

PROPOSED AMENDMENTS TO THE TEXT OF THE AIR SERVICES AGREEMENTS BETWEEN NEW ZEALAND AND THE KINGDOM OF DENMARK SIGNED AT WELLINGTON ON 7 FEBRUARY 2001

I Article 1 shall be amended to add the following definition:

Article 1

Definitions

- (i) "EEA Member States", means Member States of the European Community and the Member States of the European Free Trade Association that are also Contracting Parties to the Agreement on the European Economic Area.¹



¹ Corresponds to Article 1.1 of the *Horizontal Agreement*. Norway is not a member of the EU but is a full member of the European single aviation market through the *Agreement on the European Economic Area*. Our ASAs would have to reflect this fact.

II Articles 3 and 4 shall be amended to read as follows:

Article 3

Designation and Authorization

1. Each Contracting Party shall have the right to designate in writing through diplomatic channels to the other Contracting Party one or more airlines for the purpose of operating air services on the routes specified in the Annex and to withdraw or alter such designations.

2.² On receipt of such a designation from Denmark, New Zealand shall grant the appropriate authorization and permissions with minimum procedural delay, provided that:

- (a) the airline is established in the territory of the Kingdom of Denmark under the EU Treaties or under the Agreement on the European Economic Area, and has a valid Operating Licence in accordance with European Union law or in accordance with national law adopted under the Agreement on the European Economic Area; and
- (b) effective regulatory control of the airline is exercised and maintained by the European Union Member State or the EEA EFTA State responsible for issuing its Air Operator's Certificate and the relevant aeronautical authority is clearly identified in the designation; and



² Corresponds to Article 2.3 (a) of the *Horizontal Agreement*.

- (c) the airline has its principal place of business in the territory of the European Union or EEA Member State from which it has received the valid Operating Licence; and
- (d) the airline is owned directly or through majority ownership and is effectively controlled by European Union or EEA Member States or by Switzerland³ and/or nationals of such States.

3.4 On receipt of such a designation from New Zealand, the Kingdom of Denmark shall grant the appropriate authorization and permissions with minimum procedural delay, provided that:

- (a) New Zealand has and maintains effective regulatory control of the airline; and
- (b) the airline has its principal place of business in New Zealand.

4. When an airline has been so designated and authorized, it may begin to operate air services on the routes specified in the Annex provided that the airline complies with all applicable provisions of this Agreement.



³ Switzerland is listed in Annex 3 of the *Horizontal Agreement*. So are also Iceland and Liechtenstein, but these States are covered in these three ASAs by the definition of "EEA Member States".

⁴ Corresponds to Article 2.3 (b) of the *Horizontal Agreement*.

Article 4

Revocation and Limitation of Authorisation

1.⁵ New Zealand may refuse, revoke, suspend or limit the authorization or permissions of an airline designated by Denmark where:

- (a) the airline is not established in the territory of Denmark under the EU Treaties or in accordance with the Agreement on the European Economic Area, or does not have a valid Operating Licence in accordance with European Union law or in accordance with national law adopted in accordance with the Agreement on the European Economic Area; or
- (b) effective regulatory control of the airline is not exercised or not maintained by the European Union Member State or the EEA EFTA State responsible for issuing its Air Operator's Certificate, or the relevant aeronautical authority is not clearly identified in the designation; or
- (c) the airline does not have its principal place of business in the territory of the EEA Member State from which it has received its Operating Licence; or
- (d) the airline is not owned and effectively controlled directly or through majority ownership by EEA Member States or by Switzerland and/or nationals of such states.

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⁵ Corresponds to Article 2.4 (a) of the *Horizontal Agreement*.

- (e) the airline is already authorised to operate under a bilateral agreement between New Zealand and another EEA Member State and New Zealand can demonstrate that, by exercising traffic rights under this Agreement on a route that includes a point in that other EEA Member State, it would be circumventing restrictions on the traffic rights imposed by that other agreement; or
- (f) the airline designated holds an Air Operator's Certificate issued by an EEA Member State and there is no bilateral air services agreement between New Zealand and that EEA Member State and that EEA Member State has denied traffic rights to the airline designated by New Zealand;

In exercising its right under this paragraph, and without prejudice to its rights under paragraph 1 (e) and (f) of this Article, New Zealand shall not discriminate between airlines of EEA Member States on the grounds of nationality.⁶

2.7 The Kingdom of Denmark may refuse, revoke, suspend or limit the authorization or permissions of an airline designated by New Zealand where:

- (a) New Zealand is not maintaining effective regulatory control of the airline;
or
- (b) the airline does not have its principal place of business in New Zealand.



⁶ Corresponds to Article 2.5 of the *Horizontal Agreement*.

⁷ Corresponds to Article 2.4 (b) of the *Horizontal Agreement*.

III Article 5 shall be amended to add a new paragraph 5. The new paragraph 5 would read as follows:

Article 5
Customs Duties

5⁸. Notwithstanding any other provision to the contrary, nothing in this Agreement shall prevent Denmark or New Zealand from imposing, on a non-discriminatory basis, taxes, levies, duties, fees or charges on fuel supplied in their respective territories for use in an aircraft of a designated airline of an EEA Member State or New Zealand that operates between two points within the area of the EEA or within the territory of New Zealand.



⁸ Corresponds to Article 4 of the *Horizontal Agreement*.

V *Article 13 on Aviation Safety shall be amended to add the following paragraph:*

Article 13
Aviation Safety

8.⁹ Where Denmark (the first EEA Member State) has designated an airline whose regulatory control is exercised and maintained by a second EEA Member State, the rights of New Zealand under the safety provisions of agreement between the first EEA Member State that has designated the airline and New Zealand shall apply equally in respect of the adoption, exercise or maintenance of safety standards by that second EEA Member State and in respect of the operating authorisation of that airline.



⁹ Corresponds to Article 3 of the *Horizontal Agreement*.