

**No. 49420**

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**Australia  
and  
Tonga**

**Agreement between the Government of Australia and the Government of the Kingdom of Tonga relating to air services (with annexes). Neiafu, 23 August 2003**

**Entry into force:** *7 June 2011 by notification, in accordance with article 20*

**Authentic text:** *English*

**Registration with the Secretariat of the United Nations:** *Australia, 6 March 2012*

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**Australie  
et  
Tonga**

**Accord entre le Gouvernement de l'Australie et le Gouvernement du Royaume des Tonga relatif aux services aériens (avec annexes). Neiafu, 23 août 2003**

**Entrée en vigueur :** *7 juin 2011 par notification, conformément à l'article 20*

**Texte authentique :** *anglais*

**Enregistrement auprès du Secrétariat des Nations Unies :** *Australie, 6 mars 2012*

[ ENGLISH TEXT – TEXTE ANGLAIS ]

**AGREEMENT BETWEEN  
THE GOVERNMENT OF AUSTRALIA  
AND  
THE GOVERNMENT OF THE KINGDOM OF TONGA  
RELATING TO AIR SERVICES**

The Government of Australia and the Government of the Kingdom of Tonga (hereinafter, "the Parties");

Being Parties to the Convention on International Civil Aviation, opened for signature at Chicago on December 7, 1944;

Desiring to promote an international aviation system based on competition among airlines in the marketplace and wishing to encourage scheduled and non-scheduled airlines to develop and implement innovative and competitive services;

Recognising that this Agreement applies to both scheduled and non-scheduled services;

Desiring to ensure the highest degree of safety and security in international air transport and reaffirming their grave concern about acts or threats against the security of aircraft, which jeopardise the safety of persons or property, adversely affect the operation of air transport, and undermine public confidence in the safety of civil aviation;

Have agreed as follows:

**ARTICLE 1**

**Definitions**

For the purpose of this Agreement, unless otherwise stated, the term:

- (a) "Aeronautical authorities" means for each Party the authority or authorities as notified in writing from time to time by one Party to the other Party;
- (b) "Agreement" means this Agreement, its Annexes, and any amendments thereto;
- (c) "Air transportation" means the public carriage by aircraft of passengers, baggage, cargo, and mail, separately or in combination, for remuneration or hire;
- (d) "Airline" means any air transport enterprise marketing or operating air transportation;

- (e) “Competition Authorities” means for each Party the authority or authorities as notified in writing from time to time by one Party to the other Party;
- (f) “Convention” means the Convention on International Civil Aviation, opened for signature at Chicago on 7 December 1944, and includes:
  - (i) any Annex or any amendment thereto adopted under Article 90 of the Convention, insofar as such Annex or amendment is at any given time in force for both Parties; and
  - (ii) any amendment which has entered into force under Article 94(a) of the Convention and has been ratified by both Parties;
- (g) “Designated airline” means an airline or airlines designated and authorised in accordance with Article 2 (Designation, Authorisation and Revocation) of this Agreement;
- (h) “Ground handling” includes but is not limited to passenger, cargo and baggage handling, and the provision of catering facilities and/or services;
- (i) “International air transportation” means air transportation which passes through the air space over the territory of more than one State;
- (j) “Marketing airline” means an airline that offers air transportation on an aircraft operated by another airline, whether through cooperative marketing arrangements such as code-sharing;
- (k) “Non-scheduled air transportation” means a commercial air transport service performed as other than scheduled air transportation;
- (l) “Operating airline” means an airline that operates an aircraft in order to provide air transportation – it may own or dry lease the aircraft;
- (m) “Scheduled air transportation” means a series of flights performed by aircraft for the transport of passengers, cargo and mail between two or more points, where the flights are so regular or frequent as to constitute a systematic service, whether or not in accordance with a published timetable, and which are operated in such a manner that each flight is open for use by members of the public;
- (n) “Slots” means the right to schedule an aircraft movement at an airport;
- (o) “Tariffs” means any price, fare, rate or charge for the carriage of passengers (and their baggage) and/or cargo (excluding mail) in international air transportation, including transportation on an intra-or interline basis, charged by airlines, including their agents, and the conditions governing the availability of such price, fare, rate or charge;
- (p) “Territory” and “Stop for non-traffic purposes” have the meaning respectively assigned to them in Articles 2 and 96 of the Convention; and

- (q) “User charges” means a charge made to airlines by a service provider for the provision of airport, airport environmental, air navigation and aviation security facilities, for aircraft, their crews, passengers and cargo.

## ARTICLE 2

### Designation, Authorisation and Revocation

1. Each Party shall have the right to designate as many airlines as it wishes to conduct international air transportation in accordance with this Agreement, and to withdraw or alter such designations. Such designations shall be transmitted to the other Party in writing through diplomatic channels, and shall identify whether the airline is authorised to conduct international air transportation. A designated airline may be either an operating airline or a marketing (non-operating) airline, or both.
2. On receipt of such a designation, and of applications from a designated airline, in the form and manner prescribed for operating authorisations and technical permissions relating to the operation and navigation of the aircraft, the other Party shall grant appropriate authorisations without delay, provided that:
  - (a) the airline is incorporated and has its principal place of business in the territory of the Party designating the airline;
  - (b) the airline is qualified to meet the conditions prescribed under the laws, regulations and rules normally and reasonably applied to the operation of international air transportation by the Party considering the application or applications, in conformity with the provisions of the Convention;
  - (c) operating and marketing airlines hold the necessary operating permits, whether or not they are the operator of the airline offering air transportation;
  - (d) the Party designating the airline is maintaining and administering the standards set forth in Article 5 (Safety) and Article 6 (Aviation Security) of this Agreement.
3. When an airline has been so designated and authorised it may commence international air transportation, provided that the airline complies with the applicable provisions of this Agreement.
4. Either Party may withhold, revoke, suspend or limit the operating authorisations or technical permissions of an airline designated by the other Party, at any time, if the conditions specified in paragraph 2 of this Article are not met, or if the airline otherwise fails to operate in accordance with the conditions prescribed under this Agreement.
5. Unless immediate action is essential to prevent further non-compliance with subparagraphs 2 (b), 2 (c) or 2 (d) of this Article, the rights established by this Article shall be exercised only after consultation with the other Party.

6. This Article does not limit the rights of either Party to withhold, revoke, limit or impose conditions on the operating authorisation or technical permission of an airline or airlines of the other Party in accordance with the provisions of Article 5 (Safety) or Article 6 (Aviation Security) of this Agreement.

7. All airlines operating scheduled and/or non-scheduled air transportation shall be considered as designated airlines for the purposes of this Agreement.

### **ARTICLE 3**

#### **Grant of Rights**

1. Each Party grants to the other Party the following rights for the conduct of international air transportation by the airlines of the other Party:

- (a) the right to fly across its territory without landing;
- (b) the right to make stops in its territory for non-traffic purposes; and
- (c) the rights otherwise specified in this Agreement.

2. Nothing in this Article shall be deemed to confer on the airline or airlines of one Party the rights to take on board, in the territory of the other Party, passengers, their baggage, cargo, or mail carried for compensation and destined for another point in the territory of that other Party.

### **ARTICLE 4**

#### **Application of Laws**

1. While entering, within, or leaving the territory of one Party, its laws, regulations and rules relating to the operation and navigation of aircraft shall be complied with by the other Party's airlines.

2. While entering, within, or leaving the territory of one Party, its laws, regulations and rules relating to the admission to or departure from its territory of passengers, crew, cargo and aircraft (including regulations and rules relating to entry, clearance, aviation security, immigration, passports, customs and quarantine or, in the case of mail, postal regulations) shall be complied with by, or on behalf of, such passengers and crew and in relation to such cargo of the other Party's airlines.

3. Neither Party shall give preference to its own or any other airline over an airline of the other Party engaged in similar international air transport in the application of its entry, clearance, aviation security, immigration, passports, customs and quarantine, postal and similar regulations.