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COMMUNICATION FROM THE COMMISSION

Developing a Community civil aviation policy towards New Zealand

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1. INTRODUCTION

- 1.1 Traditionally, international air transport is governed by bilateral agreements between individual states. However, the so-called “open skies” judgements of 5 November 2002 of the European Court of Justice marked the start of an external aviation policy at Community level.

As outlined in the Communication of the European Commission “*Developing the agenda for the Community’s external aviation policy*”¹, agreements between the European Community and certain third countries will have the substantial added value of creating new economic opportunities by opening up markets and promoting investment opportunities. Furthermore, such agreements will be the best way to ensure fair competition by promoting regulatory convergence.

Therefore, the European Commission has proposed to launch targeted negotiations seeking to achieve comprehensive aviation agreements in the major regions of the world, with the aim of strengthening the prospects for promoting European industry and ensuring fair competition, while at the same time seeking to reform international civil aviation.

- 1.2 In October 2003, New Zealand requested to start negotiations on an agreement on the liberalisation of air transport with the European Community. With its market-oriented economic and transport policy and high regulatory standards, New Zealand is an obvious and promising candidate for a new-generation of air transport agreement with the European Community.

This is why New Zealand was identified in the Commission’s Communication “*Developing the agenda for the Community’s external aviation policy*” as a possible key target country for a Community-wide agreement. In its Conclusions on external aviation relations, the Council has explicitly taken note of New Zealand as a potential candidate for a future request for comprehensive negotiating mandates.²

- 1.3 Furthermore, New Zealand has demonstrated its commitment to reforming the framework for air transport jointly with the European Community by initiating an agreement on certain aspects of air services with the European Community on 14 March 2005.

An agreement on the liberalisation of air transport with New Zealand will further strengthen the good relations with New Zealand that shares the Community’s

¹ COM (2005) 79 final, dated 11.3.2005

² Council Conclusions of 27 June 2005 on developing the agenda for the Community’s external aviation policy.

objectives of reforming the framework for international air transport. It will bring economic benefits to air carriers, airports, passengers, shippers, the tourism industry and the wider economy both within the European Union and in New Zealand. In addition and equally importantly, it will be a milestone on the path towards an international reform of the regulatory framework governing the air transport sector.

- 1.4 With this Communication, the Commission therefore recommends that the Council authorises the Commission to negotiate a comprehensive agreement on an Open Aviation Area with New Zealand combining market opening with a parallel process of regulatory co-operation and/or convergence notably in priority areas such as aviation safety, security, environmental protection and application of competition rules ensuring a level playing field and fair and equal conditions for competition.

Positive relations between the Ministry of Transport of New Zealand and the services of the European Commission have been developed during the horizontal negotiations and exploratory contacts, which may serve as a good basis for entering into more ambitious air transport negotiations with New Zealand.

2. THE EXISTING REGULATORY FRAMEWORK FOR AIR SERVICES BETWEEN THE EUROPEAN COMMUNITY AND NEW ZEALAND

Bilateral air services agreements between EU Member States and New Zealand

- 2.1 Currently, air services between the EU and New Zealand are governed by the bilateral air services agreements between New Zealand and 12 EU Member States.³ There is no legal basis for air services between the other 13 Member States and New Zealand.

The existing regulatory framework for air services between the Community and New Zealand does not allow airlines, passengers and shippers to take full advantage of the benefits of free markets. The existing bilateral air services agreements establish an imbalanced framework for air services between the EU and New Zealand as not all agreements are equally liberal with regard to freedoms, capacities and routes available. These differences in the Member States' bilateral air services agreements with New Zealand lead to inequalities in the opportunities available to Community air carriers.

- 2.2 Like most bilateral air services agreements, the existing bilateral air services agreements between EU Member States and New Zealand contained restrictions that have been found illegal by the European Court of Justice. In March 2005, the European Commission reached an agreement with the New Zealand aviation authorities on certain aspects of air services ("Horizontal Agreement")⁴ that replaces these nationality clauses with a Community clause. This agreement allows all EU airlines in principle, subject to traffic rights available, to operate flights to New

³ Austria, Belgium, Denmark, France, Germany, Ireland, Italy, Luxembourg, the Netherlands, Spain, Sweden and the United Kingdom.

⁴ Proposal for a Council Decision on the signature and the provisional application of the Agreement between the European Community and New Zealand on certain aspects of air services, COM (2005) 267.

Zealand from any EU Member State where they are established. Due to the above-mentioned different degrees of market opening, it was necessary to include a “no-circumvention” clause in the recent “Horizontal Agreement” with New Zealand in order to prevent possible circumvention of the existing different bilateral restrictions on traffic rights.

The regulatory framework for air transport in New Zealand

2.3 New Zealand is a pioneer in air transport liberalisation. As early as 1985, New Zealand developed a new policy in international aviation based on the perceived benefits for the economy, including trade and tourism, rather than for the national airline.

The New Zealand aviation policy is based on the assumption that the maximisation of economic benefits will best be achieved by encouraging the liberalisation of air services and the government will examine ways to reduce barriers that inhibit competition and freer access to markets.

In 1985, New Zealand was party to only 12 bilateral air services agreements. After 1985, the number of airlines serving New Zealand and the number of tourist arrivals increased considerably. From the early 1990s, New Zealand actively sought opportunities to negotiate open skies agreements, including with the United States and a number of Member States.

New Zealand and the EU share a common position on many ‘doing business’ matters related to air transport in the WTO framework. New Zealand supported the EU position on environmental issues in the International Civil Aviation Organisation.

2.4 New Zealand’s aviation policy today is characterised by a very modern and open regulatory framework:

- Since 1986, New Zealand has allowed 100% foreign ownership of domestic airlines.
- For domestic flights, safety certification is the only requirement for market entry.
- New Zealand has concluded “open skies” agreements with several countries in all geographic regions.
- In bilateral negotiations, New Zealand usually seeks liberalisation of the designation provisions to “principal place of business” instead of the traditional “national ownership” provision.

2.5 On 27 May 2005, New Zealand and the United Kingdom signed a Memorandum of Understanding and an Air Service Agreement.

The new UK-New Zealand agreement incorporates the relevant Community standard clauses agreed through the EC/New Zealand Horizontal Agreement and provides for the following key elements:

- Unrestricted 5th, 6th, 7th, 8th and 9th freedom rights for UK-designated airlines; similar for New Zealand-designated airlines albeit with limits on 5th freedom and 7th freedom passengers on London-US routes;
- liberal code sharing and leasing rights;
- liberal charter arrangements;
- liberalised tariffs arrangements;
- provisions on fair competition and state aids and ground-handling.

2.6 The Ministry of Transport is the licensing authority for airlines in New Zealand. International airlines serving New Zealand on a scheduled basis are required to hold an International Air Service Licence. Licensing provides the mechanism for authorising and monitoring the exercise of air traffic rights exchanged in bilateral negotiations. For New Zealand airlines, licensing is also the method for allocating New Zealand's air traffic rights that, under many Air Services Agreements (ASAs), are still restricted.

2.7 The Civil Aviation Authority of New Zealand was established 1992 under the Civil Aviation Act. Its prime function is undertaking activities that promote civil aviation safety and security at reasonable cost. The responsibilities include establishing aviation safety and security standards, monitoring of the safety and security standards, investigating accidents and incidents. The Director of Civil Aviation is responsible for the granting of certificates and other aviation documents.

2.8 In 2001, New Zealand signed a multilateral "open skies" agreement, known as the Multilateral Agreement for Liberalisation of Air Transportation (MALIAT), along with Brunei, Chile, Singapore and the United States and others. New Zealand is the depositary state for the MALIAT Agreement.⁵ The key features of MALIAT are an open route schedule, open traffic rights and open capacity. The MALIAT signatories have granted each other unlimited traffic rights between each other under third, fourth, fifth and sixth freedoms as well as unlimited seventh freedom traffic rights for cargo-only flights. National majority ownership is no requirement for being designated between MALIAT countries. New Zealand went even further and signed – together with Chile, Singapore and Brunei – the so-called MALIAT Protocol.⁶ Further to the freedoms granted in MALIAT, the MALIAT Protocol allows seventh freedom rights for passenger flights and cabotage rights when continuing an international flight.

2.9 Between Australia and New Zealand, a Single Aviation Market (SAM) was agreed in 1996 and completed in 2002. Following the establishment of the Single Aviation Market, the number of scheduled passenger airlines between Australia and New Zealand has increased to 12 carriers with significant increases in passenger traffic as

⁵ Other signatories of MALIAT are the United States, Brunei, Peru, Samoa and Tonga.

⁶ The MALIAT Protocol entered into force in Singapore, New Zealand and Brunei in December 2001 and in Chile in December 2003.

a result. The Single Aviation Market gives Australian carriers access to domestic flights in New Zealand and vice versa.

Within the SAM, carriers of both countries may, provided that they meet for operating within the domestic market of either Australia or New Zealand and be at least 50% owned and be controlled by Australian and/or New Zealand nationals, operate any capacity, including cabotage, as it decides without any restrictions. The aviation safety authorities of the two countries have also agreed to mutual recognition of all aviation-related certification.

3. FURTHER STRENGTHENING RELATIONS BETWEEN THE EUROPEAN UNION AND NEW ZEALAND

3.1 The relationship between the European Union and New Zealand was given a formal framework in May 1999, when the Joint Declaration on Relations between the European Union and New Zealand was signed. The common goal in economic matters is to promote the development of an open free markets economies. New Zealand and the EU have similar views on many international and economic policy issues.

In commercial terms, the European Union is the third largest export destination for New Zealand after Australia and Japan (€ 2.7 billion) and its second largest supplier of imports (€ 2.4 billion).⁷ Overall, the European Union is New Zealand's second largest trade partner in goods. Trade in services is growing increasingly between the European Union and New Zealand. The European Union is also an important destination for investments from New Zealand and a major source of foreign investment in New Zealand.

3.2 Due to the geographical distance, air transport is essential for the commercial and social relations between New Zealand and the EU. Air transport has been consistently on the agenda of high-level meetings and action plans between New Zealand and the EU, most recently on the EU-New Zealand ministerial troika in February 2005.

3.3 New Zealand has formally requested to start negotiations on an agreement on the liberalisation of air transport with the European Community. Opening negotiations in the field of air transport will further strengthen the economic and political links between the EU and New Zealand.

4. THE ECONOMIC BENEFITS OF A COMPREHENSIVE AIR TRANSPORT AGREEMENT BETWEEN THE EUROPEAN COMMUNITY AND NEW ZEALAND

4.1 Currently, only Air New Zealand is operating direct passenger flights between the Community and New Zealand (via Los Angeles to London). A number of Community carriers offer indirect flights to New Zealand on a code-share basis and some Community carriers also offer long-haul cargo services to New Zealand. New Zealand has a growing number of visitor arrivals from the EU, particularly a strong

⁷ Eurostat, Statistical Yearbook External and intra-EU Trade 2003 Edition.

growth in tourist arrivals. The number of people travelling between New Zealand and the EU has increased from 540,000 in 2002 to 640,000 in 2004. Due to the long distance, there is a wide choice of indirect flights via the Asia/Pacific region as well as via the United States.

Benefits and added value of a Community approach

- 4.2 Even if the immediate economic impact of a liberalisation of air transport between the European Community and New Zealand might be moderate for the EU economy in the short term, given the limited share of direct flights in the EU-New Zealand market, the lifting of restrictions could enhance market opportunities for EU air carriers and increase the importance of direct flights in the total EU-New Zealand market.

An increase in (direct) air services would enhance trade and tourism flows between the EU and New Zealand and, hence, bring wider economic benefits to the EU economy.

- 4.3 With its high regulatory standards and its market oriented economic and transport policy, New Zealand is an obvious candidate for a Community-level open aviation area agreement. An air transport agreement between the EU and New Zealand could set a model for liberalisation of air transport markets with other third countries. New Zealand is a key driver of aviation liberalisation and market integration in the Asia/Pacific region. The wider impact on air transport relations with other third countries would bring significant economic benefits for the European economy

- 4.4 However, even more important than the short-term economic impact is the medium-term economic impact on other air transport markets. The economic benefits of open international aviation markets have been clearly identified in a study conducted on behalf of the European Commission on the economic impact of an EU-US Open Aviation Area.⁸ Released from the existing restrictions on the number of weekly flights and flight routes, air traffic is likely to increase. With open market access, airlines will be able to take advantage of new market opportunities and offer air services on the routes where their customers demand it. Cross-border investment flows will bring further efficiency gains.

A full liberalisation of air transport with New Zealand can only be achieved on a Community level. Since EU law sets the ownership requirements for EU carriers, a reciprocal liberalisation of ownership and control requirements needs to be done by the Community.

The wider impact on air transport relations with other third countries would bring significant economic benefits for the European economy. Due to the Single Aviation Market between New Zealand and Australia and the high level of integration already achieved between these two markets, the benefits of an Open Aviation Area with New Zealand would be reinforced as the combined market would be larger.

⁸ The Brattle Group, The Economic Impact of an EU-US Open Aviation Area, Study prepared for the European Commission, December 2002.

As a consequence of open aviation markets:

- airlines would further increase their efficiency and improve their international competitiveness,
- passengers and shippers would benefit from more choice,
- airports, aviation-related services and the aircraft manufacturing industry would benefit from an increase in air transport,
- the increase in traffic would facilitate a further increase in trade and tourism flows.

4.6 The clear potential benefits of an Open Aviation Area Agreement with New Zealand have been confirmed in an impact assessment study by independent consultants. While the short-term economic benefits might be relatively limited due to the low number of direct flights between the Community and New Zealand and the already existing degree of market access, the medium- and long-term implications for other countries in the Pacific Rim would be considerable. The recent study has confirmed that the regulatory and policy framework for air transport in New Zealand should allow the Community to reach a model agreement with New Zealand, which would result in greater levels of regulatory convergence and new opportunities for EU industry and users. New Zealand shares EU positions on many aviation-related issues and has a commitment to develop larger regional markets, which in the longer term would create considerable new market opportunities.

5. CONCLUSIONS: SUBSTANTIAL ADDED VALUE OF THE PROPOSED AIR TRANSPORT NEGOTIATIONS WITH NEW ZEALAND

5.1 A modernised framework for air transport between the EU and New Zealand offers significant new opportunities for strengthening air transport in a competitive level playing field. Further to that, it will strengthen further the excellent commercial and political relations between the EU and New Zealand.

The model of an air transport partnership between the European Union and New Zealand is inspired by the ambition to take forward an agenda for reform at the international level. The resulting agreement on the liberalisation of air transport between the European Community and New Zealand would replace the existing bilateral air services agreements between New Zealand and Member States and establish a modern framework for air services between the EU and New Zealand, with market access as open as possible and regulatory standards as high as possible. It could thereby be the model for an extended air transport partnership with other third countries.

5.2 The negotiations of an Open Aviation Area agreement with New Zealand would aim at an opening of market access and an opening of investment opportunities. The opening of market access can not be limited to third- and fourth-freedom rights but

need to include fifth-freedom rights.⁹ New Zealand can not be served with non-stop flights from Europe. Therefore, air services between the EU and New Zealand are operated on a one-stop basis via intermediate points which are significant markets in their own right, both in the Asia/Pacific region and in North America. It would not be economically viable to operate the air service between the intermediate points and New Zealand without the respective traffic rights. Therefore, fifth-freedom rights via such intermediate points are essential in order to maximise the potential benefits of the agreement.

The reciprocal opening of market access with New Zealand has already been implemented by some Member States. Very recently, the United Kingdom reached an agreement with New Zealand providing for a high degree of market liberalisation. However, other Member States have not yet reached an advanced degree of market access in their relations with New Zealand. Twelve Member States currently do not have any access at all to the New Zealand market. This imbalanced framework has led to inequalities in the opportunities of Community air carriers which are not consistent with the equal opportunities for all Community air carriers in the Single Market.

A comprehensive air transport agreement on a Community level would make the Community's aviation relations with New Zealand coherent and would grant equal opportunities for all Community air carriers for air services to New Zealand. Furthermore, it would create substantial new market opportunities for air carriers in the 12 Member States that currently do not have any rights concerning air transport from and to New Zealand. An air transport agreement on Community level would also give smaller carriers the possibility to extend their network to New Zealand. While traffic demand between several Member States and New Zealand would not necessarily make direct flights commercially viable, air carriers could pursue benefits through code-sharing arrangements to and from New Zealand.

An EU-New Zealand agreement would allow the European airline industry to invest in New Zealand and to benefit from capital originating from New Zealand. It would allow the European freight carriers to establish international freight lanes in the Asia-Pacific region and thereby to increase the efficiency of their operations thereby enabling the provision of services according to the needs of their global customers and no longer being constrained by the need to combine rights under various bilateral agreements.

- 5.3 Open aviation markets need a framework that ensures fair competition and high standards of safety, security and environmental protection. Market opening and regulatory co-operation towards convergence must go hand in hand. The bilateral air services agreements between some Member States and New Zealand have granted New Zealand air carriers fully open market access while not adequately ensuring regulatory convergence. A comprehensive air transport agreement with New Zealand on a Community level would reinforce high standards of safety, security, environmental protection, passenger protection and other regulatory issues.

⁹ Third-freedom is the right to carry passengers and freight from the EU to New Zealand. Fourth-freedom is the right to carry passengers and freight from New Zealand to the EU. Fifth-freedom is the right to carry passengers and freight from an intermediate point to New Zealand on a service starting in the EU.

With respect to environmental issues, the agreement must be consistent with the EU's commitment to sustainable development. Apart from the economic benefits highlighted above, the expected growth in air traffic has also unwanted side-effects, notably on air quality and noise levels around airports and through the contribution to global climate change. It is important that the agreement does not restrict the EU's ability to apply regulatory or economic instruments to mitigate these adverse effects. Safeguarding fair competition is another key issue in open aviation markets. By achieving greater levels of regulatory convergence, a comprehensive air transport agreement between the Community and New Zealand will ensure a competitive level playing field to avoid distortions of competition. New Zealand has strong competition authorities enforcing competition rules. There is no government support to the airline industry. New Zealand also has high standards of aviation safety and security. New Zealand shares the environmental policy objectives of the Community. As a consequence, based on the current level of enforcement of safety and security standards, of competition rules and environmental rules in New Zealand, prospects for a high level of regulatory co-operation and/or convergence between the Community and New Zealand are excellent.

In informal exploratory talks, New Zealand has confirmed its willingness to achieve a high degree of regulatory convergence with the Community and establish a competitive level playing field for EU and New Zealand carriers. Such a regulatory convergence can only be achieved at Community level. Bilateral agreements fall short of ensuring such an adequate regulatory co-operation. An EU-New Zealand agreement should establish co-operation mechanisms to ensure that the rules of the agreement are respected and further developed.

The economic benefits of an air transport agreement with New Zealand would be further increased by similar agreements with countries in the Asia/Pacific region, particularly Australia. Hence, the new partnership between the European Union and New Zealand should be open for other countries that might wish to join.

This partnership can be progressively developed towards an Open Aviation Area between the European Community and New Zealand. Exploratory talks have shown that New Zealand shares the ambitions of the Community to establish a modernised framework for international air services, free of existing restrictions and with the opportunity to provide services globally. The result of the proposed new partnership would send a clear signal to other third countries to join the trend towards a more flexible international framework for air transport.

- 5.4 In light of the above, the European Commission therefore recommends that the Council authorises the Commission to open negotiations with New Zealand with a view to concluding a comprehensive air transport agreement.
- 5.5 The Commission will work closely together with Member States and all relevant stakeholders in further developing and achieving the objectives set out in the negotiating directives.