

Air services agreements with Brazil, Mexico and Turkey

Introduction

12.1 This chapter considers three air services agreements:

- *Agreement between the Government of Australia and the Government of the United Mexican States relating to Air Services;*
- *Air Services Agreement between the Government of Australia and the Government of the Republic of Turkey; and*
- *Air Services Agreement between the Government of the Federative Republic of Brazil and the Government of Australia.*

12.2 Australia, Mexico, Turkey and Brazil are all parties to the *Convention on International Civil Aviation* (the Chicago Convention), which provides the overarching civil aviation framework for international air services.¹ A bilateral air services agreement must be concluded, however, before international airlines can service a market between two countries.²

1 *National Interest Analysis* [2010]: ATNIA 56, Agreement between the Government of Australia and the Government of the United Mexican States relating to Air Services, done at Mexico City on 9 April 2010 [2010] ATNIF 25, (Mexico NIA) para. 9; ATNIA 57, 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(Turkey NIA) para. 9; ATNIA 55 Air Services Agreement between the Government of the Federative Republic of Brazil and the Government of Australia, done at Brasilia on 21 April 2010 [2010] ATNIF 38(Brazil NIA), para. 9.

2 Mr Samuel Lucas, Department of Infrastructure and Transport, *Transcript of Evidence*, 25 February 2011, p. 18.

- 12.3 The three agreements are expected to facilitate tourism and business opportunities for Australia, including export opportunities in new and developing markets.³

The agreements

- 12.4 Each of the agreements is based upon Australia's model air services agreement and obliges both governments to allow designated airlines of each country to operate services between the two countries:

in accordance with limitations settled between aeronautical authorities and subject to compliance with applicable laws, including safety, aviation security, border security, including customs and quarantine, and trade practices.⁴

- 12.5 The agreements are supported by Memoranda of Understanding that address commercial entitlements.⁵

Brazil

- 12.6 This agreement is the first treaty level air services arrangement between Australia and Brazil and will allow international air services to be developed between the two countries.⁶ Brazil is the largest South American market and the last major South American market to be opened for Australia. The majority of passenger traffic to Brazil currently travels via either Argentina or Chile and the agreement will allow a significant gap in market opportunities to be filled. Although quite small, the Committee was informed that the market is growing strongly, with average annual growth of 19 per cent of the last five years.⁷
- 12.7 The agreement will allow the designated airlines of both countries to operate scheduled air services carrying passengers and cargo between the

3 Mr Lucas, Department of Infrastructure and Transport, *Transcript of Evidence*, 25 February 2011, p. 20.

4 Mr Lucas, Department of Infrastructure and Transport, *Transcript of Evidence*, 25 February 2011, p. 19.

5 Mr Lucas, Department of Infrastructure and Transport, *Transcript of Evidence*, 25 February 2011, p. 19.

6 Brazil NIA, para. 4.

7 Mr Lucas, Department of Infrastructure and Transport, *Transcript of Evidence*, 25 February 2011, p. 19.

two countries on specified routes, subject to capacity levels. The agreement includes provisions relating to:

- rights to overfly territory and make stops for non-traffic purposes;
- designating the number of airlines to operate agreed services;
- the application of domestic laws, regulations and rules in a Party's territory;
- safety standards and aviation security;
- exemptions from customs and excise duties;
- fares; and
- conduct of an airline's business.⁸

12.8 The agreement to the Annex includes a route schedule that specifies the routes that can be operated by designated airlines.⁹

12.9 The agreement has taken some time to finalise, with preliminary discussions taking place in the 1990s. The Committee was informed that the main reason for the long delay is that neither Australian nor Brazilian carriers had plans to enter the Brazilian or Australian market.¹⁰

Mexico

12.10 The agreement will establish a treaty level air services relationship between Australia and Mexico for the first time, allowing airlines of each country to develop international air services.¹¹ Most people travelling to Mexico currently do so via the United States. Qantas has a code share arrangement with Alaska Airlines, travelling via Los Angeles and San Francisco. It is also expected, subject to regulatory approval, that Australia will extend its code sharing network to Mexico using Delta Airlines.¹²

12.11 The provisions of the agreement are consistent with those outlined above in relation to Brazil. However, whereas the agreement with Brazil allows parties to designate 'any number' of airlines to operate agreed services, Article 2 of this agreement provides that each party may designate up to

8 NIA, paras 9 to 27.

9 Brazil NIA, para. 28.

10 Mr Lucas, Department of Infrastructure and Transport, *Transcript of Evidence*, 25 February 2011, p. 20.

11 Mexico NIA, para. 4.

12 Mr Lucas, Department of Infrastructure and Transport, *Transcript of Evidence*, 25 February 2011, p. 19.

three airlines to operate the agreed services and no more than two designated airlines can operate between any city pair.¹³

Turkey

12.12 This agreement also establishes a treaty level air services relationship for the first time. There are no airlines operating own aircraft services between Australia and Turkey, although Turkish Airlines has publicly announced an intention to commence services to Australia from late 2011 or early 2012.¹⁴

12.13 The provisions of this agreement are also consistent with those outlined above for the agreement with Brazil.¹⁵

Implementation

12.14 The agreements will be implemented through existing legislation, including the *Air Navigation Act 1920*, *Civil Aviation Act 1988* and *International Air Services Commission Act 1992*. Amendments to this legislation are not required.¹⁶

12.15 As with the air services agreements discussed in chapter three, Memoranda of Understanding have applied to each of the agreements on a non-legally binding basis, pending formal entry into force.¹⁷

12.16 Representatives of the Department of Infrastructure and Transport outlined to the Committee the steps involved when an Australian airline seeks to commence services in a country with which Australia has concluded an air services agreement. The process includes:

- making an application to the Australian Government to be designated to the other country, which would occur by way of a diplomatic third person note;
- obtaining an allocation of capacity from the International Air Services Commission, a statutory body responsible for allocating Australian

13 Mexico NIA, para. 11.

14 Mr Lucas, Department of Infrastructure and Transport, *Transcript of Evidence*, 25 February 2011, p. 20.

15 NIA, paras 9 to 25.

16 Mexico NIA, para. 27; Turkey NIA, para. 26; Brazil NIA, para. 29.

17 Mexico NIA, para. 5; Turkey NIA, para. 5; Brazil NIA, para. 5.

capacity entitlements to Australian airlines. Capacity entitlements are usually equivalent between two countries;¹⁸

- obtaining airline licence approvals from the Australian government and the other country's authorities;
- obtaining the necessary safety and security operational approvals from the Civil Aviation Safety Authority and the Office of Transport Security; and
- obtaining regulatory approvals from the Australian Government to commence services.¹⁹

12.17 The agreement is structured with the intent to provide maximum commercial flexibility. Therefore, once an airline has taken a decision to enter a market and obtained designation and regulatory approval, it is then a matter for that airline to compete in the marketplace, subject to compliance with trade practices law.²⁰

12.18 The agreements contain a provision obliging each party to provide access to airport slots on a non-discriminatory basis.²¹

Conclusion

12.19 The Committee notes that these are the first air services agreements concluded by Australia with Brazil, Mexico and Turkey. These agreements are expected to improve access to these markets for Australian airlines and increase tourism and business opportunities. The Committee supports binding treaty action being taken.

18 The Committee was informed that historically allocations have not always been equal, largely due to the aviation policies being pursued by governments at a particular time. Mr Samuel Lucas, *Transcript of Evidence*, 25 February 2011, p. 22.

19 Mr Lucas, Department of Infrastructure and Transport, *Transcript of Evidence*, 25 February 2011, pp. 21–22.

20 Mr Lucas, Department of Infrastructure and Transport, *Transcript of Evidence*, 25 February 2011, p. 21.

21 Mr Lucas, Department of Infrastructure and Transport, *Transcript of Evidence*, 25 February 2011, p. 23.

Recommendation 14

The Committee supports the *Air Services Agreement between the Government of the Federative Republic of Brazil and the Government of Australia* and recommends that binding treaty action be taken.

Recommendation 15

The Committee supports the *Agreement between the Government of Australia and the Government of the United Mexican States relating to Air Services* and recommends that binding treaty action be taken.

Recommendation 16

The Committee supports the *Air Services Agreement between the Government of Australia and the Government of the Republic of Turkey* and recommends that binding treaty action be taken.

Kelvin Thomson MP

Chair