

## MEMORANDUM OF UNDERSTANDING

1. Ministers representing the Governments of Australia and New Zealand met in Darwin on 31 July 1992 to discuss air services arrangements.
2. The discussions were held in a friendly and cordial atmosphere.
3. Pursuant to the Agreement between Australia and New Zealand relating to Air Services which entered into force on 25 July 1961, (hereinafter referred to as the Agreement) the Ministers decided as follows:

### (A) AIRLINE DESIGNATION

With immediate effect, either contracting party may designate more than one airline to operate air services for the carriage of passengers, cargo or mail between the two countries provided that prior to 1 November 1992, unless the parties otherwise decide, neither party can be required to accept the designation of more than one airline for passenger operations on any one city pair linking a point in New Zealand and a point in Australia irrespective of the manner in which this city pair is operated

### (B) CAPACITY TO BE OPERATED BY THE DESIGNATED AIRLINES

Subject to sub-paragraph (E) the designated airlines of the two countries may provide such capacity for passenger and/or freight services as they decide.

### (C) ALL POINTS EXCHANGE AND PORTS LINKAGE

Further to the route descriptions contained in the Schedule to the Agreement, the designated airlines of either Contracting Party may operate to, from and between any designated international airport(s) in the territory of the other Contracting Party provided that, in the case of passenger services:

- from 1 November 1992, no more than three trans Tasman city pair combinations, excluding Sydney/Auckland, Sydney/Wellington, Sydney/Christchurch and Brisbane Auckland, may be served by more than one airline designated by each Contracting Party;
- from 1 November 1993, no more than six trans Tasman city pair combinations, without restriction as to the city pairs to be nominated, may be served by more than one airline designated by each Contracting Party;
- from 1 November 1994, all trans Tasman city pair combinations available for international air services and such other city pairs as approved by the Contracting Parties may be served by more than one airline designated by each Contracting Party;
- no traffic rights will be exercised between the points served in the territory of the other Contracting Party except as provided for in sub-paragraph (G.).

### (D) BEYOND ROUTES

Prior consultation between and consent of the Contracting Parties is necessary before the designated airlines exercise the beyond rights set out in the Schedule to the Agreement. Notwithstanding this, the designated airlines are permitted to exercise the following rights without further consultation:

(i) For the designated airlines of New Zealand

- with immediate effect, the right to fly with full traffic rights beyond Australia (initially Sydney) to points in the USA and Canada;
- from 1 November 1992, the right to fly with full traffic rights beyond Australia to points in the USA and Canada and two other points to be nominated;
- from 1 November 1993, the right to fly with full traffic rights beyond Australia to points in the USA and Canada and five other points to be nominated;
- from 1 November 1994, the right to fly with full traffic rights beyond Australia to points in the USA and Canada and nine other points to be nominated.

Points may be optionally omitted.

(ii) For the designated airlines of Australia

- with immediate effect, the right to fly with full traffic rights beyond New Zealand to points in the USA and Canada; points in Fiji and beyond to points in the USA and Canada; and points in South America;
- from 1 November 1993, the right to fly with full traffic rights beyond New Zealand to points in the USA and Canada; points in Fiji and beyond to points in the USA and Canada; points in South America and two other points to be nominated;
- from 1 November 1994, the right to fly with full traffic rights beyond New Zealand to points in the USA and Canada; points in Fiji and beyond to points in the USA and Canada; points in South America and six other points to be nominated.

Points may be optionally omitted.

(E) BEYOND RIGHTS CAPACITY

In the exercise of the rights identified in sub-paragraph (D) (i) and (ii) above:

(i) the designated airlines of New Zealand may between them:

- with immediate effect, operate the equivalent of four B 747 services per week in total;
- from 1 November 1993, operate the equivalent of eight B 747 services per week in total;
- from 1 November 1994, operate the equivalent of ten B747 services per week in total unconstrained; or the equivalent of twelve B747 services per week in total provided that the additional four services per week available from that date are not operated to a point previously served beyond Australia, excluding USA and Canada.

(ii) the designated airlines of Australia may between them:

- with immediate effect, operate the equivalent of four B 747 services per week in total;

- from 1 November 1993, operate the equivalent of eight B 747 services per week in total;
- from 1 November 1994, operate the equivalent of ten B747 services per week in total unconstrained; or the equivalent of twelve B747 services per week in total provided that the additional four services per week available from that date are not operated to a point previously served beyond New Zealand, excluding USA and Canada

The services identified above may be operated as passenger or freighter or combined passenger and freighter services at the option of the airlines.

#### (F) TARIFFS

Pending the entry into force of an Air Services Agreement to replace the 1961 Agreement, the aeronautical authorities will administer tariffs in accordance with Annex I.

Notwithstanding the provisions of paragraphs 4 and 7 of Annex I, where a designated airline of one country files a tariff for the carriage of passengers or cargo (excluding mail) on its services between any point in its territory, which the designated airline of the second country has no authorisation to serve, and any point in the territory of the second country, the aeronautical authorities of the second country could give notice of dissatisfaction with that tariff within fifteen (15) days of receiving the filing. If such notice is given, the tariff would not come into force. For the purposes of this paragraph, the aeronautical authorities of the country giving notice of dissatisfaction would, at the same time, request consultations with the aeronautical authorities of the other country. Such consultations would be completed within fifteen (15) days of being requested. The aeronautical authorities may decide mutually to approve the tariff which the designated airline filed, or another tariff. However, if the aeronautical authorities are not able to decide mutually upon a tariff, any tariff already in force would continue in force.

#### (G) ACCESS TO DOMESTIC MARKETS

Notwithstanding sub-paragraph (C) above and subject to the outcome of consultations referred to in sub-paragraph (H)(ii) on questions relating to the ownership and control of Australian and New Zealand airlines, the Ministers will recommend to their respective Governments that the Schedule to the Agreement be amended so that, from 1 November 1994, or earlier if agreed, airlines of either Contracting Party may operate with full domestic traffic rights, including the right to carry cabotage traffic, between points within the territory of the other Contracting Party.

#### (H) CONSULTATIONS

Further consultation will occur on the following matters:

(i) consultations, to be completed before 30 June 1993, will examine if access to the Australian domestic market for New Zealand airlines (referred to above in sub-paragraph (G) above) can be brought forward to 1 November 1993, subject to progress in the deregulation of trans Tasman aviation services and to the implementation of appropriate facilitation arrangements.

(ii) the consultations referred to in sub-paragraph (H)(i) would also examine new treaty arrangements to be concluded, if possible, by 30 June 1993 to cover, inter alia, issues associated with the grant of beyond rights after 1 November 1994, including establishing the date when additional beyond rights and capacity will be allocated in following years, and the date for the achievement of a full exchange; questions relating to the ownership and control of designated Australian and New Zealand airlines operating on trans Tasman routes and on the domestic routes referred to in sub-paragraph (G), and the possibility of both

countries establishing at some future time a joint bloc for the purpose of negotiating international traffic rights.

#### REPLACEMENT OF PREVIOUS UNDERSTANDING

4. This Memorandum of Understanding replaces the Memorandum of Understanding Concerning Air Services Between Australia and New Zealand which came into effect on 14 December 1989.

#### REVISION

5. This Memorandum of Understanding may be revised at any time by the mutual decision of the aeronautical authorities communicated to each other in writing.

#### DATE OF EFFECT

6. This Memorandum of Understanding will enter into effect on the date of signature and will continue in effect until the aeronautical authorities decide in writing that they will no longer give it effect.

Dated 1 August 1992.

[signed]

Bob Collins  
Minister for Transport and Communications  
For the Government of Australia

[signed]

Rob Storey  
Minister for Transport  
For the Government of New Zealand

## **ANNEX I**

### **TARIFFS**

1. The tariffs to be applied by the designated airlines of each Contracting Party for the transportation of traffic between the territories of the two Contracting Parties on agreed services will be established, in accordance with the provisions of this Annex, and will be consistent with the development of a fully competitive air transport system and will not be predatory, unjustifiably discriminatory or reflect abuse of a dominant position.
2. The tariffs referred to in paragraph 1 of this Annex may be decided upon between the designated airlines. At the option of the designated airlines, such decision may be made in co-ordination with other airlines. In any event each designated airline will be entitled to establish a tariff individually.
3. Each Contracting Party may require the filing with its aeronautical authorities of any proposed tariff referred to in paragraph 1 of this Annex. Such filings if required will be made at least thirty (30) days before the proposed date of the introduction of the tariff or such shorter period as both aeronautical authorities may decide.
4. Subject to paragraph 7 below, any tariff proposal filed in accordance with paragraph 3 above will be treated as having been approved and will come into effect on the date stated in the filing unless, within fifteen (15) days of receipt of the proposed tariff (or such shorter period as the aeronautical authorities of both countries may agree), the aeronautical authorities of both countries have notified each other in writing that they are dissatisfied with and intend not to approve the proposed tariff. In the event that a shorter period for the submission of a tariff is accepted by the aeronautical authorities, they may also decide that the period for giving notice of dissatisfaction will be less than fifteen (15) days.
5. Any designated airline of either Contracting Party will be permitted to match any publicly available tariff established in accordance with this Annex by any designated airline on a basis which would not necessarily be identical but which would be broadly equivalent in terms of routing, applicable conditions and standards of service. The designated airlines of either Contracting Party will also be permitted to match any publicly available tariff approved for international air transportation between points in the territory of the other Contracting Party and a third country where the airline's tariff filing complies identically with the levels and associated conditions of the approved tariff.
6. The filing of a matching tariff, will be made at least one (1) day before the proposed date of the introduction of that tariff and will include satisfactory evidence of the availability of the tariffs to be matched and of the consistency of the matching tariff with the requirements of this Annex. Matching tariff filings will be permitted to come into effect on the date stated in the filing, provided that such filings conform with the matching provisions of this Annex.
7. If the aeronautical authorities of either Contracting Party consider that the introduction of a proposed tariff filed with them by a designated airline would be inconsistent with the provisions of paragraph 1 above or that its application would constitute anti-competitive behaviour likely to cause serious damage to another designated airline, they may, within fifteen (15) days of the tariff being filed, request consultations with the aeronautical authorities of the other Contracting Party. Such consultations which may be through discussion or correspondence, will be completed within fifteen (15) days of being requested and the tariff will take effect, unless disapproved or otherwise varied by the aeronautical authorities of both Contracting Parties, on the date stated in the filing or on the date of conclusion of the consultations, whichever is the latter.

8. In the event that a tariff referred to in paragraph 1 above which has come into effect in accordance with this Annex is considered by the aeronautical authorities of one Contracting Party to be causing serious damage to another designated airline on a particular route or routes, those aeronautical authorities may request consultations with the aeronautical authorities of the other Contracting Party.
9. The tariffs established in accordance with the provisions of this Annex will remain in effect until new tariffs have been established in accordance with the provisions of this Annex.