorities if the privileges or conditions of the licences or certificates permit a difference from the minimum standards established under the Chicago Convention.

16. Under Article 7, each Contracting Party may also request consultations with the other Contracting Party at any time concerning the safety standards maintained by the other Contracting Party. If required, the other Contracting Party shall be informed of the corrective action required to be undertaken to conform with the minimum standards pursuant to the Chicago Convention. Article 7 also provides that each Contracting Party may, in its territory, arrange inspections of aircraft of the other Contracting Party to verify the validity of the relevant aircraft documents and those of its crew and ensure that the aircraft equipment and the condition of the aircraft conform to ICAO standards. Each Contracting Party can take immediate action essential to ensure the safety of an airline, including varying or suspending operating authorisation, if it considers such action to be necessary.

17. Under Article 8, both Contracting 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. Each Contracting Party must advise the other Contracting Party of any differences between its national regulations and the standards

established by ICAO, and either Contracting Party may request consultations at any time to discuss any differences. A Contracting Party may require the designated airlines of the other Contracting Party to observe the first Contracting Party's aviation security provisions for entry into, departure from or while within the territory of that Contracting Party. Contracting Parties shall ensure adequate measures are applied to protecting aircraft; inspecting passengers, crew, carry-on items, baggage, cargo and aircraft stores, prior to and during boarding or loading. The Contracting 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 Contracting Party's territory. Such assessments are to be conducted in accordance with arrangements agreed between the aeronautical authorities without delay.

18. Article 9 requires each Contracting Party to use its best efforts to ensure that user charges imposed or permitted to be imposed on the designated airlines of the other Contracting Party for the use of airports, its facilities, technical and other installations and services, are just, reasonable, and not discriminatory.

19. Article 10 provides that the aeronautical authorities of one Contracting Party may require a designated airline of the other Contracting Party to provide statistics related to the traffic carried on services performed under the proposed Agreement.

20. Article 11 lists the equipment and stores used in the operation of the agreed services that the Contracting Parties are required, in accordance with international practice, to exempt from import restrictions, customs duties, excise taxes and similar fees and charges. This Article also provides that the customs laws of each Contracting Party are to be observed in relation to the supervision, re-exportation and/or disposal of equipment and supplies.

21. Article 12 provides that each Contracting Party may require notification of fares (tariffs) to its aeronautical authorities. Neither Contracting Party shall take unilateral actions to prevent the introduction or continuation of a tariff proposed. Aeronautical authorities of the Contracting Parties can only intervene to prevent unreasonably discriminatory tariffs or practices, to protect consumers against unreasonably high or restrictive tariffs due to uncompetitive practices, and to protect airlines against artificially low tariffs because of direct or indirect government subsidy or support. If either Contracting Party considers the tariffs charged by a designated airline to be discriminatory or abusive, it must request consultations and notify the other Contracting Party of the reasons of its dissatisfaction, before taking any action to prevent the introduction or continuation of the a tariff in question.

22. Under Article 13, both Contracting Parties are obliged to ensure that the designated airlines of each Contracting Party receive fair and equal opportunity to operate services in accordance with the proposed Agreement. The passenger and cargo capacity which may be provided by the designated airlines of each Contracting Party will be determined by the aeronautical authorities of the Contracting Parties from time to time. That capacity was settled in an MOU signed in September 2011. These capacity arrangements are intended to remain in effect once the proposed Agreement enters into force.

23. Article 14 provides a framework for airlines of one Contracting Party to conduct business in the territory of the other Contracting Party. The framework includes provisions allowing designated airlines to establish offices, bring in and employ staff, sell air transport services to the public, perform ground handling and use the services and personnel of any organisation, company or airline operating in the territory of the other Contracting Party, to

conduct its business. Each Contracting Party shall permit airlines of the other Contracting Party to freely convert and move currency. The Article allows airlines to utilise leased aircraft to conduct their services, provided they meet the applicable operating and safety standards and requirements of the Contracting Parties. Designated airlines may also enter into code share arrangements with any other appropriately authorised airline. Each Contracting Party is also required to provide the airlines of the other Contracting Party with access to airports and the allocation of slots (aircraft movements at an airport) on a non-discriminatory basis and in accordance with local laws and regulations.

24. Article 15 permits the designated airlines of each Contracting Party to use, in connection with the operation of the agreed services, any surface transport (for example, road or rail transport) within the territories of each Contracting Party or third countries, making it possible for airlines to provide intermodal connections.

25. Article 16 confirms that each Contracting Party's competition laws apply to the operation of airlines within their respective jurisdictions. Either Contracting Party may request consultations with the other Contracting Party in the event of alleged discrimination or unfair practices in the territory of either Contracting Party. This Article does not preclude unilateral action by the airlines or the competition authorities of either Contracting Party.

26. Under Article 17, either Contracting Party or its aeronautical authorities may request consultations with the other Contracting Party or its aeronautical authorities at any time on the implementation, interpretation, application or amendment of the proposed Agreement.

27. Article 19 provides that the proposed Agreement will be deemed to be amended so far as is necessary to comply with any multilateral agreement concerning air services that may enter into force for both Contracting Parties.

28. Article 20 provides a process for dispute resolution on matters, other than those relating to the application of domestic competition laws, which cannot be settled by consultation or negotiation. If the Contracting Parties fail to resolve any dispute by negotiation there is provision for compulsory settlement through submitting the dispute to arbitration. A three-person arbitral tribunal shall make a decision on the dispute, which is final and binding upon both Contracting Parties. Failure to comply with the award is grounds for one Contracting Party to suspend or revoke the rights granted under the proposed Agreement to the other Contracting Party, or its designated airlines, for the duration of the non-compliance.

29. The Annex contains a route schedule which specifies the routes that may be operated by designated airlines, as well as operational provisions.

Implementation

30. The proposed Agreement will 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 proposed Agreement.

Costs

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

Regulation Impact Statement

32. The Office of Best Practice Regulation has been consulted and confirmed that a Regulation Impact Statement is not required.

Future treaty action

33. Article 18 provides that the proposed Agreement may be amended by agreement between the Contracting Parties. Any amendment to the proposed Agreement shall enter into force when the two Contracting Parties notify each other in writing that they have approved the amendment in accordance with their internal requirements. Amendments to the Annex (route schedule) may be agreed directly between the aeronautical authorities of the Contracting Parties and will enter into force when confirmed by an exchange of diplomatic notes.

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

Withdrawal or denunciation

35. Article 21 provides for termination of the proposed Agreement. Either Contracting Party may give notice in writing at any time to the other Contracting Party of its decision to terminate the proposed Agreement and must also simultaneously lodge a notice of termination with ICAO. The proposed Agreement shall terminate one year after the date of receipt of the notice of termination by the other Contracting Party, unless the notice is withdrawn by mutual decision of the Contracting Parties before the end of the termination period.

36. Any termination of the proposed Agreement by Australia would 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 Regional Development

ATTACHMENT ON CONSULTATION

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the Government of Australia and the Government of the Republic of Serbia
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CONSULTATION

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

38. Prior to the negotiation of the proposed 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 Serbia and invited to comment on issues of importance to them (agency names are given as at the time of consultation):

Commonwealth Government agencies

- Attorney-General's Department
- Austrade
- Australian Customs and Border Protection Service
- Australian Quarantine and Inspection Service
- Civil Aviation Safety Authority
- Department of Immigration and Citizenship
- Department of Resources, Energy and Tourism
- International Air Services Commission
- Treasury

State Government agencies

- ACT Chief Minister's Department
- Australian Local Government Association
- NSW Department of Premier and Cabinet
- NSW Department of State and Regional Development
- NSW Transport and Infrastructure
- NT Department of Infrastructure and Planning
- Queensland Government Department of Transport
- South Australian Government Department for Transport, Energy & Infrastructure
- South Australian Government Department of Primary Industries and Regions
- South Australian Government Department of Trade and Economic Development
- South Australian Tourism Commission
- Tasmanian Government Department of Infrastructure, Energy and Recourses
- Tourism New South Wales
- Tourism NT
- Tourism Queensland
- Tourism Tasmania

- Tourism Victoria
- Tourism Western Australia
- Victorian Government Department of Innovation, Industry and Regional Development
- Victorian Government Department of Transport, Planning and Local Infrastructure
- WA Department of Transport

Industry

- Adelaide Airport Limited
- Air Freight Council of NSW Inc
- Air Freight Council of Queensland Ltd
- Australia's North West Tourism
- Australian Airports Association
- Australian and International Pilots Association
- Australian Capital Tourism
- Australian Federation of International Forwarders Ltd
- Australian Federation of Travel Agents
- Australian Tourism Export Council
- Avalon Airport
- Aviation and Tourism Management Pty Ltd
- Aviation Australia
- Board of Airline Representatives of Australia
- Brisbane Airport Corporation Pty Ltd
- Broome International Airport Holdings
- Burnie Airport Corporation Pty Ltd
- Cairns Airport Pty Ltd
- Canberra Airport
- Chamber of Commerce Northern Territory
- City of Melbourne
- 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 Limited
- Northern Territory Airports Pty Ltd
- Overnight Airfreight Operators Association
- Qantas Airways Limited
- Queensland Airports Limited
- Queensland Tourism Industry Council
- Regional Aviation Association of Australia
- SA Freight Council Inc
- SkyAirWorld
- Sydney Airport Corporation Ltd
- Tasmanian Freight Logistics Council

- Tourism and Transport Forum
- Tourism Australia
- Tourism Tropical North Queensland
- Townsville Airport
- Virgin Blue (now known as Virgin Australia)
- Westralia Airports Corporation Pty Ltd

39. Comments were received from Qantas, Virgin Blue, the South Australian Government Department of Transport, Energy and Infrastructure, and a number of Commonwealth agencies.

40. Stakeholders who provided comments supported the negotiation of a new air services agreement with Serbia to open market access for airlines in both countries.

41. Comments regarding technical details of the proposed Agreement were received from a number of Commonwealth agencies. These agencies cleared the text of the proposed Agreement prior to its approval by the Federal Executive Council.

42. The proposed Agreement was included in the schedule of treaties provided to the Commonwealth-State/Territory Standing Committee on Treaties from July 2009 to March 2013, prior to signature of the proposed Agreement.

43. The proposed Agreement was approved for signature by the Federal Executive Council on 6 December 2012.