

## **Air Services Agreement with the United Arab Emirates**

- 4.1 The proposed *Agreement between the Government of Australia and the Government of the United Arab Emirates relating to Air Services (Dubai, 8 September 2002)* will provide a legal framework for designated airlines from Australia and the United Arab Emirates (UAE) to operate scheduled air services carrying passengers and cargo on specified routes between the two countries.
- 4.2 The Agreement will provide legal certainty for air services operating between Australia and the UAE.<sup>1</sup> This will facilitate trade and tourism, through freight and passenger transportation.<sup>2</sup> The National Interest Analysis (NIA) states that the Agreement will increase the opportunities for the Australian community to access Middle East markets by enabling Australian airlines to access Middle East aviation markets, and provide greater air travel options for Australian consumers.<sup>3</sup>
- 4.3 The Agreement includes reciprocal provisions on a range of aviation related matters such as safety, security, capacity, customs regulation and commercial aspects of airline operations.<sup>4</sup>

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1 National Interest Analysis (NIA), para. 6.

2 NIA, paras 6 and 8 and Mr Stephen Bogiatzis, *Transcript of Evidence*, 26 July 2004, p. 9.

3 NIA, para. 8. See also Mr Stephen Bogiatzis, *Transcript of Evidence*, 26 July 2004, p. 10.

4 NIA, para. 9 and Mr Stephen Bogiatzis, *Transcript of Evidence*, 26 July 2004, p. 10.

## Background

- 4.4 The NIA states that aviation arrangements of less than treaty status have preceded the Agreement since December 1995.<sup>5</sup> Mr Stephen Bogiatzis from the Department of Transport and Regional Services (DoTARS) advised the Committee of the difference between the aviation arrangements and the Agreement

The memorandum of understanding is much more limited than the treaty, so the treaty will introduce broader provisions. But, again, they are standard provisions that we utilise.<sup>6</sup>

By way of example

Issues such as our security provisions...are not spelt out in detail in a memorandum of understanding. The treaty would cover those provisions. The treaty covers a range of issues around customs duties and the broader range of interests that we would need to express in a treaty that an MOU would not normally address.<sup>7</sup>

- 4.5 The aviation arrangements have enabled Emirates and Gulf Air to operate services between the two countries and have provided similar opportunities for Australian carriers.<sup>8</sup>
- 4.6 Mr Bogiatzis advised the Committee that 'the UAE is rapidly growing in importance for Australia as a bilateral aviation partner'<sup>9</sup>

Over the past 10 years the Australia-UAE yearly origin destination passenger market has grown from a base of just over 8,000 in 1993 to nearly 65,000 in 2003, an average annual growth rate of 23 per cent. Australian residents made up over 46 per cent of the total in 2003. Emirates was the dominant airline of the market, carrying 67.7 per cent of origin destination passengers.<sup>10</sup>

- 4.7 The Committee understands that the 'only airline operating between the UAE and Australia, Emirates is also a major player in the Australia-United Kingdom market'.<sup>11</sup> Mr Bogiatzis stated

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5 NIA, para. 5.

6 Mr Stephen Bogiatzis, *Transcript of Evidence*, 26 July 2004, p. 14.

7 Mr Stephen Bogiatzis, *Transcript of Evidence*, 26 July 2004, p. 14.

8 NIA, para. 5.

9 Mr Stephen Bogiatzis, *Transcript of Evidence*, 26 July 2004, p. 10.

10 Mr Stephen Bogiatzis, *Transcript of Evidence*, 26 July 2004, p. 11.

11 Mr Stephen Bogiatzis, *Transcript of Evidence*, 26 July 2004, p. 11.

Emirates provides significant competition in the Australia-United Kingdom market for the other main airlines—Qantas, Singapore Airlines, British Airways and Malaysia Airlines—as well as providing consumers with connections to many cities in Africa, the Middle East and Europe. The emergence of Etihad as the national airline of Abu Dhabi and Gulf Air’s interest in operating between Abu Dhabi and Sydney are likely to add to pressure for expanded air services arrangements with the UAE. There are clear competition, consumer and national interest considerations for Australia in developing a number of alternative routes and services to the United Kingdom and continental Europe in case some of those routes become unavailable or are less attractive to air travellers ... However, these need to be balanced against the interests of Australian airlines that are competing with sixth freedom airlines for passengers travelling between the United Kingdom and Australia and between continental Europe and Australia.<sup>12</sup>

- 4.8 In relation to air freight, Mr Bogiatzis advised the Committee that in the year ending March 2004, total air freight exports destined for the UAE were \$110 million.<sup>13</sup> For the year ending March 2003, the total air freight imports originating from the UAE were \$17 million.<sup>14</sup>
- 4.9 The Committee understands that Australia has a standard draft air services agreement, and that the Agreement with the UAE does not differ in substance from that standard draft.<sup>15</sup>

## Features of the Agreement

- 4.10 As identified in the NIA, the key provisions of the Agreement are
- the right to designate an airline or airlines to operate the agreed services (Article 2)
  - grants to the designated airlines of the other party the aviation rights necessary to establish and operate agreed services, and to other airlines to overfly its territory and make stops for non-traffic purposes (Article 3)

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12 Mr Stephen Bogiatzis, *Transcript of Evidence*, 26 July 2004, p. 11.

13 Mr Stephen Bogiatzis, *Transcript of Evidence*, 26 July 2004, p. 11.

14 Mr Stephen Bogiatzis, *Transcript of Evidence*, 26 July 2004, p. 11.

15 NIA, para. 10.

- provisions to revoke or limit authorisation of an airline's operations if the airline does not comply with certain laws and regulations (Article 5)
- recognition of certificates of airworthiness, competency and licences issued by the other Party (Article 7)
- provisions for a party to request consultations on safety standards (Article 8)
- protection of civil aviation security against acts of unlawful interference (Article 9)
- provision of fair and equal opportunity for the designated airlines to operate the agreed services on the specified routes (Article 11)
- exemption for specified equipment and stores used in operation of services from customs duties and other charges (Article 13)
- ability for airlines to establish tariffs for international air transportation based on commercial considerations in the marketplace and general competition and consumer law in each party (Article 14)
- a framework enabling airlines to establish themselves in the territory of the other Party (Articles 15 and 16).<sup>16</sup>

4.11 Further, the NIA states that the Agreement allows scheduled air services to only operate in accordance with the Route Annex to the Agreement, and does not provide for the transport of domestic passengers by a designated airline.<sup>17</sup>

4.12 In relation to the provision of the right to designate an airline, Mr Bogiatzis stated

When an airline is designated by a particular country, it becomes the airline of that country and therefore it has access to all the rights negotiated through the treaty, so there are quite complex international procedures in relation to designation which currently hinge on the extent of ownership and control of that airline. Provided both parties are satisfied that ownership and control rests with the other party, both parties can then agree to the designation of that airline.<sup>18</sup>

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16 NIA, paras 12-21.

17 NIA, para. 22.

18 Mr Stephen Bogiatzis, *Transcript of Evidence*, 26 July 2004, p. 12.

## Implementation and costs

- 4.13 The Agreement will be implemented through existing legislation, to which no legislative amendments will be required.<sup>19</sup> Further, there will be no financial costs to the Australian Government as a result of the Agreement.<sup>20</sup>

## Entry into force

- 4.14 Pursuant to article 22, the Agreement will enter into force when the parties have notified each other in writing that their domestic requirements for its entry into force have been completed. Mr Bogiatzis advised the Committee that UAE notified Australia on 22 February 2004 that 'it had adhered to the requirement regarding constitutional procedures to implement the Agreement'.<sup>21</sup>
- 4.15 According to customary international and established Australian practice, the aviation arrangements have included the application of the provisions of the Agreement before it enters into force, pending the completion of domestic requirements.<sup>22</sup>

## Consultation

- 4.16 Consultations were conducted with relevant government departments and agencies, and aviation and tourism stakeholders prior to the negotiations with aeronautical authorities of the UAE in November 1999.<sup>23</sup>
- 4.17 The NIA states that all stakeholder comments were taken into account in developing the Australian negotiating position.<sup>24</sup> Mr Bogiatzis advised the Committee of the extent to which stakeholder concerns and suggestions were incorporated into the final text
- They were quite substantially and almost fully incorporated. There is a standard procedure by which we consult quite fully with stakeholders and then we work quite closely with

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19 NIA, para. 23.

20 NIA, para. 24.

21 Mr Stephen Bogiatzis, *Transcript of Evidence*, 26 July 2004, p. 9.

22 NIA, para. 5.

23 NIA, para. 24 and Consultations Annex, pp. 1-2.

24 NIA, Consultations Annex, p. 2.

key stakeholders on both developing the text and agreeing on the text during the negotiations.<sup>25</sup>

4.18 The Committee understands that all major stakeholders supported the Agreement.<sup>26</sup>

4.19 The Committee was interested to learn that DoTARS remain in regular contact, both formally and informally, with our stakeholders. We do that through things like stakeholder conferences, whereby we twice a year, if not more regularly, formally address our range of stakeholders. We run through a range of issues and allow them to raise issues of concern in relation to our treaties. Similarly, there is regular and constant informal contact with our stakeholders in relation to each of our treaties, MOUs and commercial arrangements. There have been no concerns expressed whatsoever in relation to the treaty arrangements in this particular case.<sup>27</sup>

## Conclusion and recommendation

4.20 The Committee appreciates the benefits the Agreement will generate by providing legal certainty for air services operating between Australia and UAE. The Committee agrees with DoTARS that the Agreement will increase the opportunities for Australian community to access Middle East markets, by facilitating trade and tourism.

### Recommendation 3

**The Committee supports the *Agreement between the Government of Australia and the Government of the United Arab Emirates relating to Air Services (Dubai, 8 September 2002)* and recommends that binding treaty action be taken.**

25 Mr Stephen Bogiatzis, *Transcript of Evidence*, 26 July 2004, p. 11.

26 NIA, para. 26.

27 Mr Stephen Bogiatzis, *Transcript of Evidence*, 26 July 2004, p. 14.