

DEPARTMENT OF FOREIGN AFFAIRS AND TRADE  
CANBERRA

**Agreement between the Government of Australia and the Government of the  
Kingdom of Tonga relating to Air Services**

**(Neiafu, Tonga, 23 August 2003)**

Not yet in force  
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**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.

4. Passengers, baggage and cargo in direct transit through the territory of either Party and not leaving the area of the airport reserved for such purpose shall not undergo any examination except for reasons of aviation security, narcotics control or in special circumstances. Baggage and cargo in direct transit shall be exempt from customs duties and other similar taxes.

## **ARTICLE 5**

### **Safety**

1. Each Party shall recognise as valid, for the purposes of operating the international air transport provided for in this Agreement, certificates of airworthiness, certificates of competency and licences issued or validated by the other Party that are still in force, provided that the requirements for such certificates or licences at least equal the minimum standards that may be established pursuant to the Convention. Each Party may, however, refuse to recognise as valid for the purpose of flights undertaken pursuant to rights granted under Article 3 (Grant of Rights), paragraph 1, certificates of competency and licences granted to or validated for its own nationals by the other Party.

2. Each Party may request consultations at any time concerning the safety standards maintained by the other Party including, but not limited to, the safety standards relating to aeronautical facilities, aircrews, aircraft and their operation. Such consultations shall take place within 30 days of that request.

3. If, following such consultations, one Party finds that the other Party does not effectively maintain and administer safety standards and requirements in these areas that are at least equal to the minimum standards established at that time pursuant to the Convention, the first Party shall notify the other Party of those findings and the steps considered necessary to conform with those minimum standards, and that other Party shall take appropriate corrective action. Failure by the other Party to take appropriate action within a reasonable time, or in any case within fifteen (15) days, shall be grounds for the application of paragraph 4 of Article 2 (Designation, Authorisation and Revocation) of this Agreement.

4. Notwithstanding the obligations mentioned in Article 33 of the Convention, it is agreed that any aircraft operated by the airline(s) of one Party on services to or from the territory of another Party may, while within the territory of the other Party, be made the subject of any examination by the authorised representatives of the other Party, on board and around the aircraft to check both the validity of the aircraft documents and those of its crew and the apparent condition of the aircraft and its equipment (in this Article called “ramp inspection”), provided this does not lead to unreasonable delay.

5. If any such ramp inspection or series of ramp inspections gives rise to:

- (a) serious concerns that an aircraft or the operation of an aircraft does not comply with the minimum standards established at that time pursuant to the Convention,  
or

- (b) serious concerns that there is a lack of effective maintenance and administration of the safety standards established at that time pursuant to the Convention,

the Party carrying out the inspection shall, for the purposes of Article 33 of the Convention, be free to conclude that the requirements under which the certificate or licences in respect of that aircraft or in respect of the crew of that aircraft had been issued or rendered valid, or that the requirements under which that aircraft is operated, are not equal to or above the minimum standards established pursuant to the Convention.

6. In the event that access for the purpose of undertaking a ramp inspection of an aircraft operated by an airline(s) of one Party in accordance with paragraph 4 above is denied by the representative of that airline(s) the other Party shall be free to infer that serious concerns of the type referred to in paragraph 5 above arise and draw the conclusions referred to in that paragraph.

7. Each Party reserves the right to suspend or vary the operating authorisation of an airline(s) of the other Party immediately in the event the first Party concludes, whether as a result of a ramp inspection, a series of ramp inspections, a denial of access to a ramp inspection, consultation or otherwise, that immediate action is essential to the safety of an airline operation.

8. Any action by one Party in accordance with paragraphs 3 or 7 above shall be discontinued once the basis for the taking of that action ceases to exist.

## **ARTICLE 6**

### **Aviation Security**

1. Consistent with their rights and obligations under international law, the Parties reaffirm that their obligation 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 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, the Convention for the Suppression of Unlawful Seizure of Aircraft, opened for signature at The Hague on 16 December 1970 and the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, opened for signature at Montreal on 23 September 1971, the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, signed at Montreal on 24 February 1988, and any other multilateral agreement governing civil aviation security binding upon the parties.

2. The 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, their passengers and crew, airports and air navigation facilities, and any other threat to security of civil aviation.

3. The Parties shall act in conformity with the aviation security provisions established by the International Civil Aviation Organization and set out in Annexes to the



Convention on International Civil Aviation to the extent that such security provisions and requirements are applicable to the Parties.

4. The Parties 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 provisions.

5. Each Party agrees that such operators of aircraft may be required to observe the aviation security provisions referred to in paragraphs 3 and 4 above required by the other Party for entry into, departure from, or while within the territory of that other Party. Each Party shall ensure that adequate measures are effectively applied within its territory to protect the aircraft and to inspect passengers, crew, carry-on items, baggage, cargo and aircraft stores prior to and during boarding or loading. Each Party shall also give positive consideration to any request from the other Party for reasonable special security measures to meet a particular threat.

6. 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 Parties shall assist each other by facilitating communications and other appropriate measures intended to terminate such incident or threat thereof as rapidly as possible commensurate with minimum risk of life.

7. With regard to aviation security, the aeronautical authorities of either Party may request immediate consultations with the aeronautical authorities of the other Party.

8. When a Party has reasonable grounds to believe that the other Party has departed from the provisions of this Article, the aeronautical authorities of the first Party may request immediate consultations with the aeronautical authorities of the other Party. Failure to reach a satisfactory agreement within fifteen (15) days from the date of such request shall constitute grounds for the application of paragraph 4 of Article 2 (Designation, Authorisation and Revocation) of this Agreement. When required by an emergency, a Party may take action under paragraph 4 of Article 2 (Designation, Authorisation and Revocation) prior to the expiry of fifteen (15) days. Any action taken in accordance with this paragraph shall be discontinued upon compliance by the other Party with the security provisions of this Article.

## **ARTICLE 7**

### **User Charges**

1. User charges that may be imposed on the airlines of one Party by charging authorities or bodies within the territory of the other Party on the airlines of the other Party shall be just, reasonable, non discriminatory, equitably apportioned among categories of users and applicable only to civil aviation facilities and services used by such airlines. In any event, any such user charges shall be assessed on the airlines of the other Party on terms not less favourable than the most favourable terms available to any other airline at the time the charges are assessed.

2. User charges imposed on the airlines of the other Party may reflect, but shall not exceed, the full cost to the charging authorities or bodies of providing the appropriate civil aviation services and facilities including airport, airport environmental, air navigation, and aviation security facilities and services at the airport or within the airport system. Such charges may include a reasonable return on assets, after depreciation. Facilities and services for which charges are made shall be provided on an efficient and economic basis.

3. Each Party shall encourage consultations between charging authorities or bodies in its territory and the airlines using the services and facilities. The Parties shall also encourage such charging authorities or bodies and the airlines to exchange such information as may be necessary to permit an accurate assessment of the reasonableness of, justification for and apportionment of the charges in accordance with the principles of paragraphs 1 and 2 of this Article. In any event, each Party and its airlines shall have the right to reasonably assess on an independent basis the consistency, within the provisions of this article, of user charges imposed within the territory of the other Party.

4. Each Party shall encourage the charging authorities or bodies to provide users with reasonable advance notice, which should be not less than three months, of any proposal for changes in user charges to enable users to assess such proposals and to express their views before changes are made. Such notice shall be issued directly to each airline's head office or its local office in the country concerned.

5. Neither Party shall be held, in dispute resolution procedures pursuant to Article 17 (Settlement of Disputes), to be in breach of a provision of this Article, unless (i) it fails to undertake a review of the charge or practice that is the subject of complaint by the other Party within a reasonable amount of time; or (ii) following such a review it fails to take all steps within its power to remedy any charge or practice that is inconsistent with this Article.

## **ARTICLE 8**

### **Statistics**

1. The aeronautical authorities of one Party may require an airline of the other Party to provide statements of statistics related to the traffic carried by that airline.

2. The aeronautical authorities of each Party may determine the nature of the statistics required to be provided by airlines under the above paragraph, and shall apply these requirements on a non-discriminatory basis.

## **ARTICLE 9**

### **Customs Duties and Charges**

1. Aircraft operated in international air transportation by the airlines of each Party shall be exempt from: all import restrictions; customs duties; excise taxes; and similar fees and charges imposed by national authorities. Component parts and normal

airborne equipment for the repair, maintenance and servicing of such aircraft shall be similarly exempt.

2. The following items shall be exempt from all import restrictions; customs duties; excise taxes; and similar fees and charges imposed by national authorities, whether they are introduced by an airline of one Party into the territory of the other Party or supplied, within reasonable limits, to an airline of one Party in the territory of the other Party. These exemptions shall apply even when these supplies are to be used on any part of a journey performed over the territory of the other Party in which they have been taken on board:

- (a) aircraft stores (including but not limited to such items as food, beverages and tobacco) whether introduced into or taken on board in the territory of the other Party;
- (b) fuel, lubricants (including hydraulic fluids) and consumable technical supplies;
- (c) spare parts including engines;

provided in each case that they are for use on board an aircraft in connection with the establishment or maintenance of international air transportation by the designated airline concerned.

3. The exemptions provided by this Article shall not extend to charges based on the cost of services provided to the airlines of a Party in the territory of the other Party.

4. The normal aircraft equipment, as well as spare parts (including engines), supplies of fuel, lubricating oils (including hydraulic fluids) and lubricants and other items mentioned in paragraphs 1 & 2 of this Article retained on board the aircraft operated by the airlines of one Party may be unloaded in the territory of the other Party only with the approval of the Customs authorities of that territory. Aircraft stores intended for use on the airlines' services may, in any case be unloaded. Equipment and supplies referred to in paragraphs 1 & 2 of this Article may be required to be kept under the supervision or control of the appropriate authorities until they are re-exported or otherwise disposed of in accordance with the Customs laws and procedures of that Party.

5. The exemptions provided for by this Article shall also be available in situations where the airline or airlines of one Party have entered into arrangements with another airline or airlines for the loan or transfer in the territory of the other Party of the items specified in paragraphs 1 & 2 of this Article, provided such other airline or airlines similarly enjoy such reliefs from such other Party.

## **ARTICLE 10**

### **Tariffs**

1. Each Party shall allow each airline to determine its own tariffs for the transport of traffic pursuant to this Agreement.

2. Unless required by domestic law, tariffs charged by airlines shall not be required to be filed with the aeronautical authorities of either Party.

3. Tariffs charged by airlines shall be subject to the competition and consumer laws of both Parties.

## **ARTICLE 11**

### **Capacity**

1. There shall be a fair and equal opportunity for the airlines of both Parties to conduct international air transportation in accordance with this Agreement.

2. In the conduct of international air transportation the airlines of each Party shall take into consideration the interests of the airlines of the other Party so as not to affect unduly the services which the latter provide on the whole or part of the same routes.

3. The capacity to be operated by the airlines of the Parties between their respective territories in the conduct of international air transportation shall be maintained in close relationship with the traffic originating in Australia and destined for the Kingdom of Tonga and vice versa.

4. Provision by airlines for the carriage of traffic originating in or destined for points in the territories of third countries 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 Party which has designated the airlines;
- (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.

5. The capacity which may be provided in accordance with this Article by the airlines of each Party on the agreed services shall be such as is decided between the aeronautical authorities of the Parties before the commencement of international air transportation by the airlines concerned and from time to time thereafter.

## **ARTICLE 12**

### **Commercial Opportunities**

1. The airlines of each Party, in operating or holding out international air transportation pursuant to this Agreement, shall have the right to:

- (a) enter into code share, blocked space or other cooperative marketing arrangements with any other airline, including airlines of third countries, as the marketing and/or operating airline, provided only that the airlines hold the appropriate authority or authorities to conduct international air transportation on the routes or segments concerned, and in accordance with paragraph 2 of this Article;
- (b) establish offices in the territory of the other Party for the promotion, sale and management of air transportation;
- (c) engage in the sale and marketing of air transportation in the territory of the other Party directly and, at its discretion, through its agents or intermediaries, using its own transportation documents;
- (d) conduct international air transportation using aircraft (or aircraft and crew) leased from any company, including other airlines, provided only that the operating aircraft and crew meet the applicable operating and safety standards and requirements; and
- (e) use the services and personnel of any other organisation, company or airline operating in the territory of the other Party.

2. The airlines of each country will, when holding international air transportation out for sale, make it clear to the purchaser at the point of sale which airline will be the operating airline on each sector of the transportation and with which airline or airlines the purchaser is entering into a contractual relationship.

3. The absence of an understanding between one or other Party and a third party, permitting cooperative marketing arrangements between airlines and carriers of the third party, will not preclude the exercise of the entitlement set out in paragraph 1(a) of this Article by the airlines of either Party.

4. The airlines of each Party, including those not under this Agreement, may establish off line offices in the territory of the other Party for the promotion and sale of air transportation.

5. In accordance with the laws and regulations relating to entry, residence and employment of the other Party, a Party may bring in and maintain in the territory of the other Party those of their own managerial, sales, technical, operational and other specialist staff which the airline reasonably considers necessary for the provision of air transportation. Consistent with such laws and regulations, each Party shall, with the minimum of delay, grant the necessary employment authorisations, visas or other similar documents to the representatives and staff referred to in this paragraph.

6. The airlines of each Party shall have the right to sell air transportation, and any person shall be free to purchase such transportation, in local or freely convertible currencies. Each airline shall have the right to convert their funds into any freely convertible currency and to transfer them from the territory of the other Party at will.

Subject to the national laws and regulations and policy of the other Party, conversion and transfer of funds obtained in the ordinary course of their operations 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.

7. The airlines of each Party shall have the right at their discretion to pay for local expenses, including purchases of fuel, in the territory of the other Party in local currency, or provided this accords with local currency regulations, in freely convertible currencies.

8. All of the rights specified in paragraphs 1 – 7 of this Article shall apply equally to marketing and operating airlines.

9. Each airline shall have the right to perform its own ground-handling in the territory of the other Party, or contract with a competing agent of its choice, including any other airlines which perform ground-handling, for such services in whole or in part. Each airline shall also have the right, in the territory of the other Party, to offer its services as a ground-handling agent, in whole or in part, to any other airline. These rights shall be subject only to restrictions resulting from considerations of airport safety or security. Where such considerations preclude an airline from performing its own ground-handling or contracting with an agent of its choice for ground-handling services, these services shall be made available to that airline on a basis of equality with all other airlines.

10. The Parties recognise that to give effect to the rights and entitlements embodied in the Agreement the airlines of each Party must have the opportunity to access airports in the territory of the other Party on a non-discriminatory basis.

11. In respect of the allocation and grant of time slots (slots) to airlines at their national airports, each Party will:

- (a) in accordance with local slot allocation rules, procedures or practices which are in effect or otherwise permitted, ensure that the airlines of the other Party:
  - (i) are permitted fair and equal opportunity to secure slots; and
  - (ii) are afforded no less favourable treatment than any other airline in securing slots.
- (b) ensure that in the event of any arrangement, procedure or practice which is either established with any third party in relation to the grant of slots to the airlines of that party or is otherwise permitted for a particular foreign international airline or airlines, such opportunities are extended to the airlines of the other Party.

12. The terms of paragraph 11 will be subject to the provisions of any laws or regulations introduced by the Parties for the allocation of slots at their national airports.

## **ARTICLE 13**

### **Intermodal Services**

1. Notwithstanding any other provision of this Agreement, airlines and indirect providers of passenger transportation of each Party shall be permitted, without restriction, to employ in connection with international air transportation any surface transportation for passengers to or from any points in the territories of the Parties or in third countries, including transport to and from all airports with customs facilities. Airlines may elect to perform their own surface transportation or, at their discretion, to provide it through arrangements with other surface carriers, including surface transportation operated by other airlines and indirect providers of passenger air transportation. Such intermodal passenger services may be offered at a single through price for the air and surface transportation combined, provided that passengers are informed as to the facts of this transportation.

2. Notwithstanding any other provision of this Agreement, airlines and indirect providers of cargo transport of the Parties shall be permitted, without restriction, to employ in connection with international air transport any surface transport for cargo to or from any points in the territories of the Parties or third countries, including transport to and from all airports with customs facilities, and including, where applicable, the right to transport cargo in bond under applicable laws and regulations. Access to airport customs processing and facilities shall be provided for such cargo, whether moving by surface or by air. Airlines may elect to perform their own surface transport or to provide it through arrangements with other surface carriers, including surface transport operated by other airlines and indirect providers of cargo air transport. Such intermodal cargo services may be offered at a single through price for the air and surface transport combined, provided that shippers are informed as to the facts concerning such transport.

## **ARTICLE 14**

### **Fair Competition**

1. The competition laws of each Party, as amended from time to time, shall apply to the operation of the designated airlines of both Parties. A Party or its competition authority may, pursuant to its competition law, unilaterally exempt or authorise commercial agreements between designated airlines (including block-space, code-share and other joint service agreements) from the application of its domestic competition law. This does not obligate a Party or its competition authority to provide a reciprocal exemption.

2. Each Party shall use its best efforts, and take any reasonable action, to overcome anti-competitive and discriminatory practices in its territory adversely affecting the competitive position of the designated airlines of the other Party in the exercise of their rights and entitlements set out in this Agreement. This shall include conduct involving the use of computer reservation systems. Each Party undertakes to give notice to the other Party regarding action taken.

3. Without limiting the application of general competition and consumer law by either Party, if the aeronautical authorities of either Party consider that their designated airlines are being subjected to discrimination or anti-competitive practices in the territory of the other Party, they shall give notice to this effect to the aeronautical authorities of the other Party. Consultations between the aeronautical authorities shall be entered into as soon as possible after notice is given unless the first Party is satisfied that the matter has been resolved in the meantime.

4. A Party may also request the competition authority of the other Party to take an action in relation to anti-competitive and discriminatory practices in the territory of the other Party adversely affecting the competitive position of its designated airlines, giving reasons for the request. The competition authority shall consider the request and, if it does not take action, the second Party shall enter into consultations with the requesting Party as soon as possible.

5. Where the competition authority of one Party applies its competition law in a manner that affects the ability of the designated airlines of either Party to fully utilise all rights set out in this Agreement, the aeronautical authorities may, within 14 days of a request being made by one of the Parties, schedule consultations under Article 15 (Consultations).

6. The competition authority applying its law may at its discretion consider providing a temporary stay of action in relation to the activities of the designated airline(s) concerned, providing this is consistent with its statutory obligations, while consultations pursuant to paragraph 5 above take place.

7. Notwithstanding anything set out above, this Agreement does not prevent unilateral action by the competition authorities of either Party.

8. In undertaking the consultations outlined in this Article Parties shall:

- a) coordinate their actions with their competition authorities;
- b) provide to the other Party, on request, information about competition laws, policies and practices applicable to air services under this Agreement; and
- c) consider alternative means which might also achieve the objectives of action consistent with general competition and consumer law.

## **ARTICLE 15**

### **Consultations**

1. Either Party may at any time request consultations on the implementation, interpretation, application or amendment of this Agreement.

2. Subject to Articles 2 (Designation, Authorisation and Revocation), 5 (Safety), 6 (Aviation Security) and 14 (Fair Competition), such consultations, which



may be through discussion or correspondence, shall begin within a period of sixty (60) days of the date of receipt of such a request, unless otherwise mutually decided.

## **ARTICLE 16**

### **Amendment of Agreement**

1. This Agreement may be amended or revised by agreement in writing between the Parties.
2. Any amendment or revision shall enter into force when the Parties have notified each other in writing that their respective requirements for the entry into force of an amendment or revision have been met.
3. If a multilateral convention concerning air transport comes into force in respect of both Parties, this Agreement shall be deemed to be amended so far as is necessary to conform with the provisions of that Convention.

## **ARTICLE 17**

### **Settlement of Disputes**

1. Any disputes except those which may arise with respect to specific tariff filings, relating to the interpretation or application of this Agreement which cannot be settled by negotiations between the Parties, either through discussion, correspondence or the use of diplomatic channels, shall, at the request of either Party, be submitted to an arbitral tribunal.
2. Within a period of sixty (60) days from the date of receipt by either Party from the other Party of a note through the diplomatic channel requesting arbitration of the dispute by a tribunal, each Party shall nominate an arbitrator. Within a period of sixty (60) days from the appointment of the arbitrator last appointed, the two arbitrators shall appoint a president who shall be a national of a third State. If within sixty (60) days after one of the Parties has nominated its arbitrator, the other Party has not nominated its own or, if within sixty (60) days following the nomination of the second arbitrator, both arbitrators have not agreed on the appointment of the president, either Party may request the President of the Council of the International Civil Aviation Organization to appoint an arbitrator or arbitrators as the case requires. If the President of the Council is of the same nationality as one of the Parties, the most senior Vice President who is not disqualified on that ground shall make the appointment.
3. Except as otherwise determined by the Parties or prescribed by the tribunal, each Party shall submit a memorandum within forty-five (45) days after the tribunal is fully constituted. Replies shall be due within sixty (60) days. The tribunal shall hold a hearing at the request of either Party, or at its discretion, within thirty (30) days after replies are due.

4. The tribunal shall attempt to give a written decision within thirty (30) days after completion of the hearing, or, if no hearing is held, after the date both replies are submitted. The decision shall be taken by a majority vote.

5. The Parties may submit requests for clarification of the decision within fifteen (15) days after it is received and such clarification shall be issued within fifteen (15) days of such request.

6. The Parties undertake to comply with any arbitration decision given under this Article.

7. The expenses of arbitration under this Article shall be shared equally between the Parties.

8. If and for so long as either Party fails to comply with a decision under paragraph 6 of this Article, the other Party may limit, suspend or revoke any rights or privileges which it has granted by virtue of this Agreement to the Party in default.

## **ARTICLE 18**

### **Termination**

1. Either Party may at any time give notice in writing to the other Party of its decision to terminate this Agreement. Such notice shall be communicated simultaneously to the International Civil Aviation Organisation (ICAO). The Agreement shall terminate at midnight (at the place of receipt of the notice to the other Party) immediately before the first anniversary of the date of receipt of notice by the Party, unless the notice is withdrawn by agreement of the Parties before the end of this period.

2. In default of acknowledgement of receipt of a notice of termination by the other Party, the notice shall be deemed to have been received fourteen (14) days after the date on which ICAO acknowledged receipt thereof.

## **ARTICLE 19**

### **Registration with ICAO**

This Agreement and any amendment thereto shall be registered with the International Civil Aviation Organization.

## **ARTICLE 20**

### **Entry into Force**

This Agreement shall enter into force when the Parties have notified each other in writing that their respective requirements for the entry into force of this Agreement have been satisfied.

IN WITNESS THEREOF, the undersigned, duly authorised thereto by their respective governments, have signed this Agreement.

DONE at Neiafu, Tonga , this twenty-third day of August 2003.

HE Colin Hill

HRH Prince 'Ulukalala Lavaka Ata

High Commissioner

Prime Minister

For the Government of Australia

For the Government of the Kingdom of  
Tonga

## ANNEX I

### Section 1

#### ROUTE SCHEDULE

##### **Part I**

*(a) Routes to be operated in both directions by the designated airline(s) of Tonga:*

<b>Points of Departure</b>	<b>Intermediate Points</b>	<b>Points of Destination</b>
Tonga	Noumea, Any four points in the South Pacific Forum Countries	Any points in Australia

*(b) Joint Services Route*

For the designated airline(s) of Tonga, jointly operated with either a regional airline or airlines being full members of the Association of South Pacific Airlines or an Australian designated airline or airlines to perform scheduled international air service on the following routes:

<b>Points of Departure</b>	<b>Intermediate and/or Beyond Points</b>	<b>Points of Destination</b>
Tonga	Points in the area bordered by Australia – Papua New Guinea – Palau – the Marshall Islands – French Polynesia and New Zealand	Any points in Australia

## Part II

(a) Routes to be operated in both directions by the designated airline(s) of Australia:

<b>Points of Departure</b>	<b>Intermediate Points</b>	<b>Points of Destination</b>	<b>Points Beyond</b>
Australia	Noumea, Any four points in the South Pacific Forum Countries	Nuku'alofa	Any three points in the South Pacific Forum Countries

**(b) Joint Services Route**

For the designated airline(s) of Australia, jointly operated with a designated regional airline or airlines being full members of the Association of South Pacific Airlines to perform scheduled international air service on the following routes.

<b>Points of Departure</b>	<b>Intermediate and/or Beyond Points</b>	<b>Points of Destination</b>
Australia	Points in the area bordered by Australia – Papua New Guinea – Palau – the Marshall Islands – French Polynesia and New Zealand	Nuku'alofa

### Notes:

1. Points on the specified routes may, at the option of the designated airlines concerned, be omitted on any or all flights provided that the service either begins or terminates at a point in the territory of the Contracting Party designating the airline.
2. Points not specified on the above routes shall be nominated by the Government of the Kingdom of Tonga or the Government of the Commonwealth of Australia as appropriate and may be changed from time to time.

## **Section 2**

### **OPERATIONAL FLEXIBILITY**

Subject to Section 1 of this Annex, the airlines of each Party may, on any or all flights and at the option of each airline:

- (a) utilise unrestricted third- and fourth- freedom rights;
- (b) exercise own stopover rights only between points in the territory of the other Party;
- (c) market code share services within the territory of the other Party to points behind the gateway point provided that such services form part of a through international journey;
- (d) combine different flight numbers within one aircraft operation; and
- (e) transfer traffic from any aircraft to any other aircraft at any point on the route;

without directional or geographic limitation and without loss of any right to carry traffic otherwise permissible under this Agreement.

## **Section 3**

### **CHANGE OF GAUGE**

Subject to it performing the type of air transportation for which it is authorised under this Agreement, on any sector or sectors of the routes in Section 1 of this Annex, any airline may perform air transportation, including under co-operative marketing arrangements with other airlines, without any limitation as to change at any point or points on the route, in the type or number of aircraft operated.

## **ANNEX II**

### **NON-SCHEDULED INTERNATIONAL AIR TRANSPORT**

1. Airlines of each Party pursuant to this Agreement to operate under this Annex shall have the right to conduct non-scheduled international air transportation over the routes specified in Annex I and in accordance with the rights granted for scheduled air transportation services in this Agreement.
2. Either Party may 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) and/or Article 6 (Aviation Security).
3. Either Party may require airlines under this Annex to meet other domestic requirements which are not inconsistent with the provisions of this Agreement, including those relating to protection of consumers, before issue of operating authorisations.
4. If a Party applies different rules, regulations, terms, conditions, or limitations to one or more of its airlines, or to airlines of different countries, each airline shall be subject to the least restrictive of such criteria.
5. Each Party shall extend favourable consideration to applications by airlines of the other Party to carry traffic not covered by this Annex on the basis of comity and reciprocity.