

No. 142

AUSTRALIA
and
CANADA

Agreement for Air Services between Australia and Canada.
Signed at Ottawa, on 11 June 1946

English official text communicated by the Permanent Representative of Australia to the United Nations. The registration took place on 18 November 1947.

AUSTRALIE
et
CANADA

Accord relatif aux services de transports aériens entre l'Australie et le Canada. Signé à Ottawa, le 11 juin 1946

Texte officiel anglais communiqué par le représentant permanent de l'Australie auprès de l'Organisation des Nations Unies. L'enregistrement a eu lieu le 18 novembre 1947.

No. 142. AGREEMENT¹ BETWEEN THE GOVERNMENTS OF AUSTRALIA AND CANADA FOR AIR SERVICES BETWEEN AUSTRALIA AND CANADA. SIGNED AT OTTAWA, ON 11 JUNE 1946

The Government of the Commonwealth of Australia and the Government of Canada, hereinafter described as the "Contracting Parties", desiring to establish direct air communications between Australia and Canada, agree as follows:—

Article 1

Each contracting party grants to the other contracting party the rights specified in the Annex to this Agreement for the purpose of establishing the air services therein described. Such services may be inaugurated immediately, or at a later date at the option of the contracting party to whom the rights are granted.

Article 2

(1) Subject to paragraph (2) of this Article, and to Articles 6 and 7, each of the specified air services may be put into operation as soon as the contracting party to whom the rights have been granted, has designated an airline or airlines for the operation of the specified services. The contracting party granting the rights shall, subject to paragraph (2) of this Article, and to Articles 6 and 7, be bound to grant without delay the appropriate operating permission to the airline concerned.

(2) Each of the designated airlines may be required to satisfy the competent air authorities of the other contracting party that it is qualified to fulfil the conditions prescribed under the laws and regulations normally applied by those authorities to the operations of international commercial air services.

Article 3

The competent air authorities of the contracting parties shall exchange such periodic statements as they may agree relating to the traffic carried on their

¹ Came into force on 11 June 1946, as from the date of signature, in accordance with article 13.

respective air services to, from and over the territory of the other party, including information concerning the origin and destination of this traffic.

Article 4

(1) The charges which either of the contracting parties may impose or permit to be imposed on the designated airline or airlines of the other contracting party for the use of airports and other facilities, shall not be higher than would be paid for the use of such airports and facilities by its national aircraft engaged in similar international services.

(2) Fuel, lubricating oils and spare parts introduced into, or taken on board aircraft in the territory of one contracting party by, or on behalf of, the designated airline or airlines of the other contracting party, and intended solely for use by the aircraft of such airline or airlines, shall be accorded with respect to customs duties, inspection fees, or other charges imposed by the former contracting party, treatment not less favourable than that granted to national airlines engaged in international air transport or the airlines of the most favoured nation.

(3) Aircraft operating on the specified air services and supplies of fuel, lubricating oils, spare parts, regular equipment and aircraft stores retained on board aircraft of the designated airline or airlines of one contracting party, shall be exempt in the territory of the other contracting party from customs duties, inspection fees or similar duties or charges, even though such supplies be used by such aircraft on flights in that territory.

(4) Each of the designated airlines shall have the right to use all airports, airways and other facilities provided by the contracting parties for use by international air services on the specified air routes.

(5) Each contracting party shall grant equal treatment to its own airlines and those of the other contracting party in the application of its customs, immigration, quarantine and similar regulations.

Article 5

Certificates of airworthiness and certificates of competency, and licences of personnel issued or rendered valid by one contracting party and still in force, shall be recognized as valid by the other contracting party for the purpose of operating the services specified in the Annex. Each contracting party reserves the right, however, to refuse to recognise for the purpose of flight above its own territory, certificates of competency and licences granted to any of its own nationals by another State.

Article 6

(1) The laws and regulations of one contracting party relating to entry into, or departure from, its territory of aircraft engaged in international air navigation or to the operation and navigation of such aircraft while within its territory, shall apply to aircraft of the designated airline or airlines of the other contracting party.

(2) The laws and regulations of one contracting party relating to the entry into, or departure from, its territory of passengers, crew or cargo of aircraft (such as regulations relating to entry, clearance, immigration, passports, customs and quarantine) shall be applicable to the passengers, crew or cargo of aircraft of the designated airline or airlines of the other contracting party, while in the territory of the first contracting party.

Article 7

(1) Notwithstanding the other provisions of this Agreement, if either contracting party is not satisfied that substantial ownership and effective control of an airline designated under this Agreement are vested in nationals of the other contracting party, such contracting party may withhold or revoke the rights conferred under this Agreement for such airline to operate air services specified in the Annex. For the purposes of this Article nationals of the United Kingdom and nationals of New Zealand shall be considered to be nationals of Australia.

(2) Each contracting party reserves the right to withhold or revoke rights conferred under this Agreement for the operation of the specified services by any designated airline or airlines of the other contracting party in case of failure by such airline to comply with the laws and regulations of the first contracting party

as referred to in Article 6, or otherwise to fulfil the conditions under which the rights are granted in accordance with this Agreement.

Article 8

If either of the contracting parties considers it desirable to modify any provision or provisions of the Annex to this Agreement it shall notify the other contracting party of the desired modification and such modification may be made by direct agreement between the competent air authorities of both contracting parties to be confirmed by exchange of notes.

Article 9

Any dispute between the contracting parties relating to the interpretation or application of this Agreement, or of the Annex thereto, shall be referred for decision to the Interim Council, in accordance with the provisions of Article III, Section 6, paragraph 8, of the Interim Agreement on Civil Aviation signed at Chicago on December 7th, 1944, unless the contracting parties agree to settle the dispute by referring it to an Arbitral Tribunal appointed by agreement between the contracting parties, or to some other person or body, the contracting parties undertaking to comply with the decision given.

Article 10

When the Convention on International Civil Aviation signed at Chicago on December 7th, 1944, comes into operation in respect of both the contracting parties, reference in this Agreement to the Interim Agreement, the Interim Council and the Provisional International Civil Aviation Organisation shall be interpreted as reference to the Convention, the Council and the International Civil Aviation Organisation. In the event of the conclusion of any other multilateral convention concerning air transport to which both contracting parties adhere, this Agreement shall be read subject to the provisions of such multilateral convention or if considered necessary by either contracting party, this Agreement shall be amended so as to conform with its provisions.

Article 11

Either contracting party may at any time give notice to the other if it desires to terminate this Agreement. Such notice shall be simultaneously communicated to the Provisional International Civil Aviation Organisation. If such

notice is given, the Agreement will terminate twelve (12) months after the date of receipt of the notice by the other contracting party, unless the notice to terminate is withdrawn by agreement before the expiry of this period. In the absence of acknowledgement of receipt by the other contracting party, notice shall be deemed to have been received fourteen (14) days after the receipt of the notice by the Provisional International Civil Aviation Organisation.

Article 12

This Agreement and all contracts connected therewith shall be registered with the Provisional International Civil Aviation Organisation set up under the Interim Agreement on Civil Aviation done at Chicago on December 7th, 1944.

Article 13

This Agreement shall come into force on the date of signature.

DONE in duplicate, in Ottawa, on the eleventh day of June 1946.

For the Government of the Commonwealth of Australia:

ARTHUR S. DRAKEFORD

For the Government of Canada:

C. D. HOWE

ANNEX

1. An airline designated by the Government of Australia may operate a return service originating in Australia and terminating in Canada on the route specified below and may take on and put down at Vancouver passengers, mail and cargo for and from Australia.

2. The route to be operated by the designated airline of the Government of Australia shall be:—

Sydney to Vancouver via Fiji, Canton Island, Honolulu, San Francisco or other intermediate stopping places as may be mutually agreed—in both directions.

3. An airline designated by the Government of Canada may operate a return service originating in Canada and terminating in Australia on the route specified below and may take on and put down at Sydney passengers, mail and cargo for and from Canada.

4. The route to be operated by the designated airline of the Government of Canada shall be:—

Vancouver to Sydney via such intermediate stopping places as may be mutually agreed—in both directions.

5. In the event the designated airlines of Australia and Canada enter into a pooling arrangement in accordance with Article XII, Section 3 of the Interim Agreement on International Civil Aviation, either contracting party may permit the designated airline of the other contracting party to exercise on the specified route any of the rights exercised by its own designated airline.

6. (a) The capacity to be operated from time to time by the designated airlines of Australia and of Canada for the conveyance of the traffic referred to in the foregoing paragraphs shall be maintained in close relationship with the traffic offering between Australia and Canada—in both directions. The capacity to be provided shall be discussed from time to time between the competent air authorities of the contracting parties.

(b) This capacity shall be divided between the airlines designated by Australia and by Canada in proportions corresponding to the proportions in which traffic to be carried between Australia and Canada in both directions is embarked in Australia and Canada respectively. Unless otherwise agreed this capacity shall be shared equally between the airlines of the two contracting parties.

7. The frequencies of the services to be operated by the designated airlines of the contracting parties and the load factor to be adopted for determining the frequencies shall from time to time be agreed between the airlines of the contracting parties, subject to the approval of the competent air authorities of the contracting parties.

8. In order to meet seasonal fluctuations or unexpected demands of a temporary character the designated airlines may, notwithstanding the provisions of paragraph 6 of this Annex agree between them to such temporary increases of capacity for either airline or both airlines as are necessary to meet the traffic demand. Any such increase shall be reported forthwith to the competent air authorities who may confirm or modify them.

9. Insofar as one of the contracting parties may not wish, permanently or temporarily, to operate, in full or in part, the capacity to which it is entitled under the preceding paragraphs, that contracting party may arrange with the other contracting party under terms and conditions to be agreed between them for the designated airline of such other contracting party to operate additional capacity so as to maintain the full capacity agreed upon between them in accordance with the preceding paragraphs. It shall, however, be a condition of any such arrangement that if the first contracting party should at any time decide to commence to operate or to increase the capacity of its services, within the total capacity to which it is entitled under paragraph 6 of this Annex, the airline of the other contracting party shall withdraw correspondingly some or all of the additional capacity which it had been operating.

10. (a) Tariffs to be charged by the designated airlines referred to in this Annex shall be agreed in the first instance between them, having due regard to the rates fixed by any Tariff Conference of airlines operating in the area. Any tariff so agreed will be subject to the approval of the competent air authorities of the contracting parties. In the event of disagreement between the airlines, the competent air authorities of the contracting parties shall endeavour to reach an agreement. Should the competent national air authorities or subsequently the contracting parties themselves fail to agree, the matter in dispute will be referred to arbitration as provided for in Article 9 of this Agreement.

(b) The tariffs to be agreed as above shall be fixed at reasonable levels, due regard being paid to all relevant factors including economical operation, reasonable profit, differences of characteristics of service (including standards of speed and accommodation) and the tariffs charged by any other operators on the route.
