AIR TRANSPORT AGREEMENT

THE UNITED STATES OF AMERICA (hereinafter the United States), of the one part;

and

THE REPUBLIC OF AUSTRIA,

THE KINGDOM OF BELGIUM,

THE REPUBLIC OF BULGARIA,

THE REPUBLIC OF CYPRUS,

THE CZECH REPUBLIC,

THE KINGDOM OF DENMARK,

THE REPUBLIC OF ESTONIA,

THE REPUBLIC OF FINLAND,

THE FRENCH REPUBLIC,

THE FEDERAL REPUBLIC OF GERMANY,

THE HELLENIC REPUBLIC,

THE REPUBLIC OF HUNGARY,

IRELAND,

THE ITALIAN REPUBLIC,

THE REPUBLIC OF LATVIA,

THE REPUBLIC OF LITHUANIA,

THE GRAND DUCHY OF LUXEMBOURG,

MALTA,

THE KINGDOM OF THE NETHERLANDS,

THE REPUBLIC OF POLAND,

THE PORTUGUESE REPUBLIC,

ROMANIA,

THE SLOVAK REPUBLIC,

THE REPUBLIC OF SLOVENIA,

THE KINGDOM OF SPAIN,

THE KINGDOM OF SWEDEN,

THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND,

being parties to the Treaty establishing the European Community and being Member States of the European Union (hereinafter the Member States),

and the EUROPEAN COMMUNITY, of the other part;

DESIRING to promote an international aviation system based on competition among airlines in the marketplace with minimum government interference and regulation;

DESIRING to facilitate the expansion of international air transport opportunities, including through the development of air transportation networks to meet the needs of passengers and shippers for convenient air transportation services;

DESIRING to make it possible for airlines to offer the travelling and shipping public competitive prices and services in open markets;

DESIRING to have all sectors of the air transport industry, including airline workers, benefit in a liberalised agreement;

DESIRING to ensure the highest degree of safety and security in international air transport and reaffirming their grave concern about acts or threats against the security of aircraft, which jeopardize the safety of persons or property, adversely affect the operation of air transportation, and undermine public confidence in the safety of civil aviation;

NOTING the Convention on International Civil Aviation, opened for signature at Chicago on 7 December 1944;

RECOGNISING that government subsidies may adversely affect airline competition and may jeopardize the basic objectives of this Agreement;

AFFIRMING the importance of protecting the environment in developing and implementing international aviation policy;

NOTING the importance of protecting consumers, including the protections afforded by the Convention for the Unification of Certain Rules for International Carriage by Air, done at Montreal 28 May 1999;

INTENDING to build upon the framework of existing agreements with the goal of opening access to markets and maximising benefits for consumers, airlines, labour, and communities on both sides of the Atlantic;

RECOGNISING the importance of enhancing the access of their airlines to global capital markets in order to strengthen competition and promote the objectives of this Agreement;

INTENDING to establish a precedent of global significance to promote the benefits of liberalisation in this crucial economic sector;

HAVE AGREED AS FOLLOWS:

Article 1

Definitions

For the purposes of this Agreement, unless otherwise stated, the term:

1. 'Agreement' means this Agreement, its Annexes and Appendix, and any amendments thereto;

2. 'air transportation' means the carriage by aircraft of passengers, baggage, cargo, and mail, separately or in combination, held out to the public for remuneration or hire;

3. 'Convention' means the Convention on International Civil Aviation, opened for signature at Chicago on 7 December 1944, and includes:

(a) any amendment that has entered into force under Article 94(a) of the Convention and has been ratified by both the United States and the Member State or Member States as is relevant to the issue in question,

and

(b) any Annex or any amendment thereto adopted under Article 90 of the Convention, insofar as such Annex or amendment is at any given time effective for both the United States and the Member State or Member States as is relevant to the issue in question;

4. 'full cost' means the cost of providing service plus a reasonable charge for administrative overhead;

5. 'international air transportation' means air transportation that passes through the airspace over the territory of more than one State;

6. 'Party' means either the United States or the European Community and its Member States;

7. 'price' means any fare, rate or charge for the carriage of passengers, baggage and/or cargo (excluding mail) in air transportation, including surface transportation in connection with international air transportation, if applicable, charged by airlines, including their agents, and the conditions governing the availability of such fare, rate or charge;

8. 'stop for non-traffic purposes' means a landing for any purpose other than taking on or discharging passengers, baggage, cargo and/or mail in air transportation;

9. 'territory' means, for the United States, the land areas (mainland and islands), internal waters and territorial sea under its sovereignty or jurisdiction, and, for the European Community and its Member States, the land areas (mainland and islands), internal waters and territorial sea in which the Treaty establishing the European Community is applied and under the conditions laid down in that Treaty and any successor instrument; application of this Agreement to Gibraltar airport is understood to be without prejudice to the respective legal positions of the Kingdom of Spain and the United Kingdom with regard to the dispute over sovereignty over the territory in which the airport is situated, and to the continuing suspension of Gibraltar Airport from European Community aviation measures existing as at 18 September 2006 as between Member States, in accordance with the Ministerial statement on Gibraltar Airport agreed in Córdoba on September 2006;

and

10. 'user charge' means a charge imposed on airlines for the provision of airport, airport environmental, air navigation, or aviation security facilities or services including related services and facilities.

Article 2

Fair and equal opportunity

Each Party shall allow a fair and equal opportunity for the airlines of both Parties to compete in providing the international air transportation governed by this Agreement.

Article 3

Grant of rights

1. Each Party grants to the other Party the following rights for the conduct of international air transportation by the airlines of the other Party:

(a) the right to fly across its territory without landing;

(b) the right to make stops in its territory for non-traffic purposes;

(c) the right to perform international air transportation between points on the following routes:

(i) for airlines of the United States (hereinafter US airlines), from points behind the United States via the United States and intermediate points to any point or points in any Member State or States and beyond; and for all-cargo service, between any Member State and any point or points (including in any other Member States);

(ii) for airlines of the European Community and its Member States (hereinafter Community airlines), from points behind the Member States via the Member States and intermediate points to any point or points in the United States and beyond; for all-cargo service, between the United States and any point or points; and, for combination services, between any point or points in the United States and any point or points in any member of the European Common Aviation Area (hereinafter the ECAA) as of the date of signature of this Agreement;

and

(d) the rights otherwise specified in this Agreement.

2. Each airline may on any or all flights and at its option:

(a) operate flights in either or both directions;

(b) combine different flight numbers within one aircraft operation;

(c) serve behind, intermediate, and beyond points and points in the territories of the Parties in any combination and in any order;

(d) omit stops at any point or points;

(e) transfer traffic from any of its aircraft to any of its other aircraft at any point;

(f) serve points behind any point in its territory with or without change of aircraft or flight number and hold out and advertise such services to the public as through services;

(g) make stopovers at any points whether within or outside the territory of either Party;

(h) carry transit traffic through the other Party's territory;

and

(i) combine traffic on the same aircraft regardless of where such traffic originates;

without directional or geographic limitation and without loss of any right to carry traffic otherwise permissible under this Agreement.

3. The provisions of paragraph 1 of this Article shall apply subject to the requirements that:

(a) for US airlines, with the exception of all-cargo services, the transportation is part of a service that serves the United States,

and

(b) for Community airlines, with the exception of (i) all-cargo services and (ii) combination services between the United States and any member of the ECAA as of the date of signature of this Agreement, the transportation is part of a service that serves a Member State.

4. Each Party shall allow each airline to determine the frequency and capacity of the international air transportation it offers based upon commercial considerations in the marketplace. Consistent with this right, neither Party shall unilaterally limit the volume of traffic, frequency or regularity of service, or the aircraft type or types operated by the airlines of the other Party, nor shall it require the filing of schedules, programs for charter flights, or operational plans by airlines of the other Party, except as may be required for customs, technical, operational, or environmental (consistent with Article 15) reasons under uniform conditions consistent with Article 15 of the Convention.

5. Any airline may perform international air transportation without any limitation as to change, at any point, in type or number of aircraft operated; provided that, (a) for US airlines, with the exception of all-cargo services, the transportation is part of a service that serves the United States, and (b) for Community airlines, with the exception of (i) all-cargo services and (ii) combination services between the United States and a member of the ECAA as of the date of signature of this Agreement, the transportation is part of a service that serves a Member State.

6. Nothing in this Agreement shall be deemed to confer on:

(a) US airlines the right to take on board, in the territory of any Member State, passengers, baggage, cargo, or mail carried for compensation and destined for another point in the territory of that Member State;

(b) Community airlines the right to take on board, in the territory of the United States, passengers, baggage, cargo, or mail carried for compensation and destined for another point in the territory of the United States.

7. Community airlines' access to US Government procured transportation shall be governed by Annex 3.

Article 4

Authorisation

On receipt of applications from an airline of one Party, in the form and manner prescribed for operating authorisations and technical permissions, the other Party shall grant appropriate authorisations and permissions with minimum procedural delay, provided:

(a) for a US airline, substantial ownership and effective control of that airline are vested in the United States, US nationals, or both, and the airline is licensed as a US airline and has its principal place of business in US territory;

(b) for a Community airline, substantial ownership and effective control of that airline are vested in a Member State or States, nationals of such a State or States, or both, and the airline is licensed as a Community airline and has its principal place of business in the territory of the European Community;

(c) the airline is qualified to meet the conditions prescribed under the laws and regulations normally applied to the operation of international air transportation by the Party considering the application or applications;

and

(d) the provisions set forth in Article 8 (Safety) and Article 9 (Security) are being maintained and administered.

Article 5

Revocation of authorisation

1. Either Party may revoke, suspend or limit the operating authorisations or technical permissions or otherwise suspend or limit the operations of an airline of the other Party where:

(a) for a US airline, substantial ownership and effective control of that airline are not vested in the United States, US nationals, or both, or the airline is not licensed as a US airline or does not have its principal place of business in US territory;

(b) for a Community airline, substantial ownership and effective control of that airline are not vested in a Member State or States, nationals of such a State or States, or both, or the airline is not licensed as a Community airline or does not have its principal place of business in the territory of the European Community;

or

(c) that airline has failed to comply with the laws and regulations referred to in Article 7 (Application of Laws) of this Agreement.

2. Unless immediate action is essential to prevent further non-compliance with subparagraph 1(c) of this Article, the rights established by this Article shall be exercised only after consultation with the other Party.

3. This Article does not limit the rights of either Party to withhold, revoke, limit or impose conditions on the operating authorisation or technical permission of an airline or airlines of the other Party in accordance with the provisions of Article 8 (Safety) or Article 9 (Security).

Article 6

Additional matters related to ownership, investment, and control

Notwithstanding any other provision in this Agreement, the Parties shall implement the provisions of Annex 4 in their decisions under their respective laws and regulations concerning ownership, investment and control.

Article 7

Application of laws

1. The laws and regulations of a Party relating to the admission to 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 be applied to the aircraft utilised by the airlines of the other Party, and shall be complied with by such aircraft upon entering or departing from or while within the territory of the first Party.

2. While entering, within, or leaving the territory of one Party, the laws and regulations applicable within that territory relating to the admission to or departure from its territory of passengers, crew or cargo on aircraft (including regulations relating to entry, clearance, immigration, passports, customs and quarantine or, in the case of mail, postal regulations) shall be complied with by, or on behalf of, such passengers, crew or cargo of the other Party's airlines.

Article 8

Safety

1. The responsible authorities of the Parties shall recognise as valid, for the purposes of operating the air transportation provided for in this Agreement, certificates of airworthiness, certificates of competency, and licences issued or validated by each other and still in force, provided that the requirements for such certificates or licences at least equal the minimum standards that may be established pursuant to the Convention. The responsible authorities may, however, refuse to recognise as valid for purposes of flight above their own territory, certificates of competency and licences granted to or validated for their own nationals by such other authorities.

2. The responsible authorities of a Party may request consultations with other responsible authorities concerning the safety standards maintained by those authorities relating to aeronautical facilities, aircrews, aircraft, and operation of the airlines overseen by those authorities. Such consultations shall take place within 45 days of the request unless otherwise agreed. If following such consultations, the requesting responsible authorities find that those authorities do not effectively maintain and administer safety standards and requirements in these areas that at least equal the minimum standards that may be established pursuant to the Convention, the requesting responsible authorities shall notify those authorities of such findings and the steps considered necessary to conform with these minimum standards, and those authorities shall take appropriate corrective action. The requesting responsible authorities reserve the right to withhold, revoke or limit the operating authorisation or technical permission of an airline or airlines for which those authorities provide safety oversight in the event those authorities do not take such appropriate corrective action within a reasonable time and to take immediate action as to such airline or airlines if essential to prevent further non-compliance with the duty to maintain and administer the aforementioned standards and requirements resulting in an immediate threat to flight safety.

3. The European Commission shall simultaneously receive all requests and notifications under this Article.

4. Nothing in this Article shall prevent the responsible authorities of the Parties from conducting safety discussions, including those relating to the routine application of safety standards and requirements or to emergency situations that may arise from time to time.

Article 9

Security

1. In accordance with their rights and obligations under international law, the 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 Parties shall in particular act in conformity with the following agreements: the Convention on Offences and Certain Other Acts Committed on Board Aircraft, done at Tokyo, 14 September 1963, the Convention for the Suppression of Unlawful Seizure of Aircraft, done at The Hague, 16 December 1970, the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal, 23 September 1971, and the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, done at Montreal, 24 February 1988.

2. The Parties shall provide upon request all necessary assistance to each other to address any threat to the security of civil aviation, including the prevention of acts of unlawful seizure of civil aircraft and other unlawful acts against the safety of such aircraft, of their passengers and crew, and of airports and air navigation facilities.

3. The Parties shall, in their mutual relations, act in conformity with the aviation security standards and appropriate recommended practices established by the International Civil Aviation Organisation and designated as Annexes to the Convention; they shall require that operators of aircraft of their registries, 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.

4. Each Party shall ensure that effective measures are taken within its territory to protect aircraft and to inspect passengers, crew, and their baggage and carry-on items, as well as cargo and aircraft stores, prior to and during boarding or loading; and that those measures are adjusted to meet increased threats to the security of civil aviation. Each Party agrees that the security provisions required by the other Party for departure from and while within the territory of that other Party must be observed. Each Party shall give positive consideration to any request from the other Party for special security measures to meet a particular threat.

5. With full regard and mutual respect for each other's sovereignty, a Party may adopt security measures for entry into its territory. Where possible, that Party shall take into account the security measures already applied by the other Party and any views that the other Party may offer. Each Party recognises, however, that nothing in this Article limits the ability of a Party to refuse entry into its territory of any flight or flights that it deems to present a threat to its security.

6. A Party may take emergency measures including amendments to meet a specific security threat. Such measures shall be notified immediately to the responsible authorities of the other Party.

7. The Parties underline the importance of working towards compatible practices and standards as a means of enhancing air transport security and minimising regulatory divergence. To this end, the Parties shall fully utilise and develop existing channels for the discussion of current and proposed security measures. The Parties expect that the discussions will address, among other issues, new security measures proposed or under consideration by the other Party, including the revision of security measures occasioned by a change in circumstances; measures proposed by one Party to meet the security requirements of the other Party; possibilities for the more expeditious adjustment of standards with respect to aviation security measures; and compatibility of the requirements of one Party with the legislative obligations of the other Party. Such discussions should serve to foster early notice and prior discussion of new security initiatives and requirements.

8. Without prejudice to the need to take immediate action in order to protect transportation security, the Parties affirm that when considering security measures, a Party shall evaluate possible adverse effects on international air transportation and, unless constrained by law, shall take such factors into account when it determines what measures are necessary and appropriate to address those security concerns.

9. When an incident or threat of an incident of unlawful seizure of aircraft or other unlawful acts against the safety of passengers, crew, aircraft, airports or air navigation facilities occurs, the Parties shall assist each other by facilitating communications and other appropriate measures intended to terminate rapidly and safely such incident or threat.

10. When a Party has reasonable grounds to believe that the other Party has departed from the aviation security provisions of this Article, the responsible authorities of that Party may request immediate consultations with the responsible 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.

11. Separate from airport assessments undertaken to determine conformity with the aviation security standards and practices referred to in paragraph 3 of this Article, a Party may request the cooperation of the other Party in assessing whether particular security measures of that other Party meet the requirements of the requesting Party. The responsible authorities of the Parties shall coordinate in advance the airports to be assessed and the dates of assessment and establish a procedure to address the results of such assessments. Taking into account the results of the assessments, the requesting Party may decide that security measures of an equivalent standard are applied in the territory of the other Party in order that transfer passengers, transfer baggage, and/or transfer cargo may be exempted from re-screening in the territory of the requesting Party. Such a decision shall be communicated to the other Party.

Article 10

Commercial opportunities

1. The airlines of each Party shall have the right to establish offices in the territory of the other Party for the promotion and sale of air transportation and related activities.

2. The airlines of each Party shall be entitled, in accordance with the laws and regulations of the other Party relating to entry, residence, and employment, to bring in and maintain in the territory of the other Party managerial, sales, technical, operational, and other specialist staff who are required to support the provision of air transportation.

3. (a) Without prejudice to subparagraph (b) below, each airline shall have in relation to ground handling in the territory of the other Party:

(i) the right to perform its own ground-handling (self-handling) or, at its option

(ii) the right to select among competing suppliers that provide ground-handling services in whole or in part where such suppliers are allowed market access on the basis of the laws and regulations of each Party, and where such suppliers are present in the market.

(b) The rights under (i) and (ii) in subparagraph (a) above shall be subject only to specific constraints of available space or capacity arising from the need to maintain safe operation of the airport. Where such constraints preclude self-handling and where there is no effective competition between suppliers that provide ground-handling services, all such services shall be available on both an equal and an adequate basis to all airlines; prices of such services shall not exceed their full cost including a reasonable return on assets, after depreciation.

4. Any airline of each Party may engage in the sale of air transportation in the territory of the other Party directly and/or, at the airline's discretion, through its sales agents or other intermediaries appointed by the airline. Each airline shall have the right to sell such transportation, and any person shall be free to purchase such transportation, in the currency of that territory or in freely convertible currencies.

5. Each airline shall have the right to convert and remit from the territory of the other Party to its home territory and, except where inconsistent with generally applicable law or regulation, the country or countries of its choice, on demand, local revenues in excess of sums locally disbursed. Conversion and remittance shall be permitted promptly without restrictions or taxation in respect thereof at the rate of exchange applicable to current transactions and remittance on the date the carrier makes the initial application for remittance.

6. The airlines of each Party shall be permitted to pay for local expenses, including purchases of fuel, in the territory of the other Party in local currency. At their discretion, the airlines of each Party may pay for such expenses in the territory of the other Party in freely convertible currencies according to local currency regulation.

7. In operating or holding out services under the Agreement, any airline of a Party may enter into cooperative marketing arrangements, such as blocked-space or code-sharing arrangements, with:

(a) any airline or airlines of the Parties;

(b) any airline or airlines of a third country;

and

(c) a surface (land or maritime) transportation provider of any country;

provided that (i) all participants in such arrangements hold the appropriate authority and (ii) the arrangements meet the conditions prescribed under the laws and regulations normally applied by the Parties to the operation or holding out of international air transportation.

8. The airlines of each Party shall be entitled to enter into franchising or branding arrangements with companies, including airlines, of either Party or third countries, provided that the airlines hold the appropriate authority and meet the conditions prescribed under the laws and regulations normally applied by the Parties to such arrangements. Annex 5 shall apply to such arrangements.

9. The airlines of each Party may enter into arrangements for the provision of aircraft with crew for international air transportation with:

(a) any airlines or airlines of the Parties;

and

(b) any airlines or airlines of a third country;

provided that all participants in such arrangements hold the appropriate authority and meet the conditions prescribed under the laws and regulations normally applied by the Parties to such arrangements. Neither Party shall require an airline of either Party providing the aircraft to hold traffic rights under this Agreement for the routes on which the aircraft will be operated.

10. Notwithstanding any other provision of this Agreement, airlines and indirect providers of cargo transportation of the Parties shall be permitted, without restriction, to employ in connection with international air transportation any surface transportation for cargo to or from any points in the territories of the Parties, or in third countries, including transport to and from all airports with customs facilities, and including, where applicable, the right to transport cargo in bond under applicable laws and regulations. Such cargo, whether moving by surface or by air, shall have access to airport customs processing and facilities. Airlines may elect to perform their own surface transportation or to provide it through arrangements with other surface carriers, including surface transportation operated by other airlines and indirect providers of cargo air transportation. Such inter-modal cargo services may be offered at a single, through price for the air and surface transportation combined, provided that shippers are not misled as to the facts concerning such transportation.

Article 11

Customs duties and charges

1. On arriving in the territory of one Party, aircraft operated in international air transportation by the airlines of the other Party, their regular equipment, ground equipment, fuel, lubricants, consumable technical supplies, spare parts (including engines), aircraft stores (including but not limited to such items of food, beverages and liquor, tobacco and other products destined for sale to or use by passengers in limited quantities during flight), and other items intended for or used solely in connection with the operation or servicing of aircraft engaged in international air transportation shall be exempt, on the basis of reciprocity, from all import restrictions, property taxes and capital levies, customs duties, excise taxes, and similar fees and charges that are (a) imposed by the national authorities or the European Community, and (b) not based on the cost of services provided, provided that such equipment and supplies remain on board the aircraft.

2. There shall also be exempt, on the basis of reciprocity, from the taxes, levies, duties, fees and charges referred to in paragraph 1 of this Article, with the exception of charges based on the cost of the service provided:

(a) aircraft stores introduced into or supplied in the territory of a Party and taken on board, within reasonable limits, for use on outbound aircraft of an airline of the other Party engaged in international air transportation, even when these stores are to be used on a part of the journey performed over the territory of the Party in which they are taken on board;

(b) ground equipment and spare parts (including engines) introduced into the territory of a Party for the servicing, maintenance, or repair of aircraft of an airline of the other Party used in international air transportation;

(c) fuel, lubricants and consumable technical supplies introduced into or supplied in the territory of a Party for use in an aircraft of an airline of the other Party engaged in international air transportation, even when these supplies are to be used on a part of the journey performed over the territory of the Party in which they are taken on board;

and

(d) printed matter, as provided for by the customs legislation of each Party, introduced into or supplied in the territory of one Party and taken on board for use on outbound aircraft of an airline of the other Party engaged in international air transportation, even when these stores are to be used on a part of the journey performed over the territory of the Party in which they are taken on board.

3. Equipment and supplies referred to in paragraphs 1 and 2 of this Article may be required to be kept under the supervision or control of the appropriate authorities.

4. The exemptions provided by this Article shall also be available where the airlines of one Party have contracted with another airline, which similarly enjoys such exemptions from the other Party, for the loan or transfer in the territory of the other Party of the items specified in paragraphs 1 and 2 of this Article.

5. Nothing in this Agreement shall prevent either Party from imposing taxes, levies, duties, fees or charges on goods sold other than for consumption on board to passengers during a sector of an air service between two points within its territory at which embarkation or disembarkation is permitted.

6. In the event that two or more Member States envisage applying to the fuel supplied to aircraft of US airlines in the territories of such Member States for flights between such Member States any waiver of the exemption contained in Article 14(b) of Council Directive 2003/96/EC of 27 October 2003, the Joint Committee shall consider that issue, in accordance with paragraph 4(e) of Article 18.

7. A Party may request the assistance of the other Party, on behalf of its airline or airlines, in securing an exemption from taxes, duties, charges and fees imposed by State and local governments or authorities on the goods specified in paragraphs 1 and 2 of this Article, as well as from fuel through-put charges, in the circumstances described in this Article, except to the extent that the charges are based on the cost of providing the service. In response to such a request, the other Party shall bring the views of the requesting Party to the attention of the relevant governmental unit or authority and urge that those views be given appropriate consideration.

Article 12

User charges

1. User charges that may be imposed by the competent charging authorities or bodies of each Party on the airlines of the other Party shall be just, reasonable, not unjustly discriminatory, and equitably apportioned among categories of users. In any event, any such user charges shall be assessed on the airlines of the other Party on terms not less favourable than the most favourable terms available to any other airline at the time the charges are assessed.

2. User charges imposed on the airlines of the other Party may reflect, but shall not exceed, the full cost to the competent charging authorities or bodies of providing the appropriate airport, airport environmental, air navigation, and aviation security facilities and services at the airport or within the airport system. Such charges may include a reasonable return on assets, after depreciation. Facilities and services for which charges are made shall be provided on an efficient and economic basis.

3. Each Party shall encourage consultations between the competent charging authorities or bodies in its territory and the airlines using the services and facilities, and shall encourage the competent charging authorities or bodies and the airlines to exchange such information as may be necessary to permit an accurate review of the reasonableness of the charges in accordance with the principles of paragraphs 1 and 2 of this Article. Each Party shall encourage the competent charging authorities to provide users with reasonable notice of any proposal for changes in user charges to enable users to express their views before changes are made.

4. Neither Party shall be held, in dispute resolution procedures pursuant to Article 19, to be in breach of a provision of this Article, unless (a) it fails to undertake a review of the charge or practice that is the subject of complaint by the other Party within a reasonable amount of time; or (b) following such a review it fails to take all steps within its power to remedy any charge or practice that is inconsistent with this Article.

Article 13

Pricing

1. Prices for air transportation services operated pursuant to this Agreement shall be established freely and shall not be subject to approval, nor may they be required to be filed.

2. Notwithstanding paragraph 1:

(a) the introduction or continuation of a price proposed to be charged or charged by a US airline for international air transportation between a point in one Member State and a point in another Member State shall be consistent with Article 1(3) of Council Regulation (EEC) 2409/92 of 23 July 1992, or a not more restrictive successor regulation;

(b) under this paragraph, the airlines of the Parties shall provide immediate access, on request, to information on historical, existing, and proposed prices to the responsible authorities of the Parties in a manner and format acceptable to those authorities.

Article 14

Government subsidies and support

1. The Parties recognise that government subsidies and support may adversely affect the fair and equal opportunity of airlines to compete in providing the international air transportation governed by this Agreement.

2. If one Party believes that a government subsidy or support being considered or provided by the other Party for or to the airlines of that other Party would adversely affect or is adversely affecting that fair and equal opportunity of the airlines of the first Party to compete, it may submit observations to that Party. Furthermore, it may request a meeting of the Joint Committee as provided in Article 18, to consider the issue and develop appropriate responses to concerns found to be legitimate.

3. Each Party may approach responsible governmental entities in the territory of the other Party, including entities at the State, provincial or local level, if it believes that a subsidy or support being considered or provided by such entities will have the adverse competitive effects referred to in paragraph 2. If a Party decides to make such direct contact it shall inform promptly the other Party through diplomatic channels. It may also request a meeting of the Joint Committee.

4. Issues raised under this Article could include, for example, capital injections, cross-subsidisation, grants, guarantees, ownership, relief or tax exemption, by any governmental entities.

Article 15

Environment

1. The Parties recognise the importance of protecting the environment when developing and implementing international aviation policy. The Parties recognise that the costs and benefits of measures to protect the environment must be carefully weighed in developing international aviation policy.

2. When a Party is considering proposed environmental measures, it should evaluate possible adverse effects on the exercise of rights contained in this Agreement, and, if such measures are adopted, it should take appropriate steps to mitigate any such adverse effects.

3. When environmental measures are established, the aviation environmental standards adopted by the International Civil Aviation Organisation in Annexes to the Convention shall be followed except where differences have been filed. The Parties shall apply any environmental measures affecting air services under this Agreement in accordance with Article 2 and 3(4) of this Agreement.

4. If one Party believes that a matter involving aviation environmental protection raises concerns for the application or implementation of this Agreement, it may request a meeting of the Joint Committee, as provided in Article 18, to consider the issue and develop appropriate responses to concerns found to be legitimate.

Article 16

Consumer protection

The Parties affirm the importance of protecting consumers, and either Party may request a meeting of the Joint Committee to discuss consumer protection issues that the requesting Party identifies as significant.

Article 17

Computer reservation systems

1. Computer reservation systems (CRS) vendors operating in the territory of one Party shall be entitled to bring in, maintain, and make freely available their CRSs to travel agencies or travel companies whose principal business is the distribution of travel-related products in the territory of the other Party provided the CRS complies with any relevant regulatory requirements of the other Party.

2. Neither Party shall, in its territory, impose or permit to be imposed on the CRS vendors of the other Party more stringent requirements with respect to CRS displays (including edit and display parameters), operations, practices, sales, or ownership than those imposed on its own CRS vendors.

3. Owners/operators of CRSs of one Party that comply with the relevant regulatory requirements of the other Party, if any, shall have the same opportunity to own CRSs within the territory of the other Party as do owners/operators of that Party.

Article 18

The Joint Committee

1. A Joint Committee consisting of representatives of the Parties shall meet at least once a year to conduct consultations relating to this Agreement and to review its implementation.

2. A Party may also request a meeting of the Joint Committee to seek to resolve questions relating to the interpretation or application of this Agreement. However, with respect to Article 20 or Annex 2, the Joint Committee may consider questions only relating to the refusal by either Participant to implement the commitments undertaken, and the impact of competition decisions on the application of this Agreement. Such a meeting shall begin at the earliest possible date, but not later than 60 days from the date of receipt of the request, unless otherwise agreed.

3. The Joint Committee shall review, no later than at its first annual meeting and thereafter as appropriate, the overall implementation of the Agreement, including any effects of aviation infrastructure constraints on the exercise of rights provided for in Article 3, the effects of security measures taken under Article 9, the effects on the conditions of competition, including in the field of Computer Reservation Systems, and any social effects of the implementation of the Agreement.

4. The Joint Committee shall also develop cooperation by:

(a) fostering expert-level exchanges on new legislative or regulatory initiatives and developments, including in the fields of security, safety, the environment, aviation infrastructure (including slots), and consumer protection;

(b) considering the social effects of the Agreement as it is implemented and developing appropriate responses to concerns found to be legitimate;

(c) considering potential areas for the further development of the Agreement, including the recommendation of amendments to the Agreement;

(d) maintaining an inventory of issues regarding government subsidies or support raised by either Party in the Joint Committee;

(e) making decisions, on the basis of consensus, concerning any matters with respect to application of paragraph 6 of Article 11;

(f) developing, within one year of provisional application, approaches to regulatory determinations with regard to airline fitness and citizenship, with the goal of achieving reciprocal recognition of such determinations;

(g) developing a common understanding of the criteria used by the Parties in making their respective decisions in cases concerning airline control, to the extent consistent with confidentiality requirements;

(h) fostering consultation, where appropriate, on air transport issues dealt with in international organisations and in relations with third countries, including consideration of whether to adopt a joint approach;

(i) taking, on the basis of consensus, the decisions to which paragraph 3 of Article 1 of Annex 4 and paragraph 3 of Article 2 of Annex 4 refer.

5. The Parties share the goal of maximising the benefits for consumers, airlines, labour, and communities on both sides of the Atlantic by extending this Agreement to include third countries. To this end, the Joint Committee shall work to develop a proposal regarding the conditions and procedures, including any necessary amendments to this Agreement, that would be required for third countries to accede to this Agreement.

6. The Joint Committee shall operate on the basis of consensus.

Article 19

Arbitration

1. Any dispute relating to the application or interpretation of this Agreement, other than issues arising under Article 20 or under Annex 2, that is not resolved by a meeting of the Joint Committee may be referred to a person or body for decision by agreement of the Parties. If the Parties do not so agree, the dispute shall, at the request of either Party, be submitted to arbitration in accordance with the procedures set forth below.

2. Unless the Parties otherwise agree, arbitration shall be by a tribunal of three arbitrators to be constituted as follows:

(a) Within 20 days after the receipt of a request for arbitration, each Party shall name one arbitrator. Within 45 days after these two arbitrators have been named, they shall by agreement appoint a third arbitrator, who shall act as President of the tribunal.

(b) If either Party fails to name an arbitrator, or if the third arbitrator is not appointed in accordance with subparagraph (a) of this paragraph, either Party may request the President of the Council of the International Civil Aviation Organisation to appoint the necessary arbitrator or arbitrators within 30 days of receipt of that request. If the President of the Council of the International Civil Aviation Organisation is a national of either the United States or a Member State, the most senior Vice President of that Council who is not disqualified on that ground shall make the appointment.

3. Except as otherwise agreed, the tribunal shall determine the limits of its jurisdiction in accordance with this Agreement and shall establish its own procedural rules. At the request of a Party, the tribunal, once formed, may ask the other Party to implement interim relief measures pending the tribunal's final determination. At the direction of the tribunal or at the request of either Party, a conference shall be held not later than 15 days after the tribunal is fully constituted for the tribunal to determine the precise issues to be arbitrated and the specific procedures to be followed.

4. Except as otherwise agreed or as directed by the tribunal:

(a) The statement of claim shall be submitted within 30 days of the time the tribunal is fully constituted, and the statement of defence shall be submitted 40 days thereafter. Any reply by the claimant shall be submitted within 15 days of the submission of the statement of defence. Any reply by the respondent shall be submitted within 15 days thereafter.

(b) The tribunal shall hold a hearing at the request of either Party, or may hold a hearing on its own initiative, within 15 days after the last reply is filed.

5. The tribunal shall attempt to render a written decision within 30 days after completion of the hearing or, if no hearing is held, within 30 days after the last reply is submitted. The decision of the majority of the tribunal shall prevail.

6. The Parties may submit requests for clarification of the decision within 10 days after it is rendered and any clarification given shall be issued within 15 days of such request.

7. If the tribunal determines that there has been a violation of this Agreement and the responsible Party does not cure the violation, or does not reach agreement with the other Party on a mutually satisfactory resolution within 40 days after notification of the tribunal's decision, the other Party may suspend the application of comparable benefits arising under this Agreement until such time as the Parties have reached agreement on a resolution of the dispute. Nothing in this paragraph shall be construed as limiting the right of either Party to take proportional measures in accordance with international law.

8. The expenses of the tribunal, including the fees and expenses of the arbitrators, shall be shared equally by the Parties. Any expenses incurred by the President of the Council of the International Civil Aviation Organisation, or by any Vice President of that Council, in connection with the procedures of paragraph 2(b) of this Article shall be considered to be part of the expenses of the tribunal.

Article 20

Competition

1. The Parties recognise that competition among airlines in the transatlantic market is important to promote the objectives of this Agreement, and confirm that they apply their respective competition regimes to protect and enhance overall competition and not individual competitors.

2. The Parties recognise that differences may arise concerning the application of their respective competition regimes to international aviation affecting the transatlantic market, and that competition among airlines in that market might be fostered by minimising those differences.

3. The Parties recognise that cooperation between their respective competition authorities serves to promote competition in markets and has the potential to promote compatible regulatory results and to minimise differences in approach with respect to their respective competition reviews of inter-carrier agreements. Consequently, the Parties shall further this cooperation to the extent feasible, taking into account the different responsibilities, competencies and procedures of the authorities, in accordance with Annex 2.

4. The Joint Committee shall be briefed annually on the results of the cooperation under Annex 2.

Article 21

Second stage negotiations

1. The Parties share the goal of continuing to open access to markets and to maximise benefits for consumers, airlines, labour, and communities on both sides of the Atlantic, including the facilitation of investment so as to better reflect the realities of a global aviation industry, the strengthening of the transatlantic air transportation system, and the establishment of a framework that will encourage other countries to open their own air services markets. The Parties shall begin negotiations not later than 60 days after the date of provisional application of this Agreement, with the goal of developing the next stage expeditiously.

2. To that end, the agenda for the second stage negotiations shall include the following items of priority interest to one or both Parties:

(a) further liberalisation of traffic rights;

(b) additional foreign investment opportunities;

(c) effect of environmental measures and infrastructure constraints on the exercise of traffic rights;

(d) further access to Government-financed air transportation;

and

(e) provision of aircraft with crew.

3. The Parties shall review their progress towards a second stage agreement no later than 18 months after the date when the negotiations are due to start in accordance with paragraph 1. If no second stage agreement has been reached by the Parties within 12 months of the start of the review, each Party reserves the right thereafter to suspend rights specified in this Agreement. Such suspension shall take effect no sooner than the start of the International Air Transport Association (IATA) traffic season that commences no less than 12 months after the date on which notice of suspension is given.

Article 22

Relationship to other agreements

1. During the period of provisional application pursuant to Article 25 of this Agreement, the bilateral agreements listed in section 1 of Annex 1, shall be suspended, except to the extent provided in section 2 of Annex 1.

2. Upon entry into force pursuant to Article 26 of this Agreement, this Agreement shall supersede the bilateral agreements listed in section 1 of Annex 1, except to the extent provided in section 2 of Annex 1.

3. If the Parties become parties to a multilateral agreement, or endorse a decision adopted by the International Civil Aviation Organisation or another international organisation, that addresses matters covered by this Agreement, they shall consult in the Joint Committee to determine whether this Agreement should be revised to take into account such developments.

Article 23

Termination

Either Party may, at any time, give notice in writing through diplomatic channels to the other Party of its decision to terminate this Agreement. Such notice shall be sent simultaneously to the International Civil Aviation Organisation. This Agreement shall terminate at midnight GMT at the end of the International Air Transport Association (IATA) traffic season in effect one year following the date of written notification of termination, unless the notice is withdrawn by agreement of the Parties before the end of this period.

Article 24

Registration with ICAO

This Agreement and all amendments thereto shall be registered with the International Civil Aviation Organisation.

Article 25

Provisional application

Pending entry into force pursuant to Article 26:

1. The Parties agree to apply this Agreement from 30 March 2008.

2. Either Party may at any time give notice in writing through diplomatic channels to the other Party of a decision to no longer apply this Agreement. In that event, application shall cease at midnight GMT at the end of the International Air Transport Association (IATA) traffic season in effect one year following the date of written notification, unless the notice is withdrawn by agreement of the Parties before the end of this period.

Article 26

Entry into force

This Agreement shall enter into force one month after the date of the later note in an exchange of diplomatic notes between the Parties confirming that all necessary procedures for entry into force of this Agreement have been completed. For purposes of this exchange, the United States shall deliver to the European Community the diplomatic note to the European Community and its Member States, and the European Community shall deliver to the United States the diplomatic note or notes from the European Community and its Member States. The diplomatic note or notes from the European Community and its Member States shall contain communications from each Member State confirming that its necessary procedures for entry into force of this Agreement have been completed.

IN WITNESS WHEREOF the undersigned, being duly authorised, have signed this Agreement.

DONE at Brussels on the twenty-fifth day of April 2007 and at Washington on the thirtieth day of April 2007, in duplicate.

За Република България



Pour le Royaume de Belgique
Voor het Koninkrijk België
Für das Königreich Belgien



Cette signature engage également la Communauté française, la Communauté flamande, la Communauté germanophone, la Région wallonne, la Région flamande et la Région de Bruxelles-Capitale.

Deze handtekening verbindt eveneens de Vlaamse Gemeenschap, de Franse Gemeenschap, de Duitstalige Gemeenschap, het Vlaamse Gewest, het Waalse Gewest en het Brussels Hoofdstedelijk Gewest.

Diese Unterschrift bindet zugleich die Deutschsprachige Gemeinschaft, die Flämische Gemeinschaft, die Französische Gemeinschaft, die Wallonische Region, die Flämische Region und die Region Brüssel-Hauptstadt.

Za Českou republiku



På Kongeriget Danmarks vegne



Für die Bundesrepublik Deutschland



Eesti Vabariigi nimel



Για την Ελληνική Δημοκρατία



Por el Reino de España



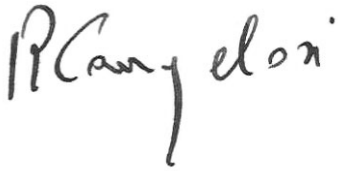
Pour la République française



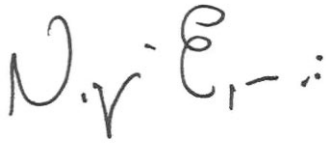
Thar cheann Na hÉireann
For Ireland



Per la Repubblica italiana



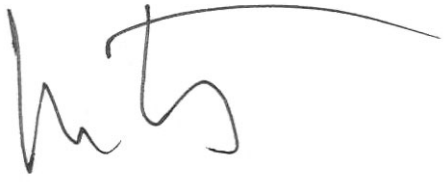
Για την Κυπριακή Δημοκρατία



Latvijas Republikas vārdā



Lietuvos Respublikos vardu



Pour le Grand-Duché de Luxembourg



A Magyar Köztársaság részéről



Għal Malta



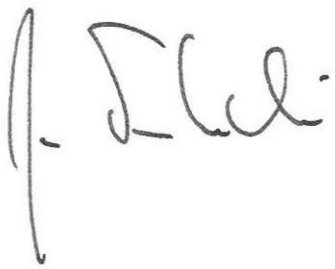
Voor het Koninkrijk der Nederlanden



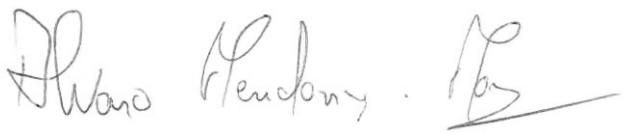
Für die Republik Österreich



W imieniu Rzeczypospolitej Polskiej



Pela República Portuguesa



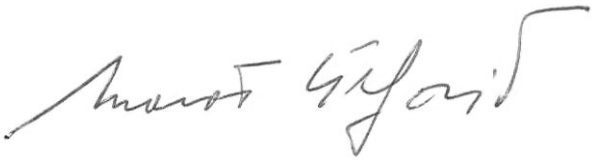
Pentru România



Za Republiko Slovenijo



Za Slovenskú republiku



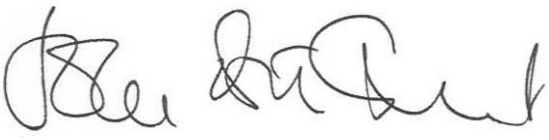
Suomen tasavallan puolesta



För Konungariket Sverige



For the United Kingdom of Great Britain and Northerm Ireland



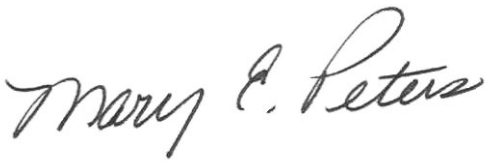
За Европейската общност
For the European Community
Por la Comunidad Europea
Za Evropské společenství
For Det Europæiske Fællesskab
Für die Europäische Gemeinschaft
Euroopa Ühenduse nimel
Για την Ευρωπαϊκή Κοινότητα
Pour la Communauté européenne
Per la Comunità europea
Eiropas Kopienas vārdā
Europos bendrijos vardu
az Európai Közösség részéről
Għall-Komunità Ewropea
Voor de Europese Gemeenschap
W imieniu Wspólnoty Europejskiej
Pela Comunidade Europeia
Pentru Comunitatea Europeană
Za Európske spoločenstvo
za Evropsko skupnost
Euroopan yhteisön puolesta
På Europeiska gemenskapens vägnar





For the United States of America





ANNEX 1

Section 1

As provided in Article 22 of this Agreement, the following bilateral agreements between the United States and Member States shall be suspended or superseded by this Agreement:

(a) The Republic of Austria: Air services agreement, signed at Vienna, 16 March 1989; amended 14 June 1995.

(b) The Kingdom of Belgium: Air transport agreement, effected by exchange of notes at Washington, 23 October 1980; amended 22 September and 12 November 1986; amended 5 November 1993 and 12 January 1994.

(amendment concluded on 5 September 1995 (provisionally applied).)

(c) The Republic of Bulgaria: Civil aviation security Agreement, signed at Sofia 24 April 1991.

(d) The Czech Republic: Air transport agreement, signed at Prague, 10 September 1996; amended 4 June 2001 and 14 February 2002.

(e) The Kingdom of Denmark: Agreement relating to air transport services, effected by exchange of notes at Washington, 16 December 1944; amended 6 August 1954; amended 16 June 1995.

(f) The Republic of Finland: Air transport agreement, signed at Helsinki, 29 March 1949; related protocol signed 12 May 1980; agreement amending 1949 agreement and 1980 protocol concluded 9 June 1995.

(g) The French Republic: Air transport agreement, signed at Washington, 18 June 1998; amended 10 October 2000; amended 22 January 2002.

(h) The Federal Republic of Germany: Air transport agreement and exchanges of notes, signed at Washington, 7 July 1955; amended 25 April 1989.

(related protocol concluded 1 November 1978; related agreement concluded 24 May 1994; protocol amending the 1955 agreement concluded on 23 May 1996; agreement amending the 1996 protocol concluded on 10 October 2000 (all provisionally applied).)

(i) The Hellenic Republic: Air transport agreement, signed at Athens, 31 July 1991; extended until 31 July 2007 by exchange of notes of 22 and 28 June 2006.

(j) The Republic of Hungary: Air transport agreement and memorandum of understanding, signed at Budapest, 12 July 1989; extended until 12 July 2007 by exchange of notes of 11 and 20 July 2006.

(k) Ireland: Agreement relating to air transport services, effected by exchange of notes at Washington, 3 February 1945; amended 25 January 1988 and 29 September 1989; amended 25 July and 6 September 1990.

(Memorandum of consultations, signed at Washington, 28 October 1993 (provisionally applied).)

(l) The Italian Republic: Air transport agreement, with memorandum and exchange of notes, signed at Rome, 22 June 1970; amended 25 October 1988; related memorandum of understanding signed 27 September 1990; amendment of 1970 agreement and 1990 MOU concluded 22 November and 23 December 1991; amendment of 1970 agreement and 1990 MOU concluded 30 May and 21 October 1997; agreement supplementing the 1970 agreement concluded 30 December 1998 and 2 February 1999.

(Protocol amending the 1970 agreement concluded 6 December 1999 (provisionally applied).)

(m) The Grand Duchy of Luxembourg: Air transport agreement, signed at Luxembourg, 19 August 1986; amended 6 June 1995; amended 13 and 21 July 1998.

(n) Malta: Air transport agreement, signed at Washington, 12 October 2000.

(o) The Kingdom of the Netherlands: Air transport agreement, signed at Washington, 3 April 1957; protocol amending the 1957 agreement concluded on 31 March 1978; amendment of 1978 protocol concluded 11 June 1986; amendment of 1957 agreement concluded 13 October and 22 December 1987; amendment of 1957 agreement concluded 29 January and 13 March 1992; amendment of 1957 agreement and 1978 protocol concluded 14 October 1992.

(p) The Republic of Poland: Air transport agreement, signed at Warsaw, 16 June 2001.

(q) The Portuguese Republic: Air transport agreement, signed at Lisbon, 30 May 2000.

(r) Romania: Air transport agreement, signed at Washington, 15 July 1998.

(s) The Slovak Republic: Air transport agreement, signed at Bratislava, 22 January 2001.

(t) The Kingdom of Spain: Air transport agreement signed at Madrid, 20 February 1973; related agreement of 20 February 31 March and 7 April 1987; amendment of 1973 agreement concluded 31 May 1989; amendment of 1973 agreement concluded 27 November 1991.

(u) The Kingdom of Sweden: Agreement relating to air transport services, effected by exchange of notes at Washington, 16 December 1944; amended 6 August 1954; amended 16 June 1995.

(v) The United Kingdom of Great Britain and Northern Ireland: Agreement concerning air services, and exchange of letters, signed at Bermuda, 23 July 1977; agreement relating to North Atlantic air fares, concluded 17 March 1978; agreement amending the 1977 agreement, concluded 25 April 1978; agreement modifying and extending the 1978 agreement relating to North Atlantic air fares, concluded 2 and 9 November 1978; agreement amending the 1977 agreement, concluded 4 December 1980; agreement amending the 1977 agreement, concluded 20 February 1985; agreement amending Article 7, Annex 2, and Annex 5 of the 1977 agreement, concluded 25 May 1989; agreement concerning amendments of the 1977 agreement, termination of the US/UK Arbitration Concerning Heathrow Airport User Charges and the request for arbitration made by the United Kingdom in its embassy's note No 87 of 13 October 1993 and settlement of the matters which gave rise to those proceedings, concluded 11 March 1994; agreement amending the 1977 agreement, concluded 27 March 1997.

(Arrangements, being provisionally applied, contained in the memorandum of consultations dated 11 September 1986; arrangements contained in the exchange of letters dated 27 July 1990; arrangements contained in the memorandum of consultations of 11 March 1991; arrangements contained in the exchange of letters dated 6 October 1994; arrangements contained in the memorandum of consultations of 5 June 1995; arrangements contained in the exchange of letters dated 31 March and 3 April 2000 (all provisionally applied)).

Section 2

Notwithstanding section 1 of this Annex, for areas that are not encompassed within the definition of 'territory' in Article 1 of this Agreement, the agreements in paragraphs (e) (Denmark–United States), (g) (France–United States), and (v) (United Kingdom–United States) of that section shall continue to apply, according to their terms.

Section 3

Notwithstanding Article 3 of this Agreement, US airlines shall not have the right to provide all-cargo services, that are not part of a service that serves the United States, to or from points in the Member States, except to or from points in the Czech Republic, the French Republic, the Federal Republic of Germany, the Grand Duchy of Luxembourg, Malta, the Republic of Poland, the Portuguese Republic, and the Slovak Republic.

Section 4

Notwithstanding any other provisions of this Agreement, this section shall apply to scheduled and charter combination air transportation between Ireland and the United States with effect from the beginning of IATA winter season 2006/2007 until the end of the IATA winter season 2007/2008.

(a) (i) Each US and Community airline may operate three non-stop flights between the United States and Dublin for each non-stop flight that the airline operates between the United States and Shannon. This entitlement for non-stop Dublin flights shall be based on an average of operations over the entire three-season transitional period. A flight shall be deemed to be a non-stop Dublin, or a non-stop Shannon, flight, according to the first point of entry into, or the last point of departure from, Ireland.

(ii) The requirement to serve Shannon in subparagraph (a)(i) of this Section shall terminate if any airline inaugurates scheduled or charter combination service between Dublin and the United States, in either direction, without operating at least one non-stop flight to Shannon for every three non-stop flights to Dublin, averaged over the transition period.

(b) For services between the United States and Ireland, Community airlines may serve only Boston, New York, Chicago, Los Angeles, and three additional points in the United States, to be notified to the United States upon selection or change. These services may operate via intermediate points in other Member States or in third countries.

(c) Code sharing shall be authorised between Ireland and the United States only via other points in the European Community. Other code-share arrangements will be considered on the basis of comity and reciprocity.

ANNEX 2

Concerning cooperation with respect to competition issues in the air transportation industry

Article 1

The cooperation as set forth in this Annex shall be implemented by the Department of Transportation of the United States of America and the Commission of the European Communities (hereinafter referred to as the Participants), consistent with their respective functions in addressing competition issues in the air transportation industry involving the United States and the European Community.

Article 2

Purpose

The purpose of this cooperation is:

1. to enhance mutual understanding of the application by the Participants of the laws, procedures and practices under their respective competition regimes to encourage competition in the air transportation industry;

2. to facilitate understanding between the Participants of the impact of air transportation industry developments on competition in the international aviation market;

3. to reduce the potential for conflicts in the Participants' application of their respective competition regimes to agreements and other cooperative arrangements which have an impact on the transatlantic market;

   and

4. to promote compatible regulatory approaches to agreements and other cooperative arrangements through a better understanding of the methodologies, analytical techniques including the definition of the relevant market(s) and analysis of competitive effects, and remedies that the Participants use in their respective independent competition reviews.

Article 3

Definitions

For the purpose of this Annex, the term 'competition regime' means the laws, procedures and practices that govern the Participants' exercise of their respective functions in reviewing agreements and other cooperative arrangements among airlines in the international market. For the European Community, this includes, but is not limited to, Articles 81, 82, and 85 of the Treaty Establishing the European Community and their implementing Regulations pursuant to the said Treaty, as well as any amendments thereto. For the Department of Transportation, this includes, but is not limited to, sections 41308, 41309, and 41720 of Title 49 of the United States Code, and its implementing Regulations and legal precedents pursuant thereto.

Article 4

Areas of cooperation

Subject to the qualifications in subparagraphs 1(a) and 1(b) of Article 5, the types of cooperation between the Participants shall include the following:

1. Meetings between representatives of the Participants, to include competition experts, in principle on a semi-annual basis, for the purpose of discussing developments in the air transportation industry, competition policy matters of mutual interest, and analytical approaches to the application of competition law to international aviation, particularly in the transatlantic market. The above discussions may lead to the development of a better understanding of the Participants' respective approaches to competition issues, including existing commonalities, and to more compatibility in those approaches, in particular with respect to inter-carrier agreements.

2. Consultations at any time between the Participants, by mutual agreement or at the request of either Participant, to discuss any matter related to this Annex, including specific cases.

3. Each Participant may, at its discretion, invite representatives of other governmental authorities to participate as appropriate in any meetings or consultations held pursuant to paragraphs 1 or 2 above.

4. Timely notifications of the following proceedings or matters, which in the judgment of the notifying Participant may have significant implications for the competition interests of the other Participant:

(a) With respect to the Department of Transportation, (i) proceedings for review of applications for approval of agreements and other cooperative arrangements among airlines involving international air transportation, in particular for antitrust immunity involving airlines organised under the laws of the United States and the European Community, and (ii) receipt by the Department of Transportation of a joint venture agreement pursuant to section 41720 of Title 49 of the United States Code;

and

(b) With respect to the Commission of the European Communities, (i) proceedings for review of agreements and other cooperative arrangements among airlines involving international air transportation, in particular for alliance and other cooperative agreements involving airlines organised under the laws of the United States and the European Community, and (ii) consideration of individual or block exemptions from European Union competition law;

5. Notifications of the availability, and any conditions governing that availability, of information and data filed with a Participant, in electronic form or otherwise, that, in the judgment of that Participant, may have significant implications for the competition interests of the other Participant;

and

6. Notifications of such other activities relating to air transportation competition policy as may seem appropriate to the notifying Participant.

Article 5

Use and disclosure of information

1. Notwithstanding any other provision of this Annex, neither Participant is expected to provide information to the other Participant if disclosure of the information to the requesting Participant:

(a) is prohibited by the laws, regulations or practices of the Participant possessing the information;

or

(b) would be incompatible with important interests of the Participant possessing the information.

2. Each Participant shall to the extent possible maintain the confidentiality of any information provided to it in confidence by the other Participant under this Annex and to oppose any application for disclosure of such information to a third party that is not authorised by the supplying Participant to receive the information. Each Participant intends to notify the other Participant whenever any information proposed to be exchanged in discussions or in any other manner may be required to be disclosed in a public proceeding.

3. Where pursuant to this Annex a Participant provides information on a confidential basis to the other Participant for the purposes specified in Article 2, that information should be used by the receiving Participant only for that purpose.

Article 6

Implementation

1. Each Participant is designating a representative to be responsible for coordination of activities established under this Annex.

2. This Annex, and all activities undertaken by a Participant pursuant to it, are

(a) intended to be implemented only to the extent consistent with all laws, regulations, and practices applicable to that Participant;

and

(b) intended to be implemented without prejudice to the Agreement between the European Communities and the Government of the United States of America Regarding the Application of their Competition Laws.

ANNEX 3

Concerning US Government procured transportation

Community airlines shall have the right to transport passengers and cargo on scheduled and charter flights for which a US Government civilian department, agency, or instrumentality (1) obtains the transportation for itself or in carrying out an arrangement under which payment is made by the Government or payment is made from amounts provided for the use of the Government, or (2) provides the transportation to or for a foreign country or international or other organisation without reimbursement, and that transportation is (a) between any point in the United States and any point in a Member State, except — with respect to passengers only — between points for which there is a city-pair contract fare in effect, or (b) between any two points outside the United States. This paragraph shall not apply to transportation obtained or funded by the Secretary of Defence or the Secretary of a military department.

ANNEX 4

Concerning additional matters related to ownership, investment and control

Article 1

Ownership of airlines of a Party

1. Ownership by nationals of a Member State or States of the equity of a US airline shall be permitted, subject to two limitations. First, ownership by all foreign nationals of more than 25 % of a corporation's voting equity is prohibited. Second, actual control of a US airline by foreign nationals is also prohibited. Subject to the overall 25 % limitation on foreign ownership of voting equity:

(a) ownership by nationals of a Member State or States of:

(i) as much as 25 % of the voting equity;

and/or

(ii) as much as 49,9 % of the total equity

of a US airline shall not be deemed, of itself, to constitute control of that airline;

and

(b) ownership by nationals of a Member State or States of 50 % or more of the total equity of a US airline shall not be presumed to constitute control of that airline. Such ownership shall be considered on a case-by-case basis.

2. Ownership by US nationals of a Community airline shall be permitted subject to two limitations. First, the airline must be majority owned by Member States and/or by nationals of Member States. Second, the airline must be effectively controlled by such States and/or such nationals.

3. For the purposes of paragraph (b) of Article 4 and subparagraph 1(b) of Article 5 of this Agreement, a member of the ECAA as of the date of signature of this Agreement and citizens of such a member shall be treated as a Member State and its nationals, respectively. The Joint Committee may decide that this provision shall apply to new members of the ECAA and their citizens.

4. Notwithstanding paragraph 2, the European Community and its Member States reserves the right to limit investments by US nationals in the voting equity of a Community airline made after the signature of this Agreement to a level equivalent to that allowed by the United States for foreign nationals in US airlines, provided that the exercise of that right is consistent with international law.

Article 2

Ownership and control of third-country airlines

1. Neither Party shall exercise any available rights under air services arrangements with a third country to refuse, revoke, suspend or limit authorisations or permissions for any airlines of that third country on the grounds that substantial ownership of that airline is vested in the other Party, its nationals, or both.

2. The United States shall not exercise any available rights under air services arrangements to refuse, revoke, suspend or limit authorisations or permissions for any airline of the Principality of Liechtenstein, the Swiss Confederation, a member of the ECAA as of the date of signature of this Agreement, or any country in Africa that is implementing an Open-Skies air services agreement with the United States as of the date of signature of this Agreement, on the grounds that effective control of that airline is vested in a Member State or States, nationals of such a State or States, or both.

3. The Joint Committee may decide that neither Party shall exercise the rights referred to in paragraph 2 of this Article with respect to airlines of a specific country or countries.

Article 3

Control of airlines

1. The rules applicable in the European Community on ownership and control of Community air carriers are currently laid down in Article 4 of Council Regulation (EEC) No 2407/92 of 23 July 1992 on licensing of air carriers. Under this Regulation, responsibility for granting an Operating Licence to a Community air carrier lies with the Member States. Member States apply Regulation 2407/92 in accordance with their national regulations and procedures.

2. The rules applicable in the United States are currently laid down in Sections 40102(a)(2), 41102 and 41103 of Title 49 of the United States Code (USC), which require that licences for a US 'air carrier' issued by the Department of Transportation, whether a certificate, an exemption, or commuter licence, to engage in 'air transportation' as a common carrier, be held only by citizens of the United States as defined in 49 USC §40102(a)(15). That section requires that the president and two-thirds of the board of directors and other managing officers of a corporation be US citizens, that at least 75 % of the voting stock be owned by US citizens, and that the corporation be under the actual control of US citizens. The requirement must be met initially by an applicant, and continue to be met by a US airline holding a licence.

3. The practice followed by each Party in applying its laws and regulations is set out in the Appendix to this Annex.

Appendix to Annex 4

1. In the United States, citizenship determinations are necessary for all US air carrier applicants for a certificate, exemption, or commuter licence. An initial application for a licence is filed in a formal public docket, and processed 'on the record' with filings by the applicant and any other interested parties. The Department of Transportation renders a final decision by an Order based on the formal public record of the case, including documents for which confidential treatment has been granted. A 'continuing fitness' case may be handled informally by the DOT, or may be set for docketed procedures similar to those used for initial applications.

2. The DOT's determinations evolve through a variety of precedents, which reflect, among other things, the changing nature of financial markets and investment structures and the DOT's willingness to consider new approaches to foreign investment that are consistent with US law. The DOT works with applicants to consider proposed forms of investment and to assist them in fashioning transactions that fully comply with US citizenship law, and applicants regularly consult with DOT staff before finalising their applications. At any time before a formal proceeding has begun, DOT staff may discuss questions concerning citizenship issues or other aspects of the proposed transaction and offer suggestions, where appropriate, as to alternatives that would allow a proposed transaction to meet US citizenship requirements.

3. In making both its initial and continuing citizenship and fitness determinations, the DOT considers the totality of circumstances affecting the US airline, and Department precedents have permitted consideration of the nature of the aviation relationship between the United States and the homeland(s) of any foreign investors. In the context of this Agreement, the DOT would treat investments from EU nationals at least as favourably as it would treat investments from nationals of bilateral or multilateral Open-Skies partners.

4. In the European Union, paragraph 5 of Article 4 of Regulation 2407/92 provides that the European Commission, acting at the request of a Member State, shall examine compliance with the requirements of Article 4 and take a decision if necessary. In taking such decisions the Commission must ensure compliance with the procedural rights recognised as general principles of Community law by the European Court of Justice, including the right of interested parties to be heard in a timely manner.

5. When applying its laws and regulations, each Party shall ensure that any transaction involving investment in one of its airlines by nationals of the other Party is afforded fair and expeditious consideration.

ANNEX 5

Concerning franchising and branding

1. The airlines of each Party shall not be precluded from entering into franchise or branding arrangements, including conditions relating to brand protection and operational matters, provided that: they comply, in particular, with the applicable laws and regulations concerning control; the ability of the airline to exist outside of the franchise is not jeopardised; the arrangement does not result in a foreign airline engaging in cabotage operations; and applicable regulations, such as consumer protection provisions, including those regarding the disclosure of the identity of the airline operating the service, are complied with. So long as those requirements are met, close business relationships and cooperative arrangements between the airlines of each Party and foreign businesses are permissible, and each of the following individual aspects, among others, of a franchise or branding arrangement would not, other than in exceptional circumstances, of itself raise control issues:

   (a) using and displaying a specific brand or trademark of a franchisor, including stipulations on the geographic area in which the brand or trademark may be used;

   (b) displaying on the franchisee's aircraft the colours and logo of the franchisor's brand, including the display of such a brand, trademark, logo or similar identification prominently on its aircraft and the uniforms of its personnel;

   (c) using and displaying the brand, trademark or logo on, or in conjunction with, the franchisee's airport facilities and equipment;

   (d) maintaining customer service standards designed for marketing purposes;

   (e) maintaining customer service standards designed to protect the integrity of the franchise brand;

   (f) providing for licence fees on standard commercial terms;

   (g) providing for participation in frequent flyer programs, including the accrual of benefits;

   and

   (h) providing in the franchise or branding agreement for the right of the franchisor or franchisee to terminate the arrangement and withdraw the brand, provided that nationals of the United States or the Member States remain in control of the US or Community airline, respectively.

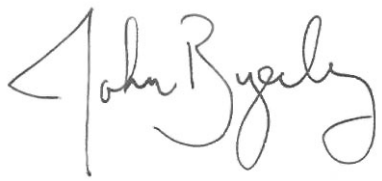
2. Franchising and branding arrangements are independent of, but may coexist with, a code-sharing arrangement that requires that both airlines have the appropriate authority from the Parties, as provided for in paragraph 7 of Article 10 of this Agreement.

Joint Declaration

Representatives of the United States and of the European Community and its Member States confirmed that the Air Transport Agreement initialled in Brussels on 2 March 2007 and envisioned for signature on 30 April 2007 is to be authenticated in other languages, as provided for either by exchange of letters, before signature of the Agreement, or by decision of the Joint Committee, after signature of the Agreement.

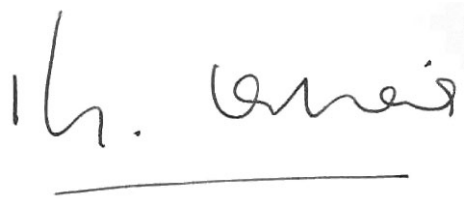
This Joint Declaration is an integral part of the Air Transport Agreement.

For the United States:



Date: 18 April 2007

For the European Community
and its Member States; *ad referendum*



Date: 18 April 2007

MEMORANDUM OF CONSULTATIONS

1. Delegations representing the European Community and its Member States and the United States of America met in Brussels 27 February – 2 March 2007, to complete negotiations of a comprehensive air transport agreement. Delegation lists appear as Attachment A.

2. The delegations reached *ad referendum* agreement on, and initialled the text of, an Agreement (the Agreement, appended as Attachment B). The delegations intend to submit the draft Agreement to their respective authorities for approval, with the goal of its entry into force in the near future.

3. With respect to paragraph 2 of Article 1, the delegations affirmed that the definition of 'air transportation' included all forms of charter air service. Furthermore, they noted that the reference to carriage 'held out to the public' did not prejudge the outcome of ongoing discussions on the issue of fractional ownership.

4. With respect to paragraph 5 of Article 1, the EU delegation noted that flights between Member States are considered as intra-Community flights under Community law.

5. With respect to paragraph 6 of Article 1, the EU delegation noted that nothing in this Agreement affects the distribution of competencies between the European Community and its Member States resulting from the Treaty establishing the European Community.

6. The EU delegation confirmed that the overseas territories to which the Treaty establishing the European Community applies are: the French overseas departments (Guadeloupe, Martinique, Réunion, Guiana), the Azores, Madeira, and the Canary Islands.

7. In response to a question from the US delegation, the EU delegation affirmed that, under European Community legislation, a Community airline must receive both its AOC and its operating licence from the country in which it has its principal place of business. Further, no airline may have an AOC or operating licence from more than one country.

8. With respect to paragraphs 1, 3 and 5 of Article 3, paragraph 3 of Article 1 of Annex 4 and paragraph 2 of Article 2 of Annex 4, and in response to a question from the US delegation, the EU delegation explained that as of the date of signature of the Agreement the members of the European Common Aviation Area comprise, in addition to the Member States of the European Community, the Republic of Albania, Bosnia and Herzegovina, the Republic of Croatia, the Republic of Iceland, the former Yugoslav Republic of Macedonia, the Republic of Montenegro, the Kingdom of Norway, the Republic of Serbia and the United Nations Interim Administration Mission in Kosovo.

9. In response to a question from the EU delegation, the US delegation explained that the following countries are implementing Open-Skies air services agreements with the United States as of the date of signature of the Agreement: Burkina Faso, the Republic of Cape Verde, the Republic of Cameroon, the Republic of Chad, the Gabonese Republic, the Republic of The Gambia, the Republic of Ghana, the Federal Democratic Republic of Ethiopia, the Republic of Liberia, the Republic of Madagascar, the Republic of Mali, the Kingdom of Morocco, the Republic of Namibia, the Federal Republic of Nigeria, the Republic of Senegal, the United Republic of Tanzania and the Republic of Uganda. The US delegation also indicated that it intended to treat airlines of the Republic of Kenya in the same way as airlines of States implementing an Open-Skies air services agreement for the purposes of paragraph 2 of Article 2 of Annex 4.

10. With respect to Article 4, the US delegation noted that the Department of Transportation (DOT) would require any foreign air carrier seeking authority to operate services pursuant to the Agreement to indicate the responsible authority that had issued its AOC and operating licence, thus making clear which authority is responsible for safety, security and other regulatory oversight of the carrier.

11. For the purposes of Article 8, 'responsible authorities' refers, on the one hand, to the US Federal Aviation Administration and, on the other hand, to the authorities of the European Community and/or the Member States having responsibility for the issuance or validation of the certificates and licences referenced in paragraph 1 or for the maintenance and administration of the safety standards and requirements referenced in paragraph 2, as is relevant to the matter in question. Furthermore, where consultations are requested pursuant to paragraph 2, the responsible authorities should ensure the inclusion in the consultations of any territorial or regional authorities who, by law or regulation or in practice, are exercising safety oversight responsibility relevant to the matter in question.

12. With respect to Article 9, the delegations affirmed that, to the extent practicable, the Parties intend to ensure the greatest possible degree of coordination on proposed security measures to minimise the threat and mitigate the potentially adverse consequences of any new measures. The delegations further noted that the channels referred to in paragraph 7 of Article 9 are available to consider alternative measures for current and proposed security requirements, in particular the Policy Dialogue on Border and Transport Security and the EU-US Transportation Security Cooperation Group. In addition, the US delegation stated that the US rulemaking process for adopting regulations routinely provides the opportunity for interested parties to comment on, and propose alternatives to, proposed regulations and that such comments are considered in the rulemaking proceeding.

13. During the discussion of paragraph 6 of Article 9, the US delegation explained that the Transportation Security Administration (TSA) must immediately issue a security directive when the TSA determines that emergency measures are necessary to protect transportation security. Such measures are intended to address the underlying security threat and should be limited in scope and duration. Emergency measures of a longer-term nature will be incorporated into TSA requirements using public notice and comment procedures.

14. With respect to the procedure to be established under paragraph 11 of Article 9, the delegations confirmed the need to establish a protocol for the preparation, implementation and conclusions of assessments carried out on the basis of this paragraph.

15. With respect to paragraph 2 of Article 10, the delegations affirmed their willingness to facilitate prompt consideration by the relevant authorities of requests for permits, visas, and documents for the staff referred to in that paragraph, including in circumstances where the entry or residence of staff is required on an emergency and temporary basis.

16. The delegations noted that the reference to 'generally applicable law or regulation' in paragraph 5 of Article 10 includes economic sanctions restricting transactions with specific countries and persons.

17. Both delegations recognised that, under paragraph 7 of Article 10, the airlines of each Party holding the appropriate authority may hold out code-share services, subject to terms and conditions that apply on a non-discriminatory basis to all airlines, to and from all points in the territory of the other Party, at which any other airline holds out international air transportation on direct, indirect, online, or interline flights, provided that such code-share services:

    (i) are otherwise in compliance with the Agreement;

    and

    (ii) meet the requirements of traffic distribution rules at the relevant airport system.

18. The delegations discussed the importance of advising passengers which airline or surface transportation provider will actually operate each sector of services when any code-share arrangement is involved. They noted that each side had regulations requiring such disclosure.

19. With respect to paragraph 7 (c) of Article 10, the delegations expressed their understanding that surface transportation providers shall not be subject to laws and regulations governing air transportation on the sole basis that such surface transportation is held out by an airline under its own name. Moreover, surface transportation providers, just as airlines, have the discretion to decide whether to enter into cooperative arrangements. In deciding on any particular arrangement, surface transportation providers may consider, among other things, consumer interests and technical, economic, space, and capacity constraints.

20. In response to a question from the EU delegation, the US delegation affirmed that, under the current interpretation of US law, the carriage of US Government-financed air transportation (Fly America traffic) by a US carrier includes transportation sold under the code of a US carrier pursuant to a code-share arrangement, but carried on an aircraft operated by a foreign air carrier.

21. The US delegation explained that under Annex 3 to the Agreement, and in the absence of a city-pair contract awarded by the US General Services Administration, a US Government employee or other individual whose transportation is paid for by the US Government (other than an employee, military member, or other individual whose transportation is paid for by the US Department of Defence or military department) may book a flight, including on a Community airline, between the US and the European Community, or between any two points outside the United States, that, at the lowest cost to the Government, satisfies the traveller's needs. The US delegation noted further that the city pairs for which contracts are awarded change from fiscal year to fiscal year. A US Government department, agency or instrumentality, other than the Department of Defence or a military department, may ship cargo on a flight, including on a Community airline, between the US and European Community, or between any two points outside the United States, that, at the lowest cost to the Government, satisfies the agency's needs.

22. The EU delegation explained that the EU does not have a similar programme to Fly America.

23. Both delegations expressed their intentions to explore further possibilities for enhancing access to government procured air transportation.

24. In response to a question from the EU delegation concerning the economic operating authority that Community airlines must obtain from the US Department of Transportation, the US delegation began by noting that, over the years, DOT economic licensing procedures have been streamlined. When foreign airlines are seeking authority provided for in an air services agreement, their applications normally can be processed quickly. The US delegation went on to explain that a Community airline has the option of submitting a single application for all route authority provided for in paragraph 1 of Article 3, which includes both scheduled and charter rights. On August 23, 2005, the DOT announced further expedited procedures under which it is contemplated that foreign air carriers seeking new route authority would file concurrent exemption and permit applications. Assuming that the DOT is in a position to act favourably, based on the record and on the public interest considerations germane to its licensing decisions, the DOT would proceed to issue a single order (1) granting the exemption request for whatever duration would normally have been given, or until the permit authority becomes effective, whichever is shorter, and (2) tentatively deciding (i.e., show-cause) to award a corresponding permit, again for the standard duration that would normally have been given (such as indefinite for agreement regimes). Where carriers have already filed for both exemption and permit authority, and where the record regarding those applications remained current, the DOT has begun to process those applications pursuant to the 23 August approach.

25. If a Community airline wishes to exercise any of the authority through code sharing pursuant to paragraph 7 of Article 10, the code-share partner airlines can file a joint application for the necessary authority. The airline marketing the service to the public needs underlying economic authority from the DOT for whatever type of services (scheduled or charter) is to be sold under its code. Similarly, the airline operating the aircraft needs underlying economic authority from the DOT: charter authority to provide the capacity to the other airline to market its service, and either charter or scheduled authority for the capacity it intends to market in its own right. The operating airline also needs a statement of authorisation to place its partner's code on those flights. An operating airline can request an indefinite duration blanket statement of authorisation for the code-share relationship, identifying the specific markets in which the code-share authority is requested. Additional markets can be added on 30 days' notice to the DOT. A code-share statement of authorisation is airline-specific, and each foreign code-share partnership requires its own statement of authorisation, and, if applicable, a code-share safety audit by the US airline under the DOT's published Guidelines.

26. If, pursuant to paragraph 9 of Article 10, a Community airline wishes to provide an entire aircraft with crew to a US airline for operations under the US airline's code, the Community airline would similarly need to have charter authority from the DOT, as well as a statement of authorisation. The US delegation indicated its belief that virtually all Community airlines that now provide scheduled service to the United States also hold worldwide charter authority from the DOT. Therefore, from an economic licensing perspective, they would only need a statement of authorisation to provide an entire aircraft with crew to US airlines. The US delegation further indicated that it did not anticipate that applications from other Community airlines for charter authority would raise any difficulties.

27. The issuance of a statement of authorisation, whether for code sharing or for the provision of an entire aircraft with crew, requires a DOT finding that the proposed operations are in the public interest. This finding is strongly facilitated by a determination that the proposed services are covered by applicable air services agreements. Inclusion of the rights in an agreement also establishes that reciprocity exists.

28. With respect both to code sharing and to the provision of an entire aircraft with crew under paragraphs 7 and 9 of Article 10, the primary focus of the public interest analysis would be on whether:

— a safety audit has been conducted by the US airline of the foreign airline,

— the country issuing the foreign carrier's AOC is IASA category 1,

— the foreign airline's home country deals with US carriers on the basis of substantial reciprocity,

— approval would give rise to competition concerns.

29. With respect to the provision of aircraft with crew, the public interest analysis would additionally focus on whether:

— the lease agreement provides that operational control will remain with the lessor carrier,

— the regulatory oversight responsibility remains with the lessor's AOC-issuing authority,

— approval of the lease will not give an unreasonable advantage to any party in a labour dispute where the inability to accommodate traffic in a market is a result of the dispute.

30. Statements of authorisation for the provision of an entire aircraft with crew will be issued, at least initially, on a limited-term (e.g., six to nine months) or exceptional basis, which is consistent with the approach in the European Union.

31. In response to a concern expressed by the EU delegation about the discretion that the DOT has under the 'public interest' standard, the US delegation stated that, in the context of Open-Skies aviation relationships, the DOT has found code-share arrangements to be in the public interest and has consistently issued statements of authorisation with a minimum of procedural delay. The US delegation indicated that, in relation to both code sharing and the provision of aircraft with crew involving only airlines of the Parties, the DOT, unless presented with atypical circumstances, such as those relating to national security, safety or criminality, would focus its analysis of the public interest on the elements described above. Furthermore, in the event that such atypical circumstances exist, the United States would expeditiously inform the other Party.

32. In response to a question from the US delegation, the EU delegation affirmed that, under the currently applicable legislation in the EU (Council Regulation (EEC) No 2407/92 of 23 July 1992), aircraft used by a Community airline are required to be registered in the Community. However, a Member State may grant a waiver to this requirement in the case of short-term lease arrangements to meet temporary needs or otherwise in exceptional circumstances. A Community airline that is party to such an arrangement must obtain prior approval from the appropriate licensing authority, and a Member State may not approve an agreement providing aircraft with crew to an airline to which it has granted an operating licence unless the safety standards equivalent to those imposed under Community law or, where relevant, national law are met.

33. Both delegations recognised that the failure to authorise airlines to exercise the rights granted in the Agreement or undue delay in granting such authorisation could affect an airline's fair and equal opportunity to compete. If either Party believes that its airlines are not receiving the economic operating authority to which they are entitled under the Agreement, it can refer the matter to the Joint Committee.

34. With respect to paragraph 4 of Article 14, the EU delegation recalled that, in accordance with its Article 295, the Treaty establishing the European Community does not prejudice in any way the rules in Member States governing the system of property ownership. The US delegation in response noted its view that government ownership of an airline may adversely affect the fair and equal opportunity of airlines to compete in providing the international air transportation governed by this Agreement.

35. With respect to Article 15, the delegations noted the importance of international consensus in aviation environmental matters within the framework of the International Civil Aviation Organisation (ICAO). In this connection, they underscored the significance of the unanimous agreement reached at the 35th ICAO Assembly, which covers both aircraft noise and emissions issues (Resolution A35-5). Both sides are committed to respecting that Resolution in full. In accordance with this Resolution, both sides are committed to applying the 'balanced approach' principle to measures taken to manage the impact of aircraft noise (including restrictions to limit the access of aircraft to airports at particular times) and to ensuring charges for aircraft engine emissions at airport level should be based on the costs of mitigating the environmental impact of those aircraft engine emissions that are properly identified and directly attributed to air transport. Both sides also noted that where relevant legal obligations existed, whether at international, regional, national or local level, they also had to be respected in full; for the United States, the relevant date was 5 October 2001, and for the European Community, the relevant date was 28 March 2002.

36. The delegations further noted the provisions on Climate Change, Energy, and Sustainable Development contained in the 2005 'Gleneagles Communiqué' of the G8 nations as well as the framework for cooperation on air traffic management issues in the Memorandum of Understanding signed by the Federal Aviation Administration and the Commission on July 18, 2006. The delegations noted the intention of the responsible US and EU authorities to enhance technical cooperation, including in areas of climate science research and technology development, that will enhance safety, improve fuel efficiency, and reduce emissions in air transport. Having regard to their respective positions on the issue of emissions trading for international aviation, the two delegations noted that the United States and the European Union intend to work within the framework of the International Civil Aviation Organisation.

37. With regard to the composition of the Joint Committee, the US delegation indicated that it was the US intention to have multi-agency representation, chaired by the Department of State. The EU delegation indicated that the EU would be represented by the European Community and its Member States. The two delegations also indicated that stakeholder participation would be an important element of the Joint Committee process, and that stakeholder representatives would therefore be invited as observers, except where decided otherwise by one or both Parties.

38. With respect to Article 18, the delegations affirmed their intention to hold a preliminary meeting of the Joint Committee not later than 60 days after the date of signature of this Agreement.

39. The Delegations confirmed their understanding that practices such as a first-refusal requirement, uplift ratio, no-objection fee, or any other restriction with respect to capacity, frequency or traffic are inconsistent with the Agreement.

40. The EU delegation suggested that both Parties should understand as clearly as possible the extent to which representatives of the US Department of Transportation (DOT) and the European Commission could exchange information on competition matters covered by Annex 2 to the Agreement under their respective laws, regulations and practices, particularly regarding data and perspectives on issues involving proceedings being actively considered by those authorities.

41. The US delegation indicated that the proceedings covered by Annex 2 to the Agreement are adjudications under US law and are subject to statutory, regulatory and judicial constraints to ensure that the agency decision is based only on the information that is included in the docket of the proceeding, including public information that the DOT has determined is officially noticeable, on which the parties have had an opportunity to comment before final agency decision.

42. The US delegation explained that these constraints do not preclude representatives advising the DOT decision-maker in an active proceeding from discussing with representatives of the Commission such matters as (1) the state of competition in any markets based upon non-confidential data; (2) the impact of existing alliances or other cooperative ventures and the results of previously imposed conditions or other limitations to address competition issues; (3) general approaches to competition analysis or methodology; (4) past cases, including records and decisions; (5) substantive law, policies, and procedures applicable to any cases; (6) issues that might be raised by potential cases that have not been formally initiated, so long as DOT representatives do not 'prejudge' the facts or results of such cases; and (7) in active proceedings, what issues have already been raised by the parties and what non-confidential evidence has been provided for the record, again up to the point of potential 'prejudgment' of the facts and outcome.

43. There are two basic procedural constraints on discussion of ongoing cases. The first applies largely to communications from the Commission to the DOT: the latter's decision cannot be based on any substantive information or argument unavailable to all parties for comment on the record before final decision. Should such information be received, it cannot be considered in the decision unless it is made available. The second constraint involves communications from, rather than to, the DOT: the agency cannot demonstrate or appear to demonstrate 'prejudgment' of the issues — that is, articulating a conclusion before the record in the case is ripe and a final decision has been publicly released. This constraint applies to DOT in any context, whether in discussions with the EU or with any other entity not legitimately part of the US Government's internal decision-making process, interested or not. DOT intends to notify the Commission's representatives immediately whenever, in its experience, prejudgment or decisional input becomes a consideration in discussing a particular topic, so that the representatives can decide how to proceed.

44. The EU delegation requested assurance from the US delegation that the statutory 'public interest' criterion is not used under the US competition regime to prefer the interests of individual US airlines over those of other airlines, US or foreign. The US delegation responded that this criterion and the competition standards that the DOT must use for its decisions are designed and used to protect competition in markets as a whole, not individual airline competitors. Among other considerations, the US delegation noted that the 'public interest' in international air transportation is defined by statute to include equality of opportunity among US and foreign airlines, as well as maximum competition. Moreover, the public interest criterion in the statutes governing DOT approval of, and antitrust immunity for, inter-carrier agreements, is not an 'exception' to the competition analysis that the agency must follow, but rather an additional requirement that must be met before the DOT may grant antitrust immunity. Finally, the US delegation emphasised that all DOT decisions must be consistent with domestic law and international obligations, including civil aviation agreements that uniformly contain the requirement for all Parties to provide a 'fair and equal opportunity to compete' to the airlines of the other Parties.

45. In the context of this discussion, both delegations affirmed that their respective competition regimes are applied in a manner to respect the fair and equal opportunity to compete accorded to all airlines of the Parties, and in accordance with the general principle of protecting and enhancing competition in markets as a whole, notwithstanding possible contrary interests of individual airline competitors.

46. Regarding the European Commission's procedures, the EU delegation explained that the principal limitation on the ability of the European Commission to engage in active cooperation with foreign governmental agencies results from restrictions on the ability to communicate confidential information. Information acquired by the Commission and the authorities of the Member States in the course of an investigation, and which is of the kind covered by professional secrecy, is subject to Article 287 of the EC Treaty and Article 28 of Regulation (EC) No 1/2003. Essentially, this refers to information which is not in the public domain and which may be discovered during the course of an investigation, be communicated in a reply for information or which may be voluntarily communicated to the Commission. This information also includes business or trade secrets. Such information may not be disclosed to any third country agency, save with the express agreement of the source concerned. Therefore, where it is considered appropriate and desirable for the Commission to provide confidential information to a foreign agency(ies), the consent of the source of that information must be obtained by means of a waiver.

47. Information which is related to the conduct of an investigation, or the possible conduct of an investigation, is not submitted to the abovementioned provisions. Such information includes the fact that an investigation is taking place, the general subject-matter of the investigation, the identity of the enterprise(s) being investigated (although this also may, in some circumstances, be protected information), the identity of the sector in which the investigation is being undertaken, and the steps which it is proposed to take in the course of the investigation. This information is normally kept confidential to ensure proper handling of the investigation. However, it may be communicated to the DOT, as the latter is obliged to maintain the confidentiality of the information under the terms of Article 5 of Annex 2 to the Agreement.

48. In response to a question from the EU delegation, the US delegation confirmed that the competent US authorities will provide fair and expeditious consideration of complete applications for antitrust immunity of commercial cooperation agreements, including revised agreements. The US delegation further confirmed that, for Community airlines, the US–EU Air Transport Agreement, being applied pursuant to Article 25 or in force pursuant to Article 26, will satisfy the DOT requirement that, to consider such an application from foreign airlines for antitrust immunity or to continue such immunity, an Open-Skies agreement must exist between the United States and the homeland(s) of the applicant foreign airline(s). The foregoing assurance does not apply to applicants from Ireland until Section 4 of Annex 1 expires.

49. In response to a question from the EU delegation, the US delegation stated that all of the DOT rules on computer reservations systems (CRSs or systems) terminated on 31 July 2004. The DOT, however, retains the authority to prohibit unfair and deceptive practices and unfair methods of competition in the airline and airline distribution industries, and the DOT can use that authority to address apparent anti-competitive practices by a system in its marketing of airline services. In addition, the Department of Justice and the Federal Trade Commission have jurisdiction to address complaints that a system is engaged in conduct that violates the antitrust laws.

50. With respect to Article 25, the EU delegation explained that in some Member States provisional application must be approved first by their parliaments in accordance with their constitutional requirements.

51. Both delegations confirmed that, in the event that one of the Parties decided to discontinue provisional application of the Agreement in accordance with Article 25(2), the arrangements in Section 4 of Annex 1 to the Agreement may continue to apply if the Parties so agree.

52. With respect to Article 26, the EU delegation explained that in some Member States the procedures referred to in this Article include ratification.

53. In response to a question from the US delegation concerning restrictions arising from the residual elements of bilateral air services agreements between Member States, the EU delegation affirmed that any such restrictions affecting the ability of US and Community airlines to exercise rights granted by this Agreement would no longer be applied.

54. The two delegations emphasised that nothing in the Agreement affects in any way their respective legal and policy positions on various aviation-related environmental issues.

55. The two delegations noted that neither side will cite the Agreement or any part of it as a basis for opposing consideration in the International Civil Aviation Organisation of alternative policies on any matter covered by the Agreement.

56. Any air services agreements between the United States and a Member State the applicability of which was in question as of the signing of the Agreement have not been listed in Section 1 to Annex 1 of the Agreement. However, the delegations intend that the Agreement be provisionally applied by the United States and such Member State or States according to the provisions of Article 25 of the Agreement.

For the Delegation of the European Community and its Member States	*For the Delegation of the United States of America*
Daniel CALLEJA	John BYERLY

Written Declaration to be submitted to the USA by the Presidency upon signing on behalf of the EC and its Member States

This Agreement will be applied on a provisional basis until its entry into force by the Member States in good faith and in accordance with the provisions of domestic law in force.