

Air Services Agreement with China

- 6.1 The *Agreement between the Government of Australia and the Government of the People's Republic of China relating to Air Services, done at Canberra on 23 March 2004* (the Air Services Agreement with China) provides a framework for the operation of scheduled air services by designated airlines between Australia and China.¹
- 6.2 The Air Services Agreement with China improves access for Australian airlines to the international Chinese aviation market and for Chinese airlines to the international Australian aviation market by, among other things, removing restrictions on the number of airlines that can enter the market and by allowing airlines to fly to international airports in Australia other than Sydney, Melbourne, Brisbane and Perth.²
- 6.3 The Air Services Agreement with China also includes reciprocal provisions on safety, security, customs regulations and commercial matters, including the ability to establish offices in the territory of the other Party and to sell fares to the public.³

1 National Interest Analysis (NIA), para. 6

2 NIA, para. 7.

3 Mr Stephen Borthwick, *Transcript of Evidence*, 11 September 2006, p. 17.

Background

- 6.4 The Air Services Agreement with China used Australia's standard draft air services agreement as the basis of negotiations.⁴ The Committee was informed that the Air Services Agreement with China does not differ substantially from the draft agreement.⁵
- 6.5 Less than treaty status agreements have been in operation since July 2003.⁶ When the Air Services Agreement with China enters into force, it will supersede the existing treaty level arrangements between Australia and China, the *Agreement between the Government of Australia and the Government of the People's Republic of China relating to Civil Air Transport*, done at Beijing 7 September 1984.⁷
- 6.6 The Air Services Agreement with China is a result of negotiations in 2003 which followed several years of lobbying by Australian officials seeking to engage Chinese officials in renegotiating the previous air services agreement.
- 6.7 The Committee was informed that services between Australia and China have increased since the operation of the terms of the Air Services Agreement with China.⁸

At present, four airlines operate passenger services between Australia and China: Qantas, Air China, China Eastern and China Southern... Today Qantas operates seven services per week in its own right, and the three Chinese airlines operate a total of 21 services per week, giving a total of 28 – a doubling of flights since 2002. Qantas also operates seven weekly freight services to China ... The majority of passenger traffic to and from China is direct, and the majority of the market, representing almost 60 per cent, is visitors to Australia. In the year ending June 2006, 1,133,934 passengers travelled between Australia and China, an average of just under 11,000 passengers travelling each way each week.⁹

4 NIA, para. 9.

5 Mr Stephen Borthwick, *Transcript of Evidence*, 11 September 2006, p. 17.

6 NIA, para. 4.

7 NIA, para. 4.

8 In accordance with Australian and international practice, aviation agreements of less than treaty status have been applied pending the completion of domestic requirements bringing the Air Services Agreement with China into force: NIA, para. 4.

9 Mr Stephen Borthwick, *Transcript of Evidence*, 11 September 2006, p. 18.

Obligations

- 6.8 Under Article 2, Australia and China are able to designate, alter and withdraw airlines they wish to operate the agreed services.¹⁰
- 6.9 Designated airlines have the right to:
- fly without landing across the territory of the other Contracting Party;
 - make stops in the territory of the other Contracting Party for non-traffic purposes and the right to land in the territory;
 - land in the territory of the other Contracting Party for the purposes of taking on board and discharging international traffic in passengers and cargo while operating an agreed service.¹¹
- 6.10 At points in the specified routes, each of the designated airlines have the right to use all airways, airports and other facilities provided by the Contracting Parties on a non-discriminatory basis.¹²
- 6.11 Either Contracting Party may revoke or limit authorisation of an airline's operations if the airline does not comply with conditions relating to international air transportation prescribed under its laws or regulations provided such conditions are consistent with the *Chicago Convention on International Civil Aviation*.¹³ The National Interest Analysis (NIA) states that this provision also applies if either Party is not satisfied that substantial ownership and effective control of an airlines are vested in nationals of the Party designating the airline, or if airline operations are not in accordance with the Agreement.¹⁴
- 6.12 Article 6 of the Agreement confirms that each Contracting Party's domestic laws, regulations and rules relating to certain aviation matters apply to the designated airlines when they are entering, within or leaving the territory of that Party. The Contracting Parties must not give preference to their own or any other airline in their laws and regulations relating to matters such as entry, clearance, immigration, passports, customs, quarantine and mail services.¹⁵

10 Article 2 Air Services Agreement with China.

11 Article 3(2) Air Services Agreement with China.

12 Article 3(5) Air Services Agreement with China.

13 NIA, para. 14.

14 NIA, para. 14.

15 NIA, para. 15.

- 6.13 Each Contracting Party is required to recognise certificates of airworthiness, competency and licences issued by the other Party provided such documents conform to the standards established by the International Civil Aviation Organisation (ICAO).¹⁶
- 6.14 The Committee was informed that international airlines operating in Australia must have a foreign air operators certificate issued by the Civil Aviation Safety Authority (CASA).
- In issuing that certificate CASA will ensure that the airline has in place appropriate safety oversight and systemic procedures that enable CASA to be satisfied that the airline is a safe airline.¹⁷
- 6.15 Australia and China may request consultations concerning safety standards maintained by the other Party.¹⁸ If consultations are not successful then the Party concerned about safety may set out the steps required for the other Party to comply with the minimum standards deemed acceptable by the *Chicago Convention on International Civil Aviation*.¹⁹ A failure to take the necessary steps to meet those minimum standards will allow the Party concerned about safety to withhold authorisation for the air services.²⁰
- 6.16 The Air Services Agreement with China will remove restrictions on the number of airlines that can enter the market by allowing airlines to fly to international airports in Australia other than Sydney, Melbourne, Brisbane and Perth.²¹
- ...Under the China agreement airlines have two levels of capacity. To the four major gateway ports of Sydney, Melbourne, Brisbane and Perth they can operate up to 8,500 seats per annum, but to every other international airport – Adelaide, Darwin, Cairns and so on – there is unrestricted capacity of their choice.²²
- 6.17 Information relating to restrictions on capacity for particular airports is found in the memorandum of understanding, a less than treaty status agreement which sits beneath the Air Services Agreement with
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16 Article 7 Air Services Agreement with China; NIA, para. 16.

17 Mr Iain Lumsden, *Transcript of Evidence*, 11 September 2006, p. 19.

18 Article 8 Air Services Agreement with China; NIA, para. 17.

19 NIA, para. 17. Article 8 Air Services Agreement with China.

20 NIA, para. 17. Article 8 Air Services Agreement with China.

21 NIA, para. 7.

22 Mr Iain Lumsden, *Transcript of Evidence*, 11 September 2006, p. 19.

China.²³ Information relating to the memorandum of understanding was not mentioned nor provided in the NIA although the Committee was informed that the information is available through the internet.

On the Australian side, the allocation of capacity is undertaken through the International Air Services Commission. They have a register of available capacity, which is contained on their website. So the information is, largely, publicly available.²⁴

Consultation

- 6.18 Prior to July 2003, an extensive list of stakeholders from the aviation and tourism industries were advised that an Air Services Agreement with China was proposed and invited to comment on issues important to them.²⁵
- 6.19 Comments were received from a number of organisations.²⁶ All stakeholders supported the negotiation of a modernised air services agreement which would offer greater flexibility and improved market access.
- 6.20 Sydney Airport Corporation noted that the Chinese market was Sydney Airport's most consistent growth market.²⁷ The Department of Industry, Tourism and Resources and the Australian Tourist Commission each identified their two main objectives as additional market access for airlines and the removal of route restrictions in the Agreement.²⁸ Qantas sought liberalisation of the Agreement's route and code share arrangements, and more modern regulatory provisions relating to issues such as tariffs, in order to allow airlines

23 Mr Stephen Borthwick, *Transcript of Evidence*, 11 September 2006, p. 20.

24 Mr Stephen Borthwick, *Transcript of Evidence*, 11 September 2006, p. 21.

25 NIA, Consultation Annex, para. 2; Mr Stephen Borthwick, *Transcript of Evidence*, 11 September 2006, p. 17.

26 Qantas, Sydney Airport Corporation, Brisbane Airport Corporation, Transport South Australia, the Western Australian Government, the Queensland Government, Tourism Victoria, the Australian Tourist Commission, the Department of Industry, Tourism and Resources, the Department of Foreign Affairs and Trade, Attorney-General's Department, Treasury, Department of Immigration and Multicultural Affairs, and Australian Customs Service.

27 NIA, Consultation Annex, para. 5.

28 NIA, Consultation Annex, para. 6.

operating on the route more flexibility to adapt their services to suit the market.²⁹

- 6.21 Information on the Air Services Agreement with China was also provided to the Commonwealth-State/Territory Standing Committee on Treaties.³⁰

Implementation

- 6.22 The Air Services Agreement with China will be implemented through existing legislation, including the *Air Navigation Act 1920 (Cth)*, the *Civil Aviation Act 1988 (Cth)* and the *International Air Services Commission Act 1992 (Cth)*.³¹

Costs

- 6.23 No direct financial costs to the Australian government are anticipated in the implementation of these agreements.³²

Conclusion and recommendation

- 6.24 The Committee supports the modernisation of Australia's bilateral air services agreements and the provision of greater commercial flexibility for airlines to undertake their operations.

29 NIA, Consultation Annex, para. 8.

30 NIA, Consultation Annex, para. 2.

31 NIA, para. 26; Mr Stephen Borthwick, *Transcript of Evidence*, 11 September 2006, p. 17.

32 NIA, para. 27; Mr Stephen Borthwick, *Transcript of Evidence*, 11 September 2006, p. 17.

Recommendation 7

The Committee supports the *Agreement between the Government of Australia and the Government of the People's Republic of China relating to Air Services, done at Canberra on 23 March 2004* and recommends that binding treaty action be taken.

