

## CIVIL AVIATION AGREEMENT.

**No. 100 of 1952.**

An Act to approve an Agreement made between the Commonwealth and Australian National Airways Proprietary Limited, and for purposes connected therewith.

[Assented to 18th November, 1952.]

**B**E it enacted by the Queen's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows:—

- Short title.**       1. This Act may be cited as the *Civil Aviation Agreement Act* 1952.
- Commencement.**   2. This Act shall come into operation on the day on which it receives the Royal Assent.

3. The agreement made between the Commonwealth and Australian National Airways Proprietary Limited, being the agreement a copy of which is set forth in the Schedule to this Act, is approved.

Approval of agreement.

4. The Commonwealth may give such guarantees, and make such advances on loan, as are provided for by the agreement referred to in the last preceding section.

Guarantees and advances.

5. The Australian National Airlines Commission constituted under the *Australian National Airlines Act 1945-1947* shall do all such things as the agreement referred to in section three of this Act provides that the Commission will do.

Australian National Airlines Commission to comply with agreement.

## THE SCHEDULE.

### Section 3.

AN AGREEMENT made the twenty-fourth day of October, One thousand nine hundred and fifty-two BETWEEN the COMMONWEALTH OF AUSTRALIA (in this agreement called "the Commonwealth") of the one part and AUSTRALIAN NATIONAL AIRWAYS PROPRIETARY LIMITED, a company incorporated under the laws of the State of Victoria relating to companies and whose registered office is situated at 390 Flinders Street Melbourne in the said State (in this agreement called "the Company") of the other part:

WHEREAS the Australian National Airlines Commission constituted under the *Australian National Airlines Act 1945-1947* of the Commonwealth (in this agreement called "the Commission") and the Company are the major operators of airline services in Australia for the transport of passengers and goods:

AND WHEREAS in order to facilitate trade and commerce among the States, provide for the efficient carriage of mail by air within Australia and assist the defence of the Commonwealth it is expedient in the opinion of the Commonwealth to make provision for the purpose of ensuring—

- (a) the continued existence of the Company, as well as of the Commission, as an operator of airline services within Australia;
- (b) the maintenance of competition between the Commission and the Company; and
- (c) the efficient and economical operation of air services within Australia:

AND WHEREAS for the attainment of those purposes it is necessary to make arrangements for the operation of air services within Australia and to provide assistance to the Company in manner provided in this agreement:

NOW IT IS HEREBY AGREED by and between the parties to this agreement as follows:—

1. This agreement shall have no force or effect and shall not be binding on either party unless and until it is approved by the Parliament of the Commonwealth.

Approval by Parliament.

2. This agreement shall commence and come into full force and effect upon the date upon which it is so approved.

Commencement.

3.—(1.) Subject to this clause, the Commonwealth will, at the request of the Company, guarantee the repayment to the Commonwealth Bank of Australia of a loan or loans not exceeding in all the sum of Three million pounds (£3,000,000) to be made by that bank to the Company for the purchase of not more than six heavy aircraft of the Vickers "Viscount" or other type required by the Company for use in its air services within Australia together with necessary spare engines, spare parts and accessories for those aircraft.

Financial assistance.

(2.) If, after the commencement of this agreement, the Commission is authorised to purchase new or second-hand heavy aircraft, the Commonwealth will facilitate the borrowing of such amount as may be required by the Company for the purchase of an equal number of heavy aircraft comparable in type and price to those authorised for purchase by the Commission, provided always that the total of all amounts borrowed by the Company in accordance with sub-clause (1.) of this clause and this sub-clause and not repaid shall not at any one time exceed the sum of Four million pounds (£4,000,000).

THE SCHEDULE—*continued.*

(3.) In this clause, "facilitate" means:—

- (a) that, in the event of the Company being unable otherwise to borrow upon reasonable terms and conditions the money required to purchase the aircraft referred to in sub-clause (2.) of this clause, the Commonwealth will guarantee the repayment of a loan of such amount as may be required to effect the purchase; and
- (b) that, in the event of the Company being unable to obtain that loan, the Commonwealth will advance the amount on loan, as and when required, on terms and conditions (including security) substantially the same as those that would have applied had the loan been available on bank overdraft guaranteed in accordance with this clause.

(4.) A guarantee by the Commonwealth in accordance with this clause shall be in such form as the Treasurer shall approve and shall be given only if—

- (a) the moneys are borrowed upon reasonable terms and conditions;
- (b) proper security is taken by the lender over the aircraft, spare engines, spare parts and accessories purchased by the Company with those moneys; and
- (c) the benefit of all security so taken will be transferred to the Commonwealth in the event of the Commonwealth being called upon to make payment under the guarantee.

(5.) No guarantee shall be given by the Commonwealth under this clause in respect of, nor shall any then existing guarantee apply to, any moneys borrowed by the Company after the expiration of a period of ten years from the date of the commencement of this agreement nor shall any advance be made by the Commonwealth to the Company under this clause after the expiration of that period.

(6.) The Company will make all arrangements necessary to ensure that, upon the expiration of that period of ten years, all amounts borrowed by it and secured by a guarantee by the Commonwealth, or advanced by the Commonwealth, in pursuance of this clause, together with all interest payable thereon, will be repaid by regular payments in the shortest time practicable, but in any event before the expiration of the period of this agreement.

(7.) In the event of any default by the Company in the repayment of monies secured by a guarantee, or advanced by the Commonwealth in pursuance of this clause, the Commonwealth shall thereupon be under no obligation to give any further guarantee or to facilitate the raising of any further borrowings by the Company pursuant to this clause.

(8.) The Company will—

- (a) insure and keep insured against all risks against which it is customary to insure, and to their full insurable value, all aircraft and other assets securing the repayment of moneys borrowed in accordance with this clause; and
- (b) in the event of any amount becoming payable by the Commonwealth under any guarantee given by it, repay to the Commonwealth upon demand the amount so paid by the Commonwealth.

Air route  
charges.

4.—(1.) The Company will pay to the Commonwealth within one year from the date of the commencement of this agreement, and the Commonwealth will accept, the sum of Three hundred and thirty-seven thousand seven hundred and seventeen pounds six shillings (£337,717.6.0) in full satisfaction of all claims by the Commonwealth against the Company for air route charges in respect of the period commencing on the first day of August One thousand nine hundred and forty-seven and ending on the thirtieth day of June One thousand nine hundred and fifty-two.

(2.) Upon the payment by the Company to the Commonwealth of the sum of Three hundred and thirty-seven thousand seven hundred and seventeen pounds six shillings (£337,717.6.0) referred to in sub-clause (1.) of this clause, the Commonwealth will take steps to discontinue the action instituted by the Commonwealth against the Company in the High Court of Australia by Writ of Summons No. 7 of 1948.

(3.) In respect of the period commencing from the first day of July One thousand nine hundred and fifty-two and ending on the date of the expiration of this agreement, the air route charges charged to the Company by the Commonwealth shall not, subject to this clause, exceed one-half of the charges set forth in Air Navigation Order Part 99 dated the twenty-seventh day of May One thousand nine hundred and forty-nine,

## THE SCHEDULE—continued.

as amended on the first day of August of that year, unless and except to the extent that an increase becomes necessary because of the provision of additional or improved facilities and services or because of higher costs of maintaining and operating facilities and services.

(4.) In the event of the use of routes not specified in the Appendix to that Order, the additional amounts charged in respect of those routes shall be proportionate to one-half of the charges specified in that Order, increased if necessary in accordance with sub-clause (3.) of this clause.

(5.) Nothing in this clause shall prevent the Commonwealth from imposing air route charges by whatever legislative means and on whatever basis of calculation it thinks fit which will produce substantially the same aggregate amount over the period referred to in sub-clause (3.) of this clause as the charges calculated in accordance with that sub-clause, increased if necessary in accordance with that sub-clause, together with the additional amounts charged in respect of new routes in accordance with sub-clause (4.) of this clause, would produce.

5.—(1.) In providing for the carriage of mail by air, the Commonwealth will take all steps necessary to assure to the Company during the continuance of this agreement, subject to the Company providing efficient services with suitable time-tables in accordance with the requirements of the Postmaster-General, a share of the air mail carried on the routes over which both the Commission and the Company operate air services substantially equal to the Commission's share of that mail. Air Mail.

(2.) The rates payable to the Company for the carriage of that mail shall be the same as the rates paid to the Commission.

(3.) Nothing in this clause affects the obligation of the Company to comply with and observe all the terms and conditions of any contract with the Commonwealth in respect of the carriage of that mail.

6. The Commonwealth agrees to take all steps necessary to ensure that during the continuance of this agreement business transacted on Commonwealth Government warrant in respect of the carriage whether of passengers or of freight is freely available to both the Commission and the Company and that the holder of a Government warrant has a free option as to the service he will use. Government  
Business.

7.—(1.) The Commission and the Company will take immediate steps to review and will keep under review at all times during the continuance of this agreement, air routes, time-tables, fares and freights and other related matters in respect of routes on which both the Commission and the Company are operating services at the date of the commencement of this agreement, so as to avoid unnecessary overlapping of services and wasteful competition, to provide the most effective and economical services with due regard to the interests of the public and to bring earnings into a proper relation to overall costs. Rationalization  
of Services.

(2.) If the Commission and the Company are unable to agree on any matter arising under sub-clause (1.) of this clause, a representative of the Commission and a representative of the Company will confer together upon that matter under the Chairman and, if the Commission and the Company are unable to agree, the Chairman shall himself decide the matter in dispute between the Commission and the Company.

(3.) The Commission and the Company will, upon being required so to do by the Chairman, furnish or produce to him all information, documents, books, papers and accounts which he considers necessary to enable him to make a decision on any matter arising under this clause.

(4.) The Commission and the Company will each abide by and accept any decision which is made by the Chairman on any matter arising under this clause on which they are unable to agree, and will give effect to the decision and not take any steps which are inconsistent with the decision.

(5.) Nothing in this clause requires or permits the Commission or the Company to act in any manner inconsistent with the *Air Navigation Act 1920-1950* or with the regulations in force under that Act.

THE SCHEDULE—*continued.*

Hire or purchase of aircraft.

8.—(1.) The Commission and the Company will each—

- (a) prior to purchasing or hiring an aircraft from the Commonwealth or any authority of the Commonwealth or any corporation in which the Commonwealth has an interest which is available for purchase or hire, apply to the Chairman for a certificate of approval ;
- (b) not purchase or hire any such aircraft without a certificate of approval of the Chairman ;
- (c) if either of them purchases such an aircraft without a certificate of approval of the Chairman, sell to the other forthwith on demand, at a price in all respects the same as the price paid in respect of the purchase, the aircraft so purchased.

(2.) Nothing in this clause shall prevent either the Commission or the Company hiring an aircraft temporarily to meet emergency requirements.

Certificates of approval.

9.—(1.) The Chairman shall grant certificates of approval under clause 8 upon application so that available aircraft shall be equally divided between the Commission and the Company.

(2.) In the event of an odd number of aircraft being available, the Chairman shall determine whether the Commission or the Company may purchase the odd aircraft.

(3.) In arriving at his determination under the last preceding sub-clause, the Chairman shall have regard to the comparative aircraft strength of the Commission and the Company at the time, and shall determine the matter so that relative strength is most nearly maintained.

(4.) Should additional aircraft become subsequently available for purchase or hire, the Chairman shall grant a certificate as to the first aircraft so available to whichever of the Commission or the Company was last previously granted a certificate for a lesser number and that one of them shall be the next recipient of a certificate for the greater number when an odd number of aircraft is again available for purchase or hire.

Exercise of Commonwealth powers.

10.—(1.) The Commonwealth will not exercise any of its powers under or by virtue of an Act, including a power to make regulations, so as to discriminate against the Company.

(2.) The Commonwealth will during the continuance of this agreement accord to the Company substantially equal treatment with the Commission in relation to the grant of import licences and the allocation of airport facilities.

Undertakings by company.

11.—(1.) The Company undertakes that, during the continuance of this agreement—

- (a) unless otherwise agreed by the Commonwealth, it will retain for use in its air services within Australia all aircraft, spare engines, spare parts and accessories purchased with monies borrowed by the Company in accordance with clause 3 of this agreement and all aircraft purchased or hired by the Company in accordance with the provisions of clauses 8 and 9 of this agreement ;
- (b) it will not sell, mortgage or otherwise charge those aircraft without the consent of the Commonwealth ; and
- (c) it will maintain and operate efficient air services for the transport of passengers and goods within Australia and will conduct its operations in a businesslike and economical manner.

(2.) In the event of—

- (a) the Company failing to comply with or observe any of its obligations under sub-clause (1.) of this clause ;
- (b) an order being made for the winding-up of the Company other than voluntarily for the purposes of reconstruction ;
- (c) the Company assigning this agreement without the prior consent in writing of the Commonwealth,

the Commonwealth may, at its option, by notice in writing to the Company, determine this agreement and, subject to sub-clause (3.) of this clause, the Commonwealth and the Commission shall thereupon be released from each and every of their respective obligations under or pursuant to this agreement.

THE SCHEDULE—*continued.*

- (3.) The determination of the agreement under sub-clause (2.) of this clause—
- (a) shall not prejudice any rights of the Commonwealth under the agreement which have accrued up to the date of determination; and
- (b) shall not affect any guarantee given by the Commonwealth before the date of determination, but the Company shall immediately repay to the Commonwealth the amount of any loan advanced by the Commonwealth in accordance with clause 3 of this agreement.
- 12.—(1.) If at any time during the continuance of this agreement the Commonwealth is involved in war or the Minister informs the Company that there is an immediate danger of the Commonwealth being so involved, the Company will, if requested so to do by the Minister, make available for use by the Commonwealth in such manner and for such time as the Commonwealth requires the whole or such part as may be required of its aircraft, spares, accessories, equipment, hangars, workshops, buildings and facilities. State of emergency
- (2.) Subject to the next succeeding sub-clause, the Company shall be entitled to be paid such reasonable compensation for the use of its property under the preceding sub-clause as is determined by mutual agreement or in the absence of agreement by arbitration in accordance with the laws relating to arbitration in force in the State of Victoria.
- (3.) Nothing contained in this clause shall be deemed to affect the operation of any Act of the Commonwealth, or any regulation, rule, order or other instrument made under or by virtue of an Act, or any other law, relating to the acquisition or requisition of property in time of war or national emergency.
13. During the continuance of this agreement, the Company will furnish to the Minister, at the end of each of its financial years, a copy of the duly audited profit and loss account and balance sheet of the Company for that year. Supply of information.
14. The Chairman referred to in clauses 7, 8, and 9 of this agreement shall be an independent person appointed by agreement between the Commission and the Company or in default of agreement shall be a retired Justice of the High Court of Australia or of the Supreme Court of a State appointed by the Minister. Chairman.
15. The Commonwealth will introduce in the Parliament of the Commonwealth such legislation as is necessary to ensure that the Commission will do all such things as this agreement provides that the Commission will do. Legislation.
16. This agreement shall continue in force for fifteen (15) years from its commencing date. Period of agreement.
17. Any notice or other communication to be given or served by the Commonwealth on the Company under this agreement shall be in writing and shall be deemed to have been duly given or served if signed by or on behalf of the Minister and delivered at or sent by prepaid post addressed to the registered office of the Company and any notice or other communication to be given or served by the Company on the Commonwealth shall be in writing signed by or on behalf of the Secretary of the Company and shall be deemed to have been duly given or served if delivered or sent by prepaid post to the Minister. Notices.
18. In this agreement, unless the contrary intention appears—
- “air route charges” means the amounts charged by the Commonwealth to owners of Australian aircraft engaged in regular public transport operations in respect of their use of aerodromes, and air route and airway facilities, meteorological services and the search and rescue service maintained and operated by the Commonwealth;
- “heavy aircraft” means aircraft of an all-up weight of not less than forty thousand pounds (40,000 lbs.);
- “the Minister” means the Minister of State for Civil Aviation of the Commonwealth, and includes any member of the Federal Executive Council for the time being acting for the Minister of State for Civil Aviation;
- “the Treasurer” means the Treasurer of the Commonwealth, and includes any member of the Federal Executive Council for the time being acting for the Treasurer.

IN WITNESS whereof the parties have executed this agreement the day and year first hereinbefore written.

SIGNED by the Right Honorable ROBERT GORDON  
MENZIES, Prime Minister of the Common-  
wealth, for and on behalf of the Common-  
wealth, in the presence of— } ROBERT MENZIES.  
G. J. YEEND

GIVEN under the Common Seal of AUSTRALIAN  
NATIONAL AIRWAYS PROPRIETARY LIMITED } L.S.  
this 24th day of October, 1952 by order of the  
Board.  
IVAN N. HOLYMAN.  
Director  
J. O. DECLERCK.  
Secretary

---