



Productivity Commission Issues Paper – Barriers to Services Exports

Department of Infrastructure and Regional Development submission

The Department of Infrastructure and Regional Development (the Department) welcomes the opportunity to provide comments on the Productivity Commission's (PC) Draft Report into Barriers to Growth in Services Exports.

The Department of Infrastructure and Regional Development's (the Department) primary interest in export services concerns the PC's preliminary findings on the impact of the aviation policy and regulatory framework on the tourism sector and the consequent recommendations regarding liberalisation of air services arrangements. Accordingly, this submission focusses on Draft Recommendations 8.2 and 8.3.

This submission should be read in conjunction with the Department's earlier submission on the Issues Paper, which also included its submission to the PC's research report on Australia's international tourism industry. The material outlined in these submissions provides a range of information and commentary which is directly relevant to the sections of the Draft Report dealing with international aviation issues and to Draft Recommendations 8.2 and 8.3.

General comments

The Department notes the Draft Report appears to focus largely on concerns raised by some stakeholders that constraints in Australia's bilateral air services arrangements are constraining aviation capacity growth, particularly to Australia's major gateway cities. The Department does not believe the available evidence supports these concerns.

As outlined in the Department's previous submissions to the PC, there are currently no markets in which the existing bilateral air services arrangements prevent airlines from adding services to/from Australia.

The Department acknowledges there are a very small number of markets (Hong Kong, Qatar and Fiji) where airlines are not currently able to add services to/from Australia's Major Gateways. Negotiations with these markets have been prioritised and, subject to agreement with those countries, are likely to be held in the coming months.

Australia remains one of the most open aviation markets in the world, both internationally and domestically. Since the current process of liberalisation and privatisation began in 1992, passenger and international aircraft movements have trebled. The openness of the Australian market is acknowledged by the OECD, which has ranked Australia's air transport services industry as the most liberalised of all 34 OECD countries and six major emerging economies.¹

The high levels of unutilised capacity in existing bilateral air services arrangements, combined with unrestricted international access to smaller airports strongly suggests there are limited regulatory barriers to airlines adding services to/from Australia. In the vast majority of cases the primary obstacle to the introduction of additional flights is the lack of a commercial case for doing so.

The Department welcomes the PC's conclusion in its Draft Report that "Australia's international aviation policy settings are broadly working well and a wide ranging review of international aviation is not warranted at this time."

¹ Organisation for Economic Cooperation and Development, *Services Trade Restrictiveness Index – Air Transport*, May 2014.

Draft Recommendation 8.2

As soon as practicable, the Australian Government should provide unrestricted access for foreign airlines flying to and from Brisbane, Melbourne and Perth airports as well as all secondary airports in Australia's major gateway cities. Following this, the Australian Government should provide unrestricted access to Sydney Kingsford Smith Airport unless a published assessment demonstrates that the costs of unrestricted access would outweigh the benefits to the community.

The Department notes this Draft Recommendation appears to be based on an assumption there are either significant capacity constraints in the current arrangements, or that significant constraints are likely to exist in the future, which requires a change in the current policy approach. The Department does not believe the analysis outlined in the Draft Report supports such a conclusion.

Indeed, the Draft Report itself acknowledges capacity in most markets is not constrained.² Where constraints exist, the Department is actively working with the relevant foreign Government to address it. The Draft Report also notes there “is no guarantee that additional services will be provided to particular airports if unrestricted access is granted, as airline route decisions are ultimately based on the commercial interest of airlines.”³

On this basis, the proposed recommendation would appear to be designed to address a ‘problem’ which either doesn’t exist in practice or can be addressed under the existing policy framework.

The issue of “leverage”

The Department notes the PC’s conclusion in the Draft Report that it has not been presented with, nor found, any evidence which demonstrates that restricting access to Australia’s major gateway cities delivers net benefits (through negotiating leverage or otherwise) for the community.⁴

The Department strongly disagrees with the PC on this point. In the Department’s experience, access to major gateway airports is often the only point of leverage available to gain foreign Government agreement to items of interest to Australia. In particular, the current approach has proved successful in obtaining outcomes in negotiations that address the full range of interests of Australian stakeholders — including by supporting Australian aviation businesses to grow their international networks either in their own right or through commercial alliances and partnerships.

This has involved leveraging foreign airlines’ interest in direct capacity entitlements to Australia to secure additional traffic and commercial rights for Australian airlines to take full advantage of the opportunities available through enhanced cooperative marketing and or commercial alliances.

Unilateral Liberalisation?

The Department notes the observation by the PC in the Draft Report that, where further liberalisation through open skies or open capacity arrangements cannot be agreed, unrestricted access for foreign airlines operating services to and from Australia’s major gateway cities could be provided.⁵

The Department assumes this reference refers to possible unilateral liberalisation, whereby unrestricted access for foreign airlines could be provided without receiving any reciprocal access for Australian airlines.

² Productivity Commission, *Draft Report: Barriers to Services Exports*, p231.

³ Productivity Commission, *Draft Report: Barriers to Services Exports*, p234.

⁴ Productivity Commission, *Draft Report: Barriers to Services Exports*, p234.

⁵ Productivity Commission, *Draft Report: Barriers to Services Exports*, p233.

This would represent a fundamental change in Australia's approach to air services negotiations, and the Department is not aware of any analysis by the PC or others which would support such a conclusion.

The Department notes the observations previously made by the PC on this issue:

“ . . . there is a risk that if Australia were to unilaterally liberalise its air services arrangements, Australian airlines may not be able to expand their networks and services elsewhere (beyond the extent of access allowed under existing bilateral arrangements). Australia's bilateral partners would be able to control additional capacity on Australian international routes, both for Australian airlines as well as the airlines of the home country and airlines from third countries seeking to operate services to Australia via another country. This could have negative consequences for the Australian community if it led to a reduction in choice and quality of air services for passengers on particular routes.”⁶

The prospect of unilateral liberalisation would impact directly on future negotiations. The simple act of articulating Australia's negotiating approach in such a manner will limit Australia's ability to negotiate open skies or open capacity agreements in the future, as foreign governments would have little reason to agree to such arrangements if they know Australia will ultimately agree to unilaterally open access for foreign airlines.

The terms of reference for the Barriers to Services Exports study enables the Commission to examine the policy approaches of other international economies where relevant,⁷ and the Draft Report includes a request for information about the likely costs and benefits of applying effective policy approaches overseas to the Australian context. The Department notes unilateral liberalisation is not an approach adopted by Australia's aviation partners (successfully or otherwise).

The Department notes the PC's view that, as access rights are sovereign rights, then the Australian Government may rescind any access previously granted if during negotiations the granting of such rights was considered to be contrary to the interests of the Australian community.⁸ The Department considers such a view to be misguided and inconsistent with how the international aviation system works.

Bilateral air services agreements are predicated on a mutual commitment to continue to move forwards, not backwards. There could be significant damage to Australia's standing if the Australian Government sought to unilaterally remove agreed entitlements, which were operated in accordance with agreements previously negotiated in good faith, on the basis Australia no longer likes the negotiated outcome. To the extent the arrangements are reflected in international treaties, Australia could also be in breach of its obligations under international law.

Draft Recommendation 8.3

When negotiating an air services agreement, the Australian Government should undertake an assessment of all relevant costs and benefits of more open international air services markets, including benefits to the community arising from lower airfares or access to a wider range of outbound travel destinations, as well as any effects on Australian airlines. The Australian Government should publicly release its assessment of the costs and benefits of the negotiated outcome as soon as practicable.

The Department notes Draft Recommendation 8.3 and draws the PC's attention to the Department's previous submissions where the inherent difficulties in undertaking and publishing studies of the type suggested were outlined.

⁶ Productivity Commission, 'Research Paper: Australia's International Tourism Industry,' p107.

⁷ Productivity Commission, *Draft Report: Barriers to Services Exports*, p3.

⁸ Productivity Commission, *Draft Report: Barriers to Services Exports*, p235.

In preparation for bilateral air services talks, the Department undertakes extensive consultation with Australia's major airlines, airports, tourism groups and other Government Agencies such as the Department of Foreign Affairs and Trade (DFAT) and the Australian Trade Commission (Austrade). Advice from these consultations, which is often provided on a confidential basis given the commercial nature of the input, is taken into account when developing a proposed negotiating mandate.

The outcome of negotiations is publicly communicated and high level advice is provided to stakeholders on the main unresolved issues. The scope to provide more detailed analysis at the conclusion of talks is limited, due to the ongoing nature of the negotiating process. It is common for the more difficult negotiations to be conducted over the course of several rounds before revised arrangements are settled.

Department of Infrastructure and Regional Development
September 2015