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TRANSPORT AND REGIONAL
DEVELOPMENT***

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THE INDUSTRY COMMISSION
INTO

INTERNATIONAL AIR SERVICES

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PREFACE

This submission represents the views of the Department of Transport and Regional Development and is designed to assist the Industry Commission in understanding the path that has led international aviation policy to its present position and to indicate some productive areas for reform.

1. INTERNATIONAL AVIATION REGULATORY FRAMEWORK

1.1 Introduction

The 1944 Chicago Convention on International Civil Aviation marked a watershed in international aviation as states met for the first time to discuss the shape of economic and technical regulation of international aviation.

The Preamble to the Convention on International Civil Aviation (the Chicago Convention), signed at the end of that conference, states that:

“the undersigned governments having agreed on certain principles and arrangements in order thatinternational air transport services may be established *on the basis of equality of opportunity* and operated soundly and economically” (DTRD emphasis added).

Article 44(e) states that one of the aims of establishing the International Civil Aviation Organisation is to

“prevent economic waste caused by unreasonable competition”

and 44 (f) that it should

“insure that the rights of contracting States are fully respected and that every contracting State has a fair opportunity to operate international airlines”.

While the Chicago Convention created a new and effective method of standardising international approaches to safety and security in international aviation, the bilateral system of economic regulation that had preceded the Chicago Convention was strengthened by the inability of the Conference to agree on how economic regulation of international aviation might otherwise be managed. The economic regulation elements of the Convention are however echoed in bilateral air services agreements around the world.

This submission acknowledges the strengths and weaknesses in the bilateral system, and that at present it is a fact of life for those who conduct business in international aviation.

The former Minister, the Hon John Sharp MP, stated on 29 November 1996: "We (the Government) remain committed to the bilateral system as the most appropriate mechanism to foster further development of international aviation services".

In order to determine how the current system operates and how it may be improved or replaced, it is essential to recognise that, until the bilateral system is replaced or repudiated, Australia is part of a system which inherently manages access and allows individual nations to deny or limit access to their aviation markets.

The international aviation regulatory framework is a complex array of economic, technical and safety related arrangements between nearly two hundred countries around the world.

The economic regulation of international aviation started as a relatively simple and straight forward process in the early decades of this century. The lynch pin at the heart of this process has been bilateral air services agreements between sovereign states.

The growth in demand for air travel, technological advances, the emerging world economy, growth in disposable income, world trade and communication have seen aviation grow into one of the major global industries.

The bilateral system has grown with the industry it regulates. In general terms, the relationship between the regulatory system, the aviation industry and the development of global travel, trade and tourism has been highly successful. As international aviation has grown, the bilateral system that supports it has also grown from being relatively simple exchanges of rights in relation to point to point services between two countries, to a complex series of interconnected structures between all countries active in international aviation. Australia is one such country.

The industry and the Governments that regulate it now face the challenge of deciding whether the present regulatory system, notwithstanding its measurable successes, can continue to meet the challenges that confront it.

How Governments respond to these challenges will be determined largely by their own perceptions of national interest and how it can best be served. Responses will vary considerably and will have a direct impact on how quickly reform can be achieved.

International aviation is not an industry which simply enables any individual, company or even single Government to establish international air services on a stand alone basis.

It cannot be conducted without the agreement of at least two and quite often more than two Governments: the nature of the "good" being sold is such that it requires both a departure and a destination point to be functional. This is a

key difference from most other goods and services internationally traded — without the cooperation of at least two governments, the “good” not only cannot be traded, it does not exist.

When considering the effectiveness of policy options in aviation it is also relevant to consider the nature of transport demand. Many of the claims about the need for reform in aviation derive from concerns over supply.

We clearly indicate below that supply is not currently constrained to any greater extent than would occur under any alternative system, with the exception of genuine multilateral reform.

Demand is often assumed. However, in the absence of it (or attempts to generate it), supply will not emerge no matter how few barriers to entry remain. The simple reality is that people and freight do not use aviation services as an end in itself but as a means of selling or consuming another good (eg tourism or communications).

The key elements of the current international regulatory framework are outlined below and a sound understanding of the international aviation environment is an essential basis for consideration of options for further liberalisation of international aviation policy in Australia.

1.2 Bilateral Agreements

Bilateral air services agreements are negotiated between parties that have complete and exclusive sovereignty over the airspace above their respective territories.

The bilateral system allows each state to negotiate on an equal basis (in law) with any other state and to enter into (and leave) the agreement freely.

All bilateral agreements are a mutually agreed “best fit” between the national interests of the bilateral partners.

Bilateral agreements define the conditions under which the carriers of either party will have access to the airspace of the other party and, through limiting the substantive ownership and effective control of carriers designated under the agreement to citizens of parties to that agreement, attempt to retain the benefits derived from the market between the contracting parties.

It is for this reason that bilateral agreements are still the preferred form of arrangement, even in the most liberal aviation countries, as witnessed by the fact that the “open skies” agreements negotiated by the United States with a number of other countries are still bilateral agreements.

There are over 3,000 bilateral agreements registered with the International Civil Aviation Organisation (ICAO), and all 185 ICAO member states are parties to them.

Australia has 51 bilateral agreements including a number of new agreements in recent years and will no doubt add to these in the future. These agreements are of treaty status and ultimately enforceable at international law.

Despite the large number and the diverse interests of the participants in these arrangements, there is a high degree of commonality in the core issues of the treaties registered with ICAO. Australia's experience also reflects this trend with a number of common provisions or clauses in most of our bilateral agreements.

Typical provisions will include:

- a guarantee of fair and equal opportunity for airlines designated under the agreement;
- an agreement that carriers designated under the agreement are substantially owned and effectively controlled by citizens of the contracting parties;
- agreed principles for regulating capacity and tariffs, including a clause that states that the primary purpose of services operated by carriers designated under the agreement is for the carriage of traffic between the two parties;
- rights granted for the designated carriers of one party to do business in the country of the other party;
- mutual recognition of airworthiness procedures;
- agreement to cooperate on aviation security;
- an exemption from duty by both parties for aircraft fuel, spare parts and supplies used by airlines of the other party;
- descriptions of the route over which the agreed services can operate; and
- an agreement that both parties will amend the air services arrangements to conform with any matter covered by any multilateral agreement which both parties have entered into.

Bilateral air services arrangements therefore define the terms on which carriers may enter any market.

Importantly, they do not impose an obligation on international carriers to enter a market and, once a carrier has entered a market, air services

arrangements do not impose an obligation on a carrier to continue to serve that market.

To change the bilateral system will require either a preparedness to ignore the impacts on the aviation industry; or a conscious effort to develop something which provides for an equivalent level of international acceptance, across governments.

Case study: Australia-Korea Air Services

The Australia-Korea market was, until recently, one of Australia's strongest growing markets, recording an average annual increase in passengers on the route of 47.8% since 1993. Capacity negotiated with the Korean Government on 3 occasions since 1992 comfortably accommodated the growth in services operated by the five carriers on the route.

After the economic downturn in north Asia inbound traffic to Australia from Korea (initial figures indicate a fall of over 66% in passenger traffic for the month of December 1997 compared with the previous year), Ansett, Qantas and Air New Zealand announced their withdrawal from the market. Both Korean Airlines and Asiana have also reduced the capacity that they operate on the route. There are currently 10 units of capacity available for Australian carriers should they choose to return to the market and also spare capacity for use by Korean carriers.

The recent Korean experience makes it clear that, while the bilateral system is capable of supporting rapidly growing markets, it does not impose an obligation on carriers to serve those markets in any conditions. The bilateral system also gives carriers designated under individual agreements quick market access should they wish to re-enter the market when economic conditions improve.

1.3 Ownership and Control

Before an airline can take up rights negotiated under a bilateral agreement, it must first be designated by its Government to the other Government concerned. The partner Government can reject that designation if it is not satisfied that the carrier is substantially owned and effectively controlled by citizens of the designating party.

National ownership and control criteria limit the access of international carriers to offshore sources of capital, although the importance of such a restriction varies from country to country (it advantages countries with deep domestic capital markets).

National ownership and control criteria are the mechanism used by States to retain the benefits generated by a bilateral relationship and the risk of unilateral amendment to these criteria is substantial.

Thus while several countries (including Australia as a leader) have allowed higher levels of foreign ownership to meet capital demands, they have generally stopped well short of allowing majority foreign ownership.

The relaxation of ownership and control criteria for a carrier designated under one agreement may also put at risk the designation of that carrier under another agreement with a more conservative partner.

The impact of ownership and control provisions was previously shown when the United States refused to grant Aerolineas Argentinas a permanent waiver under the national ownership and control criteria in the US/Argentina air services arrangements as it had assessed that Iberia, a Spanish carrier, was in effective control of Aerolineas Argentinas.

The refusal by the US to grant the waiver put all of Aerolineas Argentinas' services to the US at risk of suspension. The waiver was granted only after substantial bilateral concessions had been granted to US carriers in return. A US concern was that the rights not available to Iberia under the US/Spain air services agreement might be obtained through the back door via the relaxed interpretation of ownership and control rules by a third country.

Variations on the national ownership and control criteria exist, including:

- allowing one, state-sponsored carrier to operate on behalf of a number of countries (eg Gulf Air, SAS, Arab Air Cargo, Air Afrique);
- allowing for ownership and control criteria to extend to enterprises established in colonial possessions (Hong Kong and Macau); and
- through supra-national competition laws and policies, within a defined area (the European Union).

These variations to national ownership and control criteria have generally been accepted where it is clear that the national benefits will be retained by the parties to the arrangements. For example, Gulf Air partners negotiate and retain the benefits flowing from bilateral arrangements that designate Gulf Air as a single entity, as do the Scandinavian partners from SAS.

Australia has adopted the most liberal approach generally tolerated under the bilateral air services agreements and has permitted foreign ownership of up to 49% of Australian airlines. We have also accepted, in particular circumstances, designation of airlines that have clearly exceeded the limits available under the treaty. A summary of Australia's ownership and control provisions is at Attachment 1.

The inherent difficulties in the national ownership and control criteria are circumvented, in part, by countries either allowing access to their home markets by third country carriers, or through code share, or through alliances with other carriers or through a combination of the three.

However, as national ownership and control criteria, allied with route and capacity rights, are the prime means of controlling access to markets under the current bilateral system, it is unlikely that countries will move beyond the liberal Australian position unless there is a widely-accepted change to the fundamental nature of the bilateral system through multilateral forums.

1.4 Non-Scheduled (Charter) Operations

In general, air services agreements concentrate on scheduled passenger and freight services. There are also international passenger and freight services by non-scheduled (charter) operators; in some cases these may be one off or ad hoc flights, while others may involve an extended program of flights often on a seasonal basis.

In some parts of the world, charter services form an important (but declining) part of the total market (eg intra Europe) but their impact is far less significant in the Asian region. Charters in Europe and across the Atlantic developed in part in response to market circumstances after World War II, and in part as a response to high volume and highly seasonal holiday traffic demand.

In Australia's case, the small role of charters in this region is not driven by regulatory constraints but by the absence in most cases of the factors above. Australia has long allowed and supported inbound tourist charters and so-called "test-and-develop" charters, as well as allowing scheduled carriers to operate supplementary services to meet seasonal peaks in demand.

There is also a high premium placed by many of our regional partners on scheduled airline services, with regional carriers possibly switching capacity more effectively in line with seasonal peaks in demand than in Europe two or three decades ago.

Because charters do not operate in a predetermined relationship under a bilateral arrangement, charter services planned for operation between two countries need to meet the charter requirements of both countries independently before they can operate. They are then more at risk of cancellation or rejection than scheduled rights exercised under bilaterals.

1.5 Cabotage

In the vast majority of markets in the world cabotage (ie the practice of allowing foreign carriers to carry domestic traffic) is not permitted. Such protection is specifically authorised under the Chicago Convention, although States can eschew this protection if they choose.

This is even so in those countries, such as the United States, that support “open skies” bilateral arrangements – direct access to the US domestic traffic is not permitted for foreign carriers. The major exception is within the EU, where cabotage between member countries by EU carriers is permitted as part of the third package of aviation reforms, which was implemented on 1 April 1997.

Aside from legal issues, there are a number of other factors that have led to countries continuing to adopt this position. Foreign carriers may be perceived as lacking commitment to offering an overall network of domestic flights on a regular basis particularly given thin traffic routes, while obtaining an unfair ability to simply "cherry pick" the major domestic routes.

Reciprocity is also a major issue, countries are reluctant to give up their domestic market to foreign carriers, when in return the foreign Government's domestic markets remain closed off. Major countries with large domestic markets also see little benefit of trading off these rights for access to another country's domestic market, which may represent a very small percentage of their own cabotage traffic.

Australia's Single Aviation Market (SAM) agreement with New Zealand permits designated carriers of one party to operate on domestic routes in the country of the other party. This is the only arrangement Australia has where cabotage is permitted, and is part of a package which involves unrestricted access to operations between the two countries as part of the overall Closer Economic Relations (CER) agenda of liberalisation.

Australia also has a number of arrangements that permit a limited form of what may be considered domestic service through own-stop over rights (where international passengers travelling on a single ticket interrupt their journey in Australia). The trading of these rights forms part of our bilateral negotiations strategy.

Where international passengers or cargo may be subject to substantial delays at an Australian airport due to an emergency or operational failure, or where specialised equipment, like horse stalls, is not available, foreign carriers can be provided with dispensations to carry domestic traffic.

This allows the passengers and cargo either to reach their final destination in Australia, or to fly to another point in Australia where they can be transferred to an alternative service operating to their final destination overseas, with the minimum of inconvenience.

1.6 Fifth Freedom and Sixth Freedom Traffic – The Role of Third Country Carriers

Bilateral agreements are unique entities but they do not exist in isolation from each other. While they primarily cover third and fourth freedom traffic (ie the

carriage of passengers and cargo between the two partner countries), additional competition is provided by carriers operating services on international routes around the world utilising the so called "fifth" and "sixth" freedom rights (a description of the freedoms of the air, a key concept in international aviation, is at [Attachment 2](#)). Expanding those rights, where they are not already unrestricted, is a central part of Australia's negotiating objective.

These rights are not only available for Australian carriers. A significantly large number of foreign carriers, either by grant of direct access to third country markets (such as New Zealand) or by grant of additional capacity to serve sixth freedom markets (ie the ASEAN carriers access to Australia/Europe traffic) operate openly in Australia - third country markets. Increasingly, these activities are expanding in alliance/code share arrangements.

However, because these services include third parties, they also require the permission of that party. For example, rights for an Australian carrier to operate between Kuala Lumpur and Jakarta require separate negotiations with both the Malaysian and Indonesian Governments.

This means that the development of a network of bilateral rights throughout a region or across it to a more distant point (eg across Asia to Europe) can be complex and, for a country at one end of a long-haul route (as Australia is), may also be frustrating if rights to an intermediate point are difficult to obtain.

For Australia, the competitive benefits of these third country carriers are very important and is taken into account in determining net national benefit, as Australia assesses proposals for capacity increases and trade-offs with other rights which may be offered. However, the denial of access to intermediate points can be one very important reason why simply offering unrestricted access to Australia on a third/fourth freedom basis to a foreign partner can be unwise in the overall context of Australia's national interests.

This is one of the key reasons why we are happy to negotiate capacity well ahead of demand (Section 2.4 elaborates on this), ensuring to the best of our ability that the bilateral system does nothing to prevent entry, while not giving away all capacity and losing negotiating abilities in the future. Should we do so, we may replace one market distortion (the bilateral negotiating process) with another (an absolute, regulatory-induced advantage for one carrier or country over Australia).

The importance of this area cannot be overstated. The most significant of Australia's recent aviation disputes have been about Australia exploiting its rights to fifth freedom traffic; or the efforts of other countries' carriers to exploit rights they claim to have, to our disadvantage. Fortunately, such cases are rare and likely to decline further, as alliances and removal of restrictions in bilaterals remove the sources of friction.

1.7 Multilateral Aviation Agreements

While bilateral agreements are the outcomes of trade in access to particular markets, they exist within a framework of related multilateral instruments which govern non economic regulatory matters ([Attachment 3](#) summarises the key overlay arrangements).

The objective of these multilateral agreements is to develop uniformity in law for competing air services providers in, and between, jurisdictions on matters related to safety, security and personal damage.

2. AUSTRALIAN INTERNATIONAL AVIATION POLICY

2.1 Introduction

All bilateral agreements are a mutually agreed “best fit” between the national interests of the bilateral partners reached through negotiation.

Australia must take into account the different views and attitudes of each of our bilateral partners in achieving positive outcomes in our bilateral negotiations. This explains why all our bilateral agreements are not the same.

This section summarises the significant changes to international aviation policy made by successive Governments, with the effect of providing additional competition under the bilateral framework, increasing passenger and freight traffic (above international growth rates), furthering opportunities for Australian carriers, increasing the transparency of the negotiating process and achieving benefits for our tourism and other export industries.

2.2 Approach to Bilateral Negotiations – The National Interest

Significant aviation policy changes have occurred in Australia over the past decade. The 1987 decision on deregulation of domestic aviation was the first of a sequence of reforms in Australian aviation.

Subsequent to this change, the Federal Government flagged a substantial change in the way in which Australia negotiates its bilateral air services agreements.

No longer were the interests of the then single Australian international airline, Qantas, to be the prime factor in determining Australia’s negotiating strategies. A wider range of interests were to be taken into account, in particular those of Australia’s tourism and other export industries.

Over time, this has led to Australia's considered negotiating position at each set of bilateral talks being formed after taking into account a balance of interests.

In the lead up to bilateral talks, the specific elements of any position on particular negotiations are developed after consultation with:

- State and Federal tourism and transport organisations;
- the Department of Foreign Affairs and Trade;
- customs and immigration authorities;
- Australian international airlines;
- privatised airport lessees;
- freight interests; and
- aviation security, air service and safety authorities.

The Minister for Transport and Regional Development (who may consult other Ministers) agrees to the final negotiating position; and this is provided to negotiating team members.

The actual Australian bilateral negotiation team not only includes representatives of the Department of Transport and Regional Development, but also representatives from the Office of National Tourism, Foreign Affairs and Trade and the major Australian international airlines.

The Department is considering changes to the handling of negotiations, in the light of potential conflicts of interest which may emerge through airline alliances.

The Department has also established a more formal annual arrangement for seeking the views of interested parties before determining its negotiating priorities. This helps generate a broader range of inputs into the bilateral negotiation process.

Interested parties are also advised of any changes in these priorities or forthcoming talks through direct consultations with national and state tourism and transport officials and airport lessees throughout the year. These parties are encouraged to seek advice on, or provide any relevant information for, forthcoming talks.

In assessing the national interest for the purposes of recommending a position to the Minister, a variety of different views can be expressed in finalising a position. The Department must therefore weigh up the differences which occur:

- between the Australian carriers;
- between carrier interests and those of the tourism industry; and
- between States, each seeking that we advantage them by including their ports as points to be served and, at times, excluding others.

This last point is rarely noted, but often important, in negotiations. The Commission may wish to consider the impact on those ports of a strategy which allows the by-passing of, for example, Darwin and Adelaide, by carriers whose commercial instincts (quite reasonably) favour Sydney, followed by the other East Coast capitals, over all other ports.

Australia's approach to the national interest in aviation negotiations is a balancing act. It has also become a far more inclusive process. The outcomes outlined later on in this section have included the negotiation of a number of new air services agreements and a significant expansion in market access for both Australian and foreign carriers and flow on benefits for the Australian economy.

2.3 Multiple Designation and Airline Privatisation

In February 1992, further reforms to Australia's international aviation policy were announced.

The Government formally announced multiple designation for Australian carriers, opening the way for other carriers to compete with Qantas on international routes. Simultaneously, the separation between international and domestic aviation was removed, providing Australian carriers with the ability to develop integrated domestic and international networks for the first time.

At the same time, the Government established the International Air Services Commission (IASC), to allocate Australian international capacity and therefore separate the negotiation of capacity and route rights from its allocation. This process guaranteed Qantas access to rights it was already using for five years and included special provisions to favour new entrants, and a time limit of five years on the period in which a carrier could exploit these rights before they were reviewed publicly and made open to reallocation if not used effectively.

Further changes announced included the removal of investment barriers which had previously prevented equity investments between Australian carriers. This cleared the way for Qantas, in September 1992, to buy the former Government owned domestic carrier, Australian Airlines.

The move from full Government ownership of Qantas to eventual privatisation and 100% private ownership was a major factor in increasing the international competitiveness of Australian carriers. The initial acquisition of a 25% interest in the Company by British Airways (BA) was followed by a float of the remaining shares in the Company. The Government agreed to allow aggregate foreign equity in Qantas to be increased from 35% to 49%, with conditions to ensure that the majority ownership and control of Qantas remained in Australia. These decisions all helped address the debt-equity position of the airline.

Qantas was freed from having any real or apparent obligation to maintain market share on behalf of the national interest; and its Chairman has informed shareholders publicly that it no longer feels such an obligation. This further gives credence to the Government's decision to refocus its assessment of the broader national interest in determining aviation policy.

It is a valuable indication of the returns available to this country from aviation exports to note that:

- the Australian carrier's market share of our inbound and outbound traffic had declined steadily to 38% of total traffic by June 1992; and

- following multiple designation and the privatisation of Qantas, Australian carriers' market share has grown to 43% in 1997.

It is also important to note that this has been achieved during a time when Australia's total international passenger market has grown by almost 50%.

Australian carriers have also sought to establish major alliances with overseas partners. The Qantas/BA Joint Services Agreement (JSA) was authorised in 1995 by the Trade Practices Commission (TPC). The JSA is essentially a revenue-sharing and service co-ordination arrangement between BA and Qantas which has been augmented by code-sharing agreements in markets not covered by the revenue-sharing approach.

The Australian Competition and Consumer Commission (ACCC) is currently considering the Ansett/Air New Zealand/Singapore Airlines alliance.

2.4 Capacity Ahead of Demand

A central outcome of the clarification of the roles of Qantas, Ansett and other Australian carriers on the one hand; and the Department in implementing the commitment of successive governments to liberalising international aviation on the other hand, is the clear commitment established by the Government to negotiating capacity ahead of demand.

This has been successfully negotiated in most of our key markets and led to the creation of a substantial bank of available capacity yet to be taken up by either Australian carriers or by designated carriers of our bilateral partners.

The creation of "shelf capacity" has allowed the innovation and entry responses which typify an open market to apply. This capacity exists on shelves in our foreign partners' cupboards, as much as it does in Australia, maximising the threat that – if no Australian carrier responds to higher demand or other market opportunities – a foreign carrier can.

The driving force for this approach has been to increase market access to benefit both consumers and service providers alike.

This approach has, in most of our major overseas markets, effectively addressed claims that the Government continues to act to protect the Australian carriers. The few remaining capacity/route constrained markets largely reflect more conservative positions by some of our bilateral partners who will not be lured by "open skies" agreements but rather whose self interest is to continue limited offers to exchange market access.

The growth of the bank of available capacity over capacity actually operated, has accelerated rapidly in recent years (See [Attachment 4](#)). Since March 1996, capacity for international services to and from Australia has increased by more than 31% over the accumulated capacity of the previous fifty years.

This equates to an additional 234 Boeing 747 scheduled services per week available to fly to and from Australia even before recent significant bilateral agreements with Thailand and Argentina are counted, and this capacity growth has been largely in our major markets.

2.5 Air Freight and Charter Policy

Since 1996 the Government has increasingly supported the negotiation of dedicated freight agreements with our bilateral partners. In the past, many of our bilateral agreements had no separate freight capacity, which meant that (where no shelf capacity existed) freight capacity could only be obtained at the expense of passenger capacity.

Over 50 units of B747 equivalent of dedicated capacity are now available under 18 bilateral agreements, including major freight markets. And Australia's first unrestricted freight agreement has been concluded with Luxembourg, the home of Cargolux, one of the world's largest freight carriers.

As was very effectively demonstrated in the 1996 House of Representatives Committee report "Jet Fresh- Paddock to Plate", dedicated freight capacity is usually provided for high-value, time-sensitive, non-seasonal product. In all other cases, freight tends to travel in the bellyholds of passenger aircraft. This provides Australia with very significant quantities of passenger-subsidised freight capacity, but at times and priorities determined by passengers. Freight rates ex Australia are very cheap as a result, but not dedicated to freight, as some exporters would prefer. To obtain dedicated services, rates will have to rise and commodities will have to be better-managed across the full freight chain.

By negotiating dedicated freight capacity, the Government has been able to create opportunities for dedicated freighters to operate services on a range of major trading routes. While some may point to the current lack of use of this available capacity, as Australian exports increase in value, exporters will be able to use this dedicated freight capacity and not be constrained by having to use up passenger capacity.

The Government is also continuing to pursue through APEC, more liberal air freight arrangements amongst member economies but this requires a consensus approach. Australia is at the forefront of efforts to remove restrictions on freight carriage within the APEC region and has achieved agreement at officials level to progressively remove restrictions on air freight.

This approach has supplemented an already very liberal charter policy, which has allowed charter operators to compete with scheduled freight capacity, especially to meet seasonal increases in freight demand.

In relation to passenger charter policy, successive Governments have adopted a liberal approach to encouraging these operators, especially when they have sought to serve secondary (ie outside major capital city) gateways

in Australia. Recent legislation has also given effect to consumer protection requirements and consideration of the impacts on tourism and airline interests in Australia, when examining applications from charter operators. A copy of the relevant legislation concerning non scheduled (including charter) operations is at [Attachment 5](#).

2.6 Tariff Approvals

Under the Air Navigation Act 1920, approval of timetables and tariffs by the Department is required. The Department does this with minimal resource use and intrusiveness.

Australia has several different tariff regimes in its air services arrangements, based on how many states must approve a tariff before it becomes effective.

These include:

- a) double approval, in which both states concerned must approve a tariff;
- b) country of origin, in which only the state in which the transportation originates need approve the tariff; and
- c) double (or dual) disapproval, in which both states concerned must disapprove a tariff to prevent it coming into effect.

The last of these is the most liberal, and our preferred arrangement. Australia's policy position is that tariff setting should be for the airlines' commercial judgement and not Government regulation, up until the point where the competition authorities detect anti-competitive intent where it becomes a matter for the ACCC.

A summary of tariff provisions in Australia's air services arrangements is at [Attachment 6](#).

2.7 Outcomes from Changes to International Aviation Policy

Changes in international aviation policy have formed an important part of the Government's micro-economic reform program and have achieved significant benefits for the Australian economy.

The reforms pursued have provided a structure in which innovation by carriers and those industries dependent on them is maximised. However, the bilateral structure can be very conservative and inflexible in the hands of countries which are not supportive of competition or for other reasons prefer to manage market entry closely. All bilateral arrangements between such countries and their partners of necessity reflect this; any variance in agreements tends only to reflect the degree of negotiating leverage that some partners can bring to bear. Australia, a small and remote origin/destination market does not have the leverage (from aviation or non-aviation sources) in

international markets to overcome the conservative stance by some of its major partners.

The Department believes there have been important employment and other economic benefits flowing from the policy approaches adopted to date for aviation, airport-related and tourism industries, as well as our primary and manufacturing export industries.

Over the decade to the end of 1995, the number of passengers carried on international services worldwide grew at an annual average of 6.8%. By comparison, Australian annual average growth over the same period was 8.8%.

In total, we have gone from the average number of passengers travelling each way each week being 67,188 in 1987 to well over double that amount, 142,653 in 1997.

This growth was driven principally by markets between Australia and North East Asia, which averaged 14.7% growth since 1987, with the average number of passengers travelling each way each week rising from 8,718 in 1987 to 34,496 in 1997.

South East Asian markets also grew strongly, averaging 11% since 1987, with the average number of passengers travelling each way each week rising from 9,628 in 1987 to 27,439 in 1997.

Australia's more "traditional" markets also made significant contributions to overall growth in the same period.

Growth in European markets (including the former USSR) averaged 6.2% since 1987, with the average number of passengers travelling each way each week rising from 16,424 in 1987 to 30,002 in 1997. Growth in our North America markets averaged 3.7% since 1987, with the average number of passengers travelling each way each week rising from 10,757 in 1987 to 15,508 in 1997.

Summaries of traffic flows between these regions and Australia over the past 10 years are at Attachment 7.

Traffic flows between Australia and our top 10 bilateral markets are at Attachment 8.

During the most recent months significant downturns have occurred in some Asian markets.

As the Australian market has grown, the policy settings have enabled greater consumer choices of airlines and flexibility for airlines to serve more destinations inside and outside Australia.

In June 1991, just 31 carriers operated to Australia. This number had increased to 57 by October 1997. A list of carriers currently operating to Australia is at Attachment 9.

Major passenger growth has also helped sustain the investment in important airport infrastructure at most major airports around Australia, an outcome which will be further assisted by the current airport leasing program.

Airports are an underestimated part of the fabric of the Australian aviation industry.

Case Study: Sydney Airport

Sydney is Australia's busiest airport, handling in 1996/97, 20.7 million passenger movements, of which 7.2 million, or 32.7%, were international passengers. Sydney is Australia's major gateway and handles almost half of the nation's international passengers.

The Institute of Transport Studies at the University of Sydney, issued a report in March 1996, on the Economic Significance of Sydney International Airport. The study found that at least 500 organisations derive a significant portion of their business from their association with the airport, providing 33,500 full-time jobs and \$3.9 billion in annual expenditure.

The study estimates that the traffic through Sydney International Airport together with the subsequent flow-on to the rest of the economy, supports 66,600 jobs directly or indirectly, approximately 8 per cent of Sydney's total workforce. Similarly, the flow on effects from the expenditure across the airport region is estimated at \$5.3 billion and in the wider Sydney region \$2.4 billion.

Sydney has not been the sole beneficiary of the increased capacity available and number of international airlines operating to Australia. In the six years to 1997, following the introduction of multiple designation, seven additional airlines have commenced operations to Brisbane, bringing the number of airlines operating to that port to twenty four, while the number of frequencies operated and capacity available has doubled.

Over the same six year period four additional carriers have operated services to Perth bringing the number of international carriers to fourteen and the number of services has more than doubled.

As with capacity, there remains a reserve of options to operate to particular ports within Australia that have yet to be taken up by both foreign and Australian carriers designated under Australia's international air services

arrangements. A list of carriers exercising rights or not exercising rights at each Australian airport is at [Attachment 10](#).

The negotiations that have led to this increase in capacity has not just benefited passengers in end to end markets and increased carrier numbers, but they have also increased options for consumers in accessing destinations. Due to the greater number of route rights available to Australian and foreign carriers, consumers have been given greater flexibility in the options available for services over overseas hubs to beyond points.

To illustrate the point, [Attachment 11](#) shows the options exercised by passengers over the three principal off shore hubs – Singapore, Kuala Lumpur and Bangkok in the year to November 1997.

Australian Government recognition of the importance of sixth freedom traffic as a generator of competition with point-to-point carriers on routes west out of Australia has also served to improve access for Australians to markets we cannot access directly. Allowing for growth in sixth freedom traffic has also ensured market development when capacity has not been increased through direct bilateral negotiations. The UK market (see [Attachment 12](#)) is a prime example of the benefits of this approach.

Summary

Australian Government policy and negotiating practice has become much better geared to fully exploiting the flexibility available in the bilateral system, and to maximise the opportunity for Australian and foreign carriers to more easily respond to market changes, and to meet the demands of our tourism and export industries.

Importantly, the aviation policy settings have facilitated significant levels of growth while maintaining very high safety standards and without loss of consumer confidence in the services provided.

Australian aviation and competition policy has also allowed for mergers and alliances between major players with appropriate competition controls in place, the relatively smooth allocation and withdrawal of capacity and the addition of new services and innovations in the marketing of international aviation. All of these measures have helped the industry to adapt to the changing international aviation environment.

Australia's policy approach emphasises the benefits of competition and the flow on benefits for a wide range of stakeholders including inbound tourism and trade, which are major economic drivers, along with the interests of our airport operators.

3. OPTIONS FOR FURTHER LIBERALISATION

3.1. UNILATERAL APPROACHES

The international use of the bilateral system (even under “open skies”) and the interest of all individual countries to maintain exclusive sovereignty over the air space above their territory, imposes a severe discipline on unilateral action on international aviation.

This is not a regulatory environment which supports "go it alone" approaches.

It is difficult to argue an economic case that any party is better off unilaterally disregarding the existence of the bilateral system and offering open access, while allowing itself to remain exposed to denial of access.

This view is based on simple competition policy. The principal generator of consumer benefits, innovation and more efficient allocation of resources in international markets is competition. Competition in a product market where one party has chosen to have no rules limiting the behaviour of the other, while its counterpart can through indifference prevent a competitive response does not appear likely to serve consumer interests.

For example, if Australia was to unilaterally declare that there were no restrictions on any carriers operating to Australia, and terminate all bilateral arrangements, the guarantee of access that those arrangements provided for our carriers in foreign markets may also disappear.

Australian carriers would therefore compete with foreign carriers who have unlimited access to the Australian domestic and international markets, while Australian carriers remained unable to have the same unilateral ability to increase services and respond competitively.

This is not an argument in favour of preserving the existing system. It is a view which suggests that aviation, whilst the bilateral system remains in common use and is supported by international law, is not like any other traded good; and that a simple removal of the walls of protection will not make the nation better off.

Any proposal to change or move away from the bilateral system would need to be backed by a coherent set of pro-competitive international trade rules.

3.2. BILATERAL APPROACHES

There are a number of mechanisms that have been developed and which can continue to be used within the bilateral system to increase competition, and flexibility and reduce inappropriate regulatory mechanisms.

Multiple designation

The most common method of introducing competition in international aviation under the bilateral system is through multiple designation, a provision in air services agreements that allows the parties to the agreement to designate more than one carrier from each side.

Multiple designation is regarded by most of our bilateral partners as a tradeable item, particularly by those who have only one international carrier of their own. Australia has now negotiated multiple designation into 86 % of its air services arrangements, including all of its major partners, and will continue to seek multiple designation with the few countries still outstanding, subject to their willingness to agree.

There has, in the past, been criticism from sections of the aviation industry over the high price, in terms of traffic and route rights and capacity conceded, paid for multiple designation and the capacity required for an additional Australian carrier. Critics also point to the fact that on some routes, the additional capacity rights negotiated were not immediately taken up by new Australian entrants.

However, multiple designation has allowed the entry by new Australian (and foreign) carriers in a significant number of key growth markets. The Department cannot, and will not, determine what is a high growth market, in the manner of some other countries (eg Canada) and limit competition between its carriers to those routes. The threat of entry is a valid means of ensuring that consumers are not exploited on any route, and as such our aim is to have shelf capacity and multiple designation available on all routes.

Capacity ahead of demand

Ensuring that capacity available for international aviation services is well ahead of the demand for those services is another form of liberalisation which naturally follows on from multiple designation. As noted previously, this approach has been a cornerstone of Australia's international aviation policy in recent years.

This strategy ensures that the bilateral system does not restrict the opportunities for new or incumbent carriers to respond quickly to meet market demand. It effectively puts an end to the previous supply driven approach to capacity, and no longer restricts carriers who wish to expand capacity quickly to meet anticipated market growth. It also provides for access, or the threat of access, by additional carriers, which acts as a spur to competition for incumbent carriers.

In Australian bilaterals where capacity and demand have remained close, at least one of three factors tends to be present:

- the conservative approach of our bilateral partners; or

- it is evidence that another major element of access to a particular market has remained unresolved; or
- the market has remained static, either because there is no growth, or because the growth has been met by sixth freedom carriers.

Australia will continue to actively seek capacity ahead of demand in all of its bilateral agreements.

Further Development of Fifth freedom rights and Sixth freedom carriage

The negotiation of fifth freedom rights is usually the most contentious element of any bilateral agreement (diluting the effect of the national ownership and control criteria) as it means that partners have agreed to allow direct competition with third country carriers in their home markets (ie these rights allow Australian carriers to operate from Singapore to other Asian destinations, and Singapore carriers to operate from Australia to New Zealand).

The bulk of traffic rights restrictions under any air services arrangements usually place conditions on fifth freedom carriage.

Access to a broad range of fifth freedom routes under any bilateral agreement is a sign of the maturity of the market, as they further inject competition into markets which would otherwise be the sole domain of third/fourth freedom carriers.

The existence of fifth freedom traffic can be a sign of the age of an agreement, for example many of our bilaterals along the Kangaroo route were negotiated before the advent of the long range aircraft when a large number of intermediate points were required for services to Europe.

More recent agreements, like those with Japan, Korea and Taiwan have very little fifth freedom access because growth has been in direct services after the advent of long range aircraft, and the leverage to obtain intermediate and beyond rights is limited.

Australia actively seeks to develop networks of rights for Australian carriers to operate between points outside Australia, but we are limited by Australia's geographic location, which offers little in the way of fifth freedom markets for foreign carriers other than trans Tasman services or intermediate points for long haul services over South East Asia.

Of Australia's 51 bilateral agreements, 29 provide fifth freedom access to foreign carriers over South East Asia and 18 provide access to foreign carriers on the trans Tasman market. 5 agreements also provide access for foreign carriers to the South Pacific and beyond to the Americas. These

figures do not include opportunities for third and fourth freedom access and sixth freedom carriage.

Access to all of these routes requires the independent consent of a third party.

Another outside stimulus to competition under the bilateral system is the activity of sixth freedom carriers. In Australia's case sixth freedom carriers have been particularly active on routes between Australia and Europe. These include South East Asian carriers like Singapore Airlines, Thai International and MAS, as well as a number of European and Middle Eastern carriers.

For example, Singapore Airlines participates in the Australia-UK market by using rights made available to them under Australia's air services arrangements with Singapore and under Singapore's air services arrangements with the UK.

Australian carriers may have their access to the entire route restricted by the country at the intermediate point, while the sixth freedom carriers based at that point may enjoy better access to the market as a whole than the carriers designated by the countries at either end of the route, by virtue of the combination of its separate arrangements with those countries.

Australia gains from the presence of high levels of sixth freedom carriage by South East Asian and European carriers in particular, largely because of the valuable competition they provide for the carriers designated on the route.

In return, Australia has negotiated additional capacity or traffic rights for Australian carriers as clearly illustrated in the available capacity for Australian and foreign carriers under Australian arrangements with a number of South East Asian countries.

As the intermediate markets have grown as destinations in their own right, sixth freedom carriage has decreased as a proportion of the total traffic carried and the gap between capacity available to sixth freedom carriers and Australian carriers under these arrangements has generally decreased.

Code share, Alliances and other Airline Cooperation arrangements

Code sharing allows one carrier to sell seats on the aircraft of another carrier as if they were its own. Because code shared seats are held out for sale by the carrier as if they were its own capacity, they are accounted for in the capacity provisions of bilateral arrangements.

Code sharing is now a generally accepted practice in international aviation and is permitted under air services arrangements in most aviation markets around the world.

Code sharing offers new and incumbent carriers the opportunity to enter a market or increase traffic and revenue and obtain economies of scale and density by expanding their networks without incurring the major sunk costs associated with operating additional aircraft.

Code sharing also offers the non-operating carrier the chance to have its services advertised at the first and second screens of computer reservation systems (CRS), provided that the service they are code sharing on is the most direct available. This has proved to be a significant marketing advantage.

Code sharing can also be an efficient means of dealing with slot constraints; and of allowing joint operations by two new entrants where – but for sharing the costs – neither could otherwise afford to enter alone.

Code sharing is generally one element of a broader alliance between two or more carriers which may deliver a number of other benefits, including coordinated scheduling, sharing of airport facilities and linking of frequent flier programs. If competition is effective, code sharing benefits to the airlines will be passed on to consumers who may receive benefits such as access to larger networks, better coordination of flights, more frequent services, lower fares, wider choice of carriers and better access to frequent flier rewards.

Code sharing has been criticised on the grounds that it may lead to a lessening of competition, particularly in smaller markets. Code sharing also carries the potential for consumer deception when passengers may purchase a ticket on a code shared flight without being made aware of the identity of the operator. Both of these issues are addressed below.

Code sharing has been permitted by countries around the world as it is one of the mechanisms for enabling a more liberal and flexible outcome from the negotiation of air services agreements. The availability of capacity ahead of demand, as negotiated by countries such as Australia, also enables other carriers to enter routes where the frequency of direct services may have fallen following code sharing arrangements between incumbent carriers.

Australia has arrangements in place with 26 other countries, including many of our major bilateral partners, that permit code sharing in one form or another. While approximately 6% of capacity operated between Australia and its bilateral partners is code shared at the moment, Australia and other countries around the world can expect that there will be pressure to increase that percentage as carriers seek to serve markets more cost effectively, and alliances spread.

Australia also has a number of domestic controls in place to cover the application of code share by both Australian and foreign carriers under Australia's air services arrangements.

The ACCC has the power to investigate code share arrangements operating in Australia for abuse of market power and other aspects of the Trade Practices Act, and has investigated code share practices in the context of several broader alliances.

The ACCC is currently examining the proposed alliance between Singapore Airlines, Ansett International and Air New Zealand, which will use code sharing as part of developing synergies between the alliance members.

The Department is keen to see code-sharing facilitated on efficiency grounds but sees continuing benefits in local employment and in carriage by Australian carriers in their own right. The criteria used by the IASC to determine which Australian carriers are awarded scheduled capacity on international routes state a preference towards carriers who apply to operate their own services, rather than those who apply to operate code shared capacity on the aircraft of another carrier, when there are competing bids for capacity.

More generally, the IASC is required under its Act to have regard to commercial agreements for the joint use of capacity when assessing carrier applications for capacity.

In terms of consumer protection, a condition is placed on the Department's approval of all timetables for code shared international services that all passengers are informed, at the time of ticket reservation, of the carrier who will actually be operating the flight. The IASC also states this as a requirement at the time capacity is allocated to Australian carriers for code sharing.

Bilateral "Open Skies" Agreements

It is open to any two countries to agree, under the present system, to put in place an open market environment under their bilateral agreement.

The label "open skies" agreement in the bilateral context however is misleading. Even in so called "open skies" agreements negotiated by the United States, important restrictions including ownership and control provisions, absolute rights to revoke market access and cabotage remain firmly in place.

Those who claim that at least this type of agreement would represent a "half way" step forward for Australia and other countries choose to ignore the problems inevitably inherent in this approach. This submission does not do so.

If the ultimate objective is open trade and competition, to the benefit of consumers and industry alike, there are a number of concerns over adopting a bilateral "open skies" approach.

Most obvious is that these agreements still restrict access by carriers not designated to markets covered by the agreement. It remains a bilateral agreement, with potentially more efficient or differing quality carriers (niche competition) excluded. Resource allocation efficiency arguments cannot be made in favour of an agreement which allows three or four at best of some

hundreds of airlines a better opportunity to provide services between a certain set of points.

The simplest parallel may be made with other, more traditional trade agreements.

When two countries free up trade between themselves but exclude or limit others from competing with them, it is arguable whether this significantly improves benefits to consumers.

The benefit may also be reduced by the level of access which is realistically available under a bilateral agreement (the classic example being the fact that limits on slots at major airports can make the ability to schedule unlimited numbers of new flights meaningless).

Perhaps most importantly, whether costs of trade diversion exceed opportunities for trade creation depends crucially on the nature of the rules which govern the behaviour of participants – towards each other, towards excluded parties, and towards consumers. “Open skies” agreements replace one set of bilaterally determined trade rules with another. They do not provide an open market. They operate, not under Most Favoured Nation or other standard trade rules, but still as a preference agreement.

Moreover, these arrangements appear to require special consideration under competition law as a result. US “open skies” packages include an exemption from its anti-trust laws. Other submitters to this inquiry, particularly US airlines, are likely to note this – and indeed from our informal discussions with US and UK regulators, it appears to be a quid pro quo for airlines entering into “open skies”.

In the Department’s view, it is essential for the Commission to deal with this issue in considering reform options. The Department can see no reason for removing application of Australia’s competition rules from bilateral agreements, merely because two or three carriers are given an unrestricted right to supply a particular set of markets.

In Australia both major airlines have submitted their major commercial alliance proposals for scrutiny and authorisation under competition policy and trade practices legislation (Qantas/BA’s JSA by the former TPC and currently the Ansett/Singapore Airlines/Air New Zealand alliance by the ACCC).

If the creation of a set of privileged competitors free from the constraints of competition law is an essential part of bilaterally-determined “open skies” agreements, the incentives to perform efficiently and in the consumer interest in these markets is compromised. This is another factor which may severely limit the alleged benefits of bilateral “open skies” arrangements.

A further aspect of competition policy is the effect on consumers. The principal – but not the complete – benefit claimed for bilateral “open skies” arrangements is that they allow airlines to add or subtract capacity on a route

or routes at will. The threat of immediate entry or change to capacity in a market is likely either to ensure that competitors face continuing uncertainty and thus limited ability to extract supernormal profits, other than for a short period; or to encourage formal or informal arrangements to manage a market so as to share benefits.

The degree to which consumers may be disadvantaged under the latter course would vary, but the absence of competition law preventing the worst abuses would seriously concern the Department.

The benefits of open entry can also be created between two willing nations, simply by negotiating a substantial level of capacity well in advance of current demand, without giving up competition law provisions.

This is fully consistent with the Australian Government's commitment to a more liberal aviation environment; which uses the negotiation of capacity ahead of demand as a basic policy construct for our major tourist and other export markets. So the existing approach can deliver the same benefits in terms of ease of market access as would the "open skies" approach but without the exemptions from competition law which appear to have become the norm in so-called "open skies" major bilateral agreements to date.

We must also consider the position of our major partners, in examining whether there are good prospects for entering into such agreements. Aside from the UK, US and New Zealand, the overwhelming majority of our bilateral partners are not prepared to sign "open skies" agreements with Australia, and particularly not on a basis that would provide any greater advantages to us than we currently enjoy.

Currently, the agreements in place with New Zealand and the US are largely unrestricted and the UK agreement is as unrestricted as it can be made, in the current policy context. It should be noted that the trans-Tasman is Australia's largest single travel market and that both the US and UK remain major travel markets for Australia, notwithstanding the strong growth in Asia tourism.

A benign view of "open skies" bilateral arrangements would characterise them as a means of working within the bilateral system to remove some or all of its protectionist features. A series of such bilaterals, the suggestion is made, would make up the same thing as an open market.

However, this is only the case for nations capable, as the United States is, of marrying a series of such bilaterals together. For their dominant carriers, it certainly could replicate most of the features of an open market. For countries who may be part of one open bilateral but without the ability to put together the same package with others, the scenario may be far less benign.

A more desirable policy option, drawing on trade policy as a guide, is the concept of a regional aviation grouping, with joint removal of restrictions

inherent in the bilaterals of each participant, to the benefit of all participants. While this would still run the risk of excluding a more efficient carrier from outside the grouping, it would enhance choice and provide an equality or balance in access and regulation-induced advantage between all participants.

In order to provide benefits which prospectively might exceed those under current policy, a grouping should be open to others to join, in principle. But this otherwise unexceptional statement (in a trade context) exposes an important aspect of the service being traded. If a carrier which proposes to join a regional arrangement is State-assisted, as many international airlines are, the capacity for them to seriously jeopardise the competition within a regional grouping is potentially large.

Commitments not to provide subsidies or other assistance are unconvincing. "Bail-outs" (not always transparent) of national carriers continue today in Europe and Asia, despite "one-time-last-time" bail-out packages and the prestige of the national carrier for smaller nations (even privately owned ones) is no less than for a major aviation country.

Reducing Tariff Regulation

In aviation terms, a tariff is the price to be charged for the carriage of passengers baggage or cargo (excluding mail) and the conditions governing its availability and use. Strict adherence to a restrictive tariff regime can be an obstacle to the rapid marketing of international tariffs, made possible through computer reservation systems and increasingly sophisticated yield management systems and at worst a significant state sponsored restriction on competition.

While many of our bilateral partners still insist on the right to unilaterally reject a tariff (through double approval or country of origin clauses), the Department does not currently regulate tariffs beyond providing approvals when requested for ensuring that particular tariffs are able to enter a market.

Australia continues to pursue more liberal, double disapproval tariff regimes as a negotiating priority in its bilateral talks.

3.3 MULTILATERAL AND REGIONAL APPROACHES

Regional initiatives

While proposals for regional agreements are generally geographically based, there is no reason why countries widely separated, but with similar aims, cannot enter into agreements where there is a common interest.

These arrangements are, by their nature, more liberal than the bilateral arrangements they replace, as otherwise they will disadvantage the most liberal members. More conservative states are therefore likely to join a

regional agreement or a common interest agreement either because increased access to second and third country markets is sufficiently valuable, or because the protection that the bilateral system offers has been rendered irrelevant by an external threat.

In the South East Asian region, Indonesia, the Philippines, Brunei and Malaysia (BIMP) liberalised air links between their less well developed provinces to stimulate trade and development in the region (East Asian Growth Area (EAGA)).

BIMP - EAGA has not been a major stimulus for the market in this region because it is not connected under liberal arrangements to any point which is a significant generator of traffic, emphasising the fact that markets, rather than agreements, are the prime stimulants of growth in air services.

Where regional agreements have been based on a common interest, they have generally been on a small scale and between countries that are at much the same stage of development in their individual markets. For example, the "Andean Pact" countries, Bolivia, Ecuador, Colombia, Peru and Venezuela, established an "open skies" regime in May 1991.

Genuine, large scale liberalisation, where Governments have been prepared to surrender the complete and exclusive sovereignty over their air space in a regional context, has occurred only in exceptional circumstances.

The main large scale regional arrangement for liberalising international aviation that has made substantial progress is the European Union (EU). The liberalisation of arrangements for international aviation in this case was driven by factors external to the bilateral relationships they replaced, namely, a supra national, and activist, court, the European Court of Justice, supported by the strong competition policy provisions of the Treaty of Rome which, the court ruled, applied directly to aviation within the Union and which took precedence over existing bilateral air services arrangements.

The EU aviation arrangements have not been without their difficulties including the supposedly once only "assistance" to some of the less commercial carriers in the Union being extended. Individual EU members also still negotiate bilaterals with countries outside the EU.

However, regional agreements, or agreements of common interest, are likely to have net benefits to countries like Australia if they offer access to a substantial market under uniform access conditions; and, as noted earlier, the State-subsidised carrier issue is addressed.

This attraction is greater for countries that have little leverage to obtain traffic rights through the bilateral system and which rely on inbound traffic or who view their future in international aviation as "way ports" for traffic consolidation.

Regional agreements are, however, viewed with suspicion by many countries, both liberal and conservative. This may be because of concern over a prospective member with a strong, aggressive and highly competitive aviation sector or conversely being restricted in their competitiveness by individual members subsidies or other assistance measures. These agreements can also raise the spectre of cabotage being allowed, which most countries are unwilling to contemplate.

Entering into a liberal regional agreement may also impact on relations with countries outside the agreement eg by the appearance or more likely the reality of restricting non-members' access to fifth and sixth freedom traffic. These concerns are not insurmountable but they explain why such initiatives are rare. Australia has used the mechanism of regional fora like APEC to pursue further aviation liberalisation and will continue to do so.

CASE STUDY: AUSTRALIA'S PROPOSAL FOR LIBERALISING AIRFREIGHT SERVICES WITHIN APEC.

In the last two years in Australia, there has been growing recognition that the way in which we have approached the negotiation of traditional bilateral air services agreements in the past may create an impediment to the development of dedicated freighter services.

To meet the concerns of Australian exporters and importers, Australian aviation policy now seeks to negotiate separate air freight capacity in bilateral agreements. This allows operators to make commercial decisions about providing dedicated freighters unencumbered by passenger capacity considerations.

By 2010, APEC is expected to be the largest single market place and producer in history, and the first to rely heavily on air freight.

It is important to ensure that, in addition to the infrastructure investment being made in the region in anticipation of continued rapid growth in demand, APEC economies cooperate in addressing constraints that may arise from the bilateral system to affect the provision of air freight services and the ability of air freight to play its part in increasing regional trade.

Australia approached the Air Services Group, a sub-committee of the APEC Transport Working Group, in 1996 with a proposal to develop a series of APEC standard freight clauses for inclusion in regional bilateral agreements, or where APEC members prefer, plurilateral arrangements for freight, based on standard clauses agreed to by the Air Services Group.

Such an arrangement could have been used to construct an APEC mechanism to remove constraints on air freight, and apply a common regulatory environment.

Alternatively, APEC members would be free to take up these standard clauses in their bilateral arrangements, supporting the common regulatory environment, but removing other restrictions (eg capacity, routes) as they believe it appropriate.

So far, while there is an underlying commitment amongst APEC members to reduce impediments to trade, some member economies have adopted a conservative approach to Australia's suggestions on air freight despite this appearing to be the least contentious of aviation rights in the region.

International Civil Aviation Organisation (ICAO) and Safety Issues

Since its foundation in 1946, ICAO has been the principal multilateral regulator of international air transport. Article 44 of the Convention on International Civil Aviation (the Chicago Convention) charges ICAO with fostering the planning and development of international air transport so as to :

- (a) Insure the safe and orderly growth of international civil aviation throughout the world
- (b) Encourage the arts of aircraft design and operation for peaceful purposes;
- (c) Encourage the development of airways, airports, and air navigation facilities for international civil aviation;
- (d) Meet the needs of the peoples of the world for safe, regular, efficient and economical air transport;
- (e) Prevent economic waste caused by unreasonable competition;
- (f) Insure that the rights of contracting States are fully respected and that every contracting State has a fair opportunity to operate International airlines;
- (g) Avoid discrimination between contracting States;
- (h) Promote safety of flight in international air navigation; and
- (i) Promote generally the development of all aspects of international civil aviation.

Although the Chicago Conference gave ICAO a clear mandate to participate in the economic regulation of international air transport, ICAO has been

generally content for most of its history to develop standards and recommended practices for aviation safety and security, at which it has been remarkably successful.

ICAO has not generally focussed on the question of the economic regulation of air transport, largely because the bilateral system was the preferred method of its members, and also because, should its members ever require a multilateral regime for the economic regulation of international aviation, it was the only obvious candidate to provide it.

Serious competition for this role did not emerge until the Uruguay round of General Agreement on Trade in Services (GATS) in the late 1980s.

An ICAO Assembly resolution soon thereafter reaffirmed ICAO as the multilateral body in the United Nations system competent to deal with international air transport, and urged the Group on Negotiations in Services to take full account of ICAO's constitutional responsibilities.

ICAO held a world wide air transport conference in December 1994 to discuss international air transport regulation, which was attended by more than 130 of its members. The objective of the conference was to "create an opportunity for states to develop a coordinated approach to the regulatory regime made necessary by the changing nature of both the international aviation industry and the regulation of services under the GATS".

While the Conference did canvass strongly liberal possibilities for the economic regulation of international aviation, it gave a resounding vote of support for the bilateral system.

Any plans for ICAO as a serious alternative to the GATS have not been revived. ICAO remains, as it was before the Conference, primarily a regulator of safety and security, although its formal responsibility in this area remains.

The opportunity for ICAO to play an effective role in managing the transition to a more competitive economic framework may be receding. Its safety and air navigation purposes would remain paramount, but the direction of international economic reform in tradeable goods and services is swinging heavily in favour of forums where the totality of trade benefits to a nation from reform, rather than sectoral benefits, can be taken into account.

The international safety system based on obligations arising from the Chicago Convention and its Annexes has been maintained through oversight from national safety regulatory authorities and the cooperation of international carriers.

At its heart, the system depends on the actions of each country on whose register an aircraft is held to certify and oversight its safe maintenance.

The 'country of convenience' problem endemic in shipping has been avoided to date, as ownership and control requirements make it clear who the carrier is responsible to for safety; and with a government-managed safety consultations mechanism in the bilateral agreements. Ultimately, there is an ability to deny access, should there be doubts about safety.

Any reform of international aviation economic regulation must complement ICAO's safety oversight and recognise that breaches of safety standards remains a ground for withdrawing access. This can clearly be better achieved through a multilateral approach.

The General Agreement on Trade in Services (GATS)

The GATS offers a non regional and transparent alternative to ICAO for the deregulation of international air transport, based on Most Favoured Nation treatment and progressive liberalisation through successive rounds of multilateral negotiation.

Australia's current bilateral agreements contain an arrangement that both parties will amend the air services arrangements to conform with any matter covered by any multilateral agreement which both parties have entered into.

The current Annex to the GATS on air transport makes it clear that the GATS does not apply to measures affecting traffic rights, and that dispute settlement can only be invoked where commitments have been made and after the exhaustion of all other bilateral and multilateral procedures. However, three aviation related areas are covered by the GATS. These are: aircraft repair and maintenance; selling and marketing of air transport; and computer reservation systems.

The broader agenda of including traffic rights in the GATS during negotiations leading up to the completion of the Uruguay Round in 1994 was halted by the opposition of the EU, the Japanese and the United States. That is, the world's major aviation powers, the EU which has pursued an internal "open skies" strategy; the US which has pursued an international "open skies" strategy negotiated bilaterally; and Japan, a conservative aviation trader; all saw the prospect of progressive *universal* liberalisation as inimical to their interests. Australia's position, which supported the inclusion in the GATS of ancillary aviation services and non scheduled services was only achieved in part.

The important long term implication of the GATS is its potential to expand its coverage beyond the three types of services currently covered in the annex.

The Department acknowledges that the bilateral system of negotiating rights to access sovereign air space has proved to be flexible, and has successfully under pinned an industry that has seen unprecedented change over the past 50 years. However it is apparent from the above arguments that the rules under which the system operates can act to constrain efficient service

providers; and that merely removing constraints on access without addressing the rules will of themselves do little to promote competition or improve consumer welfare.

The GATS offers the prospect of replacing the present rules amongst a large group of countries. The size of the potential group and the nature of the changes to the rules of trade maximise the potential for benefits to be shared amongst nations.

If a one-off period of grace (of some years) could be agreed upon before its full application to all members – as we understand has occurred in some other areas of services trade now covered by the GATS - and an accommodation is reached with ICAO, the prospects are enhanced further.

4. INTERNATIONAL AIR SERVICES COMMISSION AND COMPETITION POLICY ISSUES

4.1 The Role of the IASC

The key function of the IASC is to allocate capacity negotiated under Australian bilateral air services agreements between Australian carriers based on the Commission's assessment of maximising the benefits to be gained from the operation of the capacity.

A policy statement by the Minister of Transport and Regional Development sets out the criteria to be applied by the Commission in assessing the benefit to the public in allocating capacity to Australian carriers. The criteria for assessing the benefit to the public includes the benefits accruing from or to tourism, consumers, trade and competition, together with the impact on the Australian aviation industry.

The IASC's independence from the organisation which negotiates air services capacity (the Department of Transport and Regional Development) is unique to Australia. The independence of the Commission clearly establishes the respective roles of the negotiator of the capacity, as distinct from the allocator, ruling out conflicts of interest and is an approach that has worked effectively.

The IASC's role has been made easier by successful bilateral negotiations ensuring that there is more than sufficient capacity for more than one carrier in most of our major markets, hence reducing the incidence of competing bids by Australian carriers for scarce capacity.

The IASC Act provides an initial advantage to assist new Australian carriers to enter international markets, in recognition of the major start up costs in entering international aviation, the advantages the incumbent carrier has, and the importance of new Australian carriers operating overseas.

The IASC not only allocates capacity to Australia's international carriers to foster competition between Australian carriers but is required to have regard to the need to develop strong Australian carriers capable of competing effectively with one another and the airlines of foreign countries.

In making allocations of available capacity the IASC is required to make a judgement on the capability of a carrier to obtain the approvals necessary to operate the services allocated to it. Inherent in this is the IASC's assessment of a carrier's capability both in an organisational and a financial sense to carry out the services it proposes.

Although ultimately a matter for the IASC, the Department sees this as an essential pre-requisite. Concerns have arisen in the past with the allocation of capacity to parties which then do not commence operations.

4.2 IASC Future Issues

After five years it is appropriate to examine the IASC's operations and the Department would make the following comments.

The IASC process can be made more streamlined. Where an application to the IASC is uncontested or where there are no self evident competitive entry concerns, consideration should be given to shortened approval processes. Applicant airlines would then be in a position to respond more rapidly to changing market and commercial signals.

With the advent of code sharing and the development of aviation alliances, the IASC now examines the code share arrangements between airlines and routinely applies to its determinations of capacity, conditions in respect of pricing and revenue pooling to minimise the possible diminution of competition between carriers, while allowing an airline to capture the benefits arising from code shared operations.

Again, in uncontested cases and where capacity is readily available, there is a case for considering whether this is necessary.

The Department will consider any other issues raised about the IASC's operations following the completion of the Industry Commission's report.

4.3 ACCC Competition Policy Issues

In recent years, international airline alliances have become an important part of airline operations - aimed at developing networks of operations that may be accessed by an airline without that carrier operating all sectors of a route in its own right.

Alliances between international airlines however have the potential to be contrary to Australia's competition policy regime. Accordingly proposed major alliances involving Australian carriers have sought the approval of the ACCC where such operations may reduce competition between airlines on routes.

The JSA between Qantas and BA and the proposed alliance between Ansett International, Ansett, Air New Zealand and Singapore Airlines have been, or are being, scrutinised by the ACCC or its predecessor.

In considering the likely effects of joint operations on the level of competition on a particular route there may be a conflict of jurisdiction between the IASC and the ACCC. A recent MOU between these two organisations is a positive step towards better cooperation where such contention arises and in seeking to avoid duplication of effort where responsibilities might overlap.

The ACCC considers the overall benefit of an alliance for Australian travellers. This is likely to assess the effects of code shared operations over a number of routes. Approval of an alliance may be conditional on some restrictions being met on specific routes.

Where approval has been granted by the ACCC and the relevant conditions adhered to, the Minister's policy statement now indicates that it is not the role of the IASC to make a different judgement on competition issues than that made by the ACCC. In circumstances where the Commission has a concern, the decision should be made subject to any views expressed by the ACCC.

5. ACCESS TO AIRPORT INFRASTRUCTURE

5.1 Australian Airports

By international standards, access to Australian airports is largely unconstrained, with only Sydney air traffic, reaching the point where formal slot allocation systems have become necessary. Australia also has a comparatively high number of international gateways.

The long term lease hold sale of formerly government owned airports, which commenced in 1997 with the leasing of Melbourne, Brisbane and Perth airports, will also assist in ensuring adequate infrastructure is available to meet future demands. The second tranche of airports to be leased is scheduled to be completed by the end of June 1998.

The Commonwealth Government is currently developing a slot control system at KSA on a co-operative basis with industry. *The Sydney Airport Demand Management Act 1997* supporting this process has been enacted by the Federal Parliament. It is expected that the slot system will be implemented later this month.

Other current access mechanisms in place for allocating access to the main national airports in Australia involve :

- a Controlled Departure Time Program ('CDTP') for regional and interstate services which takes into account the limitations to runway usage due to weather, and
- terminal access allocation for international services, which is a function of international scheduling arrangements.

At Sydney's Kingsford Smith Airport (KSA) additional access measures in the form of increased landing fees during peak and shoulder periods are currently in place.

5.2 Overseas Airports

At a number of overseas airports access to infrastructure, due to physical and environmental constraints, is restricted. These restrictions can clearly impact on those rights negotiated under a bilateral agreement, as they may deny carrier access to key overseas destinations and force carriers to smaller, less commercially viable gateways or to operate a reduced number of frequencies.

Regulation of airport “slots” is the concern of each country and does not come under the control of bilateral or multilateral international conventions, although it may be a factor in framing strategies for bilateral negotiations.

For example, the US has tried to argue that its “open skies” agreement with the Netherlands entitles its carriers to unlimited access to Schiphol Airport, but it is generally agreed that access to infrastructure is separate to arrangements contained within bilateral agreements.

Physical constraints on infrastructure availability are present around the world including in Europe, the United States and Japan. The impact of these constraints is to heighten the value of slots, as shown in Japan at the two main airports at Tokyo (Narita) and Osaka (Kansai), where slot access is critical given the market dominance of these locations for Japanese traffic.

The value of slots is no less important in the UK where possible regulatory approval for a possible BA and American Airlines alliance appears likely to be contingent on the alliance partners handing over potentially hundreds of slots at Heathrow, the key UK airport. (Britain's Office of Fair Trading has recommended that BA and American Airlines should surrender 168 weekly slots while the EU issued a draft opinion in October 1997 calling for 353 slots to be surrendered).

Environmental considerations also impact on airport operations.

Restrictions on night cargo flights at Schiphol airport were announced in the airport's operational plan for 1998 (presented in September 1997, before air services negotiations with Australia). From 1 April 1998 an independent official will allocate take-offs and landings according to available space.

The operational plan envisages reducing the number of homes affected by serious noise nuisance and reducing the degree of noise nuisance by decreasing the number of night flights, restricting aircraft types and reviewing flight paths. Two of the four runways (Aalsmeer runway and Buitenveld runway) will be closed from 11pm to 6am.

In summary, airport infrastructure and access issues will continue to be an important part of any future consideration of liberalisation of international aviation to ensure that locally imposed slot systems do not disadvantage local or overseas based carriers. At present these issues are taken into account in bilateral negotiations but may well increasingly be considered in relation to “fair and equal opportunity” arrangements in multilateral forums.

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	and table) Australia-UK market share by airline	
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Attachment 1

OWNERSHIP AND CONTROL PROVISIONS

DOMESTIC AVIATION

- Foreign airlines flying to Australia can generally expect approval to acquire up to 25 per cent of the equity in a domestic carrier individually or up to 40 per cent in aggregate provided the proposal is not contrary to the national interest.
 - In special circumstances the Government is prepared to consider foreign equity proposals in excess of these guidelines provided the proposal is not contrary to the national interest.
- All other foreign investors (including those which do not operate an airline service to Australia) may acquire up to 100 per cent of a domestic carrier or establish a new aviation business unless judged contrary to the national interest.

QANTAS

Ownership provisions require that:

- no more than 49 per cent in aggregate of equity be held by **foreign persons**
 - with a limit of 35 per cent of equity to be held by **foreign airlines in aggregate**; and
 - with a limit of 25 per cent of equity to be held by **an individual foreign person**.

Control provisions require that:

- the head office of Qantas always be located in Australia;
- the majority of Qantas' operational facilities to be located in Australia;
- at all times, at least two-thirds of the directors of Qantas are to be Australian citizens;
- at a meeting of the board of directors of Qantas, the director presiding at the meeting (however described) must be an Australian citizen; and
- Qantas be prohibited from taking any action to become incorporated outside Australia.

OTHER AUSTRALIAN INTERNATIONAL CARRIERS

Australian carriers seeking to be designated to operate international services are required to demonstrate compliance with bilateral requirements that they are substantially owned and effectively controlled by Australian nationals. The Government requires Australian international carriers to meet a number of national interest criteria.

Control criteria require that:

- at least two-thirds of the Board members are Australian citizens;
- the Chairperson of the Board is an Australian citizen;
- the airline's head office is in Australia; and
- the airline's operational base is in Australia.

Ownership provisions require that:

- no more than 35 per cent in aggregate of equity be held by **foreign airlines**
 - with a limit of 25 per cent of equity to be held by **an individual foreign airline**.

MULTILATERAL AGREEMENTS OF DIRECT SIGNIFICANCE TO INTERNATIONAL AIR TRANSPORT

1. The Convention on International Civil Aviation (the Chicago Convention)

Australia is a signatory to the Chicago Convention, which was drafted at the Chicago Conference from 1 November to 7 December 1944 as one of the four major post war treaties, and is the legal foundation for the regulation of world civil aviation.

The Chicago Convention contains a number of elements that bear on the economic regulation of international aviation. These include:

- recognition of international customary law on state sovereignty over airspace
- a regime for approving non scheduled flights, scheduled flights and cabotage
- the limits of national jurisdiction on aircraft and the application of the rules of the air over the high seas
- national treatment for airport and similar charges
- a regime for the nationality and registration of aircraft, and standardised documentation for aircraft engaged in international air transport;
- a regime for the universal recognition of certificates of airworthiness and certificates of competency and licences issued or rendered valid by a Contracting State and
- a regime for facilitating navigation and passenger, crew and cargo processing.

The Chicago Convention also establishes the International Civil Aviation Organisation (ICAO).

The ICAO Council has also developed and adopted 18 technical Annexes to the Convention, dealing with such varied fields as aeronautical communications, airworthiness, meteorology, operations, environmental protection and security. The Standards and Recommended Practices (SARPs) are applied universally. States are required under the Convention to register a difference with the Council when they depart from an international

standard promulgated by ICAO. The result has been the development of a high degree of technical uniformity amongst the 185 ICAO member states.

1. International Air Services Transit Agreement (IASTA)

IASTA was drafted at the same conference as the Chicago Convention and is also known as the “Two Freedoms Agreement”. IASTA provides for the multilateral exchange of rights of overflight and non traffic stop for scheduled carriers amongst its contracting states.

2. The Warsaw system

The Warsaw system is a group of air law documents governing air carrier liability with regard to passengers and consignees, based on the Convention for the Unification of Certain Rules relating to International Carriage by Air (the Warsaw Convention), signed in Warsaw on 12 October 1929.

Australia is a party to:

The Warsaw Convention

- The Protocol to amend Convention for the Unification of Certain Rules relating to International Carriage by Air (the Hague Protocol) 1955 which substantially redrafted, modernised and simplified the rules relating to the documents of carriage as well as doubling the limit of carrier liability under the Warsaw Convention.
- The Convention, Supplementary to the Warsaw Convention, for the Unification of Certain Rules Relating to International Carriage in the Air Performed by a Person other than the Contracting Carrier (the Guadalajara Convention) 1961 which extended the Warsaw Convention to the carrier actually performing the transport by air when a passenger or shipper contracts with a charterer or freight forwarder.
- Additional Protocol No 4 to amend the Convention for the Unification of Certain Rules relating to International Carriage by Air as amended by the Hague Protocol which is not yet in force and would further amend the Warsaw Convention as amended at the Hague 1955 in respect of postal items and cargo, by simplifying cargo documentation, introducing strict liability for cargo and replacing the Warsaw/Hague unit of monetary value, the Poincarre Gold franc, by Special Drawing Rights (SDRs) an international unit of monetary value created by the International Monetary Fund to supplement the use of gold and hard currency in settling international payment imbalances, without increasing the actual limits of liability specified by the Hague Protocol.

Australian carriers are also parties to the so called “Montreal Agreement” of 1966 (which is not an international agreement but only an arrangement regarding the liability among air carriers operating passenger transport to,

from, or with an agreed stopping place in the United States of America), which was adopted by the then Civil Aeronautics Board in 1966 and followed the withdrawal of the denunciation of the Warsaw Convention by the USA which was to take effect that year.

By this agreement, the parties have de facto amended the Warsaw Convention, as amended at the Hague, by providing for a limit of liability for each passenger in the case of death or bodily injury of \$US75 000 inclusive of legal fees and costs and \$US58 000 exclusive of legal fees and costs. Australian domestic law provides for significantly higher liability limits than those provided for under the Warsaw system.

1. Aviation Security and other multilateral instruments

Australia is also party to:

- The Convention on the International Recognition of Rights in Aircraft (the Geneva Convention) 1948, which is in force and recognised various rights in aircraft including property, acquisition and possession;
- The Convention on Damage Caused by Foreign Aircraft to Third Parties on the Surface (Rome Convention) 1952, which is in force and entitles any person who suffers damage on the surface caused by an aircraft in flight or by any person or thing falling from the aircraft to claim compensation;
- The Convention on Offences and Certain other Acts Committed on Board Aircraft (Tokyo Convention) 1963 which is in force and establishes jurisdiction of the state of registration of the aircraft over offences and acts that do or may endanger the safety of aircraft in flight or of persons or property therein;
- The Convention for the Suppression of Unlawful Seizure of Aircraft (The Hague Convention) 1970 which is in force and originated the concept of universal jurisdiction over unlawful acts of seizure or exercise of control of aircraft in flight (hijacking) and obliges Contracting States to institute proceedings against such acts;
- The Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (the Montreal Convention) 1971 which is in force and expands the concept of unlawful acts to offences against aircraft in service, air navigation facilities and the safety of civil aviation in general; and
- The Protocol for the Suppression of Unlawful Acts of Violence at Airports Servicing International Civil Aviation, Supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (Montreal Protocol) 1988 which is in force and aimed at suppressing acts

of violence at international airports that endanger or are likely to endanger the safety of persons or the safety of such airports.

Attachment 4**AUSTRALIAN CAPACITY AHEAD OF DEMAND**

The attached graph illustrates the increasing gap between passengers carried by international carriers and capacity which is available for use under the Australian bilateral agreements.

AUSTRALIAN LEGISLATION RELATING TO NON-SCHEDULED (INCLUDING CHARTER) FLIGHTS

Air Navigation Act 1920

14 Non-scheduled flights by aircraft possessing nationality of a Contracting State

An aircraft that possesses the nationality of a Contracting State may, subject to observance of the terms of the Chicago Convention and the provisions of this Act, the regulations, the Civil Aviation Act 1988 and the regulations made under that Act, fly in transit non-stop across Australian territory , or land in Australian territory for non-traffic purposes, in the course of a non-scheduled flight without the necessity of obtaining prior permission.

15 Definitions

In sections 15A to 15F:

"charterer" , in relation to a proposed non-scheduled flight of an aircraft , or a proposed program of non-scheduled flights of one or more aircraft , means the person who makes the arrangements for the carriage of passengers, cargo or mail on the aircraft or any of the aircraft .

"charter operator" , in relation to a proposed non-scheduled flight of an aircraft , or a proposed program of non-scheduled flights of one or more aircraft , means:

- (a) the owner of the aircraft or each of the aircraft ; or
- (b) the operator of the aircraft or each of the aircraft .

"permission" means a permission under section 15D.

"suspend" , in relation to a permission, means suspend the operation of the permission, either for a stated period or without limitation as to time.

"vary" , in relation to a permission, includes alter or remove a condition to which the permission is subject or make the permission subject to a new condition.

15A Aircraft on non-scheduled flights not to take on or discharge

passengers, cargo or mail without permission

- (1) An aircraft must not, in Australian territory , before beginning a non-scheduled flight or at an intermediate stopping place in the course of such a flight, take on passengers, cargo or mail for carriage for reward unless a permission for the carriage of the passengers, cargo or mail is in force and the carriage is in accordance with the permission.
- (2) An aircraft must not, in Australian territory , at an intermediate stopping place in the course of a non-scheduled flight or at the end of such a flight, discharge passengers, cargo or mail carried for reward unless a permission for the carriage of the passengers, cargo or mail was in force and the carriage was in accordance with the permission.
- (3) The Secretary may, by writing, determine that a permission is not required in relation to a category of commercial non-scheduled flights.
- (4) In deciding whether to make a determination under subsection (3), the Secretary is to have regard to the following matters (except to the extent, if any, to which the matters concerned relate to the safety of air navigation):
 - (a) the public interest, including but not limited to:
 - (i) the need of people to travel on, or to send cargo and mail by, aircraft ; and
 - (ii) the promotion of trade and tourism to and from Australia; and
 - (iii) if the application relates to a program of flights to or from Australia-whether there is to be a wide range of places in Australia that will be served under the program; and
 - (iv) if foreign interests hold substantial ownership and effective control of a charterer or a charter operator -employment and investment in, and general development of, the Australian Aviation industry; and
 - (v) aviation security ; and
 - (vi) Australia's international relations;

- (b) the availability of capacity (within the meaning of the International Air Services Commission Act 1992) on scheduled international air services, and any relevant determination made by the International Air Services Commission in respect of the allocation of capacity on those services;
 - (c) any relevant advice on matters referred to in paragraph (a) that is provided to the Minister by that Commission under paragraph 6(2)(c) of that Act; and
 - (d) any other matter that the Secretary thinks relevant.
- (5) A permission is not required for the taking on or discharging of passengers, cargo or mail in relation to a flight of an aircraft if the flight is included in a category of flights in relation to which a determination under subsection (3) is in force.
- (6) If subsection (1) or (2) is intentionally or recklessly contravened in respect of an aircraft, the operator of the aircraft and the pilot in command of the aircraft, unless the operator or pilot, as the case may be, has a reasonable excuse for the contravention, are each guilty of an offence punishable on conviction by imprisonment for a period of not more than 2 years.

Note: Subsection 4B(2) of the Crimes Act 1914 allows a court to impose in respect of an offence an appropriate fine instead of, or in addition to, a term of imprisonment. If a body corporate is convicted of an offence, subsection 4B(3) of that Act allows a court to impose a fine that is not greater than 5 times the maximum fine that could be imposed by the court on an individual convicted of the same offence.

- (7) If-
- (a) any passengers are, or any cargo or mail is:-
 - (i) taken on to an aircraft in Australian territory before beginning a non-scheduled flight or at an intermediate stopping place in the course of such a flight; or
 - (ii) discharged from an aircraft in Australian territory at an intermediate stopping place in the course of a non-scheduled flight or at the end of such a flight ; and

- (b) a permission was not required for the taking on or discharging of the passengers, cargo or mail because of the operation of subsection (5);

the operator of the aircraft must, within 14 days after the end of the flight, give a written notice to the Secretary setting out the prescribed particulars in relation to the flight and the passengers, cargo or mail.

Penalty: 30 penalty units.

Note: If a body corporate is convicted of an offence, subsection 4B(3) of the Crimes Act 1914 allows a court to impose a fine that is not greater than 5 times the maximum fine that could be imposed by the court on an individual convicted of the same offence.

- (8) A determination under subsection (3) is a disallowable instrument for the purposes of section 46A of the Acts Interpretation Act 1901.

15B Applications for permission to operate non- scheduled flights

- (1) A charter operator may apply to the Secretary for permission for passengers, cargo or mail to be carried on one or more aircraft on a non-scheduled flight or on a program of non-scheduled flights.

- (2) The application must:

- (a) be in writing; and
- (b) if the Secretary directs, be in a form approved by the Secretary ; and
- (c) contain the information referred to in section 15C; and
- (d) be lodged with the Secretary :
 - (i) not less than 21 days before the day on which the flight, or the first of the flights, is to begin; or
 - (ii) within any lesser period allowed by the Secretary .

15C Information to be contained in application

- (1) The information to be contained in an application includes the following:
 - (a) the name and address of the charterer of the aircraft ,

and the nationality of the interests holding substantial ownership and effective control of the charterer;

- (b) the name and address of the charter operator , and the nationality of the interests holding substantial ownership and effective control of the charter operator ;
- (c) in respect of the aircraft , or each aircraft , that is to engage in the flight or any of the flights-the type of aircraft , its capacity and whether it is leased or owned by its operator ;
- (d) whether the aircraft , or each aircraft , that is to engage in the flight or any of the flights is to carry passengers, cargo or mail;
- (e) if the aircraft or any of the aircraft are to carry cargo-the type of cargo;
- (f) if the application relates to a program of flights:
 - (i) the duration of the program and the frequency of the proposed flights; and
 - (ii) if the aircraft are to carry passengers- whether the program is of a seasonal nature, consists of flights related to special events or is to find out whether there would be a market for scheduled international air services;
- (g) the following particulars of the flight or flights-
 - (i) the place or places where the flight or flights are to begin;
 - (ii) the place or places where the flight or flights are to end;
 - (iii) any intermediate stopping places, including which of those stopping places are places at which passengers, cargo or mail may be taken on or discharged;
 - (iv) the proposed dates of departure from, and arrival at, the places mentioned in the preceding subparagraphs;
- (h) the proposed tariff structure for the flight or flights.

- (2) If the aircraft or any of the aircraft are to carry passengers, the application must, if the Secretary so requests, contain evidence, satisfactory to the Secretary, that holders of tickets for the flight or any of the flights will be indemnified for any financial loss that may be caused by the failure of the charter operator :-
 - (a) to fulfil its obligations; or
 - (b) if the application relates to a program of flights-to complete the program.
- (3) If further information is necessary to enable the Secretary to determine an application:-
 - (a) the Secretary may, by written notice to the applicant, require the applicant to provide the information; and
 - (b) the Secretary is not bound to consider the application further, or to determine it, until he or she receives the information.

15D Determination of application for permission

- (1) The Secretary may grant or refuse permission for passengers, cargo or mail to be carried on the flight or flights to which the application relates and must, as soon as practicable, give written notice of his or her decision to the applicant.
- (2) If the Secretary grants permission, the permission:
 - (a) is to be in writing; and
 - (b) has effect for the period stated in the permission; and
 - (c) may be subject to any conditions stated in the permission that the Secretary thinks appropriate.
- (3) In determining an application or deciding whether a permission is to be subject to conditions, the Secretary is to have regard to the following matters (except to the extent, if any, to which the matters concerned relate to the safety of air navigation):
 - (a) the public interest, including but not limited to-
 - (i) the need of people to travel on, or to send cargo and mail by, aircraft ; and

- (ii) the promotion of trade and tourism to and from Australia; and
- (iii) if the application relates to a program of flights to or from Australia-whether there is to be a wide range of places in Australia that will be served under the program; and
- (iv) if foreign interests hold substantial ownership and effective control of the charterer or the charter operator -employment and investment in, and general development of, the Australian Aviation industry; and
- (v) aviation security ; and
- (vi) Australia's international relations;
- (b) the availability of capacity (within the meaning of the International Air Services Commission Act 1992) on scheduled international air services, and any relevant determination made by the International Air Services Commission in respect of the allocation of capacity on those services;
- (c) any relevant advice on matters referred to in paragraph (a) that is provided to the Minister by that Commission under paragraph 6(2)(c) of that Act;
- (d) any other matter that the Secretary thinks relevant.

15E Variation of permission on application by charter operator

- (1) If the Secretary has granted a permission, a charter operator in relation to the flight or flights covered by the permission may apply to the Secretary for variation of the permission.
- (2) The application must:
 - (a) be in writing; and
 - (b) if the Secretary directs, be in a form approved by the Secretary .
- (3) If further information is necessary to enable the Secretary to determine an application:
 - (a) the Secretary may, by written notice to the applicant, require the applicant to provide the information; and

(b) the Secretary is not bound to consider the application further, or to determine it, until he or she receives the information.

(4) The Secretary may grant or refuse the application and must, as soon as practicable, give written notice of his or her decision to the applicant.

(5) In determining the application, the Secretary is to have regard to the matters referred to in subsection 15D(3).

15F Variation, suspension or cancellation of permission on Secretary's initiative

(1) The Secretary may vary, suspend or cancel a permission if:

(a) a condition to which the permission is subject has not been complied with by a charter operator ; or

(b) there has been substantial change in any of the matters to which the Secretary had regard in granting the permission; or

(c) the Secretary is satisfied that it is in the public interest (including any of the matters referred to in paragraph 15D(3)(a)) to do so.

(2) If the Secretary varies, suspends or cancels a permission, the Secretary must, as soon as practicable, give written notice of the variation, suspension or cancellation to the person who applied for the permission.

Attachment 6

SUMMARY OF TARIFF PROVISIONS**Types of Tariff Clauses**

<i>TYPE</i>	<i>NO.</i>	<i>COUNTRIES</i>
<u>Double Approval</u>	34	<i>Argentina, Austria, Brunei, Burma, Canada, Chile, China, Cook Islands, Egypt, Fiji, France, Germany, Hong Kong, India, Indonesia, Ireland, Italy, Japan, Korea, Malaysia, Mauritius, Nauru, Netherlands, Papua New Guinea, Philippines, Singapore, Solomon Islands, Sri Lanka, Switzerland, Taiwan, Thailand, Tonga, Western Samoa, Zimbabwe</i>
<u>Double Disapproval</u>	15	Bahrain, Dubai, Greece, Jordan, Kuwait, Lebanon, Luxembourg, Macau, Malta, Pakistan, Russia, South Africa, United Kingdom, Vanuatu, Vietnam
<u>Country of Origin</u>	1	United States
<u>No Approvals Needed</u>	1	New Zealand

Revised April 1998

INTERNATIONAL TRAFFIC BY REGION

The attached graphs and tables outline Origin Destination Traffic for the following regions from 1980/81 to 1997 and show resident/visitor split:

North East Asia
South East Asia
Europe
North America
Australia all countries

Source

Origin/Destination (OD) and Uplift/Discharge (UD) data is obtained from the immigration cards that all international passengers entering or leaving Australia are required to fill out.

Definitions

Origin/Destination (OD)

- Q for Australian Residents it is the country in which they will spend/have spent the most time while abroad.
- Q for Overseas Visitors it is their country of residence.

Uplift/Discharge (UD)

- Q for both Australian Residents and Overseas Visitors it is the country in which they boarded/will leave the flight that they arrived/departed on.

Attachment 8

INTERNATIONAL TRAFFIC BY TOP 10 COUNTRIES

The attached graphs and tables show Origin Destination traffic for the following countries from 1980 to 1997:

NZ		
Japan		
UK		
USA		
	Indonesia	
Singapore		
	Hong Kong	
		Korea
Malaysia		
Taiwan		

Source

Origin/Destination (OD) and Uplift/Discharge (UD) data is obtained from the immigration cards that all international passengers entering or leaving Australia are required to fill out.

Definitions

Origin/Destination (OD)

Q for Australian Residents it is the country in which they will spend/have spent the most time while abroad.

Q for Overseas Visitors it is their country of residence.

Uplift/Discharge (UD)

Q for both Australian Residents and Overseas Visitors it is the country in which they boarded/will leave the flight that they arrived/departed on.

Attachment 9

**SCHEDULED AIRLINES EXERCISING RIGHTS TO/FROM AUSTRALIA
AS AT 26 OCTOBER 1997**

	Airline	Country
1	Aerolineas Argentinas	Argentina
2	Air Caledonie International	New Caledonia
3	Air China	People's Rep of China
4	Air Mauritius	Mauritius
5	Air Nauru	Nauru
6	Air New Zealand	New Zealand
7	Air Niugini	Papua New Guinea
8	Air Pacific	Fiji
9	Air Vanuatu	Vanuatu
10	Air Zimbabwe (1)	Zimbabwe
11	Alitalia	Italy
12	All Nippon Airways	Japan
13	American Airlines (2)	USA
14	American International Airlines (freight only)	USA
15	Ansett International	Australia
16	Asian Express Airlines (freight only)	Australia
17	Asiana Airlines	Korea
18	AOM French Airlines	France
19	British Airways	UK
20	Canadian Airlines International (3)	Canada
21	Cathay Pacific Airways	Hong Kong
22	China Eastern Airlines	China
23	China Southern Airlines	China
24	EgyptAir	Egypt
25	Emirates	Dubai
26	EVA Air	Taiwan
27	Evergreen International Airlines (freight only)	USA
28	Federal Express (freight only)	USA
29	Freedom Air	New Zealand
30	Garuda	Indonesia
31	Gulf Air	Bahrain
32	Japan Airlines	Japan
33	KLM Royal Dutch Airlines	Netherlands
34	Korean Air	Rep of Korea
35	Lauda Air	Austria
36	Malaysia Airlines	Malaysia
37	Martinair Holland (freight only)	Netherlands
38	Mandarin Airlines	Taiwan
39	MBA	Papua New Guinea
40	Merpati Nusantara Airlines	Indonesia
41	Middle East Airlines	Lebanon
42	National Jet Systems	Australia
43	Olympic Airways	Greece
44	Philippine Airlines	Philippines
45	Polar Air Cargo (freight only)	USA
46	Polynesian Airlines	Western Samoa
47	Qantas Airways	Australia
48	Royal Brunei Airlines	Brunei
49	Royal Tongan Airlines (4)	Tonga
50	Sempati Air	Indonesia

51	Singapore Airlines	Singapore
52	Solomon Airlines	Solomon Islands
53	South African Airways	South Africa
54	Thai Airways International	Thailand
55	United Airlines	USA
56	Vietnam Airlines	Vietnam
57	Virgin Atlantic (5)	UK

Notes:

(1) Air Zimbabwe does not operate to Australia in their own right but leases seats under a commercial agreement with Qantas.

(2) American Airlines does not operate to Australia in their own right but code shares on Qantas operated flights.

(3) Canadian Airlines International (CP) services are operated as code share flights with Qantas. Qantas operates the Australia - Honolulu (and vice versa) sector whilst CP operate the Honolulu - Canada (and vice versa) sector.

(4) Royal Tongan code shares on Air New Zealand services AKL-SYD

(5) Virgin Atlantic does not operate to Australia in their own right but leases seats under a commercial agreement with Malaysia Airlines.

Attachment 10

INTERNATIONAL AIRLINES

EXERCISING RIGHTS/
NOT EXERCISING RIGHTS

AT AUSTRALIAN AIRPORTS

As at 26 October 1997

INTERNATIONAL AIRLINES EXERCISING RIGHTS/
NOT EXERCISING RIGHTS AT ADELAIDE

<u>GATEWAY</u>	<u>EXERCISING RIGHTS</u>	<u>NOT EXERCISING RIGHTS</u>
<u>ADELAIDE</u>	1. Ansett International (22) 2. British AW (36) 3. Cathay Pacific 4. Garuda 5. KLM 6. Malaysia AL 7. Qantas 8. Singapore AL 9. United AL (1) 10. Virgin Atlantic (21)	1. Aeroflot Russian Int'l AL (6) 2. Aerolineas Argentinas (4) 3. Air Macau (23) 4. Air Nauru (29) 5. Air New Zealand (33) 6. Air Niugini (27) 7. Air Vanuatu (9) 8. All Nippon AW (10) 9. American AL (1) 10. American Int'l AL (1) 11. Ansett Air Freight (5) 12. AOM French AL (8) 13. Asian Express AL 14. Asiana AL (13) 15. Canadian AL Int'l (2) 16. Continental AL (1) 17. Emirates (24) 18. Evergreen Int'l AL (1) 19. Federal Express (1) 20. Freedom Air 21. Gulf Air (11) 22. Japan AL (10) 23. KLM (12) 24. Korean Air (13) 25. Kuwait Airways (25) 26. LAN Chile (30) 27. Lufthansa (14) 28. Martinair (12) 29. MBA (34) 30. Merpati Nusantara AL 31. Middle East AL (20) 32. National Jet Systems 33. Northwest AL (1) 34. Olympic Airways (35) 35. Pakistan Int'l AL (26) 36. Polar Air Cargo (1) 37. Polynesian AL (15) 38. Royal Jordanian AL (16) 39. Sempati Air 40. Swissair (17) 41. Thai AW Int'l 42. Vietnam AL (28) 43. World Airways (1)

INTERNATIONAL AIRLINES EXERCISING RIGHTS/
NOT EXERCISING RIGHTS AT BRISBANE

<u>GATEWAY</u>	<u>EXERCISING RIGHTS</u>	<u>NOT EXERCISING RIGHTS</u>
<u>BRISBANE</u>	<ol style="list-style-type: none"> 1. Air Caledonie Int'l 2. Air Nauru 3. Air New Zealand 4. Air Niugini 5. Air Pacific 6. Air Vanuatu 7. All Nippon AW 8. Ansett International 9. British AW 10. Cathay Pacific 11. China Southern 12. EVA Air 13. Freedom Air 14. Garuda 15. Japan AL 16. Korean Air 17. KLM (12) 18. Malaysia AL 19. Mandarin AL 20. Philippine AL 21. Qantas 22. Royal Brunei AL 23. Singapore AL 24. Solomon AL 25. Thai AW Int'l 26. United AL (1) 	<ol style="list-style-type: none"> 1. Aeroflot Russian Int'l AL (6) 2. Aerolineas Argentinas (4) 3. Air China 4. Air Macau (23) 5. American AL 6. American Int'l AL 7. Ansett Air Freight (5) 8. AOM French AL (8) 9. Asian Express AL 10. Asiana AL 11. Canadian AL Int'l (2) 12. China Eastern AL 13. Continental AL 14. Emirates (24) 15. Evergreen Int'l AL 16. Federal Express 17. Gulf Air (11) 18. Kuwait Airways (25) 19. LAN Chile (30) 20. Lufthansa (14) 21. Martinair (12) 22. MBA (34) 23. Merpati Nusantara AL 24. Middle East AL (20) 25. National Jet Systems 26. Northwest AL 27. Olympic AW 28. Pakistan Int'l AL (26) 29. Polar Air Cargo 30. Polynesian AL (15) 31. Royal Jordanian AL (16) 32. Sempati Air 33. Swissair (17) 34. Vietnam AL (28) 35. Virgin Atlantic 36. World Airways

INTERNATIONAL AIRLINES EXERCISING RIGHTS/
NOT EXERCISING RIGHTS AT BROOME

<u>GATEWAY</u>	<u>EXERCISING RIGHTS</u>	<u>NOT EXERCISING RIGHTS</u>
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<u>BROOME</u>		<ol style="list-style-type: none"> 1. Aeroflot Russian Int'l AL (6) 2. Aerolineas Argentinas (4) 3. Air Caledonie Int'l (7) 4. Air Macau (23) 5. Air Nauru (29) 6. Air New Zealand (33) 7. Air Niugini (27) 8. Air Vanuatu (9) 9. All Nippon AW (10) 10. American AL (1) 11. American Int'l AL (1) 12. Ansett Air Freight (5) 13. Ansett International 14. AOM French AL (8) 15. Asian Express AL 16. Asiana AL (13) 17. British AW 18. Canadian AL Int'l (2) 19. Continental AL (1) 20. Emirates (24) 21. Evergreen Int'l AL (1) 22. Federal Express (1) 23. Freedom Air 24. Gulf Air (11) 25. Japan AL (10) 26. KLM (12) 27. Korean Air (13) 28. Kuwait Airways (25) 29. LAN Chile (30) 30. Lufthansa (14) 31. Martinair (12) 32. MBA (34) 33. Middle East AL (20) 34. National Jet Systems 35. Northwest AL (1) 36. Olympic AW (35) 37. Pakistan Int'l AL (26) 38. Polar Air Cargo (1) 39. Polynesian AL (15) 40. Qantas 41. Royal Jordanian AL (16) 42. Swissair (17) 43. United AL (1) 44. Vietnam AL (28) 45. Virgin Atlantic 46. World Airways (1)
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INTERNATIONAL AIRLINES EXERCISING RIGHTS/
NOT EXERCISING RIGHTS AT CAIRNS

<u>GATEWAY</u>	<u>EXERCISING RIGHTS</u>	<u>NOT EXERCISING RIGHTS</u>
<u>CAIRNS</u>	<ol style="list-style-type: none"> 1. Air New Zealand 2. Air Niugini 3. Asiana AL 4. British AW (36) 5. Cathay Pacific AW 6. Garuda 7. Japan AL 8. KLM 9. Malaysia AL 10. MBA (34) 11. Qantas 12. Singapore AL 13. United AL (1) 	<ol style="list-style-type: none"> 1. Aeroflot Russian Int'l AL (6) 2. Aerolineas Argentinas (4) 3. Air Macau (23) 4. Air Nauru (29) 5. Air Vanuatu (9) 6. All Nippon AW (10) 7. American AL 8. American Int'l AL 9. Ansett Air Freight (5) 10. Ansett International 11. AOM French AL (8) 12. Asian Express AL 13. Canadian AL Int'l (2) 14. Continental AL 15. Emirates (24) 16. Evergreen Int'l AL 17. Federal Express 18. Freedom Air 19. Gulf Air (11) 20. KLM (12) 21. Korean Air 22. Kuwait Airways (25) 23. LAN Chile (30) 24. Lauda Air 25. Lufthansa (14) 26. Martinair (12) 27. Merpati Nusantara AL 28. Middle East AL (20) 29. National Jet Systems 30. Northwest AL 31. Olympic AW (35) 32. Pakistan Int'l AL (26) 33. Polar Air Cargo 34. Polynesian AL (15) 35. Royal Jordanian AL (16) 36. Sempati Air 37. Solomon AL (19) 38. Swissair (17) 39. Thai AW Int'l (18) 40. Vietnam AL (28) 41. Virgin Atlantic 42. World Airways

INTERNATIONAL AIRLINES EXERCISING RIGHTS/
NOT EXERCISING RIGHTS AT CHRISTMAS ISLAND

<u>GATEWAY</u>	<u>EXERCISING RIGHTS</u>	<u>NOT EXERCISING RIGHTS</u>

<u>CHRISTMAS ISLAND</u>	1. National Jet Systems	1. Aeroflot Russian Int'l AL (6) 2. Aerolineas Argentinas (4) 3. Air Macau (23) 4. Air Nauru (29) 5. Air New Zealand (33) 6. Air Niugini 7. Air Vanuatu (9) 8. All Nippon AW (10) 9. American AL (1) 10. American Int'l AL (1) 11. Ansett Air Freight (5) 12. Ansett International 13. AOM French AL (8) 14. Asian Express AL 15. Asiana AL (13) 16. British AW 17. Canadian AL Int'l (2) 18. Continental AL (1) 19. Emirates (24) 20. Evergreen Int'l AL (1) 21. Federal Express (1) 22. Freedom Air 23. Garuda 24. Gulf Air (11) 25. Japan AL (10) 26. KLM (12) 27. Korean Air (13) 28. Kuwait Airways (25) 29. LAN Chile (30) 30. Lufthansa (14) 31. Martinair (12) 32. MBA (34) 33. Merpati Nusantara AL 34. Middle East AL (20) 35. Northwest AL 36. Olympic AW (35) 37. Pakistan Int'l AL (26) 38. Polar Air Cargo (1) 39. Polynesian AL (15) 40. Qantas 41. Royal Jordanian AL (16) 42. Sempati Air 43. Swissair (17) 44. United AL 45. Vietnam AL (28) 46. Virgin Atlantic 47. World Airways
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INTERNATIONAL AIRLINES EXERCISING RIGHTS/
NOT EXERCISING RIGHTS AT COOLANGATTA

<u>GATEWAY</u>	<u>EXERCISING RIGHTS</u>	<u>NOT EXERCISING RIGHTS*</u>
<u>COOLANGATTA</u>	1. Freedom Air 2. United Airlines (1)	

* Airlines would require a specific permission to operate international services to Coolangatta.

INTERNATIONAL AIRLINES EXERCISING RIGHTS/
NOT EXERCISING RIGHTS AT DARWIN

<u>GATEWAY</u>	<u>EXERCISING RIGHTS</u>	<u>NOT EXERCISING RIGHTS</u>
<u>DARWIN</u>	<ol style="list-style-type: none"> 1. Ansett International 2. British AW (36) 3. Garuda 4. Malaysia AL 5. Merpati Nusantara AL 6. Qantas 7. Royal Brunei AL 8. Singapore AL 	<ol style="list-style-type: none"> 1. Aeroflot Russian Int'l AL (6) 2. Aerolineas Argentinas (4) 3. Airlanka 4. Air Macau (23) 5. Air Nauru (29) 6. Air New Zealand (33) 7. Air Niugini 8. Air Vanuatu (9) 9. All Nippon AW 10. American AL 11. American Int'l AL 12. Ansett Air Freight (5) 13. AOM French AL 14. Asian Express AL 15. Asiana AL (13) 16. Canadian AL Int'l (2) 17. Cathay Pacific AW 18. Continental AL 19. Emirates (24) 20. Evergreen Int'l AL 21. Federal Express 22. Freedom Air 23. Gulf Air (11) 24. Japan AL 25. KLM (12) 26. Korean Air (13) 27. Kuwait Airways (25) 28. LAN Chile (30) 29. Lauda Air 30. Lufthansa 31. Martinair (12) 32. MBA (34) 33. Middle East AL (20) 34. National Jey Systems 35. Northwest AL 36. Olympic AW (35) 37. Pakistan Int'l AL (26) 38. Philippine AL 39. Polar Air Cargo 40. Polynesian AL (15) 41. Royal Jordanian AL (16) 42. Sempati Air 43. Swissair (17) 44. Thai AW Int'l 45. United AL 46. Vietnam AL (28) 47. Virgin Atlantic 48. World Airways

INTERNATIONAL AIRLINES EXERCISING RIGHTS/
NOT EXERCISING RIGHTS AT HOBART

<u>GATEWAY</u>	<u>EXERCISING RIGHTS</u>	<u>NOT EXERCISING RIGHTS</u>
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<u>HOBART</u>	<ol style="list-style-type: none"> 1. Air New Zealand 2. Malaysia AL (32) 3. United AL (1) 	<ol style="list-style-type: none"> 1. Aeroflot Russian Int'l AL (6) 2. Aerolineas Argentinas (4) 3. Air Macau (23) 4. Air Nauru (29) 5. Air Niugini (27) 6. Air Vanuatu (9) 7. All Nippon AW (10) 8. American AL (1) 9. American Int'l AL (1) 10. Ansett Air Freight (5) 11. Ansett International 12. AOM French AL (8) 13. Asian Express AL 14. Asiana AL (13) 15. British AW 16. Canadian AL Int'l (2) 17. Continental AL (1) 18. Emirates (24) 19. Evergreen Int'l AL (1) 20. Federal Express (1) 21. Freedom Air 22. Gulf Air (11) 23. Japan AL (10) 24. KLM (12) 25. Korean Air (13) 26. Kuwait Airways (25) 27. LAN Chile (30) 28. Lufthansa (14) 29. Martinair (12) 30. MBA (34) 31. Middle East AL (20) 32. National Jet Systems 33. Northwest AL (1) 34. Olympic AW (35) 35. Pakistan Int'l AL (26) 36. Polar Air Cargo (1) 37. Polynesian AL (15) 38. Qantas 39. Royal Jordanian AL (16) 40. Swissair (19) 41. United AL (1) 42. Vietnam AL (28) 43. Virgin Atlantic 44. World Airways (1)
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INTERNATIONAL AIRLINES EXERCISING RIGHTS/
NOT EXERCISING RIGHTS AT MELBOURNE

<u>GATEWAY</u>	<u>EXERCISING RIGHTS</u>	<u>NOT EXERCISING RIGHTS</u>
<u>MELBOURNE</u>	<ol style="list-style-type: none"> 1. Air Caledonie Int'l (7) 2. Air China 3. Air Mauritius 4. Air Nauru 5. Air New Zealand 6. Air Pacific 7. Air Vanuatu 8. Alitalia 9. American Int'l AL 10. American AL (1) 11. Ansett International 12. British AW 13. Canadian AL Int'l (2) 14. Cathay Pacific 15. Emirates AL 16. EVA Air 17. Evergreen Int'l AL 18. Garuda 19. Gulf Air 20. KLM (12) 21. Lauda Air 22. Malaysia AL 23. Merpati Nusantara AL 24. Olympic AW 25. Philippine AL 26. Polar Air Cargo 27. Polynesian AL 28. Qantas 29. Singapore AL 30. Thai AW Int'l 31. United AL 32. Vietnam AL 33. Virgin Atlantic (21) 	<ol style="list-style-type: none"> 1. Aeroflot Russian Int'l AL (6) 2. Aerolineas Argentinas (4) 3. Air India 4. Airlanka 5. Air Macau (23) 6. Air Malta 7. All Nippon AW (10) 8. Air Niugini (27) 9. Ansett Air Freight (5) 10. AOM French AL (8) 11. Asian Express AL 12. Asiana AL (13) 13. China Eastern AL 14. China Southern AL 15. Continental AL 16. EgyptAir 17. Federal Express 18. Freedom Air 19. Japan AL (10) 20. Korean Air (13) 21. Kuwait Airways (25) 22. LAN Chile (30) 23. Lufthansa 24. Mandarin AL 25. Martinair 26. MBA (34) 27. Middle East AL (20) 28. National Jet Systems 29. Northwest AL 30. Pakistan Int'l AL 31. Royal Jordanian AL (16) 32. Sempati Air 33. Solomon AL 34. Swissair (17) 35. World Airways

INTERNATIONAL AIRLINES EXERCISING RIGHTS/
NOT EXERCISING RIGHTS AT NORFOLK ISLAND

<u>GATEWAY</u>	<u>EXERCISING RIGHTS</u>	<u>NOT EXERCISING RIGHTS</u>
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<u>NORFOLK ISLAND</u>	1. Air New Zealand (33)	1. Aeroflot Russian Int'l AL (6) 2. Aerolineas Argentinas (4) 3. Air Macau (23) 4. Air Nauru (29) 5. Air Niugini (27) 6. Air Vanuatu (9) 7. All Nippon AW (10) 8. American AL (1) 9. American Int'l AL (1) 10. Ansett Air Freight (5) 11. Ansett International 12. AOM French AL (8) 13. Asian Express AL 14. Asiana AL (13) 15. British AW 16. Canadian AL Int'l (2) 17. Continental AL (1) 18. Emirates (24) 19. Evergreen Int'l AL (1) 20. Federal Express (1) 21. Freedom Air 22. Gulf Air (11) 23. Japan AL (10) 24. KLM (12) 25. Korean Air (13) 26. Kuwait Airways (25) 27. LAN Chile (30) 28. Lufthansa (14) 29. Martinair (12) 30. MBA (34) 31. Middle East AL (20) 32. National Jet Systems 33. Northwest AL (1) 34. Olympic AW (35) 35. Pakistan Int'l AL (26) 36. Polar Air Cargo (1) 37. Polynesian AL (15) 38. Qantas 39. Royal Jordanian AL (16) 40. Swissair (17) 41. United AL (1) 42. Vietnam AL (28)\ 43. Virgin Atlantic 44. World Airways (1)
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INTERNATIONAL AIRLINES EXERCISING RIGHTS/
NOT EXERCISING RIGHTS AT PERTH

<u>GATEWAY</u>	<u>EXERCISING RIGHTS</u>	<u>NOT EXERCISING RIGHTS</u>
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<u>PERTH</u>	<ol style="list-style-type: none"> 1. Air Mauritius 2. Air New Zealand 3. Air Zimbabwe (3) 4. Ansett International 5. British AW 6. Cathay Pacific 7. Garuda 8. Malaysia AL 9. Merpati Nusantara AL 10. Qantas 11. Royal Brunei AL 12. Sempati Air 13. Singapore AL 14. South African AW 15. Thai AW Int'l 16. United AL (1) 	<ol style="list-style-type: none"> 1. Aeroflot Russian Int'l AL (6) 2. Aerolineas Argentinas (4) 3. Air China 4. Air India 5. Air Macau (23) 6. Air Nauru (29) 7. Air Niugini (27) 8. Air Vanuatu (9) 9. All Nippon AW (10) 10. American AL 11. American Int'l AL 12. Ansett Air Freight (5) 13. AOM French AL (8) 14. Asian Express AL 15. Asiana AL (13) 16. Canadian AL Int'l (2) 17. China Eastern AL 18. China Southern AL 19. Continental AL 20. Emirates (24) 21. Evergreen Int'l AL 22. Federal Express 23. Freedom Air 24. Gulf Air 25. Japan AL (10) 26. KLM (12) 27. Korean Air (13) 28. Kuwait Airways (25) 29. LAN Chile (30) 30. Lufthansa 31. Martinair (12) 32. MBA (34) 33. Middle East AL (20) 34. Myanmar AW 35. National Jet Systems 36. Northwest AL 37. Olympic AW (35) 38. Pakistan Int'l AL (26) 39. Polar Air Cargo 40. Polynesian AL (15) 41. Royal Jordanian AL (16) 42. Swissair (17) 43. Vietnam AL (28) 44. Virgin Atlantic 45. World Airways
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INTERNATIONAL AIRLINES EXERCISING RIGHTS/
NOT EXERCISING RIGHTS AT PORT HEDLAND

<u>GATEWAY</u>	<u>EXERCISING RIGHTS</u>	<u>NOT EXERCISING RIGHTS</u>
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<u>PORT</u> <u>HEDLAND</u>	1. Merpati Nusantara AL	1. Aeroflot Russian Int'l AL (6) 2. Aerolineas Argentinas (4) 3. Air Macau (23) 4. Air Nauru (29) 5. Air New Zealand (33) 6. Air Niugini (27) 7. Air Vanuatu (9) 8. All Nippon AW (10) 9. American AL (1) 10. American Int'l AL (1) 11. Ansett Air Freight (5) 12. Ansett International 13. AOM French AL (8) 14. Asian Express AL 15. Asiana AL (13) 16. British AW 17. Canadian AL Int'l (2) 18. Continental AL (1) 19. Emirates (24) 20. Evergreen Int'l AL (1) 21. Federal Express (1) 22. Freedom Air 23. Garuda 24. Gulf Air (11) 25. Japan AL (10) 26. KLM (12) 27. Korean Air (13) 28. Kuwait Airways (25) 29. LAN Chile (30) 30. Lufthansa (14) 31. Martinair (12) 32. MBA (34) 33. Middle East AL (20) 34. National Jet Systems 35. Northwest AL (1) 36. Olympic AW (35) 37. Pakistan Int'l AL (26) 38. Polar Air Cargo (1) 39. Polynesian AL (15) 40. Qantas 41. Royal Jordanian AL (16) 42. Sempati Air 43. Swissair (17) 44. United AL (1) 45. Vietnam AL (28) 46. Virgin Atlantic 47. World Airways (1)
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INTERNATIONAL AIRLINES EXERCISING RIGHTS/
NOT EXERCISING RIGHTS AT SYDNEY

<u>GATEWAY</u>	<u>EXERCISING RIGHTS</u>	<u>NOT EXERCISING RIGHTS</u>
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<u>SYDNEY</u>	<ol style="list-style-type: none"> 1. Aerolineas Argentinas 2. Air Caledonie Int'l 3. Air China 4. Air New Zealand 5. Air Niugini 6. Air Pacific 7. Air Vanuatu 8. Air Zimbabwe (3) 9. Alitalia 10. All Nippon AW 11. American AL (1) 12. Ansett International 13. AOM French AL 14. Asian Express AL 15. Asiana AL 16. British AW 17. Canadian Al Int'l (2) 18. Cathay Pacific 19. China Eastern AL 20. EgyptAir 21. EVA Air 22. Evergreen Int'l AL 23. Federal Express 24. Freedom Air 25. Garuda 26. Gulf Air 27. Japan AL 28. KLM 29. Korean Air 30. Lauda Air 31. Malaysia AL 32. Martinair 33. Mandarin AL 34. Merpati Nusantara AL 35. Middle East AL 36. Olympic AW 37. Philippine AL 38. Polar Air Cargo 39. Polynesian AL 40. Qantas 41. Royal Tongan AL (31) 42. Singapore AL 43. South African AW 44. Thai AW Int'l 45. United AL 46. Vietnam AL 47. Virgin Atlantic (21) 	<ol style="list-style-type: none"> 1. Aeroflot Russian Int'l AL (6) 2. Air India 3. Airlanka 4. Air Macau (23) 5. Air Malta 6. Air Nauru 7. American Int'l AL 8. Ansett Air Freight (5) 9. China Southern AL 10. Continental AL 11. Cook Islands AL 12. Emirates (24) 13. Kuwait Airways (25) 14. LAN Chile (30) 15. Lufthansa 16. MBA (34) 17. Myanmar AW 18. National Jet Systems 19. Northwest AL 20. Royal Jordanian AL (16) 21. Sempati Air 22. Solomon AL 23. Swissair (17) 24. World Airways
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INTERNATIONAL AIRLINES EXERCISING RIGHTS/
NOT EXERCISING RIGHTS AT TOWNSVILLE

<u>GATEWAY</u>	<u>EXERCISING RIGHTS</u>	<u>NOT EXERCISING RIGHTS</u>
<u>TOWNSVILLE</u>		<ol style="list-style-type: none"> 1. Aeroflot Russian Int'l AL (6) 2. Aerolineas Argentinas (4) 3. Air Macau (23) 4. Air Nauru (29) 5. Air New Zealand (33) 6. Air Niugini 7. Air Vanuatu (9) 8. All Nippon AW (10) 9. American AL (1) 10. American Int'l AL (1) 11. Ansett Air Freight (5) 12. Ansett International 13. AOM French AL (8) 14. Asian Express AL 15. Asiana AL (13) 16. British AW 17. Canadian AL Int'l (2) 18. Continental AL (1) 19. Emirates (24) 20. Evergreen Int'l AL (1) 21. Federal Express (1) 22. Freedom Air 23. Garuda 24. Gulf Air (11) 25. Japan AL (10) 26. KLM (12) 27. Korean Air (13) 28. Kuwait Airways (25) 29. LAN Chile (30) 30. Lufthansa (14) 31. Martinair (12) 32. MBA (34) 33. Merpati Nusantara AL 34. Middle East AL (20) 35. National Jet Systems 36. Northwest AL (1) 37. Olympic AW (35) 38. Pakistan Int'l AL (26) 39. Polar Air Cargo (1) 40. Polynesian AL (15) 41. Qantas 42. Royal Jordanian AL (16) 43. Sempati Air 44. Singapore AL 45. Solomon AL (19) 46. Swissair (17) 47. Thai AW Int'l (18)

		48. United AL (1) 49. Vietnam AL (28) 50. Virgin Atlantic 51. World Airways (1)
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Notes:

- 1 On the South Pacific Route, each US airline may operate to a seventh point in addition to Sydney, Melbourne, Brisbane, Cairns, Perth, Darwin plus an additional eight points via one or more of the above points.

United Airlines currently serves Melbourne and Sydney. In addition, United Airlines serves Adelaide, Brisbane, Cairns, Canberra, Coolangatta, Hobart, Melbourne, Perth and Sydney by code sharing on Ansett domestic flights through Melbourne and Sydney. Polar Air Cargo currently serves Melbourne and Sydney. Federal Express currently serves Sydney. American International Airlines currently serves Melbourne. American Airlines code shares on Qantas' passenger flights serving Melbourne and Sydney. Evergreen International Airlines serves Melbourne.
- 2 Canadian Airlines International (CP) and Qantas operate a code share arrangement whereby each airline "hubs" at Honolulu with Qantas operating the Australia leg and CP the Canada leg.

Canadian Airlines International is entitled to operate to Sydney plus one additional point. At present, Melbourne has been nominated as the second point in Australia. The additional point may be changed subject to air service agreement conditions.
- 3 Air Zimbabwe code shares on Qantas' flights to South Africa and Zimbabwe.
- 4 Aerolineas Argentinas is entitled to operate to a point in Australia, currently Sydney. Aerolineas Argentinas may operate to four additional points in Australia on a code share basis with an Australian carrier.
- 5 Ansett Air Freight is licensed to operate scheduled freight-only services between Australia and New Zealand.
- 6 Aeroflot Russian International Airlines is entitled to operate to two points in Australia. The airline does not currently operate to Australia.
- 7 Air Caledonie International may operate to Sydney, Melbourne and Brisbane. The airline currently serves Sydney, Melbourne and Brisbane.
- 8 AOM French Airlines is entitled to operate to Sydney and Darwin, plus one additional point in Australia. The airline currently serves Sydney.
- 9 Air Vanuatu is entitled to operate to three points in Australia. The airline currently serves Brisbane, Melbourne and Sydney.
- 10 Japanese airlines may operate to Darwin plus any six of Sydney, Melbourne, Brisbane, Adelaide, Cairns, Townsville or one other point. Japan Airlines currently serves Brisbane, Cairns and Sydney. All Nippon Airways currently serves Brisbane and Sydney.
- 11 Gulf Air is entitled to operate to Perth and three additional points in Australia. The airline currently serves Sydney and Melbourne.
- 12 KLM and Martinair are entitled to operate to any six points in Australia. The Netherlands has nominated Sydney, Melbourne, Canberra, Brisbane, Adelaide and

Cairns as the six points (these may be changed by the Netherlands at any time). KLM serves Sydney and also serves Canberra, Melbourne Brisbane, Adelaide and Cairns by code sharing on Ansett domestic flights through Sydney. Martinair (operating dedicated freighters) currently serves Sydney.

- 13 Asiana Airlines and Korean Air are entitled to operate to Brisbane, Sydney and one additional point in Australia to be nominated. The additional point currently nominated is Cairns. Korean Air currently serves Brisbane and Sydney. Asiana Airlines currently serves Cairns and Sydney.
- 14 Lufthansa is entitled to operate to Darwin, Melbourne, Sydney, Perth and an additional point. The airline does not currently operate to Australia.
- 15 Polynesian Airlines is entitled to operate to two points in Australia. The airline currently serves Melbourne and Sydney.
- 16 Royal Jordanian Airlines is entitled to operate to a point in Australia. No operations are yet in place.
- 17 Swissair is entitled to operate to any two points in Australia of its choice. No operations are yet in place.
- 18 Thai Airways International is entitled to operate to Cairns or Townsville (in addition to Darwin, Brisbane, Sydney, Melbourne, Adelaide and Perth). The airline currently serves Brisbane, Melbourne, Perth and Sydney.
- 19 Solomon Airlines is entitled to operate to Townsville or Cairns (in addition to Brisbane, Melbourne and Sydney). The airline currently serves Brisbane.
- 20 Middle East Airlines is entitled to operate to any two points in Australia. The airline currently serves Sydney.
- 21 Virgin Atlantic code shares on Malaysia Airline flights to London via Kuala Lumpur.
- 22 Ansett International code shares on Malaysia Airline flights to Adelaide, Melbourne and Sydney.
- 23 Air Macau is entitled to operate to two points in Australia. No operations are yet in place.
- 24 Emirates is entitled to operate to Melbourne and one additional point in Australia. The airline currently serves Melbourne.
- 25 Kuwait Airways is entitled to operate to two points in Australia. No operations are yet in place.
- 26 Pakistan International Airlines is entitled to operate to Melbourne plus one additional point in Australia (excluding Sydney). No operations are yet in place.
- 27 Air Niugini is entitled to operate to Brisbane, Sydney, Thursday Island, Townsville, Cairns, Darwin and one other point in Australia. The airline currently serves Brisbane, Cairns and Sydney.

- 28 Vietnam Airlines is entitled to serve two points in Australia. The airline currently serves Melbourne and Sydney.
- 29 Air Nauru is entitled to operate to any three points in Australia. The airline currently serves Brisbane and Melbourne.
- 30 The designated airline(s) of Chile are entitled to operate to one point in Australia. No operations are in place.
- 31 Royal Tongan code shares on Ansett International services Auckland-Sydney.
- 32 In addition to its own services to Australia, Malaysia Airlines serves Adelaide, Brisbane, Cairns, Canberra, Coolangatta, Hobart, Melbourne and Sydney by code sharing on Ansett domestic flights.
- 33 In addition to its international flights, Air New Zealand also code shares on a number of Ansett's domestic flights. These code share services are not an exercise of international rights as New Zealand carriers may operate domestic services in Australia. As a result these services are not noted in this document.
- 34 MBA is entitled to operate to Brisbane, Sydney, Thursday Island, Townsville, Cairns, Darwin and one other point. MBA currently serves Cairns.
- 35 Olympic Airways can operate to three points in Australia. The airline currently operates to Melbourne and Sydney.
- 36 British Airways code shares on Qantas' flights.

Attachment 11

INTERNATIONAL TRAFFIC OPTIONS OVER SOUTH EAST ASIAN HUBS

The attached tables show the true origin or destination of passengers travelling on direct services between Australia and Bangkok, Singapore and Kuala Lumpur.

OD x UD and UD x OD Cross Tabulations

Source

Origin/Destination (OD) and Uplift/Discharge (UD) data is obtained from the immigration cards that all international passengers entering or leaving Australia are required to fill out.

Definitions

Origin/Destination (OD)

- ➔ for Australian Residents it is the country in which they will spend/have spent the most time while abroad.
- ➔ for Overseas Visitors it is their country of residence.

Uplift/Discharge (UD)

- ➔ for both Australian Residents and Overseas Visitors it is the country in which they boarded/will leave the flight that they arrived/departed on.

Cross Tabulations

By cross tabulating the OD and UD data it is possible to gain additional information on the routes being used by international air travellers.

By cross tabulating OD and UD data, it is possible to measure the effectiveness of offshore hubs in collecting and distributing traffic between Australia and OD markets. For example, the tables show that 63 458 passengers chose to travel between Australia and India via Singapore, 14 895 chose to travel via Malaysia and 8391 chose to travel via Thailand.

Where the country of OD and UD is the same, the total traffic is terminating in that country. For example, 34.7% of all traffic that moves between Australia and Singapore has its origin and destination as Singapore and Australia.

Limitations

There are a number of limitations that should be borne in mind when using this data. The most significant are:

- ➔ The quality of the information is entirely reliant on passengers providing the correct information on their cards. A common error is for passengers whose journey involves a change of flight to insert their ultimate origin or destination as their country of Uplift/Discharge.
- ➔ Passenger card data is sampled (at varying rates according to country of residence) which introduces sampling errors. This is a particular concern when dealing with small numbers.
- ➔ Trans-Tasman travel by Overseas Visitors causes some anomalies to occur. For example a UK resident travelling between Australia and New Zealand will have an OD of the UK and a UD of New Zealand. If this passenger is travelling on a route similar to UK-Aust-NZ-Aust-UK this will have the following effects:
 - The overall level of Australia-UK OD traffic will be inflated.
 - New Zealand's role as an intermediate point for Australia-UK OD traffic will appear greater than it actually is.
 - The Australia-UK OD traffic market shares for airlines that operate Trans-Tasman services will be inflated.

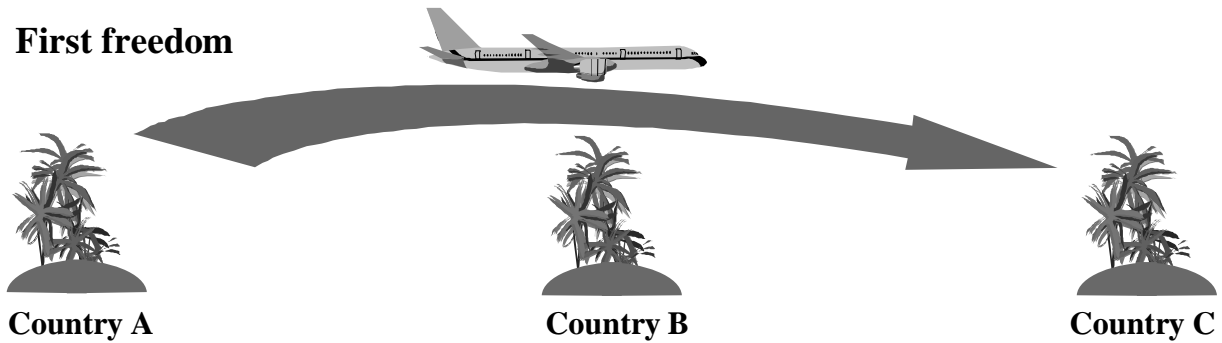
Attachment 12**AUSTRALIA-UK SIXTH FREEDOM TRAFFIC**

This graph shows that the limit of capacity negotiated under the air services arrangements negotiated between the UK and Australia did not affect the growth of traffic on the route, due to the competition provided by sixth freedom carriers. A table of the market share of all carriers on the route is also attached.

International Aviation Rights of Passage

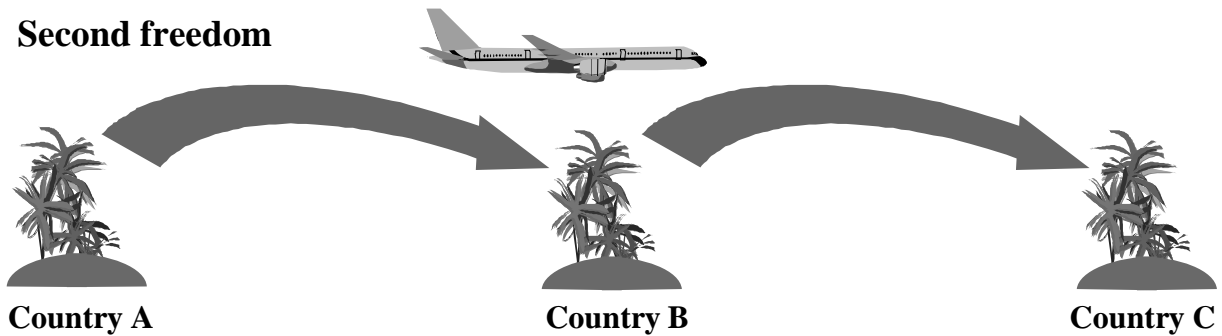
(commonly known as freedoms)

First freedom



The right of an airline of one country to fly over the territory of another country without landing.

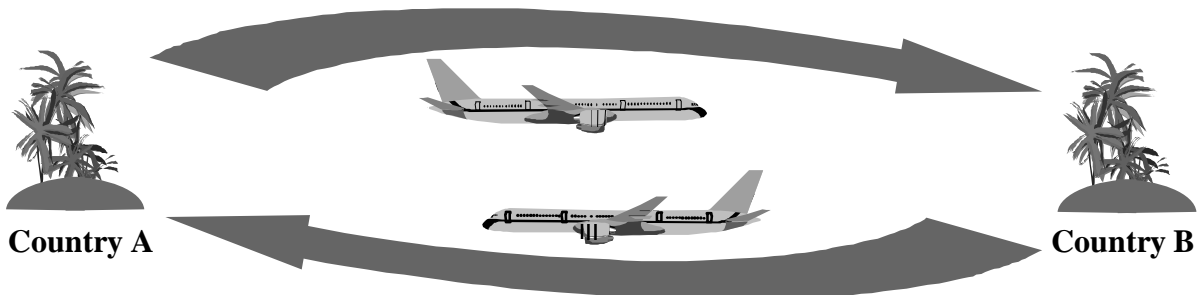
Second freedom



The right of an airline of one country to land in another country for non traffic reasons, such as maintenance or refuelling, while en route to another country.

The first two freedoms are referred to as technical rights, and some 100 countries are contracting parties to the 'The International Air Services Transit Agreement', which provides multilateral approval of these technical rights.

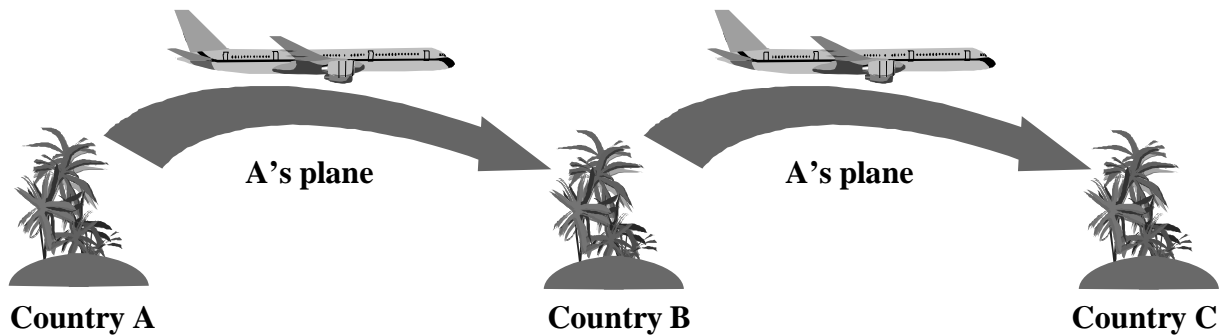
Third and fourth freedoms



The right of an airline of one country to carry traffic (passengers, mail, cargo) to another country (third freedom).

The right of an airline of one country to carry traffic from another country to its own country (fourth freedom).

Fifth freedom



The right of an airline of one country to carry traffic between two foreign countries as long as the flight originates and terminates in its own country.

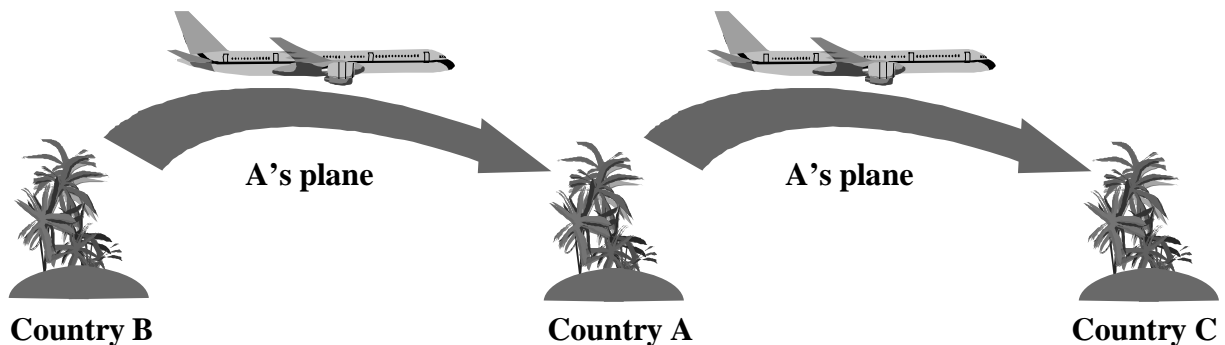
The third, fourth and fifth freedoms are granted as rights in bilateral air services agreements.

Other “freedoms”

There are a number of other so called “freedoms” which, although not officially recognised by the Chicago Convention or granted in bilateral air services agreements, are referred to and taken into account in bilateral negotiations (in particular the sixth freedom).

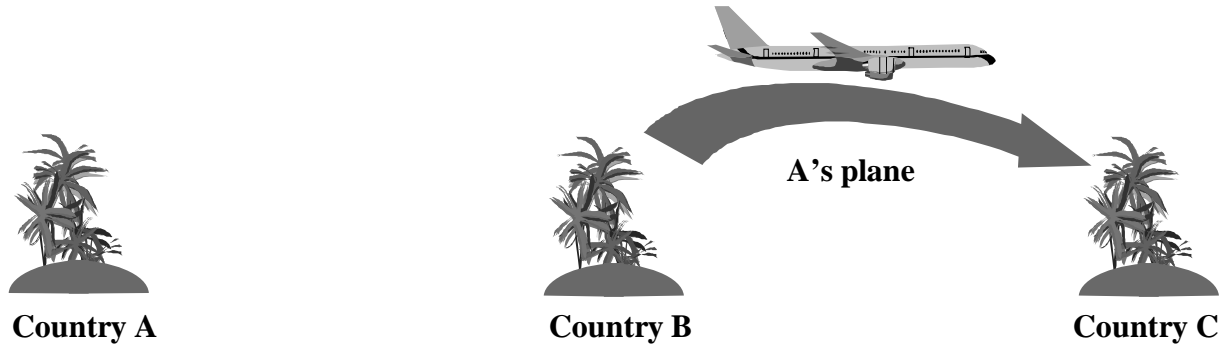
The so called sixth, seventh and eighth freedoms are described below.

“Sixth” freedom



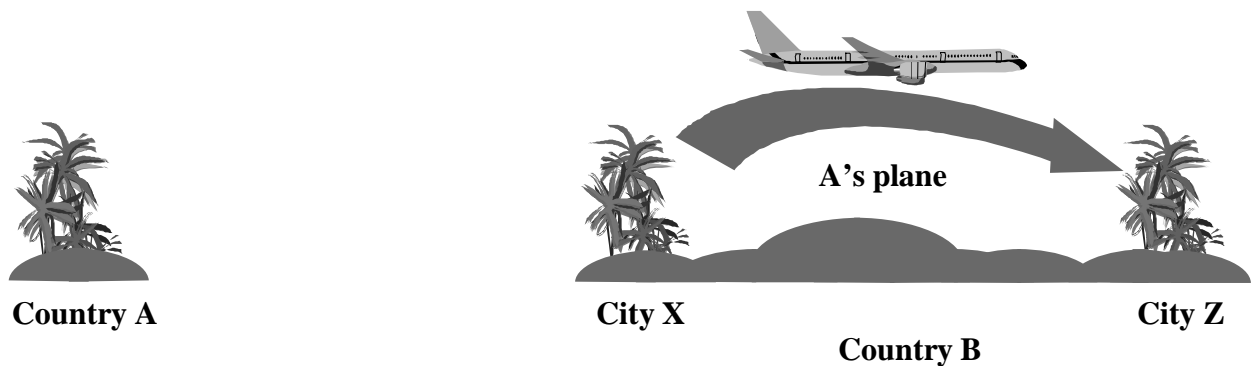
The right of an airline of one country to carry traffic between two foreign countries via its own country. This is a combination of two sets of third and fourth freedoms (with countries B and C).

“Seventh” freedom



The right of an airline of one country to carry traffic on stand alone services between two other countries.

“Eighth” freedom or Cabotage



The right of an airline of one country to carry domestic traffic between two points within the territory of another country. Also known as cabotage, this right is rarely granted to foreign airlines, although this may change in a single aviation block comprised of a number of countries (eg the European Union).