



Treaty Series No. 42 (1989)

# Exchange of Notes

between the Government of the  
United Kingdom of Great Britain and Northern Ireland  
and the Government of the United States of America  
concerning the licensing of their respective airlines  
to operate International Air Services

Washington, 25 May 1989

[The Exchange of Notes entered into force on 25 May 1989]

*Presented to Parliament  
by the Secretary of State for Foreign and Commonwealth Affairs  
by Command of Her Majesty  
October 1989*

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**EXCHANGE OF NOTES  
BETWEEN THE GOVERNMENT OF THE  
UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND  
AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA  
CONCERNING THE LICENSING OF THEIR RESPECTIVE AIRLINES TO  
OPERATE INTERNATIONAL AIR SERVICES**

No. 1

*The Secretary of State of the United States of America to Her Majesty's Ambassador  
at Washington*

*Department of State  
Washington  
25 May 1989*

Excellency:

I have the honor to refer to discussions which have taken place between representatives of the aeronautical authorities of the United States of America and representatives of the aeronautical authorities of the United Kingdom of Great Britain and Northern Ireland relating to the criteria and procedures currently employed by them in determining whether their respective airlines may be licensed under their respective national laws to operate international air services. As a result of those discussions, I therefore have the honor to propose an Agreement in the following terms:

**1. Scope of the Agreement**

This Agreement specifies procedures for implementing the obligations of each Contracting Party under Bermuda 2 to grant certain operating authorizations and technical permissions to airlines designated by the other Contracting Party, and does not effect any change in those obligations. This Agreement shall apply to airlines designated under Bermuda 2 for services on U.S. Routes 1, 2 and 7; U.K. Routes 1,2,3,4,5,10,11 and 12; and for transatlantic charter air services.

**2. Definitions**

For the purposes of this Agreement:

- (a) "Bermuda 2" means the Air Services Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the United States of America, signed at Bermuda on 23 July 1977<sup>1</sup>, as amended;
- (b) "Fitness criteria" means those factors by which each of the aeronautical authorities determine in accordance with their respective national laws whether an airline is fit to operate the international air services for which it has applied to those authorities for a license, that is to say, whether it has satisfactory financial capability, adequate managerial expertise and is disposed to comply with the laws, regulations and requirements which govern the operation of such services;
- (c) "Citizenship criteria" means those factors by which the aeronautical authorities of each Contracting Party determine whether an airline is substantially owned and effectively controlled by that Contracting Party or by its nationals;
- (d) "Fitness determination" means a finding by the aeronautical authorities of a Contracting Party that an airline has met their fitness criteria;
- (e) "Citizenship determination" means a finding by the aeronautical authorities of a Contracting Party that an airline has met their citizenship criteria;
- (f) "Aeronautical authorities" has the same meaning as in Bermuda 2;
- (g) "Operating authorizations and technical permissions" means, in the case of the United States, permits or exemptions issued under Title IV of the Federal Aviation Act, and, in the case of the United Kingdom, permits issued under Article 83 of the Air Navigation Order 1985.

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<sup>1</sup>Treaty Series No. 76 (1977), Cmnd. 7016.

### **3. Reciprocal Recognition of Determinations**

- (a) This Agreement shall apply whenever an airline which has been designated under Bermuda 2 by one Contracting Party applies to the other Contracting Party for appropriate operating authorizations and technical permissions. When considering such application, the aeronautical authorities of the latter Contracting Party shall give the same validity to any fitness or citizenship determination made by the aeronautical authorities of the Contracting Party as if the determination had been made by its own aeronautical authorities, and shall not inquire into the question of fitness or citizenship, except as provided in sub-paragraph (b) of this paragraph.
- (b) If after receipt of such an application the aeronautical authorities have a specific reason for believing that, despite the determinations made by the aeronautical authorities of the other Contracting Party, the conditions prescribed in Bermuda 2 for the grant of the appropriate operating authorizations or technical permissions have not been met, the aeronautical authorities which received the application shall promptly inform the aeronautical authorities of the other Contracting Party, giving reasons, so that the latter can, if they so desire, request consultations pursuant to Article 3(6) or Article 14(4) of Bermuda 2, as the case may be.

### **4. Procedure**

- (a) If necessary, procedures for implementing the provisions of this Agreement may be agreed from time to time between the aeronautical authorities.
- (b) The Contracting Parties shall encourage co-operation and assistance between their respective aeronautical authorities in developing, as necessary, their fitness and citizenship criteria.
- (c) Each of the aeronautical authorities shall inform the other of any proposals for any material change to the fitness or citizenship criteria which it applies.
- (d) If a Contracting Party intends to effect any such change it shall give the other Contracting Party at least 90 days notice of such intention. If the other Contracting Party requests consultations they shall be held within 30 days of such request.
- (e) If, following such consultations, the Contracting Party requesting them considers that the fitness or citizenship criteria, if so changed, would no longer be satisfactory for the purposes of this Agreement, it may notify the other Contracting Party of this and that, if the changes come into effect, it will regard the Agreement to have terminated on the date they come into effect.

### **5. Termination**

Without prejudice to the provisions of paragraph 4 (e), either Contracting Party may terminate this Agreement at any time by giving not less than 60 days written notice to that effect to the other.

If the foregoing proposals are acceptable to the Government of the United Kingdom of Great Britain and Northern Ireland, I have the honor to propose that the present Note, together with your reply in that sense, shall constitute an Agreement between our two Governments which shall enter into force on the date of your reply.

Accept, Excellency, the renewed assurances of my highest consideration.

For the Secretary of State:  
CHARLES ANGEVINE

No. 2

*Her Majesty's Ambassador at Washington to the Secretary of State of the  
United States of America*

*British Embassy  
Washington  
25 May 1989*

Sir,

I have the honour to acknowledge your Note of 25 May 1989 which reads as follows:

[As in No. 1]

I have the honour to inform you that the foregoing proposals are acceptable to the Government of the United Kingdom of Great Britain and Northern Ireland, who therefore agree that your Note, together with the present reply, shall constitute an Agreement between our two Governments in this matter which shall enter into force on the date of this present reply.

I avail myself of this opportunity to renew to you the assurance of my highest consideration.

For the Ambassador:  
A. J. HUNT