

18 October 2012

Joint Inquiry on Strengthening Trans-Tasman Economic Relations
New Zealand Productivity Commission
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Submission on draft report: Strengthening trans-Tasman economic relations

The Ministry of Transport (the Ministry) welcomes the opportunity to make a submission on the draft report of the joint inquiry on strengthening trans-Tasman economic relations.

The Ministry recognises the importance and potential benefits of achieving greater cooperation between New Zealand and Australia. We note that the Ministry has a long history of cooperation with its counterparts in Australia, particularly in the aviation and maritime sectors.

The Ministry is generally supportive of the draft recommendations, with one exception (DR 4.10, relating to the passenger movement charge). Comments on each of the transport related recommendations are provided below.

DR 4.8 – removing the remaining restrictions on the single trans-Tasman aviation market

Seventh freedom passenger rights

The Ministry is supportive of the recommendation that New Zealand and Australia consider the exchange of 7th freedom passenger rights. We note New Zealand has already exchanged these rights with a number of our trading partners, including the United Kingdom, and most of the signatories of the Multilateral Agreement on the Liberalisation of International Air Transport (the MALIAT)¹.

While the practical impact of exchanging 7th freedom passenger rights may be limited (any Australian airline with regular services across the Tasman would have little trouble connecting one of those services to another international flight and thus operating them as 5th freedom services), we agree that the restrictions do not appear to be serving any useful purpose. Seventh freedom rights would provide airlines with greater flexibility and the ability to base aircraft at airports in the other country, which may facilitate the development of new routes to third countries.

¹ Brunei Darussalam, Chile, Cook Islands, New Zealand and Singapore have signed a protocol to the MALIAT exchanging 7th freedom passenger and cargo rights. Samoa, Tonga and the United States of America are also signatories to the MALIAT (which includes 7th freedom cargo-only rights), but have not signed the protocol to exchange 7th freedom passenger rights. Mongolia has signed the MALIAT and the protocol in respect of cargo-only services.

Single Aviation Market

The Ministry is also supportive of considering an amendment to the designation criteria for Single Aviation Market (SAM) airlines.

The SAM arrangements allow airlines which are jointly majority owned by Australian or New Zealand nationals to operate trans-Tasman services and scheduled domestic services in either country. However, as noted in the draft report, the requirement for SAM airlines to be majority owned and effectively controlled by Australia and/or New Zealand nationals is not consistent with New Zealand's current International Air Transport Policy². New Zealand's preference, consistent with the International Civil Aviation Organisation's (ICAO) model and many of our more recent open skies agreements, is for designation criteria based on 'principal place of business, place of incorporation, and effective *regulatory* control'.

Foreign-owned airlines are already able to operate stand-alone domestic services (9th freedom services) within either Australia or New Zealand, as neither State places any restrictions on ownership of domestic airlines. However, foreign-owned airlines are only able to operate international services where these services are consistent with all relevant air services agreements. For example, Tiger Airways Australia (a Singapore-owned airline based in Australia) is currently able to operate services within Australia (or New Zealand), but not across the Tasman, due to restrictions in Australia's air services agreement with Singapore. A relaxation of the designation criteria in the SAM agreement could enable Tiger to operate trans-Tasman services, providing additional competition in the market.

The Ministry is scheduled to meet with its counterparts from Australia's Department of Infrastructure Transport at the International Civil Aviation Negotiation Conference in Jeddah, Saudi Arabia in December this year to discuss opportunities for further liberalisation of air services arrangements.

DR 4.9 – Further liberalisation of air services

The Ministry supports the proposed recommendations in this section. However, we believe that all of these measures have already been implemented in New Zealand's International Air Transport Policy, either explicitly or implicitly.

New Zealand has followed an 'open skies' policy for several decades, and as a result we now have more than a dozen open skies relationships in place. Many of these agreements include the exchange of 7th freedom and cabotage rights. Our current international air transport policy is arguably the most liberal in the world, and any restrictions included in our more recent agreements have generally been at the request of the other Party. We seek agreements with liberal designation criteria based on the airline having its principal place of business, place of incorporation, and effective regulatory control in the designating State. Where possible, we also refrain from referring to specific New Zealand airports in our agreements, thus ensuring that airlines are able to operate to/from any airport as they see fit, where they see a commercial opportunity.

² <http://www.transport.govt.nz/ourwork/air/Pages/IATRPolyStatement.aspx>

DR 4.10 – Passenger Movement Charge

The Ministry does not support the recommendation that New Zealand should review its approach to charging for border functions. Funding of border functions was the subject of an extensive Ministerial Committee review in 2004. The outcome of the review was that airlines and passengers would meet the full cost of aviation security functions, as they are the primary beneficiaries of aviation security, while the Crown would meet the full costs of customs and biosecurity, since “New Zealand as a whole is the primary beneficiary of those services”³.

All New Zealanders (and Australians) benefit from customs (including primary immigration checks) and biosecurity functions. Therefore it is difficult to accept that it would be ‘more equitable’ to move toward a cost-recovery system in which the full cost of providing the services would be met only by those who travel.

We note that cost-recovery of border services would also be inconsistent with Article 15 of the Convention on International Civil Aviation (the Chicago Convention), of which both Australia and New Zealand are parties. Article 15 states that “no fees, dues or other charges shall be imposed by any Contracting State in respect solely of the right of transit over *or entry into or exit from* its territory”. Furthermore, ICAO Assembly Resolution A36-15 urges Contracting States to “ensure that airport and air navigation services charges only be applied towards defraying the costs of providing facilities and services *for civil aviation*”. Unlike aviation security functions, which are an international obligation under the Chicago Convention, customs and biosecurity functions are not ‘services for civil aviation’.

It is unclear how increasing the ticket price for air travel would benefit economic growth in either country. While this would reduce costs for the Crown, there are wider impacts that need to be considered. In particular, the Commissions should consider the impact that cost-recovery would have not only on trans-Tasman routes, but also on other routes. Many of New Zealand’s long-haul routes are marginally viable and therefore highly vulnerable to the effects of reduced demand caused by an increase in the cost of travel.

We recommend that the Commissions give further consideration to the merits of Australia adopting New Zealand’s approach to the funding of customs and biosecurity services. In our view, Australia (as a Party to the Convention and an ICAO Council member) has an obligation to comply with the Convention and ICAO Assembly resolutions where reasonably practicable. This approach would also spread the cost of providing customs and biosecurity functions among those who benefit from them, and is likely to stimulate additional demand for trans-Tasman travel and facilitate the flow of goods and services between the two countries.

DR 4.11 - Remove competition exemptions for international sea freight ratemaking agreements

The Ministry strongly supports this recommendation, and notes that it is the same recommendation the New Zealand Productivity Commission made in its International Freight Inquiry.

³ Information relating to the 2004 review of Passenger Clearance Services is available at: <http://www.treasury.govt.nz/publications/informationreleases/fundingpcs>

The government has taken steps to address this recommendation. The Commerce Select Committee is currently looking at whether it is desirable to continue to exempt ratemaking and non-ratemaking agreements from the Commerce Act 1986.

While there is likely to be benefit to New Zealand in removing the exemption irrespective of action taken by Australia, there would be greater benefit in coordinating any reform of the exemptions with Australia. This would remove some of the risk of international shipping lines being deterred from serving New Zealand.

DR 4.12 – Evaluate Australia’s restrictions on competition in coastal shipping within a broad cost-benefit framework, and drawing on New Zealand’s experience

This recommendation is one for Australia to consider.

DR 4.13 – Develop integrated data collection, monitoring and benchmarking of ports’ performance

The Ministry supports this recommendation and notes that it is the same as the recommendation the New Zealand Productivity Commission made in its International Freight Inquiry. These recommendations are currently being progressed with the Ministry taking steps to:

- expand the Freight Information Gathering System to cover all ports and non-containerised cargo
- expand the measures of port productivity to cover non-containerised cargo
- regularly publish comparative information on the financial performance of ports

In developing these performance measures, international comparability, including with Australia, has been a key consideration.

DR 5.2 – Require significant new or modified regulatory proposals to account for trans-Tasman implications where relevant

We support this recommendation where relevant. By considering trans-Tasman implications in decisions on significant regulatory proposals it continues a focus on developing closer beneficial economic relations with Australia.

DR 5.3 – Consider how to facilitate joint action in regional and multilateral fora

We support this recommendation where it serves New Zealand’s interests. We agree that joint action can result in both countries having greater leverage in key forums like ICAO, the International Maritime Organization (IMO), and the World Trade Organization. As a relatively small country, New Zealand’s ability to exert influence in international fora can be limited. Increased cooperation with Australia would increase the likelihood that international rules, standards and agreements will serve our collective interest.

Specific to the Transport sector, we believe greater coordination would be beneficial in:

- providing a stronger voice in the development of Standards and Recommended Practices issued through ICAO and the IMO, to ensure that any international requirements are cost effective and supported by robust cost/benefit analysis
- progressing further liberalisation of international air services, either through ICAO and other international fora, or through a new multilateral air services agreement.

Other Recommendations

While not directly related to the Ministry's functions or responsibilities, we are also generally supportive of recommendations 4.7 (continue to develop common systems and processes for quarantine and biosecurity, where cost effective); 4.15 (progress roll out of SmartGate and associated systems where cost effective); and 4.16 (Scope a 'trans-Tasman tourist visa' for foreigners visiting both countries).

Yours sincerely

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