

**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**

## NATIONAL INTEREST ANALYSIS: CATEGORY 2 TREATY

### SUMMARY PAGE

**Air Services Agreement between  
the Government of Australia and the Government of the Czech Republic  
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#### **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 Czech Republic* (“the proposed Agreement”).
2. The proposed Agreement was signed on 24 September 2010.
3. Pursuant to its Article 23, the proposed Agreement will enter into force when the Contracting Parties have notified each other in writing that their respective requirements for its entry into force have been satisfied. The Czech Republic provided its notification on 4 May 2011. Subject to the recommendation of the Joint Standing Committee on Treaties (JSCOT), the Australian Government will provide its notification to the Government of the Czech Republic after the proposed Agreement has been tabled in both houses of Parliament for 15 joint sitting days. The proposed Agreement will enter into force from the date of Australia’s notification.
4. 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.
5. The proposed Agreement was preceded by an aviation arrangement of less than treaty status, in the form of a Memorandum of Understanding (MOU), signed at the conclusion of air services negotiations in 2005. In accordance with established Australian and international practice this MOU applied the provisions of the proposed Agreement on a non-legally binding basis until the proposed Agreement enters into force.

#### **Overview and national interest summary**

6. The purpose of the proposed Agreement is to provide a binding legal framework to support the operation of air services between Australia and the Czech Republic. 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 Czech aviation market and allows for the establishment of air services between the two countries. The proposed Agreement will enable Australian and Czech carriers to provide services between any point in Australia and any point in the Czech Republic, 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, will benefit from the proposed Agreement through the opening of increased opportunities.

## **Obligations**

9. Australia and the Czech Republic are both Contracting Parties to the *Convention on International Civil Aviation*, opened for signature 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.

10. 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 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, 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. Article 2 of the proposed Agreement 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, including with respect to its principal place of business and establishment, ownership and regulatory control. 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 ([2009] ATS 17) (the Horizontal Agreement), 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. The European Court of Justice found that certain provisions in bilateral air services agreements negotiated by EU Member States conflicted with European Community law. The Horizontal Agreement contains provisions which resolve those inconsistencies. The inclusion of these provisions in the proposed Agreement provides security from legal challenge.

12. Under Article 3 of the proposed Agreement, each Contracting Party grants to the designated 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. Article 3 also provides the right for designated airlines to operate on the routes specified in the Route Schedule for the purpose of taking on board and discharging passengers, cargo and mail.

13. Article 4 of the proposed Agreement confirms that each Contracting Party's domestic laws, regulations and rules relating to the operation and navigation of aircraft apply to the

airlines when they are entering, within or leaving the territory of that Contracting Party. Article 4 also applies each Contracting Party's laws, regulations and rules relating to, for example, aviation security, immigration and customs to the passengers, crew, baggage, cargo and mail carried by the aircraft while they are entering, within or leaving that Contracting Party's territory. Passengers, baggage and cargo in direct transit may be subject to examination in respect of aviation security, control of drugs, immigration requirements, or in other special cases in accordance with the laws and regulations of the relevant Contracting Party. Baggage and cargo in direct transit shall be exempt from customs duties and other similar taxes. In applying their laws, the Contracting Parties are prevented from giving preference to their own or any other airline.

14. Under Article 5, each Contracting Party is required to recognise certificates of airworthiness, competency and licences issued 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 may request consultations at any time concerning safety standards maintained by the other Contracting Party. 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 operation if it considers such action to be necessary.

15. Under Article 6, 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. A Contracting Party may require the airlines of the other Contracting Party to observe the Contracting Party's aviation security provisions for entry into, departure from or while within the territory of that Contracting Party and shall ensure that adequate measures are applied to protect the aircraft and to inspect 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 at any time consultations, including a security assessment of measures adopted by the other Contracting Party. Following a request, consultations shall take place within 60 days or such shorter time as agreed. To facilitate expeditious consultations, administrative arrangements are to be agreed between the aeronautical authorities and implemented without delay.

16. Article 7 requires each Contracting 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.

17. Article 8 provides that a Contracting Party may request, from the other Contracting Party's designated airlines, statistics relating to the agreed services.

18. Article 9 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, indirect taxes and similar fees and charges. Contracting 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.

19. 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.

20. Under Article 11, both Contracting Parties are obliged to ensure that there is a fair and equal opportunity for the designated airlines of both Contracting Parties to operate the agreed services. The capacity that can be operated between the two countries was initially settled in an MOU signed in June 2005, when the proposed Agreement was negotiated. These capacity arrangements are intended to continue once the proposed Agreement enters into force.

21. Article 12 provides a framework that allows airlines of one Contracting Party to conduct business in the territory of the other Contracting Party. 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 Contracting Party to conduct its business.

22. Article 13 provides a framework that allows airlines to provide services by means of cooperative marketing arrangements such as code sharing.

23. Under Article 14, the airlines of each Contracting Party shall 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 Contracting Party be transparent, neutral and non-discriminatory.

24. Article 15 provides that airlines of each Contracting 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 Contracting Parties.

25. Article 16 provides that the designated airlines of each Contracting Party can utilise surface transport to connect with their international air services, within the territory of the Contracting Parties or third countries, provided that passengers and shippers of cargo are informed of who will provide the transport involved.

26. Article 17 confirms that each Contracting Party's competition laws apply to the operation of airlines within their respective jurisdictions. Under this Article, the aeronautical authorities of either Contracting Party may request consultations with the other Contracting Party if the Contracting Party considers that its airlines are being subjected to discrimination or unfair competitive practices. Following the request, consultations between the Contracting Parties will take place within 30 days (or an agreed shorter period).

27. Article 18 provides that each Contracting Party may at any time request consultations on the implementation, interpretation, application or amendment of the proposed Agreement. Such consultations will begin within 60 days following such a request, unless otherwise agreed.

28. Article 20 provides for dispute resolution, with the exception of disputes concerning the application of national competition laws, between the aeronautical authorities of the

Contracting Parties. If the Contracting Parties fail to resolve any dispute by negotiation there is provision for compulsory settlement through submitting the dispute to arbitration.

29. The Annex contains a route schedule which specifies the routes that may be operated by designated airlines.

### **Implementation**

30. 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.

### **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, Department of Finance and Deregulation, has been consulted and confirms that a Regulation Impact Statement is not required.

### **Future treaty action**

33. Article 19 provides that the Contracting Parties may agree in writing to amend or revise the proposed Agreement. Any amendment or revision to the proposed Agreement shall enter into force when the two Contracting Parties have notified each other in writing that their respective requirements for the entry into force of an amendment or revision have been met. This Article also provides that the proposed Agreement will be deemed to be amended so far as is necessary to comply with any multilateral air transportation agreement that may come into force for both Contracting Parties.

34. Any amendment to the proposed Agreement will be subject to Australia's domestic treaty-making process.

### **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 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 agreement before the end of the termination period.

36. Any notification of withdrawal from the proposed Agreement by Australia will be subject to Australia's domestic treaty-making process.

**Contact details**

Aviation Industry Policy Branch  
Aviation and Airports Business Division  
Department of Infrastructure and Transport

## **ATTACHMENT ON CONSULTATION**

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#### **CONSULTATION**

37. It is the practice ahead of negotiations of an air services agreement for the Department of Infrastructure and Transport 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 the Czech Republic and invited to comment on issues of importance to them:

#### **Commonwealth Government agencies**

- Attorney-General's Department
- Australian Quarantine and Inspection Service
- Austrade
- Civil Aviation Safety Authority
- Australian Customs and Border Security Service
- Department of Foreign Affairs and Trade
- Department of Finance and Administration
- Department of Immigration and Citizenship
- Department of Industry, Tourism and Resources
- Department of Prime Minister and Cabinet
- International Air Services Commission
- Treasury
- Tourism Australia (formerly the Australian Tourism Commission)

#### **State Government agencies**

- ACT Government Chief Minister's Department
- Queensland Government Department of Employment, Economic Development and Innovation, Aviation Steering Committee
- NSW Government Ministry of Transport and Department of State and Regional Development
- South Australian Government Department of Transport and Urban Planning
- Tasmanian Department of Infrastructure, Energy & Resources
- Victorian Government Department of Innovation, Industry and Regional Development
- Government of Western Australia
- Tourism New South Wales
- Tourism Queensland



- Tourism Tasmania
- Tourism Victoria
- Tourism Western Australia

## **Industry**

- Adelaide Airport Limited
- Air Freight Council of NSW Inc
- Air Freight Council of Queensland Ltd
- Air Freight Council of Western Australia
- Alice Springs Airport
- Australian Airports Association
- Australian and International Pilots Association
- Australian Aviation Council
- Australian Local Government Association
- Australian Tourism Export Council
- Australia's North West Tourism
- Avalon Airport Australia Pty Ltd & Essendon Airport Pty Ltd
- Board of Airline Representatives of Australia
- Brisbane Airport Corporation Ltd
- Broome International Airport Holdings
- Burnie Airport Corporation Pty Ltd/Wynyard Aerodrome
- Cairns Airport
- Canberra International Airport
- Chamber of Commerce Northern Territory
- Essendon Airport
- Global Aviation Services
- Gold Coast Airport Ltd
- Hobart International Airport
- Launceston Airport
- Melbourne Airport
- Moorabbin Airport
- National Food Industry Strategy Ltd
- National Jet Systems Pty Ltd
- National Tourism Alliance
- Newcastle Airport Ltd
- Northern Territory Airports Pty Ltd
- Northern Territory Transport
- Perth Airport
- Qantas Airways Ltd
- Queensland Airports Ltd
- Queensland Tourism Industry Corporation
- Queensland Transport
- South Australian Freight Export Council Inc
- Sydney Airport Corporation Ltd
- Tasmanian Freight Logistics Council
- Tourism and Transport Forum (TTF) Australia
- Tourism Top End
- Tropical Tourism North Queensland

- Virgin Blue
- Westralia Airports Corporation Pty Ltd

39. Comments were received from: Qantas, Virgin Blue, Sydney Airport, the South Australian Government Department of Transport and Urban Planning, and the Treasury.

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

41. Sydney Airport supported the negotiations.

42. Qantas supported negotiations of arrangements including liberal cooperative marketing provisions and route rights. Virgin Blue supported the negotiations.

43. Comments on the Agreement were received from the Attorney-General's Department, the Department of Foreign Affairs and Trade, the Treasury, Customs, the Civil Aviation Safety Authority, the Australian Competition and Consumer Commission and the Department of Immigration and Citizenship. These agencies cleared the text of the proposed Agreement prior to its approval by the Federal Executive Council.

44. The proposed Agreement was included in the schedule of treaty actions provided to the Commonwealth-State/Territory Standing Committee on Treaties from July 2006 to September 2010, prior to signature of the proposed Agreement.

45. The proposed Agreement was approved for signature by the Federal Executive Council on 30 May 2008.