

Chair
Cabinet Economic Growth and Infrastructure Committee

APPROVAL OF A NEW INTERNATIONAL AIR TRANSPORT POLICY STATEMENT

Proposal

1. This paper seeks the Committee's approval of the attached International Air Transport Policy of New Zealand.

Executive summary

2. In May 2012, Cabinet approved the release of a discussion document, which set out the matters being considered as part of the review of New Zealand's International Air Transport Policy, and invited stakeholders to comment on the Ministry of Transport's proposed policy approach [EGI Min (12) 6/3 refers].
3. This paper seeks the Committee's approval of the proposed International Air Transport Policy of New Zealand, which has been developed based on the proposals set out in the discussion document and the feedback received from stakeholders.
4. New Zealand's existing air transport policy is already among the most liberal in the world. However, the proposed policy recognises that, in order to keep pace with the increasingly volatile international aviation industry, an even greater level of flexibility is required. A liberal air services policy, which seeks to remove regulatory constraints on air services, remains a necessary tool to ensure that the best possible social and economic outcomes are delivered to the benefit of New Zealanders.
5. A notable feature of the proposed policy is to consider, on a case-by-case basis, granting approval for extra-bilateral air services¹, in advance of securing the necessary rights through air services negotiations. In particular, as a measure to assist with Christchurch's recovery from the 2010/11 earthquakes, favourable consideration will be given to any foreign airline seeking to operate to Christchurch, irrespective of whether the necessary air rights have been exchanged (until June 2017). As well as supporting the recovery effort in Christchurch, this proposal recognises the value to the overall economy of attracting visitors to the South Island.
6. The draft policy also states that (among other things) New Zealand will:
 - 6.1. continue to seek the exchange of the most liberal air rights, including the rights for airlines to operate within the territory of the other country (8th and 9th freedom rights²)

¹ Services in which the necessary air rights have not been exchanged through an Air Services Agreement

² Refer to Annex I for an illustration of the freedoms of the air

- 6.2. seek the inclusion of an agreement promoting greater cooperation between civil aviation regulatory authorities in future negotiations
- 6.3. continue to seek agreements with liberal airline ownership and investment criteria, which reflect New Zealand's view that it should be the right of each country to determine the investment environment for its own airlines
- 6.4. for airlines other than Air New Zealand, remove the current limits of 25 percent ownership by any one foreign airline or 35 percent by foreign airlines in total, providing greater access to foreign capital
- 6.5. continue to focus on expanding New Zealand's air services relationships in East Asia and South America, and with other States where the unavailability of air rights is preventing airlines from offering services.

Background

7. New Zealand's International Air Transport Policy sets out the framework for the negotiation and implementation of Air Services Agreements which facilitate international air services. The policy sits alongside a range of government initiatives designed to maintain and improve air services, such as tourism partnerships and visa policy.
8. A liberal air transport policy was set in 1985, updated and reaffirmed in 1998, and followed by successive governments. Many of the specific objectives in the 1998 policy, including open skies agreements with Australia and the United Kingdom, have largely been achieved.
9. Since 1998 the aviation industry has been subject to a number of shocks including terrorism, pandemics, global and regional financial crises, and fluctuating oil prices. At the same time, while some new tourism markets such as China and India are growing rapidly, established markets, with the exception of Australia, have stalled or are in decline. For these reasons, it was timely to review New Zealand's international air transport policy, to guide New Zealand's approach to air services negotiations and set priorities for future negotiations.
10. In May 2012, Cabinet approved the release of a discussion document, which invited feedback from stakeholders on the Ministry of Transport's proposed policy approach.
11. This paper seeks the Committee's approval of the draft International Air Transport Policy of New Zealand (attached as Annex III), which has been developed by the Ministry of Transport based on the proposals set out in the discussion document and the feedback received from stakeholders.

Overview of the proposed policy statement

12. New Zealand's small population and relative isolation from its major trading partners are significant competitive disadvantages in terms of our ability to attract and secure new air services. For these reasons, a liberal air services policy, which seeks to remove regulatory constraints on air services, is seen as a necessary tool to help

ensure that the best possible social and economic outcomes are delivered to the benefit of all New Zealanders.

13. The updated International Air Transport Policy of New Zealand reaffirms New Zealand's desire to pursue greater liberalisation in international air services, providing freer access for international airlines. The new policy also represents a significant step forward in a number of areas, as New Zealand continues to challenge traditional approaches, and adapts its policy in response to international developments and new airline business models.
14. Given the large number of factors that influence an airline's decision to serve a particular market, the policy is not expected to fundamentally alter the competitive dynamics of New Zealand's international air services. Any changes in service offerings are likely to be gradual.
15. Airlines will enter and exit the market in response to commercial and other market influences. However, over time it is expected that the new policy will provide more airlines with the opportunity to compete in the New Zealand market, and lead to more air services and greater connectivity.

Policy Objective

16. The proposed objective of the International Air Transport Policy is to help grow the economy and deliver greater prosperity, security and opportunities for all New Zealanders. This will be achieved by seeking opportunities for New Zealand-based and foreign airlines to provide their customers with improved connectivity and increased trade in goods and services (including tourism).

Approach to liberalisation

17. The new policy reaffirms the existing policy of seeking 'open skies' agreements³, except where it is not in the best interests of the country as a whole. In the event that an open skies agreement cannot be reached, the policy would signal New Zealand's aim to put in place the most open package possible, recognising both the benefits that foreign airlines can bring, and ensuring that New Zealand airlines have a fair and equal opportunity to compete.
18. A new aspect of the proposed policy is to consider granting approval for extra-bilateral services, on a case-by-case basis, pending the exchange of the necessary air rights. This proposal recognises that there may be situations in which a new commercial opportunity arises involving a foreign airline which does not have rights for the operation it seeks to pursue. In such circumstances, the policy would enable an airline to be granted operating authorisation on a temporary basis, on the understanding that negotiations with the airline's home country would be held when reasonably possible (with a view toward securing fair and equal opportunities for New Zealand airlines). This policy would be applied where the prospective air service is demonstrated to be in New Zealand's best overall interests. This would involve consideration of (among

³ Agreements which, among other things, remove all restrictions on routes and capacity

other things) the impact of the new service on existing routes, and the likelihood of obtaining reciprocal rights for New Zealand airlines.

19. Extra-bilateral services could be authorised pursuant to the non-scheduled services provisions of the Civil Aviation Act 1990, or through the standard licensing provisions of that Act, where an interim arrangement relating to comity and reciprocity is reached with the relevant overseas authorities.
20. A key change from the proposals set out in the discussion document is to include a measure to assist with Christchurch's recovery from the 2010/11 earthquakes. The proposed policy states that until 2017, the Ministry of Transport will give favourable consideration to authorising operations by any foreign airline seeking to operate to Christchurch, irrespective of whether the necessary air rights have been exchanged. This will also be applied as a temporary measure, while negotiations are sought with the airline's home country. While this measure will not guarantee any new international air services for Christchurch, it will remove a barrier to entry and enable Christchurch Airport to unreservedly market itself to foreign airlines.
21. As well as supporting the recovery effort in Christchurch, this proposal recognises the value to the overall economy of attracting visitors to the South Island. Notably, average visitor expenditure in the South Island is \$3,444, compared to an average spend in the North Island of \$2,605. As an example of the economic impact an air service can have on a region, the non-stop Air Asia X service from Kuala Lumpur to Christchurch, which operated between April 2011 and May 2012, resulted in a six-fold increase in Malaysian visitors to Christchurch compared to the previous year. In its 14 months of operation, the service brought a total of 42,540 visitors into the South Island at a time when local businesses and tourism operators were struggling.
22. The proposed measure also addresses the fact that Christchurch has been disadvantaged in some of our older and more restrictive air services agreements. For example, our agreements with India and Argentina do not include Christchurch on the list of points that can be served.

Elements of Agreements

23. Under the proposed policy, New Zealand's 'model' open skies agreement would continue to include the exchange of the most liberal air rights, including the rights for airlines to operate within the territory of the other country (8th and 9th freedom rights). New Zealand would also continue to seek agreements with no regulation of tariffs⁴ (unless there is evidence of anti-competitive behaviour), and open airline investment provisions.
24. As a result of stakeholder feedback (primarily from the Aviation Industry Association) the policy specifically states that New Zealand will continue to seek the inclusion of provisions promoting greater cooperation between regulatory authorities. Such provisions would set a framework for greater cooperation on matters such as mutual recognition of aviation certificates, and facilitation of trade in aviation-related goods

⁴ In international air transport, a tariff is the price charged by the airline for the carriage of passengers, baggage or cargo and the conditions governing its availability and use.

and services, to support the export efforts of the aviation industry in line with the government's Business Growth Agenda. A civil aviation cooperation agreement was included in the last round of negotiations with China, held in April 2012.

Airline ownership and investment

25. The proposals in the draft policy statement relating to airline ownership and investment are unchanged from the proposals set out in the discussion document. Under the proposed policy, New Zealand will continue to press for the acceptance of designation (the ability to exercise a particular country's air rights) based on principal place of business, place of incorporation, and effective regulatory control (without reference to ownership). This will ensure that airlines are not able to circumvent bilateral air services arrangements, and ensure that there is a clear link between an airline operating into New Zealand and the responsible safety regulators.
26. The policy statement highlights that ownership of Air New Zealand does not form part of the international air transport policy. It notes that the government's policy on the ownership of Air New Zealand is being considered in the context of the government's mixed ownership model.
27. With regard to other New Zealand airlines, the proposal is to remove the current policy limits of 25 percent ownership by any one foreign airline or 35 percent by foreign airlines in total. This may help to provide New Zealand based airlines with improved access to capital.
28. The policy would also enable New Zealand to consider, on a case-by-case basis, designating foreign owned, New Zealand based airlines, to enable them to benefit from New Zealand's air rights. This would be considered in situations where the airline would be granted operating authorisations by the other states involved in the service. This could be either because the relevant air services agreement specifically provides for it, or because the other state would waive its right to refuse to grant operating authorisations.

Forward negotiating programme

29. As proposed in the discussion document, under the new policy, New Zealand would prioritise relationships where the unavailability of air rights is preventing airlines from offering services. The aim will be to have arrangements in place ahead of demand.
30. In 2011, Cabinet mandates were secured for negotiations with five states in each of East Asia and South America⁵ [EGI Mins (11) 12/5 and (11) 7/12 refer]. This has already resulted in the signing of new and significantly more liberal air services agreements with Japan and China, two of our most important trading partners. East

⁵ Japan, China, Indonesia, Vietnam, Thailand, Brazil, Argentina, Colombia, Peru, and Uruguay. Agreements with Japan and China were concluded in February 2012 and April 2012, respectively.

Asia and South America will continue to be the focus of negotiations in the short to medium term. Longer term negotiating priorities will shift in line with commercial and aero-political developments, and government priorities.

31. The policy also proposes that New Zealand will continue to engage in multilateral and regional initiatives that are consistent with New Zealand's objectives. In particular, New Zealand would seek opportunities to enhance our links at a regional level with the Association of South-East Asian Nations (ASEAN). New Zealand would also continue its existing policy of taking a flexible approach toward implementing agreements with South Pacific states.

Endorsement of the Agenda for Freedom

32. Subject to Cabinet agreement, I propose to issue a statement endorsing the *Statement of Policy Principles regarding the Implementation of Bilateral Air Services Agreements* (the "Agenda for Freedom"), attached as Annex II to this Cabinet paper. The Agenda for Freedom is a Multilateral Statement of Policy Principles developed in a process facilitated by the International Air Transport Association and endorsed by 11 governments and the European Commission. The principles of the Agenda for Freedom are closely aligned with the proposed policy statement.

Summary of feedback received

33. The Ministry of Transport received feedback from 12 interested parties, including most of the major aviation and tourism industry stakeholders. Submissions were received from Air New Zealand, Virgin Australia, the three largest international airports (Auckland, Wellington and Christchurch), the NZ Airports Association, the Aviation Industry Association, the Tourism Industry Association, Tourism New Zealand, the International Air Transport Association, the New Zealand Air Line Pilots Association, and an interested member of the public.
34. While there was considerable support for the policy objective, a common theme among stakeholders was that the objective needed to be focussed more heavily on delivering economic results. In particular, the New Zealand Airports Association felt that the original wording lacked urgency and drive. The policy objective has been amended as a result to place a greater emphasis on economic benefits.
35. Stakeholders had conflicting views on the proposed approach to liberalisation. Air New Zealand argued that the current approach to liberalisation has not delivered growth, and that new or additional air services are not always in the country's best interests due to the impact that new services may have on existing routes. Air New Zealand opposed any move toward unilateral liberalisation or the granting of extra-bilateral rights, and suggested that the policy should retain some flexibility to use air rights as leverage to secure outcomes that are in the national interest. In contrast, airports sought an even more liberal approach, suggesting that New Zealand should adopt a unilateral open skies policy (in which there would be no requirement to seek reciprocal rights for New Zealand airlines). The NZ Airports Association submitted that New Zealand's demands for reciprocity in air services agreements are not in the country's best interests, and are a potential impediment to the establishment of new air services by foreign airlines.

36. The proposal to give favourable consideration to authorising operations by foreign airlines seeking to operate to Christchurch was influenced by a submission from Christchurch Airport, which favoured a regional air access package for all South Island airports. This approach was ruled out as it would have given South Island airports a significant and permanent advantage over their North Island competitors. However, the proposed policy recognises that due to the ongoing impact of the Christchurch earthquakes, some special consideration for Christchurch was warranted for the short-medium term.
37. The proposals relating to airline ownership and investment, including reducing the limits on foreign ownership of New Zealand designated international airlines (other than Air New Zealand) were generally supported. However, some stakeholders pointed out that the benefits of reducing limitations on foreign ownership would be limited by the fact that Air New Zealand is currently the only major New Zealand-based international airline. The Tourism Industry Association and the Aviation Industry Association both noted that it was important to ensure that measures were in place to prevent anti-competitive behaviour by airlines with significant foreign ownership.
38. Virgin Australia was particularly supportive of the proposal to consider designating, on a case by case basis, airlines that are based in New Zealand but not substantially owned by New Zealand interests where this would be consistent with the bilateral arrangements in the markets that they propose to operate. This would enable Virgin Australia (NZ) Limited (and potentially other airlines) to operate services from New Zealand using New Zealand air rights.
39. The New Zealand Airports Association submitted that consideration should be given to allowing foreign investors to hold a majority shareholding in a New Zealand airline provided that they did not hold a majority of voting shares. While this is not specifically mentioned in the proposed policy, there is nothing in the policy that would prevent this type of ownership structure for airlines other than Air New Zealand, as long as the other states involved in the services were prepared to grant the airline operating authorisation.
40. All stakeholders agreed that New Zealand's model open skies agreement should include the exchange of 7th freedom and cabotage (8th and 9th freedom) traffic rights, no regulation of tariffs, and open investment provisions. Air New Zealand's support for this proposal was dependent upon the agreement being reciprocal, and in New Zealand's best overall interests.
41. Most stakeholders agreed that the focus of the forward negotiating programme should be on East Asia and South America, due to the strong growth occurring in these regions. The New Zealand Airports Association submitted that New Zealand should develop a specific strategy to leverage the development of the Association of South-East Asian Nations Single Aviation Market. This suggestion was incorporated into the draft policy statement.
42. Air New Zealand submitted that the policy should recognise the role of collaborative airline arrangements (such as code-shares or more comprehensive alliances) in achieving the overall policy objectives. This issue is being considered separately as part of the government's response to recommendations made by the Productivity Commission.

Consultation

43. Officials consulted with the following organisations in developing the discussion paper: Auckland International Airport, Wellington International Airport, Christchurch International Airport, NZ Airports Association, Air New Zealand, Tourism New Zealand, Aviation Industry Association, and the Tourism Industry Association. Other interested parties were given the opportunity to comment on the discussion paper in May/June 2012, and in addition to the organisations listed above, submissions were received from Virgin Australia, the International Air Transport Association, the Air Line Pilots Association, and a member of the public.
44. The Ministry of Foreign Affairs and Trade; the Treasury; the Ministry of Business, Innovation and Employment; and the Officials' Committee for the Cabinet Economic Growth and Infrastructure Committee have been consulted on this paper. The Department of Prime Minister and Cabinet has been informed.

Financial implications

45. There are no financial implications arising directly from this paper. Implementation of the International Air Transport Policy is part of the ongoing work programme of the Ministry of Transport.

Legislative implications

46. No legislative or regulatory changes are proposed. The proposals set out in the policy statement can be implemented as a matter of policy without changes to legislation or regulation.

Regulatory Impact Analysis

47. A regulatory impact statement is not required, as no legislative or regulatory changes are proposed.

Publicity

48. I intend to announce the release of the policy statement, which will be published on the Ministry of Transport's website.

Recommendations

49. It is recommended that the Committee:

1. **approve** the International Air Transport Policy Statement, attached as Annex III to this paper, which sets out the framework for the negotiation and implementation of Air Services Agreements which facilitate international air services
2. **note** my intention to announce the International Air Transport Policy Statement and to make it available on the Ministry of Transport's website
3. **authorise** the Minister of Transport to issue a statement endorsing the *Statement of Policy Principles regarding the Implementation of Bilateral Air Services Agreements*, attached as Annex II to this paper, which has been endorsed by 11 governments and the European Commission, and is closely aligned with the proposed policy statement

Hon Gerry Brownlee
Minister of Transport

Dated: _____

Annex I: Freedoms of the air

FIRST FREEDOM



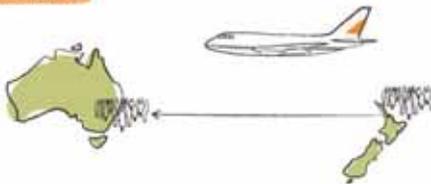
The right or privilege, in respect of scheduled international air services granted by one State to another State or States to fly across its territory without landing.

SECOND FREEDOM



The right or privilege, in respect of scheduled international air services granted by one State to another State or States to land in its territory for non traffic purposes.

THIRD FREEDOM



The right or privilege, in respect of scheduled international air services granted by one State to another State to put down in the territory of the first State, traffic coming from the home State of the carrier.

FOURTH FREEDOM



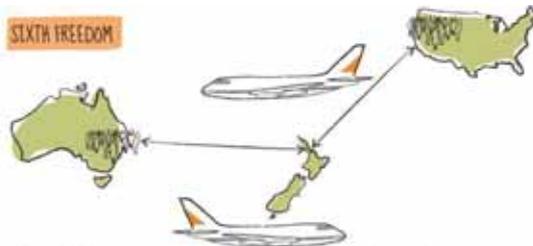
The right or privilege, in respect of scheduled international air services granted by one State to another State to take on, in the territory of the first State, traffic destined for the home State of the carrier.

FIFTH FREEDOM



The right or privilege, in respect of scheduled international air services granted by one State to another State to put down and to take on, in the territory of the first State, traffic coming from or destined to a third state.

SIXTH FREEDOM



The right or privilege, in respect of scheduled international air services, of transporting, via the home State of the carrier traffic moving between two other States.

SEVENTH FREEDOM



The right or privilege, in respect of scheduled international air services, granted by one State to another State, of transporting traffic between the territory of the granting State and any third State with no requirement to include on such operation any point in the territory of the recipient.

CABOTAGE - EIGHTH FREEDOM



The right or privilege, in respect of scheduled international air services, of transporting cabotage traffic between two points in the territory of the granting state which originates or terminates in the home territory of the foreign carrier.

CABOTAGE - NINTH FREEDOM



The right or privilege of transporting cabotage traffic of the granting State on a service performed entirely within the territory of the granting State.

Statement of Policy Principles

regarding the Implementation of Bilateral Air Services Agreements

Whereas:

International air transport is of fundamental importance to the global economy. Estimates of its support to 8% of world GDP and 32 million jobs probably underestimate air transport's full economic significance.

Restrictions in bilateral air services agreements on market access, investment, and pricing may reduce the contributions of international air transport to trade, tourism, job creation, and economic growth.

Some of these restrictions may no longer serve a valid public policy purpose and often differ from the treatment of other economic sectors that are considered equally strategic to national economies.

Some countries have long waived or eliminated certain of these restrictions on a case-by-case basis.

The International Air Transport Association (IATA), representing its member airlines, has called on governments to provide the airline industry with a higher degree of commercial freedom, as is already the case in other economic sectors, and to do so fast in order to meet the needs of the industry.

We, the undersigned authorities with responsibility for the international civil aviation policies of the Republic of Chile, Malaysia, the Republic of Panama, the Republic of Singapore, the Swiss Confederation, the United Arab Emirates, and the United States of America, therefore declare:

That we recognise the importance of promoting compatible regulatory approaches and reducing the potential for conflicts.

That we intend the following policy principles, although non-binding, to guide our implementation of existing air services agreements with other countries as well as our approach to the negotiation of new or amended air services agreements in the future.

That these policy principles are without prejudice to the primacy of requirements related to aviation safety, aviation security, and fair and equal opportunity to compete, and are based on the understanding that the pursuit of valid social or public policy purposes may justify a different approach in a particular air services relationship:

1. Freedom to access capital markets

a. We should generally respect the policies of other countries that seek to encourage foreign investment in their airlines. Accordingly, on the basis of reciprocity, and in the absence of valid social or public policy concerns, we should waive, where our legal systems permit us to do so, or otherwise refrain from exercising rights under existing bilateral air services agreements to disallow service by an airline of the other party to that agreement on the grounds that it is not owned and controlled by nationals or the Government of that other party.

b. Furthermore, also on the basis of reciprocity, we should eliminate, replace, or otherwise reduce the negative effects of traditional nationality clauses when negotiating new or amended air services agreements, including through expedited methods such as joint memoranda of understanding or a public exchange of letters.

c. We should give sympathetic consideration to the possibility of a multilateral agreement to accomplish this goal.

2. Freedom to do business

a. Restrictions on market access in international civil aviation should be the exception, not the rule. Accordingly, on the basis of reciprocity, and irrespective of any infrastructure constraints, we should consider waiving, where our legal systems permit us to do so, provisions in existing air services agreements that limit the number of airlines that may be designated or otherwise authorized to operate as well as provisions that limit the rights of airlines to provide such services.

b. Furthermore, on the basis of reciprocity, we should reduce or eliminate such restrictions when negotiating new or amended air services agreements, including through expedited methods such as joint memoranda of understanding or a public exchange of letters.

3. Freedom to price services

a. Airlines should generally have the freedom to set prices for international air transportation in accordance with their assessment of the market. Accordingly, on the basis of reciprocity, we should waive, where our legal systems allow us to do so, provisions in air services agreements requiring the filing of tariffs and should abstain from exercising rights under double approval, country-of-origin, or similar provisions that interfere in market-based pricing decisions of airlines.

b. Furthermore, on the basis of reciprocity, we should replace restrictive pricing provisions, such as double approval pricing, with liberal provisions when negotiating new or amended air services agreements, including through expedited methods such as joint memoranda of understanding or a public exchange of letters.

4. Fair competition

We recognise that measures taken by a government to deny airlines a fair and equal opportunity to compete may cause us to refrain from or stop implementing some of the principles contained in this statement.

5. Legal effect

Signature of this Statement of Policy Principles creates no legal obligations on the signatories or the countries they represent.

6. Endorsement by representatives of other countries

This Statement of Policy Principles may be endorsed at any time by an authority with responsibility for international civil aviation policies of any other country through a letter sent to IATA.

IATA will publish such endorsements as soon as they are received.

**Done at Montebello, Québec, Canada
on 16 November 2009**