

No. 30312

**AUSTRALIA
and
SWITZERLAND**

**Agreement relating to air services (with annex). Signed at
Canberra on 17 October 1990**

Authentic texts: English and French.

Registered by Australia on 28 September 1993.

**AUSTRALIE
et
SUISSE**

**Accord relatif aux services aériens de lignes (avec annexe).
Signé à Canberra le 17 octobre 1990**

Textes authentiques : anglais et français.

Enregistré par l'Australie le 28 septembre 1993.

AGREEMENT¹ BETWEEN THE GOVERNMENT OF AUSTRALIA AND THE SWISS FEDERAL COUNCIL RELATING TO AIR SERVICES

Considering that Australia and Switzerland are Parties to the Convention on International Civil Aviation opened for signature at Chicago on the seventh day of December, 1944² desiring to develop international co-operation in the field of air transport, and desiring to establish the necessary basis for the operation of air services, the Swiss Federal Council and the Government of Australia have agreed as follows:

Article I

DEFINITIONS

1. For the purposes of this Agreement:

(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 annex adopted under Article 90 of that Convention and any amendment of the annexes or Convention under Articles 90 and 94 thereof so far as those annexes and amendments are applied by both Contracting Parties.

(b) The term “aeronautical authorities” means, in the case of Switzerland, the Federal Office for Civil Aviation and, in the case of Australia, the Secretary to the Department of Transport and Communications or in both cases any person or body, authorised to exercise the functions currently assigned to the said authorities.

(c) The terms “air service”, “international air service”, “airline” and “stop for non-traffic purposes” have the meanings assigned to them in Article 96 of the Convention.

(d) The term “agreed service” means any scheduled air service operated on a specified route.

(e) The term “specified route” means a route specified in the Annex to this Agreement.

(f) The term “designated airline” means an airline which one Contracting Party has designated, in accordance with Article VI of this Agreement, for the operation of the agreed services.

(g) The term “tariff” means the prices which the designated airlines charge for the carriage of passengers, baggage and cargo and the conditions under which these prices apply, including commission charges and other additional remuneration for agency or sale of transportation of documents but excluding remuneration and conditions for carriage of mail.

2. The Annex forms an integral part of this Agreement. All references to the Agreement shall include the Annex unless explicitly agreed otherwise.

¹ Came into force on 1 February 1993, when the Contracting Parties notified each other (on 28 January and 1 February 1993) of the completion of their constitutional formalities, in accordance with article XX.

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

Article II

GRANT OF RIGHTS

1. Each Contracting Party grants to the other Contracting Party the rights specified in this Agreement for the purpose of operating agreed services.

2. Subject to the provisions of this Agreement, the designated airline of each Contracting Party shall enjoy:

(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;

(c) The right to embark and disembark in the territory of one Contracting Party at the points specified in the Annex of this Agreement passengers, baggage, cargo and mail destined for or coming from points in the territory of the other Contracting Party; and

(d) The right to embark and disembark in the territory of third countries at points on a specified route passengers, baggage, cargo and mail destined for or coming from points on that specified route in the territory of the other Contracting Party.

3. Nothing in this Article shall be deemed to confer on the designated airline of one Contracting Party the privilege of embarking, in the territory of the other Contracting Party, passengers, baggage, cargo and mail carried for remuneration or hire and destined for another point in the territory of that Contracting Party.

4. If because of armed conflict, political disturbances or developments, or special and unusual circumstances, the designated airline of one Contracting Party is unable to operate a service on its normal routes, the other Contracting Party shall use its best efforts to facilitate the continued operation of such service through appropriate temporary rearrangements of such routes as are mutually decided by the Contracting Parties.

Article III

EXERCISE OF RIGHTS

1. The designated airline of each Contracting Party shall enjoy fair and equal opportunities to operate the agreed services on the specified routes.

2. The designated airline of a Contracting Party shall take into consideration the interests of the designated airline of the other Contracting Party so as not to affect unduly the agreed services of the latter airline.

3. The agreed services provided by the designated airlines shall bear a close relationship to traffic demand. The agreed services provided by the designated airlines shall have as their primary objective the provision of capacity adequate for the requirements of traffic originating in the territory of one Contracting Party and destined for the territory of the other Contracting Party.

4. Provision for the carriage of passengers and cargo both taken up and discharged at points on the specified routes in the territories of third countries 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 areas through which the airline passes, local and regional air services being taken into account; and

(c) The requirements of viable through airline operations.

5. The capacity on the agreed services to be operated by the designated airlines of the Contracting Parties may from time to time be arranged by the designated airlines of the Contracting Parties. The initial capacity and share of capacity and any increase in capacity on the agreed services which may be provided in accordance with this Agreement shall be such as are mutually arranged between the aeronautical authorities of the Contracting Parties before the commencement of each agreed service and each such increase in capacity and from time to time thereafter.

Article IV

APPLICATION OF LAWS AND REGULATIONS

1. The laws and regulations of one Contracting Party governing entry into and departure from its territory of aircraft engaged in international air navigation or flights of such aircraft over that territory shall apply to the designated airline of the other Contracting Party.

2. The laws and regulations of one Contracting Party governing entry into, sojourn in, and departure from its territory of passengers, crew, baggage, cargo or mail, including formalities regarding entry, exit, emigration and immigration, as well as customs and sanitary measures shall apply to passengers, crew, baggage, cargo or mail carried by the aircraft of the designated airline of the other Contracting Party while they are within that territory.

3. Neither Contracting Party may grant to its own designated airline any preference over the designated airline of the other Contracting Party in the application of the laws and regulations provided for in this Article.

Article V

AVIATION SECURITY

1. Consistent with their rights and obligations under international law, the Contracting Parties reaffirm that their obligations to each other to protect the security of civil aviation against acts of unlawful interference forms an integral part of this Agreement. Without limiting the generality of their rights and obligations under international law, the Contracting Parties shall in particular act in conformity with the provisions of the Convention on Offences and Certain Other Acts Committed on Board Aircraft, opened for signature at Tokyo on 14 September 1963,¹ the Convention for the Suppression of Unlawful Seizure of Aircraft, opened for signature at The Hague on 16 December 1970² and the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation opened for signature at Montreal on 23 September 1971³ and any other convention relating to the security of civil aviation applied by both Contracting Parties.

¹ United Nations, *Treaties Series*, vol. 704, p. 219.

² *Ibid.*, vol. 860, p. 105.

³ *Ibid.*, vol. 974, p. 177 and vol. 1217, p. 404 (corrigendum to vol. 974).

2. The Contracting Parties shall provide upon request all necessary assistance to each other to prevent acts of unlawful seizure of civil aircraft and other unlawful acts against the safety of such aircraft, passengers and crew, airports and air navigation facilities, and any other threat to the security of civil aviation.

3. The Contracting Parties shall, in their mutual relations, act in conformity with the aviation security standards and recommended practices established by the International Civil Aviation Organisation and designated as annexes to the Convention to the extent that such security standards and recommended practices are applied by the Contracting Parties. They shall require that operators of aircraft of their registry or operators of aircraft who have their principal place of business or permanent residence in their territory and the operators of airports in their territory act in conformity with such aviation security standards and recommended practices. In this paragraph the reference to aviation security standards and recommended practices includes any differences notified by the Contracting Party concerned. Each Contracting Party shall advise the other Contracting Party of any difference between its national regulations and practices and the aforementioned security standards and recommended practices. Each Contracting Party may request immediate consultations with the other Contracting Party at any time to discuss such differences.

4. Each Contracting Party agrees that its designated airline may be required to observe the aviation security standards and recommended practices referred to in paragraph 3 of this Article required by the other Contracting Party for entry into, departure from, or while within, the territory of the other Contracting Party. Each Contracting Party shall ensure that effective measures are taken within its territory to protect aircraft, to screen passengers and their carry-on items, and to carry out appropriate checks on crew, cargo and aircraft stores prior to and during boarding or loading. Each Contracting Party shall also give positive consideration to any request from the other Contracting Party for reasonable special security measures to meet a particular threat to civil aviation.

5. When an incident or threat of an incident of unlawful seizure of civil aircraft or other unlawful acts against the safety of such aircraft, their passengers and crew, airports or air navigation facilities occurs, the Contracting Parties shall assist each other by facilitating communications and other appropriate measures intended to terminate such incident or threat as rapidly as possible commensurate with minimum risk to life.

6. When a Contracting Party has reasonable grounds to believe that the other Contracting Party has departed from the aviation security provisions of this Article, the aeronautical authorities of the first Contracting Party may request immediate consultations with the aeronautical authorities of the other Contracting Party. The consultations shall commence within 15 days from the date on which consultations were requested. If the Contracting Parties fail to reach a satisfactory resolution within 15 days from the commencement of consultations and if the other Contracting Party has not adequately met its obligations pursuant to paragraphs 4 and 5 of this Article, the first Contracting Party may immediately take appropriately measured protective action which may involve limiting or imposing conditions on the operating authorisations or technical permissions of the airline of the other Contracting Party. Any action taken in accordance with this paragraph shall be discontinued upon compliance by the other Contracting Party with the provisions of this Article. When justified by an emergency involving an immediate threat to the safety

of the passengers, crew or aircraft, the first Contracting Party may take interim action prior to the expiry of 30 days from the date of the request for consultations.

Article VI

DESIGNATION AND OPERATING AUTHORISATION

1. Each Contracting Party shall have the right to designate one airline for the purpose of operating the agreed services. Such designation shall be made by notice in writing between the aeronautical authorities of the Contracting Parties.

2. The aeronautical authorities which have received the notification of designation shall, subject to the provisions of paragraphs 3 and 4 of this Article, grant without delay to the designated airline of the other Contracting Party the necessary operating authorisation.

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

4. A 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 of the rights specified in Article II of this Agreement, whenever that Contracting Party is not satisfied that substantial ownership and effective control of the airline is vested in the Contracting Party designating the airline or in its nationals.

5. Having received the operating authorisation, provided for under paragraph 2 of this Article, the designated airline may at any time operate the agreed services, provided that tariffs established in accordance with the provisions of Article XII of this Agreement are in force.

Article VII

REVOCATION AND SUSPENSION OF OPERATING AUTHORISATION

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

(a) It is not satisfied that substantial ownership and effective control of the airline are vested in the Contracting Party designating the airline or in its nationals; or

(b) The airline fails to comply with or has infringed the laws or regulations of the Contracting Party granting these rights; or

(c) The airline fails to operate the agreed services in accordance with the conditions prescribed under this Agreement.

2. Rights conferred by paragraph 1 of this Article shall be exercised only after consultation between the Contracting Parties, unless the immediate revocation, suspension or imposition of conditions is essential to prevent further infringements of laws and regulations.

Article VIII

RECOGNITION OF CERTIFICATES AND LICENCES

1. Certificates of airworthiness, certificates of competency and licences issued or rendered valid by one Contracting Party shall, during the period of their validity, be recognised as valid by the other Contracting Party.

2. Each Contracting Party reserves the right, however, to refuse to recognise as valid, for the purpose of flights over its own territory, certificates of competency and licences granted to or rendered valid for its own nationals by the other Contracting Party or by any other State.

Article IX

EXEMPTION FROM DUTIES AND OTHER CHARGES

1. Aircraft operated on agreed services by the designated airline of one Contracting Party, as well as their normal equipment, supplies of fuels, lubricating oils (including hydraulic fluids) and lubricants, consumable technical supplies, spare parts (including engines), aircraft stores (including food, beverages, liquor, tobacco and other products for sale to or use by passengers, in limited quantities, during the flight) and other items intended for or used solely in connection with the aviation operation or servicing, which are on board such aircraft, shall, on entering into the territory of the other Contracting Party, be exempt from customs duties, excise duties, inspection fees and other national duties and charges, provided such equipment, supplies and stores remain on board the aircraft until they are re-exported.

2. The following shall be exempt from customs duties, excise duties, inspection fees and other national duties and charges:

(a) Aircraft stores taken on board in the territory of one Contracting Party, and intended for use on board the aircraft operated on an international service by the designated airline of the other Contracting Party;

(b) Spare parts (including engines) and normal airborne equipment imported into the territory of one Contracting Party for the maintenance or repair of aircraft operating agreed services;

(c) Fuels, lubricating oils (including hydraulic fluids) and lubricants destined for the designated airline of one Contracting Party to supply aircraft operating agreed services, even when these supplies are to be used on any part of a journey performed over the territory of the Contracting Party in which they have been taken on board.

3. The normal airborne equipment, as well as spare parts (including engines), aircraft stores, supplies of fuel, lubricating oils (including hydraulic fluids) and lubricants and other items mentioned in paragraph 1 of this Article retained on board the aircraft operated by the designated airline of one 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 a case, they may be placed under the supervision of those customs authorities until they are re-exported or otherwise disposed of in accordance with the Customs laws and procedures of that Contracting Party.

4. The exemptions provided for by this Article shall be available in situations where the designated airline of either Contracting Party has entered into arrangements with another airline or airlines for the loan or transfer in the territory of the other Contracting Party of the items specified in paragraphs 1 and 2 of this Article provided such other airline or airlines similarly enjoy such exemptions from the other Contracting Party.

Article X

USER CHARGES

1. The charges imposed on a designated airline of one Contracting Party by the competent charging authorities or bodies of the other Contracting Party for the use of airport services and facilities and other aviation services and facilities by that designated airline shall not be higher than those imposed on a designated airline of the other Contracting Party engaged in similar international operations using similar aircraft, airports, services and facilities.

2. Each Contracting Party shall encourage consultation between its competent charging authorities and airlines using the services and facilities, where practicable through the airline's representative organisations. Reasonable notice should be given to users of any proposals for changes in user charges to enable them to express their views before changes are made. Each Contracting Party shall further encourage the competent charging authorities and the airlines to exchange appropriate information concerning user charges.

Article XI

COMMERCIAL OPPORTUNITIES

1. The designated airline of one Contracting Party shall be permitted to maintain adequate representation in the territory of the second Contracting Party, consistent with the immigration laws, regulations and practices of the second Contracting Party. This representation may include commercial, operational and technical representatives who may consist of transferred or locally engaged personnel.

2. Each Contracting Party shall take all appropriate action within its jurisdiction to eliminate all forms of discrimination or unfair competitive practices adversely affecting the competitive position of the designated airline of the other Contracting Party to compete in the international air services covered by this Agreement.

3. The designated airline of one Contracting Party may establish offices in the territory of the other Contracting Party for the purpose of providing air services. Each designated airline shall have the right to engage in the sale of air transportation in the territory of the other Contracting Party directly and, at its discretion, through its agents. Each designated airline shall have the right to use for this purpose its own transportation documents.

4. The designated airline of each Contracting Party shall have the right to sell air transportation in local or freely convertible currencies, and to convert its funds into any freely convertible currency and to transfer them from the territory of the other Contracting Party at will. Subject to the national laws and regulations and

policy of the other Contracting Party, conversion and transfer of funds shall be permitted at the foreign exchange market rates for payments prevailing at the time of submission of the requests for conversion or transfer and shall not be subject to any charges except normal service charges levied for such transactions.

5. The designated airline of one Contracting Party shall be permitted to pay for local expenses including purchases of fuel, in the territory of the other Contracting Party in local currency. The designated airline of one Contracting Party may pay for such expenses in the territory of the other Contracting Party in freely convertible currencies in accordance with national currency regulations.

Article XII

TARIFFS

1. The tariffs to be applied by each designated airline in connection with any transportation to and from the territory of the other Contracting Party shall be established at reasonable levels, due regard being paid to all relevant factors, including the interests of users of air transportation, cost of operation, reasonable profit, the characteristics of each service and the tariffs charged by other airlines.

2. The tariffs referred to in paragraph 1 of this Article may be established by mutual agreement by the designated airlines of both Contracting Parties and after consultation with other airlines operating over the whole or part of the same route. The designated airlines may reach such agreement through the rate-fixing procedure established by the international body which formulates proposals in this matter.

3. Tariffs shall be submitted for approval to the aeronautical authorities of the Contracting Parties at least sixty days before the proposed date of their introduction. This time limit may be reduced with the approval of the said authorities. If within thirty days after the submission of the tariffs neither of the aeronautical authorities notifies to the other aeronautical authorities its disapproval, these tariffs shall be considered approved.

4. If a tariff is not approved by the aeronautical authorities of one Contracting Party, the aeronautical authorities of both Contracting Parties may determine the tariff by mutual agreement. If negotiations are requested by one Contracting Party, they shall begin within thirty days from the date of the request.

5. A tariff already established shall remain in force until a new tariff has been established in accordance with the provisions of this Article, but not longer than twelve months from the day of disapproval by the aeronautical authorities of one of the Contracting Parties.

6. The designated airline of one Contracting Party shall be permitted to match any publicly available tariff approved for international air transportation between the points in the territory of the other Contracting Party and the points in its own territory as well as points in third countries as specified in this Agreement.

Article XIII

TIME-TABLE SUBMISSION

Not later than thirty five days prior to the commencement of or modification to the agreed services, the designated airline of one Contracting Party shall submit its

proposed time-table to the aeronautical authorities of the other Contracting Party for approval.

Article XIV

PROVISION OF STATISTICS

The aeronautical authorities of both Contracting Parties shall supply each other, on request, with periodic statistics or other similar information relating to the traffic carried on agreed services.

Article XV

CONSULTATIONS

A Contracting Party or its aeronautical authorities may at any time request consultations on the implementation, interpretation, application or amendment of this Agreement. Such consultations, which may be through discussion or correspondence, shall begin within a period of sixty days from the date the other Contracting Party receives a written request, unless otherwise arranged by the Contracting Parties.

Article XVI

SETTLEMENT OF DISPUTES

1. Any dispute arising under this Agreement, which cannot be settled by direct negotiations or through diplomatic channels, shall, at the request of either Contracting Party, be submitted to an arbitral tribunal.

2. In such case, each Contracting Party shall nominate an arbitrator and the two arbitrators shall appoint a president, who shall be a national of a third State. If within two months after one Contracting Party has nominated its arbitrator, the other Contracting Party has not nominated its own or, if within the month following the nomination of the second arbitrator, both arbitrators have not agreed on the appointment of the president, each Contracting Party may request the President of the Council of the International Civil Aviation Organisation to proceed with any necessary nominations.

3. The arbitral tribunal shall determine its own procedure and decide on the distribution of the cost of the procedure.

4. The Contracting Parties shall comply with any decision delivered in application of this Article.

Article XVII

MODIFICATION OF AGREEMENT

1. If either of the Contracting Parties considers it desirable to modify any provision of this Agreement, such modification, if agreed between the Contracting Parties, shall be applied provisionally from the date of its signature and enter into

force when the Contracting Parties will have notified each other of the fulfilment of their constitutional procedures.

2. Modifications to the Annex of this Agreement may be agreed directly between the aeronautical authorities of the Contracting Parties. Such modifications shall be applied provisionally, unless the aeronautical authorities otherwise mutually decide, from the date they have been agreed upon and enter into force when confirmed by an exchange of diplomatic notes.

3. If a multilateral convention concerning air transport comes into force in respect of both Contracting Parties, this Agreement shall be deemed to be modified so far as is necessary to conform with the provisions of that convention.

Article XVIII

TERMINATION

1. Each Contracting Party may at any time give notice in writing to the other Contracting Party of its decision to terminate this Agreement. Such notice shall simultaneously be communicated to the International Civil Aviation Organisation.

2. This Agreement shall terminate twelve months after the date of receipt of the notice will have elapsed, unless the notice is withdrawn by mutual agreement before the expiry of this period.

3. In default of acknowledgment of receipt by the other Contracting Party, the notice shall be deemed to have been received fourteen days after the date on which the International Civil Aviation Organisation will have received communication thereof.

Article XIX

REGISTRATION WITH INTERNATIONAL CIVIL AVIATION ORGANIZATION

This Agreement and all amendments thereto shall be registered with the International Civil Aviation Organisation.

Article XX

ENTRY INTO FORCE

This Agreement shall enter into force when the Contracting Parties will have notified to each other the fulfilment of their constitutional formalities with regard to the conclusion of and the entry into force of international agreements.

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

DONE at Canberra, this seventeenth day of October 1990 in two originals, in the English and French languages, both texts being equally authentic.

For the Government of Australia:

[KIM BEAZLEY]

For the Swiss Federal Council:

[ARNOLD HUGENTOBLER]

ANNEX

I. Routes to operated by the designated airline of Switzerland:

From Switzerland via intermediate points to two points in Australia and vice versa.

II. Routes to be operated by the designated airline of Australia:

From Australia via intermediate points to two points in Switzerland and beyond to points in Europe and vice versa.

Note

(a) Points on the specified routes may, unless otherwise agreed, at the option of the designated airline concerned, be omitted on any or all flights.

(b) Points in the territory of one Contracting Party may be nominated by the aeronautical authorities of the other Contracting Party and changed from time to time.

(c) The designated airline of Switzerland shall not uplift any traffic in Singapore, Japan or Hong Kong for discharge in Australia, nor uplift any traffic in Australia for discharge in Singapore, Japan and Hong Kong.

(d) The designated airlines of Switzerland and Australia may combine points in the territory of the other Contracting Party without exercising traffic rights between those points.

(e) If Sydney is a point chosen by the designated airline of Switzerland to be operated on Route I above this will be operated in conjunction with a second point in Australia.

(f) Points in Australia on the specified routes for the designated airline of Switzerland may be served in any combination as part of a through international journey, provided that for the first year of its operation, Sydney is only served once as a point of arrival and a point of departure on each round trip.

(g) Points in Europe which may normally be considered as geographically points beyond Switzerland may, in respect of the services to be operated by the designated airline of Australia, nonetheless be served as intermediate points en route to and/or through a point or points in Switzerland.
