

No. 18254

**DENMARK
and
NIGERIA**

**Agreement for air services between and beyond their respective territories (with annex and exchange of letters).
Signed at Lagos on 11 March 1977**

Authentic text: English.

Registered by Denmark on 30 January 1980.

**DANEMARK
et
NIGÉRIA**

**Accord relatif aux services aériens entre leurs territoires respectifs et au-delà (avec annexe et échange de lettres).
Signé à Lagos le 11 mars 1977**

Texte authentique : anglais.

Enregistré par le Danemark le 30 janvier 1980.

AGREEMENT¹ BETWEEN THE GOVERNMENT OF THE KINGDOM OF DENMARK AND THE FEDERAL MILITARY GOVERNMENT OF THE FEDERAL REPUBLIC OF NIGERIA FOR AIR SERVICES BETWEEN AND BEYOND THEIR RESPECTIVE TERRITORIES

The Government of the Kingdom of Denmark and the Federal Military Government of the Federal Republic of Nigeria (hereinafter referred to as the Contracting Parties),

Considering that the Kingdom of Denmark and the Federal Republic of Nigeria are parties to the Convention on International Civil Aviation² and of the International Air Services Transit Agreement,³ both opened for signature at Chicago on the seventh day of December, 1944, and

Desiring to conclude an agreement, supplementary to the said Convention and Agreement, for the purpose of establishing air services between and beyond their respective territories,

Have agreed as follows:

Article 1. INTERPRETATION

For the purpose of the present Agreement, and any annex attached thereto, 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 and includes any annexes adopted under article 90 of that Convention and any amendment of the annexes or that Convention under articles 90 and 94 thereof so far as those annexes and amendments have been adopted by both Contracting Parties;

(b) The term "aeronautical authorities" means, in the case of the Federal Republic of Nigeria, the Commissioner responsible for matters relating to Civil Aviation and any person or body authorised to perform any functions at present exercised by the said Commissioner or similar functions and, in the case of the Kingdom of Denmark, the Ministry of Public Works and any person or body authorised to perform any functions at present exercised by the said Ministry or similar functions;

(c) The term "designated airline" means an airline which has been designated and authorised in accordance with article 3 of the present Agreement;

(d) The term "territory" in relation to a State means the land areas and territorial waters adjacent thereto under the sovereignty or protection of that State;

¹ Applied provisionally from 11 March 1977, the date of signature, and came into force definitively on 16 November 1977, the date of an exchange of notes between the Contracting Parties through diplomatic channels confirming its approval in conformity with their constitutional procedures, in accordance with article 18(1).

² United Nations, *Treaty Series*, vol. 15, p. 295. For the texts of the Protocols amending this Convention, see vol. 320, pp. 209 and 217; vol. 418, p. 161; vol. 514, p. 209; vol. 740, p. 21; vol. 893, p. 117; vol. 958, p. 217, and vol. 1008, p. 213.

³ *Ibid.*, vol. 84, p. 389.

(e) The terms "air service", "international air service", "airline" and "stop for non-traffic purposes" have the meanings respectively assigned to them in article 96 of the Convention; and

(f) The terms "aircraft equipment", "aircraft stores" and "spare parts" have the meanings respectively assigned to them in annex 9 of the Convention.

Article 2. RIGHTS AND PRIVILEGES OF DESIGNATED AIRLINES

(1) Each Contracting Party grants to the other Contracting Party the rights specified in the present Agreement for the purpose of establishing scheduled international air services on the routes specified in the appropriate section of the schedules annexed to the present Agreement. Such services and routes are hereafter called "the agreed services" and "the specified routes", respectively. The airline designated by each Contracting Party shall enjoy, while operating an agreed service on a specified route, the following rights:

- (a) To fly without landing across the territory of the other Contracting Party;
- (b) To make stops in the said territory for non-traffic purposes; and
- (c) To make stops in the said territory at the points specified for that route in the appropriate schedule annexed to the present Agreement for the purpose of putting down and taking up international traffic in passengers, cargo and mail.

(2) Nothing in paragraph (1) of this article shall be deemed to confer on the airline of one Contracting Party the privilege of taking up, in the territory of the other Contracting Party, passengers, cargo or mail destined for another point in the territory of that other Contracting Party.

Article 3. DESIGNATION OF AIRLINES

(1) Each Contracting Party shall have the right to designate in writing to the other Contracting Party one airline for the purpose of operating the agreed services on the specified routes.

(2) On the receipt of the notice of such designation, the other Contracting Party shall, subject to the provisions of paragraphs (3) and (4) of this article, without delay, grant to the airline designated the appropriate operating authorisation.

(3) The aeronautical authorities of one Contracting Party may require an airline designated by the other Contracting Party to satisfy them that it is qualified to fulfil the conditions prescribed under the laws and regulations normally and reasonably applied to the operation of international air services by such authorities in conformity with the provisions of the Convention.

(4) Each Contracting Party shall have the right to refuse to grant the operating authorisation referred to in paragraph (2) of this article or to impose such conditions as it may deem necessary on the exercise by a designated airline of the rights specified in article 2 of the present Agreement, in any case where the said Contracting Party is not satisfied that substantial ownership and effective control of that airline are vested in the Contracting Party designating the airline or in its nationals.

(5) When an airline has been so designated and authorised, it may begin at any time to operate the agreed service provided that a tariff established in accord-

ance with the provisions of article 9 of the present Agreement is in force in respect of that service.

Article 4. VALIDITY OF CERTIFICATES

(1) Certificates of airworthiness, certificates of competency and licences issued or validated by either Contracting Party and which have not expired shall be recognized as valid by the other Contracting Party for the purposes of operating the air routes specified in the annex hereto.

(2) Each Contracting Party reserves the right to refuse to recognize as valid for the purposes of operating the said air routes over its own territory, certificates of competency and licences issued to its own nationals by the other Contracting Party.

Article 5. REVOCATION AND SUSPENSION OF RIGHTS

(1) Each Contracting Party shall have the right to revoke an operating authorisation or to suspend the exercise of the rights specified in article 2 of the present Agreement by any airline designated by the other Contracting Party, or to impose such conditions as it may deem necessary for the exercise of these rights in any of the following cases:

- (a) 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 such Contracting Party;
- (b) Failure by the airline to comply with the laws or regulations of the Contracting Party granting these rights;
- (c) If the airline otherwise fails to operate in accordance with the conditions prescribed under the present Agreement.

(2) Unless immediate revocation, suspension or imposition of the conditions mentioned in paragraph (1) of this article is essential to prevent further infringements of laws, or regulations, such right shall be exercised only after consultations with the other Contracting Party.

Article 6. EXEMPTION FROM CUSTOMS DUTIES, ETC.

(1) Aircraft operated on international services by the designated airline of either Contracting Party, as well as their regular equipment, supplies of fuels and lubricants, and aircraft stores (including food, beverages and tobacco) on board such aircraft, shall be exempt from all customs duties, inspection fees and other similar charges on arriving in the territory of the other Contracting Party, provided such equipment and supplies remain on board the aircraft up to such time as they are re-exported or are used on the part of the journey performed over that territory.

(2) There shall also be exempt from the same duties, fees, and charges with the exception of charges corresponding to the services performed:

- (a) Aircraft stores taken on board in the territory of a Contracting Party, within limits fixed by the authorities of the said Contracting Party, and for use on board outbound aircraft engaged in an international service of the other Contracting Party;

- (b) Spare parts introduced into the territory of either Contracting Party for the maintenance or repairs of aircraft used on international services by the designated airline of the other Contracting Party;
- (c) Fuel and lubricants destined to supply outbound aircraft operated on international services by the designated airline of the other Contracting Party, even when these supplies are to be used on the part of the journey performed over the territory of the Contracting Party in which they are taken on board.

Materials referred to in sub-paragraphs (a), (b) and (c) above may be required to be kept under customs supervision or control.

Article 7. TREATMENT OF REGULAR AIRBORNE EQUIPMENT, ETC.

The regular airborne equipment as well as the materials and supplies retained on board the aircraft of either Contracting Party may be unloaded in the territory of the other Contracting Party only with the approval of the Customs authorities of that territory. In such case, they may be placed under the supervision of the said authorities up to such time as they are re-exported or otherwise disposed of in accordance with Customs regulations.

Article 8. MODE OF OPERATION

(1) There shall be fair and equal opportunity for the designated airline of each Contracting Party to operate the agreed services on the specified routes.

(2) The inauguration and subsequent operation of the agreed services on the specified routes shall be strictly within the limits set out in the annex to this Agreement or as it may be amended from time to time.

Article 9. TARIFFS

(1) The tariffs to be charged by the airline of one Contracting Party for carriage to or from the territory of the other Contracting Party shall be established at reasonable levels due regard being paid to all relevant factors including cost of operation, reasonable profit and the tariffs of other airlines.

(2) The tariffs referred to in paragraph (1) of this article, together with the rates of agency commission applicable, shall, if possible, be agreed by the designated airlines of both Contracting Parties, in consultation with other airlines operating over the whole or part of the route, and such agreement shall, where possible, be reached through the rate-fixing machinery of the International Air Transport Association.

(3) The tariffs so agreed shall be submitted for the approval of the aeronautical authorities of the Contracting Parties at least thirty (30) days before the proposed date of their introduction; in special cases, this time limit may be reduced subject to the agreement of the said authorities.

(4) If the designated airlines cannot agree on any of these tariffs, or if for some other reasons a tariff cannot be fixed in accordance with the provisions of paragraph (2) of this article, or if during the first fifteen (15) days of the thirty (30) days' period referred to in paragraph (3) of this article, one Contracting Party gives the other Contracting Party notice of its dissatisfaction with any tariff agreed in accordance with the provisions of paragraph (2) of this article, the aeronautical authorities of the Contracting Parties shall try to determine the tariff by agreement between themselves.

(5) If the aeronautical authorities cannot agree on the approval of any tariff submitted to them under paragraph (3) of this article or on the determination of any tariff under paragraph (4), the dispute shall be settled in accordance with the provisions of article 13 of the present Agreement.

(6) Subject to the provisions of paragraph (5) of this article, no tariff shall come into force if the aeronautical authorities of either Contracting Party have not approved it.

(7) The tariffs established in accordance with the provisions of this article shall remain in force until new tariffs have been established in accordance with the provisions of the present article.

Article 10. STATEMENTS OF STATISTICS

The aeronautical authorities of either Contracting Party shall supply to the aeronautical authorities of the other Contracting Party at the latter's request such periodic or other statements of statistics as may be reasonably required for the purpose of reviewing the capacity provided on the agreed services by the designated airline of the first Contracting Party.

Such statements shall include all information required to determine the amount of traffic carried by the airline on the agreed services and the origins and destination of such traffic.

Article 11. TRANSFER OF EXCESS RECEIPTS

Each Contracting Party grants to the designated airline of the other Contracting Party the right of transfer at the official rate of exchange of the excess of receipts over expenditure earned by the airline in its territory in connection with the carriage of passengers, mail and cargo subject to prevailing regulations in the territory of each Contracting Party. Whenever the payments system between the Contracting Parties is governed by a special agreement, this agreement shall apply in place of the provisions of this article.

Article 12. CONSULTATIONS

(1) In a spirit of close cooperation, the aeronautical authorities of the Contracting Parties shall consult each other from time to time with a view to ensuring the implementation of, and satisfactory compliance with, the provisions of the present Agreement and the schedules annexed thereto and shall also consult when necessary to provide for modification thereof.

(2) Either Contracting Party may request consultation, which may be through discussion or by correspondence and shall begin within a period of sixty (60) days of the date of the request, unless both Contracting Parties agree to an extension of this period.

Article 13. SETTLEMENT OF DISPUTES

(1) 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.

(2) If the Contracting Parties fail to reach a settlement by negotiation, they may agree to refer the dispute for decision to some person or body; if they do not so agree, the dispute shall 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 (60) days from the date of receipt by either Contracting Party from the other of a notice through diplomatic channels requesting arbitration of the dispute by such a tribunal and the third arbitrator shall be appointed within a further period of sixty (60) 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. In each case, the third arbitrator shall be a national of a third State and shall act as President of the arbitral tribunal.

(3) The Contracting Parties shall comply with any decision given under paragraph (2) of this article.

(4) Each Contracting Party will be responsible for the cost of its designated arbitrator and subsidiary staff provided and both Contracting Parties shall share equally all such further expenses involved in the activities of the tribunal including those of the President.

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

Article 14. EFFECT OF MULTILATERAL AGREEMENTS

The present Agreement and its annex shall be amended so as to conform with any multilateral treaties which may become binding on both Contracting Parties.

Article 15. REGISTRATION OF AGREEMENT WITH ICAO

The present Agreement, its annex, any amendments to either the Agreement or annex and any Exchange of Notes relating to either the Agreement or its annex shall be registered with the International Civil Aviation Organization.

Article 16. AMENDMENTS

If either of the Contracting Parties considers it desirable to modify any provision of the present Agreement, including the schedules annexed thereto, such modification, if agreed between the Contracting Parties and if necessary after consultation in accordance with article 12 of the present Agreement, shall come into effect when confirmed by an Exchange of Notes.

Article 17. TERMINATION

(1) The present Agreement shall be in force for an indefinite period of time, subject to the provisions of paragraph (2) below.

(2) Either Contracting Party may at [any] time give notice to the other Contracting Party of its decision to terminate the present Agreement; such notice shall be simultaneously communicated to the International Civil Aviation Organization. In such case the Agreement shall 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 International Civil Aviation Organization.

Article 18. ENTRY INTO FORCE

(1) This Agreement including its annex shall be applied provisionally from the date of signature, and shall enter into force on the date of Exchange of Notes between the Contracting Parties through diplomatic channels confirming that it has been approved in accordance with their constitutional procedures.

(2) If Notes are not exchanged within twelve (12) months from the date of signature, either Contracting Party may terminate the provisional application by giving twelve (12) months' notice in writing to the other Contracting Party.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto by their respective Governments, have signed the present Agreement.

DONE at Lagos, this eleventh day of March 1977, in duplicate in the English language.

HENNING HALCK

For the Government of the Kingdom of Denmark

WILLIAM OSISIOGU

For the Federal Military Government of the Federal Republic of Nigeria

ANNEX

SCHEDULE 1

Routes to be operated by the designated airline of the Federal Military Government of the Federal Republic of Nigeria

<i>Column 1 Points of departure</i>	<i>Column 2 Intermediate points</i>	<i>Column 3 Point in Denmark</i>	<i>Column 4 Points beyond</i>
Points in Nigeria	Tripoli, Tunis, Dakar, Robertsfield, Rome, Brussels, Amsterdam, London, Frankfurt Points in France Points in Switzerland Points in Spain	Copenhagen	New York Kingston

1. The designated airline may omit any point on any of the flights on the specified routes.
2. The designated airline may terminate any of its services on the specified routes.
3. Frequency: twice weekly in each direction.
4. Any request from the Nigerian aeronautical authorities to include additional points in the Danish territory shall be considered on its merits by the Danish Government.

SCHEDULE 2

Routes to be operated by the designated airline of the Government of the Kingdom of Denmark

<i>Column 1 Points of departure</i>	<i>Column 2 Intermediate points</i>	<i>Column 3 Point in Nigeria</i>	<i>Column 4 Points beyond</i>
Points in Scandinavia	Points in Germany except Frankfurt Points in Spain except Madrid Points in Austria, Bulgaria, Czechoslovakia, Greece, Hungary, Poland, Netherlands except Amsterdam, Yugoslavia, Morocco, Tunisia Points in Switzerland except Zürich and Geneva	Lagos	Lusaka, Libreville, Accra, Kinshasa, Luanda

1. The designated airline may omit any point on any of the flights on the specified routes.
2. The designated airline may terminate any of its services on the specified routes.
3. Frequency: twice weekly in each direction.
4. Any request from the Danish aeronautical authorities to include additional points in the Nigerian territory shall be considered on its merits by the Nigerian Government.
5. No 5th freedom rights shall be exercised between Nigeria and any of the following points in either direction by the designated airline of the Kingdom of Denmark: Accra, Kinshasa and Luanda.

EXCHANGE OF LETTERS

I

Lagos, 11th March, 1977

Your Excellency:

With reference to the Air Transport Agreement between the Government of the Kingdom of Denmark and the Federal Military Government of the Federal Republic of Nigeria signed today, I have the honour to notify Your Excellency that, in accordance with article 3 of the Agreement, the Government of Denmark designate Det Danske Luftfartselskab A/S (DDL) to operate the routes specified in the annex to the Agreement.

In this connection I have the honour to confirm, on behalf of the Government, the following understanding reached in the course of the negotiations preceding the signature of the Agreement:

1. Det Danske Luftfartselskab A/S (DDL) co-operating with Det Norske Luftfartselskab A/S (DNL) and AB Aerotransport (ABA) under the name of Scandinavian Airlines System (SAS) may operate the routes for which it has been designated under the Agreement with aircraft, crews and equipment of either or both of the other two airlines.

2. In so far as Det Danske Luftfartselskab A/S (DDL) employ aircraft, crews and equipment of the other airlines participating in the Scandinavian Airlines System (SAS), the provisions of the Agreement shall apply to such aircraft, crews and equipment as though they were the aircraft, crews and equipment of Det Danske Luftfartselskab A/S (DDL) and the competent Danish authorities and Det Danske Luftfartselskab A/S (DDL) shall accept full responsibility under the Agreement therefor.

I avail myself of this opportunity to renew to Your Excellency the assurances of my highest consideration.

HENNING HALCK

The Honourable Commissioner for Civil Aviation
Professor William Osiogun
Lagos

II

FEDERAL MINISTRY OF CIVIL AVIATION

Commissioner's Office

Lagos, 11th March, 1977

Your Excellency,

I have the honour to acknowledge receipt of your letter of even date which reads as follows:

[See letter I]

I have the honour to inform you of the concurrence of the Federal Military Government of the Federal Republic of Nigeria to the understanding mentioned in paragraph two of the foregoing.

Accept, Your Excellency, the assurance of my highest consideration.

Prof. I. U. W. OSIOGUN
Commissioner for Civil Aviation

His Excellency, Mr. Henning Halck
Ambassador Extraordinary and Plenipotentiary
of Denmark in Lagos