

Memorandum of Understanding

1. Delegations representing the Government of India and the Governments of Denmark, Norway and Sweden met in New Delhi on 29 – 30 November 2006 to discuss matters pertaining to air services between India on the one hand and Denmark, Norway and Sweden on the other. The discussions were held in a very friendly and cordial atmosphere.

The list of the two delegations is attached as Appendix A.

2. Requirement of European Community Law

2.1 In line with their European Union obligations, the delegation representing Denmark, Norway and Sweden requested that the standard Community clauses be incorporated in the Air Services Agreements concluded by India with Denmark, Norway and Sweden. The delegation further indicated that, unless the Indian side accepted these clauses, under the EC law, the provisions of this MOU could only be applied on a provisional basis.

2.2 The Indian delegation responded that it was not in a position to immediately confirm the incorporation of these clauses. However, the entire issue of restoring legal certainty to bilateral air services agreements between India and EU Member States is currently being discussed with the European Commission, which has proposed the conclusion of a Horizontal Agreement between India and the European Commission. The Indian delegation stated that discussions with the EC delegation are in process to finalise such an Agreement on priority.

3. Review of the Air Services Agreements

3.1 The two delegations recognized the need to review and update the existing Air Services Agreements between India and Denmark, Norway and Sweden, and agreed that the process of updating the Air Services Agreements will be undertaken progressively. However, pending a comprehensive revision of the Air Services Agreements, the two

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delegations agreed to amend the existing Article 9 (Capacity Provisions), Article 10 (Tariffs) and Article 15 (Aviation Security), and to incorporate new articles on Safety and Co-operative Marketing Arrangements in the Air Services Agreements. The text of these articles as agreed between the two delegations is given at Appendix B.

- 3.2 With regard to the provisions relating to the Co-operative Marketing Arrangements, the delegation representing Denmark, Norway and Sweden expressed their concern about the counting of the capacity of both the operating and the marketing carriers in case of code share arrangements with airlines of third countries. The Indian side responded that at present it is not possible to accept the request of the delegation of Denmark, Norway and Sweden. However, the same could be considered at a later date. In the meantime, both sides would consider positively any request in a situation where third country code sharing arrangements could block capacity.

4. Designation of Airlines

- 4.1 It was agreed that each Contracting Party shall be entitled to designate one or more airlines for operation of the agreed services. Article 3 (Designation of Airlines) of the existing Air Services Agreements shall stand amended accordingly.
- 4.2 The delegation of Denmark, Norway and Sweden advised that SAS shall be their jointly designated airline. Appreciating that the position of SAS differs from that usually obtaining in civil aviation matters, it was agreed that the Aeronautical Authorities of the Government of India shall not exercise powers against SAS under paragraph (4) of Article 3 of the Air Services Agreements, which relates to substantial ownership and effective control remains in the hands of the Governments of Denmark, Norway and Sweden, and/or their nationals.

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5. Route Schedule

- 5.1 It was agreed that in addition to the existing points of call in India, the designated airlines of Denmark, Norway and Sweden shall be entitled to operate the agreed services to one more point to be selected out of Kolkata, Chennai and Hyderabad.
- 5.2 It was also agreed that the intermediate 5th freedom traffic rights currently available to the designated airlines of India from a point of their choice in Europe to the points of call in Denmark, Norway and Sweden, specified in the Route Schedule annexed to the respective Air Services Agreements, shall continue to be available to the designated airlines of India.
- 5.3 Both delegations also agreed that the designated airlines of either Contracting Party shall be permitted to serve intermediate and/or beyond points not specified on their respective Route Schedules, without exercising 5th freedom traffic rights between such points and the territory of the other Contracting Party.
- 5.4 The Revised Route Schedules reflecting the above understanding are given at Appendix C.

6. Capacity Entitlement

- 6.1 It was agreed that the designated airlines of Denmark, Norway and Sweden shall together be entitled to operate 21 frequencies per week in each direction with any type of aircraft, upto the capacity of a B747 aircraft, in accordance with the Route Schedules annexed to the respective Air Services Agreements.

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- 6.2 Within their entitlement of 21 frequencies per week, the operations by the designated airlines of Denmark, Norway and Sweden shall not exceed seven services per week to/from points in the territory of any one Contracting Party. Further, the operations by the designated airlines of Denmark, Norway and Sweden shall not exceed seven services per week to/from any one point of call in India.
- 6.3 The designated airlines of India shall be entitled to operate 21 frequencies per week in each direction with any type of aircraft, upto the capacity of a B747 aircraft, in accordance with the Route Schedules annexed to the respective Air Services Agreements.
- 6.4 Within their entitlement of 21 frequencies per week, the operations by the designated airlines of India shall not exceed 14 frequencies per week in each direction to/from any one point of call in Denmark, Norway and Sweden.

7. Commercial Arrangements

- 7.1 The delegation of Denmark, Norway and Sweden requested for removal of the existing requirement of a mandatory commercial arrangement between the designated airlines of the Contracting Parties, covering unilateral/imbalanced operations. The Indian side clarified that the Government of India has taken a decision that the existing mandated commercial arrangements shall cease to apply after 31 December 2009 and also that with immediate effect any new or additional operations by the foreign airlines shall not be subject to any commercial arrangement.
- 7.2 In view of the above, it was agreed that the operations by the designated airlines of either side shall not be subject to any mandated commercial arrangement.

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8. Open Sky Policy for all-cargo services

It was agreed that designated airlines of either Party shall be permitted to operate any number of all-cargo services between any points in Denmark, Norway and Sweden and India, with any aircraft type, with full 3rd, 4th and 5th traffic rights.

9. Entry into Force

Both delegations agreed that the changes in the ASA shall enter into force after all the Contracting Parties have confirmed by the exchange of diplomatic notes that they have obtained the necessary approvals for the entry into force of this Agreement. Pending these approvals, the delegations agreed that they would give immediate practical effect to this Memorandum of Understanding to the extent possible under their national law.

This Memorandum of Understanding shall supercede all earlier Confidential Memoranda of Understanding concluded between India and Denmark, Norway and Sweden.

Signed in New Delhi on 30 November 2006.

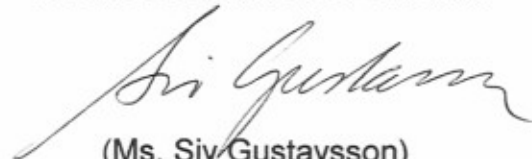
For the Government of India



(R. K. Singh)

Leader of Indian Delegation

For the Government of Sweden



(Ms. Siv Gustavsson)

For the Government of Denmark



(Mr. Thorkild Saxe)

For the Government of Norway



(Mr. Pierre Chauvin)

APPENDIX-A

LIST OF INDIAN DELEGATION

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| 1. | Mr. R.K. Singh
Joint Secretary,
Ministry of Civil Aviation | Leader |
| 2. | Mr. M.S. Chopra
Deputy Secretary.
Ministry of Civil Aviation | Member |
| 3. | Mr. K.P. Maggon
Director (Regulations & information)
Directorate General of Civil Aviation | Member |
| 4. | Mr. M.P. Gavai
Director
Ministry of External Affairs | Member |
| 5. | Mr. V.K. Verma
Commercial Director,
Air India Limited | Member |
| 6. | Mr. T.K. Palit
General Manager (P&IR),
Air India Limited | Member |
| 7. | Mr. Prem Sagar
Sr. Manager (P&IR),
Air India Limited | Member |

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LIST OF SCANDINAVIAN DELEGATION

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| 1. | Ms. Siv Gustavsson
Deputy Director - General,
Head of the Transport Policy Division
Ministry of Industry, Employment & Communications.
Sweden | Leader |
| 2. | Mr. Lars Osterberg
Director,
Transport Policy Division,
Ministry of Industry, Employment & Communications.
Sweden | Member |
| 3. | Mr. Johan Holmer
Senior Advisor,
Air Transport Policy & Relations,
Civil Aviation Authority,
Sweden. | Member |
| 4. | Mr. Pierre Chauvin
Senior Adviser,
Civil Aviation Section,
Ministry of Transport & Communications
Norway | Member |
| 5. | Mr. Thorkild Saxe,
Head of Section,
EU and Aviation Division,
Ministry of Transport & Energy,
Denmark. | Member |

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Article 9
Capacity Provisions

1. The agreed services to be operated by the designated airlines of the Contracting Parties shall have as their primary objective the provision of capacity, at reasonable load factors adequate to meet the traffic requirements between the territories of the two Contracting Parties.
2. Each Contracting Party shall allow fair and equal opportunity for the designated airlines of both contracting Parties to operate the agreed services between their respective territories so as to achieve equality and mutual benefit.
3. Each Contracting Party and its designated airline shall take into consideration the interests of the other Contracting Party and its designated airlines so as not to affect unduly the services, which the latter provides.
4. If, on review, the aeronautical authorities of the Contracting Parties fail to agree on the capacity to be provided on the agreed services, the capacity that may be provided by the designated airlines of the Contracting Parties shall not exceed the total capacity previously agreed.

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Article 10
Tariffs

1. Each Party shall allow prices for air services to be decided by each designated airline based on commercial considerations in the marketplace. Intervention by the Parties shall be limited to:

- a) prevention of unreasonably discriminatory prices or practices;
- b) protection of consumers from prices that are unreasonably high or restrictive due to the abuse of a dominant position; and
- c) protection of airlines from prices that are artificially low due to direct or indirect governmental subsidy or support.

2. Tariffs for international air services between the territories of the Parties shall not be required to be filed. Notwithstanding the foregoing, the designated airlines of the Parties shall continue to provide immediate access, on request, to information on historical, existing, and proposed prices to the aeronautical authorities of the Parties in a manner and format acceptable to those aeronautical authorities.

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Article 15
Aviation Security

1. Consistent with their rights and obligations under international law, the Contracting Parties reaffirm that their obligation 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, signed at Tokyo on 14 September, 1963, the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at the Hague on 16 December 1970, and the Convention for the Suppression of unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 23 September, 1971 and its Protocol done at Montreal on 24 February 1988 and any other convention on aviation security to which both Parties become members.

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

3. The Party shall, in their mutual relations, act in conformity with the aviation security provisions established by the International Civil Aviation Organization and designated as Annexes to the Convention on International Civil Aviation, to the extent that such security provisions are applicable to the 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 provisions.

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4. Each contracting Party agrees that such operators of aircraft may be required to observe the aviation security provisions referred to in paragraph (3) above required by the other Contracting Party for entry into, departure from or while within, the territory of that other Contracting Party. Each Contracting 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 Contracting Party shall also give sympathetic consideration to any request from the other contracting Party for reasonable special security measures to meet a particular threat.

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 rapidly and safely such incident or threat thereof.

6. When a Party has reasonable grounds to believe that the other Party has departed from the aviation security provisions of this Article, the aeronautical authorities of that Party may request immediate consultations with the aeronautical authorities of the other Party. Failure to reach a satisfactory agreement within 15 days from the date of such request shall constitute grounds to withhold, revoke, limit, or impose conditions on the operating authorisation and technical permissions of an airline or airlines of that Party. When required by an emergency, a Party may take interim action prior to the expiry of 15 days.

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New Article
Safety

1. Either Party may request consultations concerning the safety standards maintained in respect of an airline designated by the other Party relating to aeronautical facilities, aircrews, aircraft, and operation of the designated airlines.
2. If, following such consultations, which shall take place within 30 days of the request by either Party or such longer period as may be mutually agreed which shall not exceed 60 days, one Party finds that safety standards in the areas referred to in paragraph 1 that meet the standards established at that time in accordance with the Convention are not effectively maintained and administered in respect of airlines designated by the other Party, the other Party shall be notified of such findings and the steps considered necessary to conform with these minimum standards, and the other Party shall take appropriate corrective action.
3. Each Party reserves the right to suspend, or limit the operating authorisation or technical permission of an airline or airlines designated by the other Party in the event the other Party does not take appropriate corrective action within a reasonable time.
4. Any action by one Party in accordance with paragraph 3 shall be discontinued once the basis for that action ceases to exist.

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New Article
Co-operative Marketing Arrangements

1. When operating or holding out the agreed combination and all-cargo services on the specified route(s), any designated airline of either Party may enter into cooperative marketing arrangements, whether as the operating or marketing airline, with
 - a) an airline or airlines of the same Party;
 - b) an airline or airlines of the other Party; or
 - c) an airline or airlines of a third country
2. When a designated airline of a Party performs air services under cooperative marketing arrangements as the operating airline, the total capacity operated by that airline will be counted against the capacity entitlements of that Party designating the airline.
3. When a designated airline of a Party performs air services under cooperative marketing arrangements as the marketing airline with the airline of its own country or the airline of the other Party, the total capacity offered by the former airline will not be counted against the capacity entitlements of that Party designating that airline.
4. When a designated airline of a Party performs air services under cooperative marketing arrangements as the marketing airline with an airline from a third country, the total capacity offered will be counted against the capacity entitlements of both the marketing airline and operating airline.
5. All airlines operating or holding out the above services must hold the appropriate authority including route rights, traffic rights and capacity entitlement and meet the requirements normally applied to such arrangements.
6. The designated airlines of both Parties will, when holding services out for sale, in terms of code-share, blocked-space or other joint venture arrangements, make it clear to the purchaser at the point of sale which airline will be the operating airline on each sector of the service and with which airline(s) the purchaser is entering into a contractual relationship.

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ANNEXSECTION - I

The designated airlines of India shall be entitled to operate the agreed services in both directions on the following routes:

Points of origin	Intermediate Points	Points of destination	Beyond Points
Points in India	One point of choice in Europe	Stockholm	Nil

SECTION - II

The designated airlines of the Kingdom of Sweden shall be entitled to operate the agreed services in both directions on the following routes:

Points of origin	Intermediate Points	Points of destination	Beyond Points
Points in the Kingdom of Sweden	Nil	Delhi, Mumbai and one point out of Kolkata, Chennai and Hyderabad	Nil

Notes:

1. The designated airlines of either Party may on one or all flights omit calling at intermediate point.
2. The designated airlines of Sweden shall not be entitled to operate to any two points in India on the same flight.
3. The designated airlines of both Parties shall be entitled to serve any intermediate/beyond points not specified in the Route Schedule, without exercising 5th freedom traffic rights between such points and the territories of the other Party.

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ANNEXSECTION - I

The designated airlines of India shall be entitled to operate the agreed services in both directions on the following routes:

Points of origin	Intermediate Points	Points of destination	Beyond Points
Points in India	One point of choice in Europe	Oslo	Nil

SECTION - II

The designated airlines of the Kingdom of Norway shall be entitled to operate the agreed services in both directions on the following routes:

Points of origin	Intermediate Points	Points of destination	Beyond Points
Points in the Kingdom of Norway	Nil	Delhi, Mumbai and one point out of Kolkata, Chennai and Hyderabad	Nil

Notes:

1. The designated airlines of either Party may on one or all flights omit calling at intermediate point.
2. The designated airlines of Norway shall not be entitled to operate to any two points in India on the same flight.
3. The designated airlines of both Parties shall be entitled to serve any intermediate/beyond points not specified in the Route Schedule, without exercising 5th freedom traffic rights between such points and the territories of the other Party.





ANNEXSECTION - I

The designated airlines of India shall be entitled to operate the agreed services in both directions on the following routes:

Points of origin	Intermediate Points	Points of destination	Beyond Points
Points in India	One point of choice in Europe	Copenhagen	Nil

SECTION - II

The designated airlines of the Kingdom of Denmark shall be entitled to operate the agreed services in both directions on the following routes:

Points of origin	Intermediate Points	Points of destination	Beyond Points
Points in the Kingdom of Denmark	Nil	Delhi, Mumbai and one point out of Kolkata, Chennai and Hyderabad	Nil

Notes:

1. The designated airlines of either Party may on one or all flights omit calling at intermediate point.
2. The designated airlines of Denmark shall not be entitled to operate to any two points in India on the same flight.
3. The designated airlines of both Parties shall be entitled to serve any intermediate/beyond points not specified in the Route Schedule, without exercising 5th freedom traffic rights between such points and the territories of the other Party.

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