

No. 7271

**AUSTRALIA
and
ITALY**

Agreement relating to air services (with schedule, memorandum and exchange of notes). Signed at Rome, on 10 November 1960

Official texts: English and Italian.

Registered by the International Civil Aviation Organization on 8 June 1964.

**AUSTRALIE
et
ITALIE**

Accord relatif aux services aériens (avec annexe, mémorandum et échange de notes). Signé à Rome, le 10 novembre 1960

Textes officiels anglais et italien.

Enregistré par l'Organisation de l'aviation civile internationale le 8 juin 1964.

No. 7271. AGREEMENT¹ BETWEEN THE GOVERNMENT OF THE COMMONWEALTH OF AUSTRALIA AND THE GOVERNMENT OF THE ITALIAN REPUBLIC RELATING TO AIR SERVICES. SIGNED AT ROME, ON 10 NOVEMBER 1960

The Government of the Commonwealth of Australia and the Government of the Italian Republic (hereinafter referred to as the "Contracting Parties"),

Desiring to conclude an agreement relating to air transport, agree as follows :

Article 1

(1) For the purpose of this Agreement, unless the context otherwise requires :

(a) the term "the Convention" means the Convention on International Civil Aviation opened for signature at Chicago on the seventh day of December 1944 ;²

(b) the term "aeronautical authorities" means, in the case of the Commonwealth of Australia, the Director-General of Civil Aviation, or any person or body authorized to perform the functions presently exercised by the Director-General of Civil Aviation, or similar functions, and, in the case of Italy, the Ministero della Difesa-Aeronautica (Direzione Generale dell'Aviazione Civile e del Traffico Aereo), or any person or body authorized to perform the functions presently exercised by the said Ministry or similar functions ;

(c) the term "designated airline" means the airline which the aeronautical authorities of one Contracting Party have designated in writing, through the diplomatic channel, to the aeronautical authorities of the other Contracting Party, in accordance with Article 5, as being the airline authorized to operate international air services in accordance with the provisions of Article 3 ;

(d) the terms "territory", "air service", "international air service", "airline", and "stop for non-traffic purpose" have the meanings respectively assigned to them in Articles 2 and 96 of the Convention.

(2) The Schedule³ to this Agreement forms an integral part of the Agreement, and all references to the "Agreement" shall be deemed to include reference to the Schedule except where otherwise provided.

¹ Came into force on 10 May 1963, the day on which the Government of Italy notified the Government of Australia that it had ratified the Agreement, in accordance with article 15.

² See footnote 2, p. 30 of this volume.

³ See p. 260 of this volume.

Article 2

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

Article 3

Each Contracting Party grants to the other Contracting Party the rights specified in this Agreement to enable its designated airline to establish and operate international air services on the routes specified in the Schedule (hereinafter called "agreed services" and "specified routes" respectively).

Article 4

(1) The agreed services on any specified route may be inaugurated at any time at the option of the Contracting Party to which the rights are granted under Article 3 of this Agreement, but not before

(a) the aeronautical authorities of the Contracting Party to which the rights have been granted have designated an airline for that route ; and

(b) the aeronautical authorities of the Contracting Party granting the rights have given the appropriate operating permission to the designated airline. Operating permission shall, subject to the provisions of paragraph (2) of this Article and of Article 5, be given without delay.

(2) The designated airline of one Contracting Party may be required to satisfy the aeronautical authorities of the other Contracting Party that it is qualified to fulfil the conditions prescribed by the laws and regulations normally applied by those authorities to the operation of international air services.

Article 5

(1) The aeronautical authorities of one Contracting Party shall have the right to designate in writing, through the diplomatic channel, to the aeronautical authorities of the other Contracting Party an airline to operate the agreed services on the specified routes.

(2) Each Contracting Party reserves the right to withhold, suspend or revoke the rights granted under Article 3 in respect of an airline designated by the aeronautical authorities of the other Contracting Party, or to impose such conditions as it deems necessary on the exercise of those rights, in any case where it is not satis-

fied that substantial ownership and effective control of the airline are vested in the Contracting Party whose aeronautical authorities have designated the airline or in nationals of that Contracting Party.

(3) Each Contracting Party reserves the right to suspend the exercise by a designated airline of the other Contracting Party of the rights granted under Article 3, or to impose such conditions as it deems necessary on the exercise of those rights, in any case where the airline fails to operate in accordance with the conditions specified in this Agreement.

(4) The rights reserved in paragraphs (2) and (3) of this Article shall be exercised by a Contracting Party only after consultation with the other Contracting Party unless the immediate suspension of the rights or the imposition of the conditions is necessary to prevent further infringements of the laws and regulations of the first mentioned Contracting Party.

Article 6

Subject to the provisions of this Agreement, the designated airline of each Contracting Party shall enjoy, while operating an agreed service on a specified route, the following rights :

(a) the right to fly without landing across the territory of the other Contracting Party ;

(b) the right to make stops in that territory for non-traffic purposes ; and

(c) the right to make stops in that territory, at the points specified for that route in the Schedule, for the purposes of putting down and of taking on international traffic in passengers, cargo and mail.

Article 7

(1) Fuel, lubricating oils, spare parts, regular aircraft equipment and aircraft stores on board aircraft of the designated airline of one Contracting Party on arrival in the territory of the other Contracting Party or taken on board those aircrafts in that territory for the exclusive use of those aircrafts in the operation of the agreed services shall be exempted from customs duties, inspection fees and other similar charges, subject to the Customs regulations of the second Contracting Party, even if they are used or consumed by those aircrafts during flights in that territory.

(2) Fuel, lubricating oils, spare parts, regular aircraft equipment and aircraft stores which are exempted under the provisions of paragraph (1) shall not be unloaded without approval of the Customs authorities of the second Contracting Party. If unloading is approved, they shall remain subject to the regulations of these Customs authorities.

(3) The aircraft of the designated airline of one Contracting Party operating the agreed services on the specified routes to, from or across the territory of the other

Contracting Party shall be admitted into that territory temporarily free of customs duties, inspection fees and other similar charges subject to the Customs regulations of the second Contracting Party.

Article 8

(1) There shall be a fair and equal opportunity for the designated airlines of both Contracting Parties to operate the agreed services on the specified routes between their respective territories.

(2) In operating the agreed services the designated airline of each Contracting Party shall take into consideration the interest of the designated airline of the other Contracting Party so as not to affect unduly the services which the latter provides on the whole or part of the same route.

(3) The agreed services provided by the designated airlines of the Contracting Parties shall bear a close relationship to the requirements of the public for transportation on the specified routes. The agreed services provided by a designated airline shall have as their primary objective the provision of capacity adequate for the requirements of traffic originating in or destined for the territory of the Contracting Party whose aeronautical authorities have designated that airline. Provision for the carriage on the agreed services of traffic both originating in and destined for the territories of States other than that whose aeronautical authorities have designated the airline shall be made in accordance with the general principles that capacity shall be related to :

(a) the requirements of traffic originating in or destined for the territory of the Contracting Party whose aeronautical authorities have designated the airline ;

(b) the traffic requirements of the area through which the airline passes, after taking account of local and regional services ; and

(c) the requirements of through airline operations.

(4) The capacity which may be provided in accordance with this Article by the designated airline of each of the Contracting Parties on the agreed services shall be such as is agreed between the aeronautical authorities of the Contracting Parties before the commencement by the designated airline concerned of an agreed service and from time to time thereafter.

Article 9

(1) The tariffs on any agreed services shall be established at reasonable levels, due regard being paid to all relevant factors including cost of operation, reasonable profit, characteristics of the service (such as standards of speed and accommodation) and, where it is deemed suitable, the tariffs of other airlines for any part of the specified route. These tariffs shall be fixed in accordance with the provisions of this Article.

(2) Agreement on the tariffs shall, whenever possible, be reached by the designated airlines through the rate-fixing machinery of the International Air Transport Association. When this is not possible, tariffs in respect of each of the specified routes shall be agreed upon between the designated airlines. In any case the tariffs shall be subject to the approval of the aeronautical authorities of both Contracting Parties.

(3) If the designated airlines cannot agree on the tariffs, or if the aeronautical authorities of either Contracting Party do not approve the tariffs submitted to them in accordance with provisions of paragraph (2) of this Article, the aeronautical authorities of the Contracting Parties shall endeavour to reach agreement on those tariffs.

(4) If agreement under paragraph (3) of this Article cannot be reached, the dispute shall be settled in accordance with the provisions of Article 13 of this Agreement.

(5) No new or amended tariff shall come into effect unless it is approved by the aeronautical authorities of both Contracting Parties or is determined by a tribunal of arbitrators under Article 13 of this Agreement. Pending determination of the tariffs in accordance with the provisions of this Article, the tariffs already in force shall apply.

Article 10

The aeronautical authorities of each Contracting Party shall supply to the aeronautical authorities of the other Contracting Party upon request such periodic or other statements of statistics as may be reasonably required. These statements shall include information relating to the amount of traffic carried by the designated airline of one Contracting Party on the agreed services to and from the territory of the other Contracting Party, including the origin and destination of the traffic.

Article 11

This Agreement shall be registered with the International Civil Aviation Organization (I.C.A.O.).

Article 12

(1) In order to ensure close collaboration in all matters affecting the performance of this Agreement, the aeronautical authorities of the Contracting Parties shall consult on request of either of the authorities.

(2) 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 in relation to the proposed modification. Consultation shall begin within a period of sixty days from the date of the request. When these authorities agree on modifications to this Agreement, the modifications shall come into effect when they have been confirmed by an exchange of notes through the diplomatic channel, except that if the modifications are to the Schedule they shall come into effect when they have been confirmed by an exchange of letters between the aeronautical authorities of the Contracting Parties.

(3) If a general multilateral agreement concerning air transport comes into force in respect of both Contracting Parties, this Agreement shall be amended so as to conform with the provisions of that Agreement.

Article 13

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

(2) If the Contracting Parties fail to reach a settlement by negotiation, the dispute may at the request of either Contracting Party be submitted for decision to a tribunal of three arbitrators, one to be nominated by each Contracting Party and the third to be appointed by the two so nominated. Each of the Contracting Parties shall nominate an arbitrator within a period of sixty days from the date of receipt by either Contracting Party from the other of a diplomatic note requesting arbitration of the dispute and the third arbitrator shall be appointed within a further period of sixty days. If either of the Contracting Parties fails to nominate an arbitrator within the period specified, or if the third arbitrator is not appointed within the period specified, the President of the Council of the International Civil Aviation Organization may be requested by either Contracting Party to appoint an arbitrator or arbitrators as the case requires.

(3) The Contracting Parties undertake to comply with any decision given under paragraph (2) of this Article.

Article 14

Either of the Contracting Parties may at any time give to the other written notice of its intention to terminate this Agreement. A copy of the notice shall be sent simultaneously to the International Civil Aviation Organization. This Agreement shall terminate one year after the day of receipt by the other Contracting Party of the said notice unless by agreement between the Contracting Parties the notice is withdrawn before the expiration of that period. If the other Contracting Party fails to acknowledge receipt of the notice, the notice shall be deemed to have been received fourteen days after the International Civil Aviation Organization has received its copy.

Article 15

This Agreement shall enter into force on the day that the Government of the Italian Republic notifies the Government of the Commonwealth of Australia that it has ratified the Agreement.

IN WITNESS WHEREOF the undersigned, being duly authorized by their respective Governments, have signed this Agreement.

DONE at Rome this 10th day of November in the year 1960 in duplicate in the English and Italian languages both of which shall be equally authentic.

For the Government
of the Commonwealth of Australia :

H. A. McCLURE SMITH

For the Government
of the Italian Republic :

Carlo Russo

SCHEDULE

1. The route to be operated in both directions by the designated airline of Australia :

Australia via Netherlands New Guinea, Indonesia, North Borneo, Sarawak and Brunei, Singapore, Malaya, Vietnam, Thailand, Burma, Ceylon, India, Pakistan, Afghanistan, Kuwait, Bahrein, Iran, Iraq, Saudi Arabia, United Arab Republic (including Syria and Egypt), Israel, Lebanon, Cyprus, Turkey, Greece, Malta, to Rome and beyond to Frankfurt and London.

2. The route to be operated in both directions by the designated airline of Italy :

Italy via Malta, Greece, Turkey, Cyprus, Lebanon, Israel, United Arab Republic (including Syria and Egypt), Saudi Arabia, Iraq, Iran, Bahrein, Kuwait, Afghanistan, Pakistan, India, Ceylon, Burma, Thailand, Vietnam, Malaya, Singapore, North Borneo, Sarawak and Brunei, Indonesia, Netherlands New Guinea to Sydney-Melbourne.

3. Points on any of the above routes may at the option of the designated airline concerned be omitted on any or all flights, provided that an agreed service shall have its starting point or terminal in the territory of the Contracting Party designating the airline.

MEMORANDUM

The Government of the Commonwealth of Australia and the Government of the Italian Republic agree as follows :

— Up to the date at which the designated Italian airline shall begin to operate the agreed services in accordance with the Agreement signed on this day,¹ the

¹ See p. 248 of this volume.

Australian designated airline shall continue to operate the three flights a week on each direction with Boeing 707-138, aircraft which Qantas is at present operating ;

— When the Italian designated airline is ready to operate under the Agreement, the aeronautical authorities of the Contracting Parties shall agree as to the capacity to be provided ;

— The said authorities shall furthermore agree as to the division of such capacity between the respective designated airlines.

Rome, 10 November 1960.

For the Government
of the Commonwealth of Australia :

H. A. McCLURE SMITH

For the Government
of the Italian Republic :

Carlo Russo

EXCHANGE OF NOTES — ÉCHANGE DE NOTES

I

[ITALIAN TEXT — TEXTE ITALIEN]

Eccellenza,

ho preso atto della Sua richiesta di inclusione nella tabella delle rotte dei punti di Hong Kong e di Manila, come scali con diritti di traffico.

In relazione a tale richiesta sono lieto di informarLa che il Governo italiano concede tali diritti, il cui esercizio è, però, rinviato alla data nella quale il Governo italiano avrà ottenuto dai rispettivi Paesi interessati i diritti di traffico a favore delle linee aeree italiane sui detti scali per i propri servizi aerei verso l'Australia.

Verificandosi tale condizione, l'inclusione nella tabella delle rotte italiana ed australiana degli scali indicati sarà effettuata attraverso scambio di lettere fra le due autorità aeronautiche.

Coi sensi della mia più alta considerazione.

Roma, 10 novembre 1960.

Carlo Russo

A Sua Eccellenza il Signor H. A. McClure Smith
Ambasciatore di Australia
Roma

[TRANSLATION — TRADUCTION]

Excellency,

[See note II]

Accept, Excellency, etc.

Rome, 10 November 1960.

Carlo Russo

His Excellency Mr. H. A. McClure Smith
Ambassador of Australia
Rome

II

Your Excellency,

I acknowledge receipt of your note of to day's date, which I am transcribing :

"I have noted your request as regards the inclusion of Hong Kong and Manila as traffic stops in the route schedules.

“With reference to such request, I am pleased to inform you that the Italian Government grants such rights, the exercise of which is postponed to the date in which the Italian Government shall have obtained from the respective Countries concerned, traffic rights in favour of the Italian airlines at the said stops for its own air services to Australia. Upon the realization of such condition, the inclusion in the Italian air route Schedule and in the Australian air route Schedule of the above stops shall be effected through an exchange of letters between the two aeronautical authorities.”

I am happy to confirm that the contents thereof are accepted by the Australian Delegation.

With the expression of my highest consideration.

Rome, 10th November 1960.

H. A. McCLURE SMITH

His Excellency Carlo Russo
Undersecretary of State
Ministry of Foreign Affairs
Rome