

No. 22076

**NEW ZEALAND
and
TONGA**

**Agreement concerning air services (with route schedule).
Signed at Wellington on 26 November 1980**

Authentic text: English.

Registered by New Zealand on 26 July 1983.

**NOUVELLE-ZÉLANDE
et
TONGA**

**Accord relatif aux services aériens (avec tableau des routes).
Signé à Wellington le 26 novembre 1980**

Texte authentique : anglais.

Enregistré par la Nouvelle-Zélande le 26 juillet 1983.

AGREEMENT¹ BETWEEN NEW ZEALAND AND THE KINGDOM OF TONGA CONCERNING AIR SERVICES

The Government of New Zealand and the Government of Tonga,

Desiring to conclude an agreement for the purpose of establishing and operating air services between their respective territories,

Have agreed as follows:

Article I. DEFINITIONS

1. For the purpose of the present Agreement, unless the context otherwise requires:

(a) The term "aeronautical authorities" means, in the case of each of the Contracting Parties, the Minister responsible for civil aviation and any person or body authorised to perform any functions on civil aviation at present exercised by the said Minister;

(b) The term "designated airline" means an airline which has been designated and authorised in accordance with Article III of this Agreement;

(c) The term "territory" in relation to a State means the land areas and territorial waters adjacent thereto under the sovereignty of that State and in the case of New Zealand also includes the Cook Islands and Tokelau;

(d) The term "air service" means any scheduled air service performed by aircraft for the public transport of passengers, cargo or mail;

(e) The term "international air service" means an air service which passes through the air space over the territory of more than one State;

(f) The term "airline" means any air transport enterprise offering or operating an international air service;

(g) The term "stop for non-traffic purposes" means a landing for any purpose other than taking on or discharging passengers, cargo or mail.

2. The Schedule to this Agreement (hereinafter called "the Schedule") forms an integral part of this Agreement and all references to this Agreement shall be deemed to include references to the Schedule.

Article II. GRANT OF RIGHTS

1. Each Contracting Party grants to the other Contracting Party the following rights in respect of its scheduled international air services:

(a) The right to fly across its territory without landing;

(b) The right to make stops in its territory for non-traffic purposes.

2. Each Contracting Party grants to the other Contracting Party the rights specified in this Agreement for the purpose of establishing scheduled international air services on the routes specified in the appropriate Section of the Schedule annexed to this Agreement. Such services and routes are hereinafter

¹ Came into force on 26 November 1980 by signature, in accordance with article XVII.

called “the agreed services” and “the specified routes” respectively. While operating an agreed service on a specified route the airline designated by each Contracting Party shall enjoy in addition to the rights specified in paragraph 1 of this Article the right to make stops in the territory of the other Contracting Party at the points specified for that route in the Schedule to this Agreement for the purpose of taking on board and discharging passengers and cargo including mail, separately or in combination.

3. Nothing in paragraph 2 of this Article shall be deemed to confer on the airline of one Contracting Party the privilege of taking on board, in the territory of the other Contracting Party, passengers and cargo including mail carried for hire or reward to be set down at another point in the territory of the other Contracting Party.

Article III. DESIGNATION OF AIRLINES

1. Each Contracting Party shall have the right to designate in writing through the diplomatic channel to the other Contracting Party an airline for the purpose of operating the agreed services on the specified routes.

2. Each Contracting Party shall have the right, on notification in writing to the other Contracting Party, to withdraw its designation of an airline and to designate another airline in its place.

3. On receipt of a designation the other Contracting Party shall, subject to the provisions of paragraphs 4 and 5 of this Article, without delay grant to the airline designated the appropriate operating authorisation.

4. 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 International Convention on Civil Aviation signed at Chicago on 7 December 1944¹ and associated Annexes.

5. Each Contracting Party shall have the right to refuse to grant the operating authorisations referred to in paragraph 3 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 II of this 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.

6. When an airline has been so designated and authorised it may at any time operate the agreed services, provided that a tariff established in accordance with the provisions of Article IX of this Agreement is in force in respect of that service.

¹ 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; vol. 1008, p. 213, and vol. 1175, p. 297.

Article IV. REVOCATION OR SUSPENSION
OF OPERATING AUTHORISATIONS

1. Each Contracting Party shall have the right to revoke an operating authorisation or to suspend the exercise of the rights specified in Article II of this Agreement by an airline designated by the other Contracting Party, or to impose such conditions as it may deem necessary on the exercise of these rights:

- (a) 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; or
- (b) In the case of failure by that airline to comply with the laws or regulations of the Contracting Party granting these rights; or
- (c) In a case where the airline otherwise fails to operate in accordance with the conditions prescribed under this 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 consultation with the other Contracting Party.

Article V. CUSTOMS REGULATIONS

1. Aircraft of the designated airline of one Contracting Party operating international air services, and the supplies of regular equipment, fuel, lubricating oils, and aircraft stores (including provisions of food, drink and tobacco) on board such aircraft, shall be exempted on arrival in the territory of the other Contracting Party from all customs duty, inspection fees, and other similar duties and charges, provided that such supplies either:

- (a) Remain on board the aircraft concerned until departure from the territory of the latter Contracting Party or are used on the part of the journey performed over that territory; or
- (b) Are unloaded from the aircraft with the permission of the appropriate customs authorities, pursuant to the provisions of paragraph 3 of this Article.

2. The same exemption from duties and charges, save in respect of reasonable charges made for services rendered, shall apply to:

- (a) Aircraft stores, of whatever origin obtained in the territory of one Contracting Party within the limits permitted by relevant laws and regulations of that Contracting Party, and taken on board aircraft of the other Contracting Party operating an international air service;
- (b) Spare parts imported into the territory of one Contracting Party for the maintenance or repair of aircraft of the other Contracting Party operating an international air service;
- (c) Fuel and lubricating oils obtained in the territory of one Contracting Party and intended for fuelling aircraft of the other Contracting Party operating an international air service, even though such supplies are to be used on that part of the flight which passes over the territory of the Contracting Party in whose territory they were taken on board;
- (d) At the discretion of the customs authorities, equipment (including specialised ground equipment), intended for incorporation in or use on aircraft of a

designated airline of the other Contracting Party engaged on an international air service, or for use solely in connection with the operation or servicing of such aircraft.

3. Supplies of regular equipment and aircraft stores referred to in paragraph 1 of this Article may not be unloaded except with the permission of the customs authorities of the Contracting Party concerned. If this permission has been granted, the supplies shall be stored in accordance with the directions of the customs authorities pending re-exportation or compliance with normal customs procedures.

Article VI. TRANSFER OF EARNINGS

Each Contracting Party grants to the designated airline of the other Contracting Party the right of free transfer of the excess of their receipts in its territory over their expenditure therein. Such transfers shall be effected on the basis of the prevailing foreign exchange market rates for current payments.

Article VII. PRINCIPLES GOVERNING OPERATION OF AGREED SERVICES

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 between their respective territories.

2. In operating services on any specified route the designated airline of each Contracting Party shall take into account the interests 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 airline of each Contracting Party shall bear close relationship to the requirements of the public for transportation on the specified routes and shall have as their primary objective the provision, at a reasonable load factor, of capacity adequate to carry the current and reasonably anticipated requirements for the carriage of passengers and cargo including mail originating from or destined for the territory of the Contracting Party which has designated the airline. Provision for the carriage of passengers and cargo including mail originating from and destined for points on the specified routes in the territories of States other than that designating the airline shall be made in accordance with the general principles that capacity shall be related to:

- (a) Traffic requirements to and from the territory of the Contracting Party which has designated the airline;
- (b) Traffic requirements of the area through which the agreed service passes, after taking account of local and regional services;
- (c) The requirements of through airline operation.

Article VIII. CHANGE OF GAUGE

In operating any agreed service on any specified route a designated airline of one Contracting Party may substitute one aircraft for another at a point in the territory of the other Contracting Party on the following conditions only:

- (a) That it is justified by reason of economy of operation;

- (b) That the aircraft used on the section of the route more distant from the terminal in the territory of the first Contracting Party is not larger in capacity than that used on the nearer section;
- (c) That the aircraft used on the more distant section shall operate only in connection with and as an extension of the service provided by the aircraft used on the nearer section and shall be scheduled so to do; the former shall arrive at the point of change for the purpose of carrying traffic transferred from, or to be transferred into, the aircraft used on the nearer section; and its capacity shall be determined with primary reference to this purpose;
- (d) That there is an adequate volume of through traffic;
- (e) That the airline shall not hold itself out to the public by advertisement or otherwise as providing a service which originates at a point where the change of aircraft is made;
- (f) That the provisions of Article VII of this Agreement shall govern all arrangements made with regard to change of aircraft;
- (g) That in connection with any one aircraft flight into the territory in which the change of aircraft is made, only one flight may be made out of that territory.

Article IX. TARIFFS

1. For the purpose of the following paragraphs the term "tariffs" means the prices to be paid for the carriage of passengers and cargo and the conditions under which these prices apply, including prices and conditions for agency and other auxiliary services excluding remuneration and conditions for the carriage of mail. Tariffs of the designated airlines of the Contracting Parties for carriage between their territories shall be established in accordance with the procedures set out in this Article.

2. The tariffs charged by the designated airlines of one Contracting Party for public transport to and from the territory of the other Contracting Party shall be established at the lowest level consistent with a high standard of safety and an adequate return to efficient airlines operating on the agreed routes. Each tariff shall, to the extent feasible, be based on the costs of providing such service assuming reasonable load factors. Additional relevant factors shall include among others the need of the airline to meet competition from scheduled or charter air services, taking into account differences in cost and quality of service, and the prevention of unjust discrimination and undue preferences or advantages. To further the reasonable interests of users of air transport services, and to encourage the further development of civil aviation, individual airlines should be encouraged to initiate innovative, cost-based tariffs.

3. The tariffs charged by the designated airlines of one Contracting Party for public transport between the territory of the other Contracting Party and the territory of a third State shall be subject to the approval of the other Contracting Party and such third State; provided, however, that a Contracting Party shall not require a different tariff from the tariff of its own airlines for comparable service between the same points. The designated airlines of each Contracting Party shall file such tariffs with the other Contracting Party, in accordance with its requirements.

4. Any tariff agreements with respect to public transport between the territories of the Contracting Parties concluded as a result of inter-carrier discussions,

including those held under the traffic conference procedures of the International Air Transport Association, or any other association of international airlines, and involving the airlines of the Contracting Parties will be subject to the approval of the aeronautical authorities of those Contracting Parties, and may be disapproved at any time whether or not previously approved. The submission of such agreements is not the filing of a tariff for the purposes of the provisions of paragraph 5 of this Article. Such agreements shall be submitted to the aeronautical authorities of both Contracting Parties for approval at least 60 days before the proposed date of effectiveness, accompanied by such justification as each Contracting Party may require of its own designated airlines. The period of 60 days may be reduced with the consent of the aeronautical authorities of the Contracting Party with whom a filing is made. The aeronautical authorities of each Contracting Party shall use their best efforts to approve or disapprove (in whole or in part) each agreement submitted in accordance with this paragraph at least 15 days prior to the proposed effective date. Each Contracting Party may require that tariffs reflecting agreements approved by it be filed and published in accordance with its laws.

5. Any tariff of a designated airline of one Contracting Party for public transport between the territories of the Contracting Parties shall, if so required, be filed with the aeronautical authorities of the other Contracting Party at least 60 days prior to the proposed effective date unless the aeronautical authorities of that Contracting Party permit the filing to be made on shorter notice. Such tariff shall become effective unless action is taken to continue in force the existing tariff as provided in paragraph 7 of this Article.

6. If the aeronautical authorities of one Contracting Party, on receipt of any filing referred to in paragraph 5 of this Article, are dissatisfied with the tariff proposed or desire to discuss the tariff with the other Contracting Party, the first Contracting Party shall so notify the other Contracting Party through diplomatic channels within 30 days of the filing of such tariff, but in no event less than 15 days prior to the proposed effective date of such tariff. The Contracting Party receiving the notification may request consultations and, if so requested, such consultations shall be held at the earliest possible date for the purpose of attempting to reach agreement on the appropriate tariff. If notification of dissatisfaction is not given as provided in this paragraph, the tariff shall be deemed to be approved by the aeronautical authorities of the Contracting Party receiving the filing and shall become effective on the proposed date.

7. If agreement is reached on the appropriate tariff under paragraph 6 of this Article, each Contracting Party shall exercise its best efforts to put such tariff into effect. If an agreement is not reached prior to the proposed effective date of the tariff, or if consultations are not requested, the aeronautical authorities of the Contracting Party expressing dissatisfaction with that tariff may take action to continue in force the existing tariffs beyond the date on which they would otherwise have expired at the levels and under the conditions (including seasonal variations) set forth therein. In this event the other Contracting Party shall similarly take any action necessary to continue the existing tariffs in effect. In no circumstances, however, shall a Contracting Party require a different tariff from the tariff of its own designated airlines for comparable service between the same points.

8. The aeronautical authorities of each Contracting Party shall exercise their best efforts to ensure that the designated airlines conform to the agreed tariffs filed with the aeronautical authorities of the Contracting Parties, and that no airline rebates any portion of such tariffs by any means, directly or indirectly.

Article X PROVISION OF STATISTICS

The aeronautical authorities of a Contracting Party shall supply to the aeronautical authorities of the other Contracting Party at their 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 a designated airline of the Contracting Party referred to first in this Article. 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 destinations of such traffic.

Article XI. AVIATION SECURITY

The Contracting Parties, considering that unlawful acts against the safety of civil aviation including seizure or exercise of control of aircraft in flight jeopardize the safety of persons and property and seriously affect the operation of air service, shall cooperate closely for the prevention and suppression of unlawful acts against the safety of civil aviation or threat thereof.

Article XII. COMMERCIAL OPERATIONS

1. The designated airline or airlines of one Contracting Party shall be entitled, in accordance with the laws and regulations relating to entry, residence and employment of the other Contracting Party, to bring in and maintain in the territory of the other Contracting Party those of their own managerial, technical, operational and other specialist staff who are required for the provision of air services.

2. Each Contracting Party agrees to use its best efforts to ensure that the designated airlines of the other Contracting Party are offered the choice, subject to reasonable limitations which may be imposed by airport authorities, of providing their own services for ground handling operations; of having such operations performed entirely or in part by another airline, an organization controlled by another airline, or a servicing agent, as authorised by the airport authority; or of having such operations performed by the airport authority.

3. Each Contracting Party grants to each designated airline of the other Contracting Party the right to engage in the sale of air transportation in its territory directly and, at the airline's discretion, through its agents. Each airline shall have the right to sell such transportation, and any person shall be free to purchase such transportation, in the currency of that territory or in freely convertible currencies of other countries.

Article XIII. CONSULTATION

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 this Agreement and shall consult when necessary to provide for modification thereof.

2. Either Contracting Party may request consultations which may be either oral or in writing and shall begin within a period of 60 days of the date of receipt of the request, unless both Contracting Parties agree to an extension of this period.

Article XIV. SETTLEMENT OF DISPUTES

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, 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 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 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 Organisation may at the request of either Contracting Party appoint an arbitrator or arbitrators as the case requires. In such 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. The expenses of the national arbitrators shall be borne by the respective Contracting Parties. All other expenses of the arbitral tribunal, including the fees and expenses of the third arbitrator, shall be shared equally by the Contracting Parties.

Article XV. AMENDMENT

If either of the Contracting Parties considers it desirable to modify any provision of this Agreement including the annexed Schedule, such modification, if agreed between the Contracting Parties and if necessary after consultation in accordance with Article XIII of this Agreement, shall come into effect when confirmed by an Exchange of Notes, through the diplomatic channel.

Article XVI. TERMINATION

Either Contracting Party may at any time give notice to the other Contracting Party of its decision to terminate this Agreement; such notice shall be simultaneously communicated to the International Civil Aviation Organisation. In such case the Agreement shall terminate 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 14 days after the receipt of the notice by the International Civil Aviation Organisation.

Article XVII. ENTRY INTO FORCE

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

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

DONE in duplicate at Wellington this 26th day of November 1980 in the English language.

[Signed — Signé]¹
For the Government
of New Zealand

[Signed — Signé]²
For the Government
of the Kingdom of Tonga

ROUTE SCHEDULE

SECTION 1

New Zealand routes

<i>Point of origin</i>	<i>Point in Tonga</i>	<i>Intermediate point</i>	<i>Points beyond</i>
1. Points in New Zealand	Fua'amotu	—	Western Samoa
2. Points in New Zealand	Fua'amotu	Niue	Cook Islands

SECTION 2

Tongan routes

<i>Point of origin</i>	<i>Intermediate point</i>	<i>Point in New Zealand</i>
1. Points in Tonga	—	Auckland
2. Points in Tonga	Niue	Rarotonga

NOTE:

Points on the routes set out in sections 1 and 2 of this schedule may be omitted on any or all flights provided that each service begins or ends in the territory of the Contracting Party designating the airline concerned.

¹ Signed by Brian Talboys — Signé par Brian Talboys.

² Signed by Senipisi Longi Kavaliku — Signé par Senipisi Longi Kavaliku.