

National Interest Analysis [2014] ATNIA 5

with attachment on consultation

**Agreement between
the Government of Australia and the Government of the Republic of Croatia
relating to Air Services
(Zagreb, 4 September 2013)**

[2013] ATNIF 23

NATIONAL INTEREST ANALYSIS: CATEGORY 2 TREATY

SUMMARY PAGE

**Agreement between
the Government of Australia and the Government of the Republic of Croatia
relating to Air Services
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Nature and timing of treaty action

1. The proposed treaty action is to bring into force the *Agreement between the Government of Australia and the Government of the Republic of Croatia relating to Air Services*, done at Zagreb on 4 September 2013 (the proposed Agreement).
2. Pursuant to its Article 21, the proposed Agreement and any amendments will enter into force on the date of the last written notification by which the Parties have notified each other through diplomatic channels that their internal legal requirements for its entering into force have been fulfilled. The Australian Government will provide its notification to the Government of the Republic of Croatia (Croatia) 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 Croatia. It will allow the airlines of Australia and Croatia to develop international air services between the two countries.
4. The text of the proposed Agreement was settled in November 2012, having been largely negotiated in 2007. The proposed Agreement was preceded by aviation arrangements of less-than-treaty status, in the form of a memorandum of understanding (MOU) signed in February 2007. 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 Croatia 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 February 2007, Qantas Airways has already utilised the rights available to airlines of both countries to enter into code share arrangements with airlines of other countries to provide air services on routes between Australia and Croatia.

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 Croatia. 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 Croatian aviation market and allows for the establishment of air services between the two countries. The proposed Agreement will enable Australian and Croatian carriers to provide services between any point in Australia and any point in Croatia, 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, could potentially benefit from the proposed Agreement through the opening of increased commercial opportunities.

Obligations

9. Australia and Croatia are both Parties to the *Convention on International Civil Aviation*, done at Chicago on 7 December 1944 (the Chicago Convention)¹. 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 Croatia 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 Party and to sell fares to the public.

11. Article 2 of the proposed Agreement allows each Party to designate any number of airlines to operate the agreed services. On receipt of such a designation, and an application from a designated airline for operating authorisation, the other Party must grant the appropriate authorisations provided that the airline being designated complies with the conditions for incorporation and principal place of business set out in the proposed Agreement, holds the necessary operating permits and meets the conditions the Party normally applies to the operation of international air transport. It is also a condition of granting an authorisation to a designated airline that the Party designating the airline complies with the safety and security provisions of the proposed Agreement. In the event of any non-compliance with the terms of Article 2(2), or if the airline otherwise fails to operate in accordance with the conditions set out in the proposed Agreement, the other Party may withhold, revoke, suspend or limit that airline's authorisations.

12. Under Article 3 of the proposed Agreement, each Party grants the 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 (such as refuelling). Article 3 also provides the right for designated airlines to operate on the routes specified in Annex 1 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 Party.

¹ [1957] ATS 5

13. Article 4 of the proposed Agreement confirms that each Party's domestic laws and regulations relating to the operation and navigation of aircraft apply to the airlines when they are entering, within or leaving the territory of that Party. Each Party's laws and regulations relating to entry and exit of passengers, crew, baggage, cargo and mail, and aircraft (for example, immigration, aviation security, customs and quarantine) must be complied with in the territory of that Party. This Article prevents either Party giving preference to any airline – including its own 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.

14. Under Article 5, each Party is required to recognise certificates of airworthiness, certificates of 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). Each Party can, however, refuse to recognise certificates and licences held by its own nationals or airlines that have been issued by the other Party. Under Article 5, each Party may also 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 the corrective action required to be undertaken to conform to the standards pursuant to the Chicago Convention. The other Party shall then take appropriate corrective action. Article 5 also provides that each Party may, in its territory, arrange inspections of aircraft of the other 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 the standards pursuant to the Chicago Convention. Each 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.

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. Each Party must advise the other Party of any differences between its national regulations and the standards established by ICAO, and either Party may request consultations at any time to discuss any differences. A Party may require the designated airlines of the other Party to observe the first Party's aviation security provisions for entry into, departure from or while within the territory of that Party. Parties shall ensure adequate measures are applied to protect 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 each Party to use its best efforts to ensure that user charges imposed or permitted to be imposed on the designated airlines of the other Party for the use of airports, their facilities, technical and other installations and services, are reasonable, non-discriminatory and equitably apportioned. Reasonable charges reflect, but do not exceed, the full costs to the competent charging authorities of providing the facilities and services. For charges to be non-discriminatory, they should be levied on foreign airlines at a rate no higher than the rate imposed of a Party's own airlines operating similar services.

17. Article 8 provides that the aeronautical authorities of one Party may require a designated airline of the other Party to provide statistics related to the traffic carried on services performed under the proposed Agreement.

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. This Article also provides that the customs laws of each Party are to be observed in relation to the supervision, re-exportation and/or disposal of equipment and supplies.

19. Article 10 provides that each Party shall allow each airline to determine its own air fares (tariffs).

20. Under Article 11, designated airlines may be required by aeronautical authorities to submit for approval their proposed timetables when this is required by national laws and regulations.

21. Under Article 12, both Parties are obliged to ensure that the designated airlines of each 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 Party must be determined by the aeronautical authorities of the Parties before the commencement of such services, and from time to time thereafter. That capacity was settled in an MOU signed in September 2007. These capacity arrangements are intended to remain in effect once the proposed Agreement enters into force.

22. Article 13 provides a framework for 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 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 Party, to conduct its business. Each Party shall permit airlines of the other 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 Parties. Designated airlines may also enter into code share arrangements with any other appropriately authorised airline. Each Party is also required to provide the airlines of the other 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.

23. Article 14 permits the designated airlines of each 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 Party or third countries, making it possible for airlines to provide intermodal connections.

24. Article 15 confirms that each Party's competition laws apply to the operation of airlines within their respective jurisdictions. Either Party may request consultations with the other Party in the event of alleged discrimination or unfair practices in the territory of either Party. When undertaking consultations, both Parties are required to coordinate their actions with the relevant authorities, consider alternative options and take into account the views and international obligations of the other Party. This Article does not preclude unilateral action by the airlines or the competition authorities of either Party.

25. Under Article 16, either Party may request consultations with the other Party at any time on the implementation, interpretation, application or amendment of the proposed Agreement.

26. Article 18 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 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 Parties. Failure to comply with the award is grounds for one Party to suspend or revoke the rights granted under the proposed Agreement to the other Party, or its designated airlines, for the duration of the non-compliance.

27. Annex 1 contains a route schedule which specifies the routes that may be operated by designated airlines, as well as operational provisions.

28. Annex 2 contains a non-binding option for mediation, as an alternative to undertaking dispute resolution procedures. The mediation process is without prejudice to the continuing use of the mechanism for consultations, arbitration and termination.

Implementation

29. 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

30. 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

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

Future treaty action

32. Article 17 provides that the proposed Agreement may be amended by agreement in writing between the Parties. Any amendment to the proposed Agreement shall enter into force when the two Parties notify each other in writing through diplomatic channels that their internal legal requirements for its entering into force have been fulfilled. Article 17 also provides that the proposed Agreement will be deemed to be amended as far as is necessary to comply with any multilateral agreement relating to air transportation entering into force for both Parties.

33. 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

34. Article 19 provides for termination of the proposed Agreement. Either Party may give notice in writing through diplomatic channels at any time to the other Party of its decision to terminate the proposed Agreement and must 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 Party, unless the notice is withdrawn by mutual decision of the Parties before the end of the termination period.

35. 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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CONSULTATION

36. It is the practice ahead of negotiation 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.

37. 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 Croatia 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 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
- Qantas Airways
- 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

38. Comments were received from Qantas, Sydney Airport, Melbourne Airport, the South Australian Government Department of Transport, Energy and Infrastructure, Tourism Victoria, Tourism and Transport Forum, and a number of Commonwealth agencies.

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

40. 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.

41. The proposed Agreement was included in the schedule of treaties under negotiation, consideration or review provided to the Commonwealth-State/Territory Standing Committee on Treaties from July 2006 to March 2013, prior to signature of the proposed Agreement.

42. The proposed Agreement was approved for signature by the Federal Executive Council on 28 June 2013.