

No. 1713

**NETHERLANDS
and
AUSTRALIA**

**Agreement (with annex) for the establishment of air services.
Signed at Canberra, on 25 September 1951**

Official text: English.

Registered by the International Civil Aviation Organization on 24 April 1952.

**PAYS-BAS
et
AUSTRALIE**

**Accord (avec annexe) relatif à l'établissement de services
aériens. Signé à Canberra, le 25 septembre 1951**

Texte officiel anglais.

Enregistré par l'Organisation de l'aviation civile internationale le 24 avril 1952.

No. 1713. AGREEMENT¹ BETWEEN THE GOVERNMENT OF THE KINGDOM OF THE NETHERLANDS AND THE GOVERNMENT OF THE COMMONWEALTH OF AUSTRALIA FOR THE ESTABLISHMENT OF AIR SERVICES. SIGNED AT CANBERRA, ON 25 SEPTEMBER 1951

The Government of the Kingdom of the Netherlands and the Government of the Commonwealth of Australia, hereinafter described as the "Contracting Parties", desiring to conclude an agreement for the purpose of promoting air services agree as follows :

Article I

For the purpose of this Agreement and its Annex unless the context otherwise requires :

(A) The term "territory" shall have the meaning assigned to it by Article 2 of the Convention on International Civil Aviation signed at Chicago on December 7, 1944² (hereinafter referred to as the "Convention").

(B) The term "aeronautical authorities" shall mean in the case of Australia the Director-General of Civil Aviation, and in the case of the Netherlands the Director-General of Civil Aviation and in both cases any person or body authorised by the respective Contracting Parties to perform the functions currently exercised by the abovementioned authorities.

(C) The term "designated airline" shall mean the air transport enterprise or enterprises which the aeronautical authorities of one of the Contracting Parties have notified in writing to the aeronautical authorities of the other Contracting Party as the airline or airlines designated by the first Contracting Party in accordance with Article III of this Agreement for the route or routes specified in such notification.

(D) The definitions contained in paragraphs (a), (b), (c) and (d) of Article 96 of the Convention shall apply.

(E) The Annex to this Agreement shall be deemed to be part of the Agreement and all references to the "Agreement" shall include references to the Annex, except where otherwise expressly provided.

¹ Came into force on 25 September 1951, as from the date of signature, in accordance with article XII.

² United Nations, *Treaty Series*, Vol. 15, p. 295; Vol. 26, p. 420; Vol. 32, p. 402; Vol. 33, p. 352; Vol. 44, p. 346, and Vol. 51, p. 336.

Article II

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 (hereinafter referred to as the "specified air services"). 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 III

(A) Subject to paragraph (B) of this Article, and to Article VI, 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 air service. The Contracting Party granting the rights shall, subject to paragraph (B) of this Article, and to Article VI, be bound to grant without delay the appropriate operating permission to the designated airline concerned.

(B) Each of the designated airlines may be required to satisfy the aeronautical 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 air services.

Article IV

(A) 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 air routes specified in the Annex (hereinafter referred to as the "specified air routes").

(B) In the administration of its customs, immigration, quarantine and similar regulations, each Contracting Party shall accord to the designated airline of the other Contracting Party treatment equal to that accorded to its own airlines engaged in similar international services. Moreover, the aeronautical authorities of the Contracting Parties shall, on request, consult regarding the administration of these regulations if, in the opinion of one of the Contracting Parties, such regulations impose an onerous burden on its designated airline in the operation of the air services pursuant to this Agreement.

(C) Supplies of fuel, lubricating oils, spare parts, regular equipment and aircraft stores on board an aircraft of the designated airline of one Contracting Party on arrival in the territory of the other Contracting Party shall be exempt from all national duties and charges including customs duties and inspection fees even though such supplies are used by such aircraft on flights in that territory. The goods so exempt shall not be unloaded except with the approval

of the Customs Authorities of the other Contracting Party, and if unloaded, shall be kept under customs supervision until required for use of the aircraft of the designated airline or re-exported.

(D) Supplies of fuel, lubricating oils, spare parts, regular equipment and aircraft stores introduced into or taken on board aircraft of one Contracting Party in the territory of the second Contracting Party by or on behalf of the designated airline of the first Contracting Party for use in the operation of an agreed service or a specified air route shall be exempt from all national duties and charges including customs duties and inspection fees imposed in the territory of the second Contracting Party, even though such supplies are used by such aircraft on flights in that territory.

(E) This treatment shall be in addition to and without prejudice to that which each Contracting Party is under obligation to accord under Article 24 of the Convention.

Article V

To the extent to which they are applicable to the air services established under the present Agreement, the provisions of the Convention shall remain in force in their present form between the Contracting Parties for the duration of the Agreement, as if they were an integral part of the Agreement, unless both Contracting Parties ratify any amendment to the Convention which shall have duly come into force in which case the Convention as amended shall remain in force for the duration of the present Agreement.

Article VI

(A) Each Contracting Party shall have the right to refuse to accept the designation of an airline and to withhold or revoke the grant to an airline of the rights specified in the Annex to the present Agreement or to impose such conditions as it may deem necessary on the exercise by an airline of those rights in any case where it is not satisfied that substantial ownership and effective control of that airline are vested in the Contracting Party designating the airline or in nationals of that Contracting Party.

(B) Each Contracting Party shall have the right to suspend the exercise by an airline of the rights specified in the Annex to the present Agreement or to impose such conditions as it may deem necessary on the exercise of those rights in any case where the airline fails to comply with the laws and regulations of the Contracting Party granting those rights or with the conditions contained in the present Agreement.

(C) Action shall not be taken in pursuance of paragraphs (A) and (B) of this Article to revoke or suspend the grant of the rights specified in the Annex to this Agreement or to impose conditions on the exercise thereof before notice in writing of such proposed action, stating the grounds therefor, is given to the other Contracting Party and consultation between the aeronautical authorities of both Contracting Parties has not led to agreement within a period of thirty days after the date upon which the said notice would, in the ordinary course of transmission, be received by the Contracting Party to whom it is addressed, provided that if the alleged failure to operate in accordance with the conditions referred to in paragraph (B) of this Article relates to Section III of the Annex to this Agreement then a period of ninety days after the said date shall be allowed for the purpose of such consultation.

(D) In the event of action by one of the Contracting Parties under paragraph (B) of this Article the rights of the other Contracting Party under Article VIII shall not be prejudiced, but notwithstanding proceedings under Article VIII the Contracting Party in whose opinion there has been a failure to comply as aforesaid may, pursuant to paragraph (B) of this Article, suspend the exercise of the rights specified in the Annex to the present Agreement or impose conditions on the exercise of those rights pending the giving of a final decision under Article VIII.

Article VII

(A) In a spirit of close collaboration the aeronautical authorities of the two Contracting Parties will consult on request with a view to assuring the observance of the principles and the implementation of the provisions outlined in this Agreement.

(B) For any purpose relating to operations under this Agreement, either Contracting Party may require the other Contracting Party on a basis of reciprocity to supply such information as may be reasonably required with regard to traffic (including information concerning the origin and destination of such traffic) carried by the designated airline of such other Contracting Party on the specified air services to, from and over the territory of the Contracting Party requiring such information.

(C) Each Contracting Party shall cause its designated airline or airlines to provide to the aeronautical authorities of the other Contracting Party, as long in advance as practicable, copies of time tables and all other relevant information concerning the operation of the specified air services and copies of all modifications thereof.

Article VIII

(A) If any dispute arises between the Contracting Parties relating to the interpretation or application of the present Agreement, the Contracting Parties shall in the first place endeavour to settle it by negotiation between themselves.

(B) If the Contracting Parties fail to reach a settlement by negotiation :

(1) They may agree to refer the dispute for decision to an arbitral tribunal or to some other person or body appointed by agreement between them; or

(2) If they do not so agree or if, having agreed to refer the dispute to an arbitral tribunal, they cannot reach agreement as to its composition, either Contracting Party may submit the dispute for decision to any tribunal competent to decide it which may hereafter be established within the International Civil Aviation Organisation, or, if there is no such tribunal, to the Council of the said Organisation, or if the Council of the said Organisation decline to consider such a dispute or is not empowered to do so, to the International Court of Justice.

(C) The Contracting Parties undertake to comply with any decision given (including any interim recommendation made) under paragraph (B) of this Article.

(D) If and so long as either Contracting Party or a designated airline of either Contracting Party fails to comply with a decision given under paragraph (B) of this Article, the other Contracting Party may limit, withhold or revoke any rights which it has granted by virtue of the present Agreement.

Article IX

This Agreement shall be registered with the International Civil Aviation Organisation set up by the Convention.

Article X

(A) If a general multilateral air transport agreement enters into force in relation to both Contracting Parties, the present Agreement shall be reviewed to determine whether or not it can remain in force consistent with such multilateral agreement.

(B) If either of the Contracting Parties considers it desirable to modify the terms of this Agreement, it may request consultation between the aeronautical authorities of both Contracting Parties, and such consultation shall begin within

a period of sixty days from the date of the request. When these authorities agree on modifications to the Agreement, these modifications will come into effect when they have been confirmed by the Contracting Parties by an exchange of notes through the diplomatic channel.

(C) Changes made by either Contracting Party in the intermediate stopping places on the specified air routes authorized to its designated airlines except those which

(i) change the places served by the designated airline in the territory of the other Contracting Party; or

(ii) result in the route being not reasonably direct

shall not be considered as modifications of this Agreement, and either Contracting Party may therefore make such changes provided that notice of any such changes shall be given without delay to the aeronautical authorities of the other Contracting Party. If the aeronautical authorities of such second Contracting Party find that the principles set forth in Section III of the Annex to this Agreement are thereby infringed and such infringement affects the interests of any of their airlines because of the carriage by the designated airline of the first Contracting Party of traffic between the territory of the second Contracting Party and the new point in the territory of a third country, the aeronautical authorities of the second Contracting Party may request consultation in accordance with the provisions of paragraph A of Article VII.

Article XI

It shall be open to either Contracting Party at any time to give notice to the other of its desire to terminate this Agreement. Such notice shall be simultaneously communicated to the International Civil Aviation Organisation. If such notice is given, this Agreement shall terminate twelve calendar 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 by the other Contracting Party specifying an earlier date of receipt, notice shall be deemed to have been received fourteen days after the receipt of the notice by the International Civil Aviation Organisation.

Article XII

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

IN WITNESS WHEREOF the undersigned plenipotentiaries being duly authorized thereto by their respective Governments have signed the present Agreement and have affixed thereto their seals.

DONE at Canberra in duplicate on the twenty-fifth day of September one thousand nine hundred and fifty-one in the English language.

(Signed) E. TEIXEIRA DE MATTOS
For the Government of the
Kingdom of the Netherlands

(Signed) H. L. ANTHONY
For the Government of the
Commonwealth of Australia

A N N E X

Section I

(A) The airline or airlines designated by the Government of the Commonwealth of Australia, pursuant to the present Agreement, are accorded rights of transit and stop for non-traffic purposes in Netherlands territory as well as the right to pick up and discharge international traffic in passengers, cargo and mail at each of the points in such territory on the following routes :

Route No. 1

Australia via Djakarta—Singapore—Calcutta—Karachi—Basra—Cairo—Rome—Amsterdam—London and/or other terminal point in Western Europe.

Route No. 2

Australia via Djakarta—Singapore—Ceylon—Bombay—Karachi—Basra—Cairo—Rome—Amsterdam—London and/or other terminal point in Western Europe.

(Note: On any flight, a stop may be made at Amsterdam either before or after a stop is made at London.)

Route No. 3

Australia—Sorong.

Route No. 4

Australian Territory of Papua and New Guinea—Hollandia and/or Biak.

(B) Points on any of the specified air routes, may, at the option of the designated airline, be omitted on any flight.

Section II

(A) The airline or airlines designated by the Government of the Kingdom of the Netherlands, pursuant to the present Agreement, are accorded rights of transit and stop for non-traffic purposes in Australian territory as well as the right to pick up and discharge international traffic in passengers, cargo and mail at each of the points in such territory on the following routes:

Route No. 1

Amsterdam—Munich—Rome—Beirut or Damascus or Cairo—Baghdad or Basra—Dhahran—Karachi—Calcutta—Bangkok—Biak—Darwin—Sydney.

Route No. 2

Amsterdam—Munich—Rome—Beirut or Damascus or Cairo—Baghdad or Basra—Dhahran—Karachi—Calcutta—Bangkok—Djakarta—Darwin—Sydney.

Route No. 3

Netherlands New Guinea—Darwin.

Route No. 4

Netherlands New Guinea—Lae and/or Port Moresby.

(B) Points on any of the specified air routes, may, at the option of the designated airline, be omitted on any flight.

Section III

(A) In the operation of the specified air services, the designated airline of each Contracting Party shall retain as its primary objective the provision of capacity for the transportation of traffic which originates in or is ultimately destined for the territory of the Party designating the airline.

(B) The Contracting Parties recognise the principle that the Contracting Party in whose territory the traffic originates or for whose territory the traffic is ultimately destined shall have the primary right to the carriage of such traffic.

(C) The aeronautical authorities of the two Contracting Parties shall consult from time to time as to the capacities which may be operated in accordance with the principles contained in this Section.

(D) To the extent that the designated airline of one Contracting Party is temporarily unable or unwilling to share in the operation of the specified air routes, that airline may arrange with the designated airline of the other Contracting Party to operate the whole or part of its share. It shall be a condition of any such arrangement that if the designated airline of the first Contracting Party should at any time decide to commence to operate or to increase the capacity of its services, the designated airline of the other Contracting Party shall withdraw upon request some or all of the additional capacity which it may have been operating.

(E) In order to meet seasonal fluctuations or unexpected demands of a temporary character, the designated airlines may agree between them temporary increases of capacity.

(F) Any variation of capacity pursuant to agreement between the designated airlines shall be promptly notified to the aeronautical authorities of both Contracting Parties.

Section IV

(A) Tariffs to be charged for the carriage of passengers and cargo on any of the specified air services shall be fixed at reasonable levels, due regard being paid to all relevant factors, including economic operation, reasonable profit, differences of characteristics of service (including standards of speed and accommodation) and the tariffs charged by other airlines on the route or any section thereof.

(B) The tariffs, in respect of each route and each section thereof, shall be agreed between the designated airlines concerned in consultation with other airlines operating on the same route or section and shall have regard to any relevant rates adopted by the International Air Transport Association. Tariffs in respect of traffic between the territories of the Contracting Parties shall be subject to the approval of the aeronautical authorities of both Contracting Parties. Other tariffs in respect of the specified air services shall also be subject to the approval of the aeronautical authorities of both Contracting Parties except that the approval of the aeronautical authorities of a Contracting Party shall not be required in respect of tariffs for a route or section in which no designated airline of that Contracting Party is concerned.

(C) Notwithstanding the provisions of paragraph (B), the designated airline of a Contracting Party shall not in the course of operating the specified air services carry or offer to carry passengers or cargo (whether such carriage is performed, or is to be performed solely by such airline or partly by such airline and partly by arrangement with another airline or an operator of surface transport) between a place in the territory of the other Contracting Party and any other place, at a tariff other than that approved by the aeronautical authorities of such other Contracting Party who shall have regard to any relevant rates adopted by the International Air Transport Association.

(D) In the event of disagreement between the designated airlines concerned, or in case the aeronautical authorities do not approve the tariffs as required under paragraphs (B) and (C) of this Section, the Contracting Parties shall endeavour to reach agreement between themselves, failing which, the dispute shall be dealt with in accordance with Article VIII. Pending determination of the tariffs in accordance with this Section, the tariffs already in force shall prevail.
