

Air Services Agreement between the Government of Australia and the Government of the Czech Republic (New York, 24 September 2010)

and

Exchange of Notes constituting an Amendment to the Agreement between the Government of Australia and the Government of the Socialist Republic of Vietnam relating to Air Services (done at Canberra on 31 July 1995) (Hanoi, TBA 2011)

Introduction

- 6.1 On 20 September 2011, the *Air Services Agreement between the Government of Australia and the Government of the Czech Republic* (New York, 24 September 2010) and the *Exchange of Notes constituting an Amendment to the Agreement between the Government of Australia and the Government of the Socialist Republic of Vietnam relating to Air Services* (done at Canberra on 31 July 1995) (Hanoi, TBA 2011) were tabled in the Commonwealth Parliament.

Background

- 6.2 Air services agreements are bilateral treaties concerning the establishment of civilian air services between the treaty partners.
- 6.3 The Department of Infrastructure and Transport described that, as a general rule, Australia maintains a model air services text which was developed in consultation with all relevant stakeholders. The model air services text is used as a template when negotiating agreements.
- 6.4 The treaty-level air services agreements are supplemented by arrangements of less than treaty status which settle more detailed commercial entitlements that determine the scope of each airline's operations under the air services agreements.¹
- 6.5 The agreements considered here include a full treaty and an exchange of notes amending a treaty. They have been treated separately in this chapter.

Air Services Agreement between the Government of Australia and the Government of the Czech Republic

- 6.6 The *Air Services Agreement between the Government of Australia and the Government of the Czech Republic* (the proposed Agreement) will establish for the first time a treaty level air services relationship between Australia and the Czech Republic. It will allow the airlines of Australia and the Czech Republic to develop international air services between the two countries.
- 6.7 The proposed Agreement was preceded by similar provisions in the form of a Memorandum of Understanding (MOU). The MOU applies the provisions of the proposed Agreement on a non-legally binding basis until the proposed Agreement enters into force.² MOUs are confidential and are not subject to public or parliamentary consideration.

1 Mr Stephen Borthwick, General Manager, Aviation Industry Policy Branch, Aviation and Airports Division, Department of Infrastructure and Transport, *Committee Hansard*, 31 October 2011, p. 23.

2 National Interest Analysis [2011] ATNIA 26 with attachment on consultation *Air Services Agreement between the Government of Australia and the Government of the Czech Republic* done at New York on 24 September 2010, [2010] ATNIF 43, (Hereafter referred to as 'NIA'), paras. 1-5.

Reasons for Australia to take the proposed treaty action

- 6.8 The proposed Agreement will enable Australian and Czech carriers to provide services for the public and for air freight between any point in Australia and any point in the Czech Republic, based on capacity levels decided from time to time by the aeronautical authorities of the Contracting Parties.
- 6.9 Australian travellers and Australian businesses, particularly in the tourism and export industries, will benefit from the proposed Agreement through the opening of services between the two Parties.³

Obligations

- 6.10 Australia and the Czech Republic are both Parties to the *Convention on International Civil Aviation*, signed at Chicago on 7 December 1944, and this Agreement was made in accordance with and pursuant to that Convention.
- 6.11 The proposed Agreement obliges Australia and the Czech Republic to allow the designated airlines of each country to operate scheduled air services carrying passengers and cargo between the two countries on specified routes.
- 6.12 The proposed Agreement also includes reciprocal provisions on a range of aviation-related matters such as safety, security, 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.
- 6.13 **Article 2** allows each Contracting Party to designate any number of airlines to operate the agreed services. Either Contracting Party may refuse, revoke, suspend or limit authorisation of an airline's operations if the airline fails to meet, or operate in accordance with, the conditions prescribed in the proposed Agreement.
- 6.14 Article 2 is consistent with the *Agreement between the Government of Australia and the European Community on Certain Aspects of Air Services*, signed 29 April 2008, which recognises airlines of individual Member States of the European Union (the EU) as air carriers of the EU for the purposes of airline designation.

3 NIA, paras. 7-8.

- 6.15 **Article 3** requires the Parties to grant to the designated 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 on the routes specified in the Route Schedule.
- 6.16 **Article 4** confirms that each Party's domestic laws, regulations and rules relating to the operation and navigation of aircraft as well as aviation security, immigration and customs to the passengers, crew, baggage, cargo and mail apply to the airlines when they are entering, within or leaving the territory of that Party. In applying their laws, the Parties are prevented from giving preference to their own or any other airline.
- 6.17 **Article 5** requires that the Parties recognise certificates of airworthiness, competency and licences issued by the other Party, provided the standards conform to those established by the International Civil Aviation Organization (ICAO). Each Party can take immediate action essential to ensure the safety of an airline operation if it considers such action to be necessary.
- 6.18 **Article 6** requires both Parties 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. The Parties shall assist each other in the event of an incident or threat of an incident.
- 6.19 **Article 7** requires each Party to encourage their charging authorities to ensure that the charges imposed on airlines for the use of aviation facilities are reasonable and non-discriminatory.
- 6.20 **Article 8** provides that a Party may request, from the other Party's designated airlines, statistics relating to the agreed services.
- 6.21 **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, indirect taxes and similar fees and charges. Parties may require certain equipment and supplies to be kept under the supervision or control of appropriate authorities until re-exported or otherwise disposed of.
- 6.22 **Article 10** allows the designated airlines to set their own fares without government intervention. Article 10 confirms that fares for air transportation wholly within the European Union are subject to European Union law.

- 6.23 **Article 11** requires both Parties ensure that there is a fair and equal opportunity for the designated airlines of both Parties to operate the agreed services.
- 6.24 **Article 12** provides a framework that allows airlines of one Party to conduct business in the territory of the other Party.
- 6.25 The framework includes provisions allowing airlines to:
- establish offices;
 - bring in and maintain staff;
 - sell air transport services to the public;
 - convert and move currency freely; and
 - use the services and personnel of any organisation, company or airline operating in the territory of the other Party to conduct its business.
- 6.26 **Article 13** provides a framework that allows airlines to provide services by means of cooperative marketing arrangements such as code sharing.
- 6.27 **Article 14** requires the airlines of each Party to have the right to perform their own ground handling, or choose from available ground handling providers and to offer their services as a ground handling agent to other airlines. This Article also provides that allocation of time slots to airlines at national airports of each Party be transparent, neutral and non-discriminatory.
- 6.28 **Article 15** provides that airlines of each Party shall be permitted to utilise leased aircraft, or leased aircraft and crew, to provide their services, provided they meet the applicable operating and safety standards and requirements of the Parties.
- 6.29 **Article 16** provides that the designated airlines of each Party can utilise surface transport to connect with their international air services, within the territory of the Parties or third countries, provided that passengers and shippers of cargo are informed of who will provide the transport involved.
- 6.30 **Article 17** confirms that each Party's competition laws apply to the operation of airlines within their respective jurisdictions and that the aeronautical authorities of either Party may request consultations with the other Party if the Party considers that its airlines are being subjected to discrimination or unfair competitive practices.
- 6.31 **Article 18** provides that each Party may at any time request consultations on the implementation, interpretation, application or amendment of the proposed Agreement.

- 6.32 **Article 20** provides for dispute resolution, with the exception of disputes concerning the application of national competition laws, between the aeronautical authorities of the Parties. If they fail to resolve any dispute by negotiation there is provision for compulsory settlement through arbitration.
- 6.33 **The Annex** contains a route schedule which specifies the routes that may be operated by designated airlines.⁴

Implementation

- 6.34 The proposed 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 amendment to these Acts or any other legislation is required for the implementation of the proposed Agreement.⁵
- 6.35 Current Australian air access to the Czech Republic is done through the code-share arrangements QANTAS has with its UK partner, British Airways, that flies to Prague. Czech Airlines code-share with Etihad services between Abu Dhabi and both Sydney and Melbourne.⁶

Costs

- 6.36 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.⁷

4 NIA, paras. 9-29.

5 NIA, para. 30.

6 Mr Stephen Borthwick, General Manager, Aviation Industry Policy Branch, Aviation and Airports Division, Department of Infrastructure and Transport, *Committee Hansard*, 31 October 2011, p. 24.

7 NIA, para. 31.

Exchange of Notes constituting an Amendment to the Agreement between the Government of Australia and the Government of the Socialist Republic of Vietnam relating to Air Services

- 6.37 The *Exchange of Notes constituting an Amendment to the Agreement between the Government of Australia and the Government of the Socialist Republic of Vietnam relating to Air Services* (the proposed Amendment) will bring into force an amendment to the *Agreement between the Government of Australia and the Government of the Socialist Republic of Vietnam relating to Air Services*, originally signed on 31 July 1995.
- 6.38 The proposed Amendment introduces a new Route Annex that will replace the existing Route Annex to the Agreement. The new Route Annex has been given interim effect through a Memorandum of Understanding (MOU) signed in October 2003. The Government of the Socialist Republic of Vietnam sent its diplomatic note on 29 June 2011. The proposed Amendment will enter into force on the date of Australia's note in reply.⁸

Overview and national interest summary

- 6.39 The Route Annex to the Agreement determines the origin and destination points in each country that each Party's airlines are permitted to fly from and to, in addition to their intermediate (en-route) stops and destinations beyond the other country. The proposed Amendment provides for a more liberal Route Annex that allows airlines to serve any points in the other country and any intermediate and beyond points.⁹

Reasons for Australia to take the proposed treaty action

- 6.40 The proposed Amendment provides for increased commercial opportunities for Australian airlines, subject to any traffic rights decided between the aeronautical authorities. While the current Route Annex allows for two destination points in each country, one intermediate destination point, and one beyond destination point, the proposed Amendment would allow designated airlines to serve any destination

8 National Interest Analysis [2011] ATNIA 22 with attachment on consultation *Exchange of Notes constituting an Amendment to the Agreement between the Government of Australia and the Government of the Socialist Republic of Vietnam relating to Air Services* (done at Canberra on 31 July 1995), Hanoi, TBA 2011, [2011] ATNIF 16. (Hereafter referred to as 'NIA'), paras 1-4.

9 NIA, paras 5-6.

points in the other country and any intermediate and beyond destination points.¹⁰

Obligations

- 6.41 The Agreement obliges Australia and Vietnam to allow the designated airlines of each country to operate scheduled air services carrying passengers and cargo between the two countries on the specified routes included in the Agreement. To facilitate these services, the Agreement also includes reciprocal provisions on a range of aviation-related matters such as safety, security, customs regulation, and the commercial aspects of airline operations, including the ability to establish offices in the territory of the other Contracting Party and to sell fares to the public.
- 6.42 The Route Annex specifies the routes that may be operated by designated airlines. Parties may operate services on these routes in accordance with traffic rights and capacity entitlements settled in an associated MOU.¹¹

Implementation

- 6.43 The Agreement is 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 are required for the implementation of the proposed Amendment.¹²
- 6.44 At present, Vietnam Airlines and Jetstar operate services between both countries. Vietnam Airlines runs seven services a week to both Sydney and Melbourne and Jetstar operate four services a week to Ho Chi Minh City from Darwin. Most travellers – 80 per cent – are visitors to Australia.¹³

Costs

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

10 NIA, para 7.

11 NIA, paras 8-10.

12 NIA, para. 11.

13 Mr Stephen Borthwick, General Manager, Aviation Industry Policy Branch, Aviation and Airports Division, Department of Infrastructure and Transport, *Committee Hansard*, 31 October 2011, pp. 23-24.

the proposed Amendment reduces the regulatory burden on business and industry.¹⁴

Conclusion

- 6.46 In relation to the Czech agreement, while the Committee notes that there is no detailed economic modelling on the Czech/Australian air market, the Department of Infrastructure and Transport stated that there have been a range of studies that highlight the benefits of opening up the market.¹⁵ The Committee agrees that opening up the code share provisions should open up the market and assist in growing the air travel market between the two countries and with it the tourism sector.
- 6.47 Accordingly, the Committee support the treaty and recommends that binding treaty action be taken.
- 6.48 As with the above agreement with the Czech Republic, the Committee agrees that opening up the number of destinations available to Australian and Vietnamese carriers will reduce barriers to the expansion of services and assist in growing the air travel market between the two countries and with it the tourism sector.¹⁶
- 6.49 Accordingly, the Committee support the treaty and recommends that binding treaty action be taken.

Recommendation 6

The Committee supports *Air Services Agreement between the Government of Australia and the Government of the Czech Republic (New York, 24 September 2010)* and recommends that binding treaty action be taken.

14 NIA, para. 12.

15 Mr Stephen Borthwick, General Manager, Aviation Industry Policy Branch, Aviation and Airports Division, Department of Infrastructure and Transport, *Committee Hansard*, 31 October 2011, pp. 23-24.

16 Mr Stephen Borthwick, General Manager, Aviation Industry Policy Branch, Aviation and Airports Division, Department of Infrastructure and Transport, *Committee Hansard*, 31 October 2011, pp. 23-24.

Recommendation 7

The Committee supports *Exchange of Notes constituting an Amendment to the Agreement between the Government of Australia and the Government of the Socialist Republic of Vietnam relating to Air Services (done at Canberra on 31 July 1995) (Hanoi, TBA 2011)* and recommends that binding treaty action be taken.