1950
NEW ZEALAND

AGREEMENT

BETWEEN THE GOVERNMENT OF NEW ZEALAND AND THE GOVERNMENT OF CANADA RELATING TO AIR TRANSPORT

Wellington, 16 *August*, 1950
[in force 16 August, 1950]

Presented to Both Houses of the General Assembly by Leave

By Authority: R. E. OWEN, Government Printer, Wellington.—1950.

AGREEMENT BETWEEN THE GOVERNMENT OF NEW ZEALAND AND THE GOVERNMENT OF CANADA RELATING TO AIR TRANSPORT

The Government of New Zealand and the Government of Canada (hereinafter described as the " contracting parties "),

Desiring to establish direct air communications between New Zealand and Canada,

Agree as follows :—

Article I

For the purpose of this Agreement and its Annex unless the context otherwise requires :

(1) The term " territory " shall mean in respect of either contracting party the land areas and territorial waters adjacent thereto under the sovereignty, suzerainty, protection, mandate, or trusteeship of such party.

(2) The term " aeronautical authorities " shall mean in the case of New Zealand the Minister in Charge of Civil Aviation, and in the case of Canada the Minister of Transport or such other Minister as the Governor in Council may from time to time designate, and in both cases any person or body authorised by the respective contracting parties to perform the functions presently exercised by the abovementioned authorities.

(3) The term " designated airline " shall mean the air transport enterprise or enterprises which one contracting party has designated in writing to the other contracting party for the operation of an agreed service.

Article II

Each contracting party grants to the other contracting party the rights specified in the Annex to this Agreement for the purpose of establishing the air services therein described (hereinafter referred to as " the agreed services "). Such services may be inaugurated immediately, or at a later date at the option of the contracting party to whom the rights are granted.

Article III

(1) Subject to paragraph (2) of this Article, and to Articles VII and VIII, each of the agreed air services may be put into operation as soon as the contracting party to whom the rights have been granted has designated an airline or airlines for the operation of the agreed services and the contracting

party granting the rights shall be bound to grant without delay the appropriate operating permission to the airline concerned.

(2) Each of the designated airlines may be required to satisfy the aeronautical authorities of the other contracting party that it is qualified to fulfill the conditions prescribed under the laws and regulations normally applied by those authorities to the operations of international commercial air services.

Article IV

The aeronautical authorities of the contracting parties shall exchange such periodic statements as they may agree relating to the traffic carried on the agreed services to, from and over the territory of the other party, including information concerning the origin and destination of this traffic.

Article V

(1) The charges which either of the contracting parties may impose or permit to be imposed on the designated airline of the other contracting party for the use of airports and other facilities shall not be higher than would be paid for the use of such airports and facilities by its national aircraft engaged in similar international services.

(2) Subject to paragraph (3) of this Article, aircraft of the designated airline of a contracting party operating on the agreed services, as well as fuel, lubricating oils, and spare parts introduced into or taken on board aircraft in the territory of the other contracting party by or on behalf of the designated airline of the former contracting party and intended solely for use by the aircraft of such airline, shall be accorded with respect to customs duties, inspection fees, or other charges imposed in the territory of the other contracting party treatment not less favourable than that granted to national airlines engaged in international air transport or the airlines of any other nation.

(3) Aircraft of the designated airline of a contracting party operating on the agreed services on a flight to, from or across the territory of the other contracting party shall be admitted temporarily free from customs duties, although subject otherwise to the customs regulations of such other contracting party. Supplies of fuel, lubricating oils, spare parts, regular equipment, and aircraft stores retained on board aircraft of the designated airline of a contracting party shall be exempt

in the territory of the other contracting party from customs duties, inspection fees, or similar duties or charges, even though such supplies be used by such aircraft on flights in that territory.

(4) Each designated airline shall have the right to use, on the routes specified in the Annex to this Agreement, all airports, airways and other facilities provided by the contracting parties for use by international air services.

(5) Each contracting party shall grant to the designated airline of the other contracting party treatment in the application of its customs, immigration, quarantine, and similar regulations equal to that granted to its own designated airline.

Article VI

Certificates of airworthiness and certificates of competency, and licenses issued or rendered valid by one contracting party and still in force, shall be recognised as valid by the other contracting party for the purpose of operating the services specified in the Annex. Each contracting party reserves the right, however, to refuse to recognise for the purpose of flight above its own territory, certificates of competency and licenses granted to any of its own nationals, by any authority other than its own.

Article VII

(1) The laws and regulations of a contracting party relating to entry into, or departure from, its territory of aircraft engaged in international air navigation or to the operation and navigation of such aircraft while within its territory, shall apply to aircraft of a designated airline of the other contracting party.

(2) The laws and regulations of a contracting party relating to the entry into, sojourn in and departure from, its territory of passengers, crew or cargo of aircraft (such as regulations relating to entry, clearance, immigration, passports, customs and quarantine) shall be applicable to the passengers, crew and cargo of aircraft of a designated airline of the other contracting party, while in the territory of the former contracting party.

Article VIII

(1) Notwithstanding the other provisions of this Agreement, if either contracting party is not satisfied that substantial ownership and effective control of an airline designated under

this Agreement are vested in nationals of the other contracting party, such contracting party may withhold or revoke the rights conferred under this Agreement for such airline to operate air services specified in the Annex.

For the purpose of this Article nationals of the United Kingdom and nationals of Australia shall be considered to be nationals of New Zealand.

(2) Each contracting party reserves the right to withhold or revoke operating permission granted under this Agreement to a designated airline of the other contracting party in case of failure by such airline to comply with the laws and regulations of the first contracting party as referred to in Article VII, or otherwise to fulfill the conditions under which operating permission is granted in accordance with this Agreement.

Article IX

If either of the contracting parties considers it desirable to modify any provision or provisions of this Agreement or its Annex it shall notify the other contracting party of the desired modification and such modification may be made by direct agreement between the aeronautical authorities of both contracting parties; such agreement to be confirmed by exchange of notes.

Article X

(1) If any dispute arises between the contracting parties relating to the interpretation or application of the present Agreement, the contracting parties shall in the first place endeavour to settle it by negotiation between themselves.

(2) If the contracting parties fail to reach a settlement by negotiation,

(*a*) They may agree to refer the dispute for decision to an arbitral tribunal or to some other person or body appointed by agreement between them; or

(*b*) If they do not so agree or if, having agreed to refer the dispute to an arbitral tribunal, they cannot reach agreement as to its composition, either contracting party may submit the dispute for decision to any tribunal competent to decide it which may hereafter be established within the International Civil Aviation Organisation, or, if there is no such tribunal, to the Council of the said Organisation, or, if the Council of the said Organisation decline to consider such a dispute or is not empowered to do so, to the International Court of Justice.

(3) The contracting parties undertake to comply with any decision given (including any interim recommendation made) under paragraph (2) of this Article.

(4) If and so long as either contracting party fails to comply with a decision given under paragraph (2) of this Article, the other contracting party may limit, withhold, or revoke any rights which it has granted by virtue of the present Agreement. If and so long as a designated airline of either contracting party fails to comply with a decision given under paragraph (2) of this Article, the other contracting party may limit, withhold, or revoke any operating permission which it has granted by virtue of Article III of this Agreement.

Article XI

In the event of the conclusion of any multilateral convention concerning air transport to which both contracting parties adhere, this Agreement shall be read subject to the provisions of such multilateral convention or if considered necessary by either contracting party, this Agreement shall be amended so as to conform with its provisions.

Article XII

To the extent to which they are applicable to the air services established under the present Agreement, the provisions of the Convention on International Civil Aviation signed at Chicago on 7th December, 1944, shall apply in their present form between the contracting parties for the duration of this Agreement as if they were an integral part of the Agreement unless both contracting parties ratify any amendments to the Convention which shall have come duly into force, or ratify a new Convention, in which case the Convention, as amended, or the new Convention, having come into force, shall apply for the duration of the present Agreement.

Article XIII

Either contracting party may at any time give notice to the other if it desires to terminate this Agreement. Such notice shall be simultaneously communicated to the International Civil Aviation Organisation. If such notice is given, the Agreement will terminate twelve (12) months after date of receipt of the notice by the other contracting party, unless the notice to terminate is withdrawn by agreement before the

expiry of this period. In the absence of acknowledgment of receipt by the other contracting party notice shall be deemed to have been received fourteen (14) days after the receipt of the notice by the International Civil Aviation Organisation.

Article XIV

This Agreement including the provisions of the Annex hereto shall come into force on the date of signature.

Done in duplicate, in Wellington, on the 16th day of August, 1950.

For the Government of New Zealand:

F. W. DOIDGE.

For the Government of Canada:

ALFRED RIVE.

ANNEX

Section 1

An airline designated by the Government of New Zealand may operate a return service originating in New Zealand and terminating in Canada on the route specified below and may take on and put down at Vancouver international traffic in passengers, mail and cargo coming from or destined for New Zealand or points beyond or coming from or destined for the territory of a third country on the route specified below.

The route to be operated by the airline designated by the Government of New Zealand shall be:

Auckland to Vancouver and return via such intermediate stopping places as may be agreed between the aeronautical authorities of the contracting parties.

Section 2

An airline designated by the Government of Canada may operate a return service originating in Canada and terminating in New Zealand on the route specified below and may take on and put down at Auckland international traffic in passengers, mail and cargo coming from or destined for Canada or points beyond or coming from or destined for the territory of a third country on the route specified below.

The route to be operated by the airline designated by the Government of Canada shall be:

Vancouver to Auckland and return via such intermediate stopping places as may be agreed between the aeronautical authorities of the contracting parties.

SECTION 3

In the event the designated airlines of New Zealand and of Canada enter into a pooling arrangement in accordance with Chapter XVI of the Convention on International Civil Aviation, either contracting party may permit the designated airline of the other contracting party to exercise on the specified route any of the rights exercised by its own designated airline.

SECTION 4

(1) The capacity to be operated from time to time by the designated airlines of New Zealand and Canada for the conveyance of traffic over the routes specified in Sections 1 and 2 of this Annex shall be maintained in close relationship with the traffic offering between New Zealand and Canada—in both directions. Unless otherwise agreed, this capacity shall be shared equally between the airlines of the two contracting parties.

(2) Additional capacity may be provided by the designated airline of each party on the agreed services for the carriage of traffic between intermediate points and between such points and the terminal point in the territory of each contracting party. Capacity provided by either of the designated airlines for this purpose shall be maintained in close relationship to the traffic offering.

(3) The total capacity to be provided by the designated airline of each contracting party for the traffic referred to in paragraphs (1) and (2) of this Section shall be agreed from time to time between the aeronautical authorities of the contracting parties. If and so long as the designated airline of one contracting party may not wish to operate in full or in part its share of the agreed total capacity, the designated airline of the other contracting party shall be entitled to provide additional capacity equal to the difference between the capacity actually provided and the agreed total capacity.

SECTION 5

The frequencies of the services to be operated by the designated airlines of the contracting parties and the load factor to be adopted for determining the frequencies shall from time to time be agreed between the airlines of the contracting parties subject to the approval of the aeronautical authorities of the contracting parties.

SECTION 6

In order to meet seasonal fluctuations or unexpected demands of a temporary character the designated airlines may, notwithstanding the provisions of Section 4 of this Annex agree between them to such temporary increases of capacity for either airline or both airlines as are necessary to meet the traffic demand. Any such increase shall be reported forthwith to the aeronautical authorities who may confirm or modify them.

SECTION 7

(1) The fares and rates to be charged by the designated airlines shall be fixed at reasonable levels, due regard being paid to all relevant factors including cost of operation, reasonable profit, differences of characteristics of service (including standards of speed and accommodation) and the fares and rates charged by any other airlines on the route. These fares and rates shall be determined in accordance with the following provisions of this Section.

(2) Fares and rates to be charged by the designated airlines while operating the agreed services for the carriage of passengers and cargo over each route described in Sections 1 and 2 of this Annex, and each section thereof shall be agreed in the first instance between them. This agreement shall, where possible, be reached through the traffic conference machinery of the International Air Transport Association. Any tariff of fares and rates so agreed shall be subject to the approval of the aeronautical authority of each contracting party.

(3) If the designated airlines should fail to agree on the fares and rates, as provided in paragraph (2), the aeronautical authorities of the contracting parties shall endeavour to determine the fares and rates by agreement between themselves. If the aeronautical authorities of the contracting parties should fail to agree, the contracting parties shall endeavour to reach agreement between themselves, failing which the matter in dispute shall be referred to arbitration as provided for in Article X of this Agreement.

(4) The designated airline of either contracting party shall file with the aeronautical authority of each contracting party, in accordance with the respective regulations or directives of such authority, a tariff or tariffs containing fares and rates determined under paragraphs (2) and (3) of this Section, which it proposes to establish, at least 30 days before the date on which it proposes that the fares and rates shall come into effect: Provided that this period of 30 days may be reduced in particular cases if so agreed by the aeronautical authorities of both contracting parties.

(5) If the aeronautical authority of one of the contracting parties is dissatisfied with any fare or rate in a tariff filed in accordance with paragraph (4) of this Section, it shall so notify in writing the aeronautical authority of the other contracting party and the designated airline filing the tariff in dispute, within 15 days of the date of filing, or, in particular cases, within such other period as may be agreed between the aeronautical authorities of both parties.

(6) After notification under paragraph (5) of this Section, the aeronautical authorities of both contracting parties shall endeavour to secure agreement on the fares or rates to be established. If the aeronautical authorities of the contracting parties cannot secure agreement, the dispute shall be settled in accordance with the provisions of Article X of the present Agreement.

(7) If agreement has not been reached at the end of the 30-day period referred to in paragraph (4) above a disputed fare or rate on the agreed services shall remain in suspension until the dispute shall have been settled.

(8) If no notification is given under paragraph (5), a tariff filed under paragraph (4) shall come into effect after the expiry of the period specified in paragraph (4) and shall remain in effect until:

(*a*) The expiry of any period for which the aeronautical authority of either contracting party may have approved its effectiveness; or

(*b*) A new or amended tariff shall have been established in substitution therefor in accordance with the provisions of this Section,

whichever is the earlier.

(9) The aeronautical authority of one contracting party may, with the consent of the aeronautical authority of the other contracting party, at any time require the designated airline to file a new or amended tariff of fares and rates on the agreed services, and the provisions of this Section shall apply thereto as if it were a first tariff.

(10) Notwithstanding the provisions of paragraphs (2) and (7) the designated airline of one contracting party, while operating the agreed services, shall not carry or offer to carry passengers or cargo from or to a place in the territory of the other contracting party at fares or rates other than those approved by such other contracting party. If carriage is performed or is to be performed partly by air and partly by an operator of a surface transport the air portion of the through fare shall be subject to the approval of the aforementioned aeronautical authorities who may require the designated airline to file such information as may be necessary to determine the air portion of the through fare.

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