

Office of the Minister of Transport

Cabinet Economic Development Committee

Proactive Release of Information on New Zealand's Air Transportation Agreement with Mexico, and a Delegation of Authority to the Ministers of Transport and Foreign Affairs, and a Proposal to Delegate Authority for Air Services Treaty Actions to the Ministers of Transport and Foreign Affairs Proposal

1. I propose that Cabinet:
 - agree to an exchange of diplomatic notes amending the *Air Transportation Agreement between the Government of the United Mexican States and the Government of New Zealand* (“the Agreement”), signed at Mexico City on 14 May 1999; and
 - grant a “power to act” to the Ministers of Transport and Foreign Affairs empowering them to approve any future bilateral air services treaty actions that are not subject to Parliamentary treaty examination, including entry into force requirements.

Relation to government priorities

2. Enhanced air services improve New Zealand’s connectivity with the rest of the world. This relates to the Government’s priority of “accelerating the recovery” from COVID-19 through global trade. Tourism and improved people-to-people links, including for education and business development purposes, will help to accelerate the recovery through the *Reconnecting New Zealanders* strategy.

Background

3. Under an international system dating back to the 1940s, airlines are able to operate international services only where the right to do so has been expressly permitted in a bilateral air services agreement or one of the limited number of multilateral agreements.
4. Among other things, air services agreements set out the routes airlines may operate, the amount of capacity they are entitled to provide and the degree of flexibility they have in the setting of tariffs (fares). Aviation safety and security articles are standard, as are provisions relating to “doing business” matters such as the establishment of local offices and the repatriation of earnings.
5. New Zealand’s long-standing International Air Transport Policy promotes the negotiation of air services agreements that will increase New Zealand’s global connectivity.

Mexico

6. Officials have, over a number of years, sought to engage with Mexico in order to remove the Agreement's three-yearly renewal requirement, and to liberalise the Agreement more generally (EGI Min (14) 16/2 refers). Perseverance has now resulted in Mexico's readiness to update the Agreement.
7. Air New Zealand has offered code-share services to Mexico for many years, with the flights operated by its Star Alliance partner United Airlines. Code-sharing is a right expressly provided for in the Agreement.
8. No Mexican carrier operates or code-shares to New Zealand.

Air services treaties

9. On 12 October 2015, Cabinet (CAB-15-MIN-0139 refers) delegated to the Minister of Transport, in consultation with the Minister of Foreign Affairs, responsibility for setting priorities and objectives, i.e., a mandate, for air services negotiations.

MEXICO

Cabinet approval of an exchange of diplomatic notes to amend the Air Transportation Agreement with Mexico

10. I seek Cabinet approval for New Zealand to conclude:
 - an exchange of diplomatic notes amending the *Air Transportation Agreement between the Government of the United Mexican States and the Government of New Zealand*; and
 - a subsequent exchange of diplomatic notes that would provide for entry into force of the amendments.
11. Officials were prompted to engage with Mexico by the ongoing requirement to renew the Agreement every three years. The Agreement is the only one of this type New Zealand has requiring renewal. Since 1999, the Agreement has been renewed seven times, most recently in 2021, and it is currently in force until March 2024.
12. In addition to removing the renewal requirement, New Zealand and Mexican officials also decided to provide for additional enhancements to the Agreement. In particular, the amendments provide for more liberal airline ownership provisions, more comprehensive aviation safety and security provisions in line with New Zealand policy, less onerous tariff (fares) requirements and adding the right for airlines to use leased aircraft.

IN CONFIDENCE

13. The amendments were finalised by email exchange between the New Zealand Embassy in Mexico City and the Mexican Ministry of Foreign Affairs, resulting in draft diplomatic notes to give effect to the amendments.

Parliamentary treaty examination and entry into force

14. On 20 July 2021, the Minister of Foreign Affairs decided the exchange of diplomatic notes with Mexico need not be subject to the parliamentary treaty examination process because it is not a not major bilateral treaty of particular significance, in accordance with Standing Order 405.
15. The amendments to the Agreement with Mexico will enter into force once each side has notified the other of the completion of its internal processes for entry into force of international treaties.
16. The exchange of diplomatic notes will be concluded largely in the Spanish language, between the New Zealand Embassy in Mexico City and the Mexican Ministry of Foreign Affairs. The amendments themselves will be recorded in both English and Spanish (the Agreement itself was concluded in both languages). Officials will verify the Spanish language text as a true reflection of the understandings reached between the two sides.

Risks

17. The enhanced air services arrangements with Mexico are not expected to have implications in terms of safety oversight by New Zealand authorities or on border processing. This is because code-sharing is expected to continue, with no commencement of services by New Zealand and Mexican airlines using their own aircraft anticipated.
18. Internationally accepted standard aviation safety and security provisions are, however, included in the Agreement with Mexico. Further, any airline operating to/from New Zealand is required to meet stringent safety and security standards before being granted the appropriate operating certificate by the Director of Civil Aviation, in addition to the requirements applied in its home state (where relevant).

DELEGATING AUTHORITY FOR AIR SERVICES TREATY ACTIONS

19. In 2015 Cabinet delegated to the Minister of Transport, in consultation with the Minister of Foreign Affairs, responsibility for issuing mandates for air services negotiations. Cabinet retained responsibility for authorising the outcome of the negotiations (decision 6 of the Cabinet Business Committee Minute of Decision CBC-15-MIN-0005 of 28 September 2015 refers).
20. In support of the above, the Committee's Minute of Decision noted "that the risk of officials negotiating an agreement that does not meet the government's direction is very low, as air services agreements are highly standardised, and

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all negotiations are conducted transparently and in accordance with the International Air Transport Policy Statement”.

IN CONFIDENCE

21. The Committee also agreed “that the Ministry of Transport will consult with relevant departments, including the Ministry of Foreign Affairs and Trade, and the Ministry of Business, Innovation and Employment, in the preparation of specific air services negotiating mandates to ensure the air services negotiating programme is consistent with broader government objectives”.
22. In view of the low risk to New Zealand in the negotiation of air services agreements, I propose that, in addition to their responsibility for negotiation mandates, and in accordance with paragraph 5.9 of the Cabinet Manual 2017, the Ministers of Transport and Foreign Affairs have the “power to act” in approving any future bilateral air services agreements that are not subject to Parliamentary treaty examination, and any subsequent amendments, once they are negotiated, including entry into force requirements.
23. In accordance with Standing Order 405 of the Standing Orders of the House of Representatives, the Government will present to the House “major bilateral treat[ies] of particular significance.” The determination of whether a bilateral treaty is of particular significance is made by the Minister of Foreign Affairs.
24. I propose that Cabinet retain responsibility for approving major bilateral treaty actions of particular significance, as well as multilateral air services agreements. This would be consistent with the requirement that, in accordance with the Standing Orders, multilateral treaty actions are always subject to the parliamentary treaty examination process.
25. New Zealand is party to one multilateral air services agreement, the *Multilateral Agreement on the Liberalization of International Air Transportation* (MALIAT)¹, and is currently engaged in the negotiation of a multilateral air services agreement with the Association of Southeast Asian Nations.
26. My office proposed this change as a way of streamlining the authorisation of air services agreements, and reducing the flow of papers to Cabinet. The Department of Prime Minister was consulted, as was the Cabinet Office. Both are supportive of the proposal, as are my own officials.

Consultation

27. The Ministry of Foreign Affairs and Trade, The Treasury, the Ministry of Business, Innovation and Employment (Immigration and Tourism), the Ministry of Primary Industries and the New Zealand Customs Service were consulted on this Cabinet paper. The Department of the Prime Minister and Cabinet has been informed.

Regulatory impact analysis

28. No legislative or regulatory changes would arise from the actions proposed. Accordingly, a Regulatory Impact Assessment is not required.

¹ The members of the MALIAT are New Zealand, Brunei, Chile, the Cook Islands, Mongolia (on a cargo-only basis), Singapore, Tonga and the United States.

Climate implications policy assessment

29. The thresholds for providing a climate implications policy assessment disclosure are not met in the case of this paper. This is primarily because aircraft operations are not expected to increase as a result of the amended Agreement with Mexico.

Financial, population, human rights, gender and disability implications

30. There are no financial, population, human rights, gender or disability implications arising from this paper.

Publicity

31. I do not propose to issue a public statement.

Proactive release

32. I propose to release this paper, concerning international air services, proactively in whole or in part within 30 business days of the Committee meeting.

Recommendations

33. The Minister of Transport recommends that the Committee:

Mexico

1. **note** that New Zealand and Mexican officials have negotiated by correspondence the texts of an exchange of third person diplomatic notes amending the *Air Transportation Agreement between the Government of the United Mexican States and the Government of New Zealand* (“the Agreement”)
2. **note** that the amendments to the Agreement provide for:
 - 2.1 more flexible airline ownership provisions
 - 2.2 more flexible tariff filing provisions
 - 2.3 more comprehensive aviation safety and aviation security provisions
 - 2.4 provision for the use of leased aircraft
 - 2.5 removal of the requirement for the Agreement to be renewed every three years
3. **note** that on 20 July 2021 the Minister of Foreign Affairs decided that the exchange of diplomatic notes amending the Agreement is not a major bilateral treaty of particular significance and, therefore, need not be subject to the Parliamentary treaty examination process

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4. **note** that the amendments to the Agreement will enter into force on the date of the last notification by which the Parties communicate to each other their compliance with their respective internal procedures
5. **approve** the text of the exchange of diplomatic notes amending the Agreement (Attachment 1)
6. **note** that, at the request of Mexico, the exchange of diplomatic notes will be concluded largely in the Spanish language, between the New Zealand Embassy in Mexico City and the Mexican Ministry of Foreign Affairs, with the amendments themselves recorded in both English and Spanish
7. **note**, however, that the text at Attachment 1 has been prepared largely in English for ease of understanding
8. **authorise** officials to complete the exchange of diplomatic notes amending the Agreement, subject to any minor and/or technical changes arising from the process of legal verification and/or translation
9. **authorise** officials to conclude a subsequent exchange of diplomatic notes with Mexico to provide for the entry into force of the amendments to the Agreement

Delegating Authority for Air Services Treaty Actions

10. **note** that New Zealand's approach to negotiating bilateral air services agreements, and any subsequent amendments, remains as set out in the International Air Transport Policy Statement, which has been followed by successive governments
11. **note** that the risk of officials negotiating an air services agreement, or subsequent amendment, that does not meet the government's expectations is low, as air services agreements are highly standardised and all negotiations are conducted transparently, and in accordance with the International Air Transport Policy Statement
12. **note** that in, view of the above, in 2015 Cabinet agreed (CAB-15-MIN-0139 refers) to delegate to the Minister of Transport, in consultation with the Minister of Foreign Affairs, responsibility for issuing mandates for air services negotiations, while retaining for Cabinet the responsibility for approving air services agreements once they are negotiated
13. **agree** that, in view of the low risk to New Zealand in the negotiation of air services agreements, and in accordance with paragraph 5.9 of the Cabinet Manual 2017, the Ministers of Transport and Foreign Affairs have the "power to act" in approving bilateral air services agreements that are not subject to the Parliamentary Treaty Examination process, and any subsequent amendments, once they are negotiated, including entry into force requirements

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14. **revoke** decision 6 of the Cabinet Business Committee Minute of Decision CBC-15-MIN-0005 of 28 September 2015, in favour of recommendation 13 above
15. **agree** that Cabinet will retain responsibility for approving the outcomes of multilateral air services negotiations and bilateral air services agreements that are subject to the Parliamentary Treaty Examination process.

Authorised for lodgement:

Hon Michael Wood
Minister of Transport