

MEMORANDUM OF CONSULTATIONS

**The Government of India
and
The Government of the French Republic.**

Paris, 23rd February 2005

MEMORANDUM OF CONSULTATIONS

Delegations representing the Governments of the French Republic and of India met in Paris on 22-23 February, 2005, to discuss matters of common interest related to the Air Services Agreement signed in New Delhi on 16 July, 1947 (the Agreement). The consultations were preceded by a meeting between the designated airlines on 21 February 2005.

The list of delegations is attached at Appendix A.

The consultations were held in the warm and cordial atmosphere characteristic of the relations between the two countries.

Delegations addressed the following subjects:

1- Designation of airlines

Both delegations agreed that each Contracting Party may designate one or more airline(s) to operate the agreed services on the specified air routes.

In line with its European obligations, the French delegation requested that the standard Community clauses be incorporated into the Agreement. It requested in particular changes in ownership and control provisions, so as to allow the designation by France of carriers licensed in the EC and established in France. The relevant Community clauses are attached as Appendix B to the present Memorandum. The French delegation further indicated that, until such clauses are inserted into the Agreement, under EC law, the present MoU could only be applied on a provisional basis.

The Indian delegation, while taking note of the request of the French delegation, said that it needed more time to study the clauses. Therefore, it was not immediately possible to confirm the incorporation of these clauses as this was under consideration of the Government of India. However, the entire issue would be discussed in due course with the European Commission as part of the proposal for a European Union level horizontal agreement.

2- Route schedule

Both delegations agreed to amend the Route Schedule in order to include:

- for the airlines designated by France, as points of call in India:
Delhi, Mumbai, Kolkata and the additional points of Bangalore, Chennai and Hyderabad.
- for the airlines designated by India, as points beyond France:
New York, Montreal, Toronto, and four new points in North America to be selected by the Indian Aeronautical Authorities.

Pho.

~~The Indian delegation informed of its wish to include, among the points to be served beyond France, points in North Africa and in Latin America. The French delegation informed of its wish to address the issue of domestic code-share operations. Both delegations agreed to further address these issues during their next round of talks.~~

3- Frequency entitlement

Both delegations agreed that the designated airlines of each Contracting Party shall be entitled to operate with their own aircraft or through code-sharing arrangements, on the specified routes, as from IATA Summer Season 2005, up to 35 (thirty-five) weekly services with any aircraft type up to Boeing 747.

Both delegations further agreed that the designated airlines of each Contracting Party may operate 5th freedom traffic rights between points located in the other Contracting Party and the points beyond specified in the Route Schedule, up to a total of 35 (thirty-five) weekly services.

4- Code-sharing operations

Both delegations agreed that the designated airlines of each Contracting Party shall be entitled to enter into code-share arrangements to operate the frequency entitlement defined at section 3 in services between the territories of the two Parties, including via intermediate points, provided all operating airlines hold the appropriate authorities.

Both delegations agreed that the airlines shall inform the customer, at the latest at check-in point, which is the airline operating the flight.

All frequencies of the marketing airline involved in such code-sharing arrangements shall be counted against the capacity entitlement of the Contracting Party having designated the airline.

Furthermore, at the request of the Indian delegation, the French delegation accepted to grant the right, for one or more airlines designated by India, to enter into marketing code-share arrangements on beyond points mentioned at the Route Schedule, within the frequency entitlement, with one or more airlines holding the appropriate 3rd/4th freedom traffic rights.

5- Relations between the designated airlines

The French delegation requested that mandatory commercial agreements between the designated airlines should be suppressed as soon as the number of frequencies between France and India operated by the designated airlines of one Contracting Party is equal to the number of frequencies operated by the designated airlines of the other Contracting Party.

The Indian delegation informed that the Government of India had formulated a new policy in December 2004 regarding mandated commercial agreements. In accordance with this policy, henceforth there would be no mandated commercial agreements on any new services operated by foreign carriers, including new services on routes already operated. The existing mandated commercial agreements would continue a maximum period of five years and would cease thereafter. However, the respective designated airlines would remain free to enter, at their own choice, into commercial agreements for their mutual benefit.

And

6- Tariffs

Both delegations agreed that the following provision at Article II, (B) of the Agreement is no longer in force : "shall be agreed in the first instance between the designated airlines in consultation with other airlines operating on the route, or any section thereof, and".

7- Safety

Both delegations confirmed their desire to promote the highest possible level of safety in international aviation, and reasserted their commitment to the principles stipulated in the Convention and its annexes, particularly annex 6. The French delegation suggested to insert a Safety Article into the Agreement, attached at Appendix C. Both delegations agreed to further discuss this issue during their next meeting.

8- Slots

The two delegations agreed to assist the designated airlines in the acquisition of commercially viable slots at airports in both countries, on a reciprocal basis, with due respect to the existing legislative and regulatory framework of each Contracting Party.

9- The provisions of the present MoU enter into force at the date of its signature.

Signed, at Paris, on February 23rd, 2005, in duplicate, in the English language.

For the French Government



Philippe DUMONT

For the Indian Government



Shri Ajay PRASAD

APPENDIX B

CLAUSES FOR OWNERSHIP AND CONTROL

DESIGNATION AND AUTHORISATION

Article II (B) to be replaced by:

- I) *In the case of an airline designated by the French Republic:*
- (1) *it is established in the territory of the French Republic under the Treaty establishing the European Community and has a valid Operating Licence in accordance with European Community law; or*
 - (2) *effective regulatory control of the airline is exercised and maintained by the European Community Member State responsible for issuing its Air Operators Certificate and the relevant aeronautical authority is clearly identified in the designation; or*
- II) *In the case of an airline designated by India:*
- (1) *it is established in the territory of India or has not a valid Operating Licence in accordance with Indian law; or*
 - (2) *effective regulatory control of the air carrier is exercised by India; or*
 - (3) *the air carrier is owned and shall continue to be owned directly or through majority ownership by [name of country or countries] or its nationals, or the air carrier is not effectively controlled by such states and/or such nationals."*

CLAUSE ON TARIFFS

The tariffs to be charged by the designated airline(s) of India for carriage wholly within the European Community shall be subject to European Community law.

CLAUSE ON TAXATION OF AVIATION FUEL

(provisions to be added at Article VIII)

Nothing in this Agreement shall prevent the French Republic from imposing, on a non-discriminatory basis, taxes, levies, duties, fees or charges on fuel supplied in its territory for use in an aircraft of a designated air carrier of India that operates between a point in the territory of the French Republic and another point in the territory of the French Republic or in the territory of another European Community Member State.

And -

CLAUSE ON AVIATION SAFETY

1. Each Contracting Party may request consultations at any time concerning the safety standards maintained by the other Contracting Party in areas relating to aeronautical facilities, flight crew, aircraft and their operation. Such consultations shall take place within thirty (30) days of that request.

2. If, following such consultations, one Contracting Party finds that the other Contracting Party does not effectively maintain and administer safety standards in the area referred to in paragraph 1 that are at least equal to the minimum standards established at that time pursuant to the Convention, the first Contracting Party shall notify the other Contracting Party of those findings and the other Contracting Party shall take appropriate corrective action. Failure by the other Contracting Party to take appropriate action within a reasonable time, and in any case within fifteen (15) days or such longer period as may be agreed, shall be grounds for the application of Article 4 of this Agreement.

3. Notwithstanding the obligations mentioned in Article 33 of the Convention, it is agreed that any aircraft operated or leased by the airline or airlines of one Contracting Party on services to or from the territory of another Contracting Party may, while within the territory of the other Contracting Party, be made the subject of an examination by the authorities representative of the other Contracting 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.

4. 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 safety standards established at that time pursuant to the Convention,

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

5. In the event that access for the purpose of undertaking a ramp inspection of an aircraft operated by the airline or airlines of one Contracting Party in accordance with paragraph 3 above is denied, the other Contracting Party shall be free to infer that serious concerns of the type referred to in paragraph 4 above arise and draw the conclusions referred in that paragraph

6. Each Contracting Party reserves the right to suspend or vary the operating authorisation of an airline or airlines of the other Contracting Party immediately in the event the first Contracting Party concludes, whether as a result of a ramp inspection, a series of ramp inspections, a denial of access for ramp inspection, consultation or other form of dialogue, that immediate action is essential to the safety of an airline or airlines operation.

7. Any action by one Contracting Party in accordance with paragraphs 2 or 6 above shall be discontinued once the basis for the taking of that action ceases to exist.

8. Where the French Republic has designated an airline whose regulatory control is exercised and maintained by another member State of the European Union, the rights of India under this Article shall apply equally in respect of the adoption, exercise or maintenance of safety standards by that Member State of the European Union and in respect of the operating authorisation of that airline.

PhD

J