COMMISSION OF THE EUROPEAN COMMUNITIES

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2006/0058 (CNS)

Proposal for a

DECISION OF THE COUNCIL AND THE REPRESENTATIVES OF THE GOVERNMENTS OF THE MEMBER STATES OF THE EUROPEAN UNION, MEETING WITHIN THE COUNCIL

On the signature and provisional application of the Air Transport Agreement between the European Community and its Member States, on the one hand, and the United States of America, on the other hand

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On the conclusion of the Air Transport Agreement between the European Community and its Member States, on the one hand, and the United States of America, on the other hand

(presented by the Commission)

EXPLANATORY MEMORANDUM

1) CONTEXT OF THE PROPOSAL

- **Grounds for and objectives of the proposal**

The Air Transport Agreement between the European Community and its Member States, on the one hand, and the United States of America, on the other hand has been negotiated under a mandate received from the Council in June 2003. Air services between the EU and US presently operate on the basis of bilateral agreements between individual Member States and the US. These bilateral agreements contain provisions that the European Court of Justice ruled in November 2002 to be incompatible with Community law and it is therefore essential that a new Community-level framework for EU/US air services is established. The Agreement represents a comprehensive first-stage agreement and contains a commitment by both sides to begin negotiations on a second stage within a defined timescale. It would meet the legal requirements of the Community and deliver substantial immediate economic benefits for transatlantic air travellers and shippers.

- **General context**

The negotiating mandate set the objective of establishing an Open Aviation Area (OAA) between the EU and US. This would create a single market for air transport between the EU and US in which investment could flow freely and in which European and US airlines would be able to provide air services without any restriction, including in the domestic markets of both parties. Achievement of the mandate in full would require significant legislative changes in the United States, in particular to remove the existing legal restrictions on foreign ownership and control of US airlines and on cabotage. These issues remain extremely politically sensitive in the US. For this reason, the mandate explicitly recognises the possibility of implementing an agreement in a staged approach, although it requires there to be mechanisms to ensure progression to subsequent stages.

The EU accepted during the negotiations that cabotage could not be included in a first stage agreement, but made clear to the US that a first-stage agreement would be acceptable to the EU only if meaningful progress was made towards the removal of restrictions on ownership and control of US airlines. On 2 November 2005, the US Department of Transportation (DOT) issued a "Notice of Proposed Rulemaking" (NPRM) that would re-interpret the statutory requirement for US airlines to be under the "actual control" of US citizens so as to expand opportunities for foreign citizens to invest in and participate in the management of US airlines.

Based on the negotiating directives of the mandate, the text of the Agreement with the United States of America was finalised by the Commission at the final negotiating round on 18 November 2005. In finalising the text of the Agreement, the EU stated that in reaching a decision on whether to proceed with the Agreement, the European Community and its Member States will consider the results of the NPRM process as expressed in a final rule. The adoption of the decision by the Council will therefore be subject to the prior adoption by the US DOT of a final rule that is assessed by the Council to constitute clear, meaningful and robust changes to US policy in this area. If

the DOT's final rule is published in sufficient time and if the Council's assessment is positive, it is foreseen that signature of the Agreement will take place in the first half of 2006.

- **Existing provisions in the area of the proposal**

The provisions of the Agreement supersede the 20 existing bilateral air services agreements between Member States and the United States.

- **Consistency with the other policies and objectives of the Union**

The conclusion of an Air Transport Agreement with the United States has been a long-standing priority for the EU and is a key element in the development of the EU's external aviation policy, as identified in Commission Communication COM(2005) 79 final "Developing the agenda for the Community's external aviation policy". The Agreement will also serve a fundamental objective of the Community external aviation policy by bringing existing bilateral air services agreements in line with Community law.

2) CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT

- **Consultation of interested parties**

Consultation methods, main sectors targeted and general profile of respondents

Throughout the negotiating process, the Commission has consulted extensively with stakeholders, in particular via regular meetings of the Consultative Forum comprising representatives of air carriers, airports, and labour organisations.

Summary of responses and how they have been taken into account

More than 10 meetings have been held with the Consultative Forum, during which all elements of the negotiations were discussed in detail. All comments from stakeholders were duly taken into consideration in the preparation of the Community's negotiating position.

- **Collection and use of expertise**

There was no need for external expertise.

- **Impact assessment**

The Agreement represents a significant first step towards the EU's ultimate goal of establishing an EU/US Open Aviation Area. A report prepared for the Commission in 2002 by US consultants, the Brattle Group, estimated that an EU/US Open Aviation Area would generate upwards of 17 million extra passengers a year, consumer benefits of at least €5billion a year, and would boost employment on both sides of the Atlantic.

The Agreement establishes a Joint Committee which will be responsible for reviewing the implementation of the Agreement and its effects.

3) LEGAL ELEMENTS OF THE PROPOSAL

- **Summary of the proposed action**

The Agreement represents a comprehensive first-stage agreement that will replace the existing bilateral agreements concluded by Member States with the United States. The Agreement removes all existing restrictions on the rights of both Community air carriers and United States air carriers to operate between points in the European Community and points in the United States. In this respect, the Agreement removes the obstacles to the ability of Community air carriers to benefit from the right of establishment within the Community, including the right to non-discriminatory market access, in relation to the provision of air services to and from the United States that were identified in the judgements of the Court of Justice of the European Communities in the cases C-466/98, C-467/98, C-468/98, C-469/98, C-471/98, C-472/98, C-475/98 and C-476/98.

- **Legal basis**

Article 80(2), in conjunction with the first sentence of the first subparagraph of Article 300(2) and the first subparagraph of Article 300(3) thereof.

- **Subsidiarity principle**

The subsidiarity principle applies insofar as the proposal does not fall under the exclusive competence of the Community.

The objectives of the proposal cannot be sufficiently achieved by the Member States for the following reason(s).

The Agreement establishes new arrangements at Community level governing the provision of transatlantic air services that will replace the existing arrangements made by individual Member States. The Agreement creates simultaneously for all Community air carriers uniform conditions for market access, and establishes new arrangements for regulatory co-operation between the European Community and the United States in fields essential for the safe, secure, and efficient operation of transatlantic air services. In particular, there will be strengthened co-operation in matters concerning aviation security and aviation safety. There will also be new arrangements for co-operation between the competition authorities of each side concerning the application of their respective competition regimes to international aviation affecting the transatlantic market. These arrangements can only be achieved at Community level because they involve a number of areas of exclusive Community competence.

Community action will better achieve the objectives of the proposal for the following reason(s).

The Agreement allows for the simultaneous extension of its terms to the 25 Member States, applying the same rules without discrimination and benefiting all Community air carriers regardless of their nationality. These carriers can now operate freely from any point in the European Union to any point in the United States.

Removal of all market access restrictions between the EU and the United States will not only attract new entrants to the market and create opportunities to operate to underserved airports, but will also facilitate consolidation between Community air carriers.

The Agreement secures for all Community air carriers access to commercial opportunities, such as provision of aircraft with crew to US air carriers, which no Member State has been able to secure by negotiating individually. One of the main objectives of the mandate is to create a level playing field between all EU and US air carriers, and this requires strong regulatory co-operation which can only be delivered at Community level.

The proposal therefore complies with the subsidiarity principle.

- **Proportionality principle**

The proposal complies with the proportionality principle for the following reason(s).

A Joint Committee will be established to discuss matters related to the implementation of the Agreement. The Joint Committee will foster expert-level exchanges on new legislative or regulatory initiatives or developments and consider potential areas for further development of the Agreement. The Joint Committee will be composed of representatives of the Commission and the Member States.

Furthermore, Member States will continue to carry out the traditional administrative tasks they execute in the context of international air transport, but under common rules applied uniformly.

- **Choice of instruments**

Proposed instruments: other.

Other means would not be adequate for the following reason(s).

External aviation relations can only be given effect through international agreements.

4) BUDGETARY IMPLICATION

The proposal has no implication for the Community budget.

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THE COUNCIL OF THE EUROPEAN UNION AND THE REPRESENTATIVES OF THE GOVERNMENTS OF THE MEMBER STATES MEETING WITHIN THE COUNCIL

Having regard to the Treaty establishing the European Community and in particular Article 80(2), in conjunction with the first sentence of the first subparagraph of Article 300(2) thereof

Whereas

(1) the Commission has negotiated on behalf of the Community and of the Member States an Agreement on Air Transport with the United States of America (hereinafter, the "Agreement");

(2) the Agreement was initialled on ……..;

(3) the Agreement should be signed and applied provisionally by the Community and the Member States, subject to its possible conclusion at a later date;

(4) currently the statutory law of the United States requires, among other things, that, for an airline to be licensed as a U.S. carrier, it must be under "the actual control" of U.S. citizens. This requirement has been interpreted by the U.S. Department of Transportation in a statement of general policy contained in Part 399.88 of Title 14 of its Code of Federal Regulations (hereafter "CFR 14 Part 399.88");

(5) the Agreement is based on the understanding that the United States shall apply the interpretation of the statutory "actual control" requirement that has been enounced by the Department of Transportation in CFR 14 Part 399.88 in a manner which affords to the nationals of the Member States who have invested in an airline of the United States the possibility to exercise a commensurate degree of influence over the commercial operations of such airline. Therefore, if the aviation authorities or the courts of the United States fail to interpret or apply CF 14 399.88 in such a manner, or if that provision is amended, revoked, withdrawn or annulled, unless it is replaced by another provision which affords no less favourable treatment to the Community investors, the Community and the Member States should discontinue the provisional application of the Agreement;

(6) it is necessary to lay down procedural arrangements for deciding, if appropriate, how to discontinue the provisional application of the Agreement. It is also necessary to lay

down appropriate procedural arrangements for the participation of the Community and the Member States in the Joint Committee set up under Article 17 of the Agreement and in the arbitration procedures provided in Article 18 of the Agreement, as well as for implementing certain provisions of the Agreement concerning security, safety, traffic rights and government support.

HAVE DECIDED AS FOLLOWS:

Article 1 (Signature)

Subject to a possible conclusion at a later date, the President of the Council is hereby authorised to designate the person empowered to sign, on behalf of the Community, the Agreement on Air Transport between the European Community and its Member States, of the one part, and the United States of America, of the other part. The text of the Agreement is attached to this decision.

Article 2 (Provisional application)

1. Pending its entry into force, the Agreement shall be applied on a provisional basis by the Community and by the Member States from […].

2. A decision to discontinue the provisional application of the Agreement and give notice thereof to the United States in accordance with Article 24(2) of the Agreement, and a decision to withdraw such notice, shall be taken by the Council, on behalf of the Community and of the Member States, acting unanimously on the basis of a Commission proposal.

3. If the Council determines, in accordance with the procedure established in paragraph 2, that

   a) CFR 14 Part 399.88, or any successor provision, is being interpreted or applied by the aeronautical authorities or the courts of the United States in a manner which does not afford to the nationals of the Member States who have invested in an airline of the United States the possibility to exercise a commensurate degree of influence over the commercial operations of such airline, with the exception of matters relating to security, safety and the Civil Reserve Air Fleet commitments; or

   b) CFR 14 Part 399.88, or any successor provision, is amended in a manner which provides less favourable treatment to the nationals of the Member States who have invested in an airline of the United States than CFR 14 Part 399.88; or

   c) CFR 14 Part 399.88, or any successor provision, is withdrawn, revoked or annulled, unless it is replaced by another provision which affords treatment no less favourable to the nationals of the Member States who have invested in an airline of the United States than CFR 14 Part 399.88.

it shall give the notice provided in Article 24(2) of the Agreement.

Article 3 (Joint Committee)

1. The Community and the Member States shall be represented in the Joint Committee established under Article 17 of the Agreement by the Commission assisted by representatives of the Member States.

2. The position to be taken by the Community and its Member States within the Joint Committee as regards matters falling within Articles 17 or 19 of the Agreement or matters that do not require the adoption of a decision having legal effects shall be established by the Commission. In all other instances the position of the Community and its Member States shall be adopted by the Council, acting by qualified majority on a proposal from the Commission.

Article 4 (Arbitration)

1. The Commission shall represent the Community and the Member States in arbitration proceedings under Article 18 of the Agreement.

2. The decision to suspend the application of benefits pursuant to Article 18(7) of the Agreement shall be taken by the Council on the basis of a Commission proposal. The Council shall decide by qualified majority.

3. Any other appropriate action to be taken under Article 18 of the Agreement shall be decided by the Commission, with the assistance of a Special Committee of representatives of the Member States appointed by the Council.

Article 5 (Traffic rights)

1. Member States shall inform in advance the Commission of any decision that they intend to adopt under Articles 4 or 5 of the Agreement.

2. If the Commission determines at any time that a decision which a Member State has adopted, or intends to adopt, under Articles 4 or 5 of the Agreement is incompatible with the Agreement it shall address a decision to that Member State requiring it to take appropriate action in order to comply with the Agreement. The Commission shall inform the Council and the other Member States of such decision. Any Member State may refer the decision of the Commission to the Council within 10 working days from its notification. The Council may take a different decision within one month of the referral. The Council shall decide by qualified majority.

Article 6 (Safety)

Member States shall inform the Commission immediately of any requests or notifications made or received by them under Article 7 of the Agreement.

Article 7 (Security)

Member States shall inform the Commission immediately of any requests or notifications made or received by them under Article 8 of the Agreement.

Article 8 (Government subsidies and support)

1. If a Member State believes that a subsidy or support being considered or provided by a governmental entity in the territory of the United States will have the adverse competitive effects referred to in Article 13(2) of the Agreement, it may bring the matter to the attention of the Commission, which may approach such entity or request a meeting of the Joint Committee established under Article 17 of the Agreement.

2. Member States shall inform immediately the Commission when they are contacted by the United States under Article 13(3) of the Agreement.

Done at Brussels,

For the Council
The President

2006/0058 (CNS)

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THE COUNCIL OF THE EUROPEAN UNION AND THE REPRESENTATIVES OF THE GOVERNMENTS OF THE MEMBER STATES MEETING WITHIN THE COUNCIL

Having regard to the Treaty establishing the European Community and in particular Article 80(2), in conjunction with the first sentence of the first subparagraph of Article 300(2) and the first subparagraph of Article 300(3) thereof

Having regard to the opinion of the European Parliament[1]

Whereas:

(1) the Commission has negotiated on behalf of the Community and of the Member States an Agreement on Air Transport with the United States of America (hereinafter, the "Agreement");

(2) the Agreement was signed on ….;

(3) the Agreement should be approved by the Community and the Member States;

(4) currently the statutory law of the United States requires, among other things, that, for an airline to be licensed as a U.S. carrier, it must be under "the actual control" of U.S. citizens. This requirement has been interpreted by the U.S. Department of Transportation in a statement of general policy contained in Part 399.88 of Title 14 of its Code of Federal Regulations (hereafter "CFR 14 Part 399.88");

(5) the Agreement is based on the understanding that the United States shall apply the interpretation of the statutory "actual control" requirement that has been enounced by the Department of Transportation in CFR 14 Part 399.88 in a manner which affords to the nationals of the Member States who have invested in an airline of the United States the possibility to exercise a commensurate degree of influence over the commercial operations of such airline. Therefore, if the aviation authorities or the courts of the United States fail to interpret or apply CF 14 399.88 in such a manner, or if that provision is amended, revoked, withdrawn or annulled, unless it is replaced by another

[1] OJ C …

provision which affords no less favourable treatment to the Community investors, the Community and the Member States should discontinue the provisional application of the Agreement;

(6) it is necessary to lay down procedural arrangements for deciding, if appropriate, how to terminate the Agreement. It is also necessary to lay down appropriate procedural arrangements for the participation of the Community and the Member States in the Joint Committee set up under Article 17 of the Agreement and in the arbitration procedures provided in Article 18 of the Agreement, as well as for implementing certain provisions of the Agreement concerning security, safety, traffic rights and government support.

HAVE DECIDED AS FOLLOWS:

Article 1 (Approval)

1. The Agreement on Air Transport between the European Community and its Member States, on the one part, and the United States of America, of the other part, is hereby approved on behalf of the Community. The text of the Agreement is attached to this decision.

2. Upon completion of its internal procedures for entry into force of the Agreement, each Member State shall transmit to the Secretariat of the Council the diplomatic note provided for in Article 25 of the Agreement.

3. The President of the Council is hereby authorised to designate the person empowered to deliver to the United States the diplomatic notes provided in Article 25 of the Agreement on behalf of the Community and of the Member States.

Article 2 (Termination)

1. A decision to terminate the Agreement and give notice thereof to the United States in accordance with Article 22 of the Agreement, and a decision to withdraw such notice, shall be taken by the Council, on behalf of the Community and of the Member States, acting unanimously on the basis of a Commission proposal.

2. If the Council determines, in accordance with the procedure established in paragraph 2, that

   a) CFR 14 Part 399.88, or any successor provision, is being interpreted or applied by the aeronautical authorities or the courts of the United States in a manner which does not afford to the nationals of the Member States who have invested in an airline of the United States the possibility to exercise a commensurate degree of influence over the commercial operations of such airline, with the exception of matters relating to security, safety and the Civil Reserve Air Fleet commitments; or

   b) CFR 14 Part 399.88, or any successor provision, is amended in a manner which provides less favourable treatment to the nationals of the Member States who have invested in an airline of the United States than CFR 14 Part 399.88; or

c) CFR 14 Part 399.88, or any successor provision, is withdrawn, revoked or annulled, unless it is replaced by another provision which affords treatment no less favourable to the nationals of the Member States who have invested in an airline of the United States than CFR 14 Part 399.88.

it shall give the notice provided in Article 22 of the Agreement.

Article 3 (Joint Committee)

1. The Community and the Member States shall be represented in the Joint Committee established under Article 17 of the Agreement by the Commission assisted by representatives of the Member States.

2. The position to be taken by the Community and its Member States within the Joint Committee as regards matters falling within Articles 17 or 19 of the Agreement or matters that do not require the adoption of a decision having legal effects shall be established by the Commission. In all other instances the position of the Community and its Member States shall be adopted by the Council, acting by qualified majority on a proposal from the Commission.

Article 4 (Arbitration)

1. The Commission shall represent the Community and the Member States in arbitration proceedings under Article 18 of the Agreement.

2. The decision to suspend the application of benefits pursuant to Article 18(7) of the Agreement shall be taken by the Council on the basis of a Commission proposal. The Council shall decide by qualified majority.

3. Any other appropriate action to be taken under Article 18 of the Agreement shall be decided by the Commission, with the assistance of a Special Committee of representatives of the Member States appointed by the Council.

Article 5 (Traffic rights)

1. Member States shall inform in advance the Commission of any decision that they intend to adopt under Articles 4 or 5 of the Agreement.

2. If the Commission determines at any time that a decision which a Member State has adopted, or intends to adopt, under Articles 4 or 5 of the Agreement is incompatible with the Agreement it shall address a decision to that Member State requiring it to take appropriate action in order to comply with the Agreement. The Commission shall inform the Council and the other Member States of such decision. Any Member State may refer the decision of the Commission to the Council within 10 working days from its notification. The Council may take a different decision within one month of the referral. The Council shall decide by qualified majority.

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Member States shall inform the Commission immediately of any requests or notifications made or received by them under Article 7 of the Agreement.

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Member States shall inform the Commission immediately of any requests or notifications made or received by them under Article 8 of the Agreement.

Article 8 (Government subsidies and support)

1. If a Member State believes that a subsidy or support being considered or provided by a governmental entity in the territory of the United States will have the adverse competitive effects referred to in Article 13(2) of the Agreement, it may bring the matter to the attention of the Commission, which may approach such entity or request a meeting of the Joint Committee established under Article 17 of the Agreement.

2. Member States shall inform immediately the Commission when they are contacted by the United States under Article 13(3) of the Agreement.

Done at Brussels,

For the Council
The President

ANNEX

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 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,

THE REPUBLIC OF MALTA,

THE KINGDOM OF THE NETHERLANDS,

THE REPUBLIC OF POLAND,

THE PORTUGUESE REPUBLIC,

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 traveling 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 liberalized 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 December 7, 1944;

Recognizing 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 May 28, 1999;

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

Intending to establish a precedent of global significance to promote the benefits of liberalization 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 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 December 7, 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; application of this Agreement to Gibraltar airport shall

be suspended until the arrangements in the Joint Declaration made by the Foreign Ministers of the Kingdom of Spain and the United Kingdom on December 2, 1987, enter into operation; 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 "U.S. 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; and for all-cargo service, between the United States and any point or points; 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 requirement that, with the exception of all-cargo services, the transportation is part of a service that serves the United States for U.S. airlines or a service that serves a Member State for Community airlines.

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 14) 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, with the exception of all-cargo services, the transportation is part of a service that serves the United States for U.S. airlines or a service that serves a Member State for Community airlines.

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

a. U.S. 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.

Article 4

Authorization

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

a. for a U.S. airline , substantial ownership and effective control of that airline are vested in the United States, U.S. nationals, or both;

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;

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 7 (Safety) and Article 8 (Security) are being maintained and administered.

Article 5

Revocation of Authorization

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

   a. for a U.S. airline, substantial ownership and effective control of that airline are not vested in the United States, U.S. nationals, or both;

   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

   c. that airline has failed to comply with the laws and regulations referred to in Article 6 (Application of Laws) of this Agreement.

2. Unless immediate action is essential to prevent further noncompliance with subparagraph 1c 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 authorization or technical permission of an airline or airlines of the other Party in accordance with the provisions of Article 7 (Safety) or Article 8 (Security).

Article 6

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 utilized 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 7

Safety

1. The responsible authorities of the Parties shall recognize as valid, for the purposes of operating the air transportation provided for in this Agreement, certificates of airworthiness, certificates of competency, and licenses issued or validated by each other and still in force, provided that the requirements for such certificates or licenses at least equal the minimum standards that may be established pursuant to the Convention. The responsible authorities may, however, refuse to recognize as valid for purposes of flight above their own territory, certificates of competency and licenses 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 authorization 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 noncompliance 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 8

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 agreement: the Convention on Offenses and Certain Other Acts Committed on Board Aircraft, done at Tokyo September 14, 1963, the Convention for the Suppression of Unlawful Seizure of Aircraft, done at The Hague December 16, 1970, the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal September 23, 1971, and the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, done at Montreal February 24, 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 Organization 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 recognizes, 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 minimizing regulatory divergence. To this end, the Parties shall fully utilize 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 authorization 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 9

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 sub-paragraph (b) below, each airline shall have in relation to groundhandling in the territory of the other Party:

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

   (ii) the right to select among competing suppliers that provide groundhandling 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 sub-paragraph (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 groundhandling 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 co-operative 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 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.

9. 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 intermodal 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 10

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 U.S. 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 17.

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 11

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 favorable than the most favorable 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 18, 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 12

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 U.S. 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 13

Government Subsidies and Support

1. The Parties recognize 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 17, 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-subsidization, grants, guarantees, ownership, relief or tax exemption, by any governmental entities.

Article 14

Environment

1. The Parties recognize the importance of protecting the environment when developing and implementing international aviation policy. The Parties recognize 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 International Civil Aviation Organization 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 17, to consider the issue and develop appropriate responses to concerns found to be legitimate.

Article 15

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 16

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 17

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 19 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 8, 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 10.

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

Article 18

Arbitration

1. Any dispute relating to the application or interpretation of this Agreement, other than issues arising under Article 19 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 Organization 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 Organization 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 defense shall be submitted 40 days thereafter. Any reply by the claimant shall be submitted within 15 days of the submission of the statement of defense. 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 Organization, or by any Vice President of that Council, in connection with the procedures of paragraph 2b of this Article shall be considered to be part of the expenses of the tribunal.

Article 19

Competition

1. The Parties recognize 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 recognize 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 minimizing those differences.

3. The Parties recognize that cooperation between their respective competition authorities serves to promote competition in markets and has the potential to promote compatible regulatory results and to minimize 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 20

Second Stage Negotiations

The Parties share the goal of continuing to open access to markets and to maximize benefits for consumers, airlines, labor, and communities on both sides of the Atlantic. To continue this

process, the Parties shall develop an agenda including items of priority interest to each Party. The Parties shall begin negotiations by not later than 60 days after the date of provisional application of this Agreement, with the goal of developing the next stage expeditiously.

Article 21

Relationship to Other Agreements

1. During the period of provisional application pursuant to Article 24 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 25 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 Organization or another international organization, 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 22

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 Organization. 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 23

Registration with ICAO

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

Article 24

Provisional Application

Pending entry into force pursuant to Article 25:

1. The Parties agree to apply this Agreement from [A].

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 25

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 authorized, have signed this Agreement.

DONE at [_____] on this [_____] day of _____, 200__, in duplicate, in the Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Slovak, Slovene, Spanish and Swedish languages. In case of divergence, the English text shall prevail over the other language texts.

FOR THE UNITED STATES OF AMERICA

FOR THE REPUBLIC OF AUSTRIA

FOR THE KINGDOM OF BELGIUM

FOR THE REPUBLIC OF CYPRUS

FOR THE CZECH REPUBLIC

FOR THE KINGDOM OF DENMARK

FOR THE REPUBLIC OF ESTONIA

FOR THE REPUBLIC OF FINLAND

FOR THE FRENCH REPUBLIC

FOR THE FEDERAL REPUBLIC OF GERMANY

FOR THE HELLENIC REPUBLIC

FOR THE REPUBLIC OF HUNGARY

FOR IRELAND

FOR THE ITALIAN REPUBLIC

FOR THE REPUBLIC OF LATVIA

FOR THE REPUBLIC OF LITHUANIA

FOR THE GRAND DUCHY OF LUXEMBOURG

FOR THE REPUBLIC OF MALTA

FOR THE KINGDOM OF THE NETHERLANDS

FOR THE REPUBLIC OF POLAND

FOR THE PORTUGUESE REPUBLIC

FOR THE SLOVAK REPUBLIC

FOR THE REPUBLIC OF SLOVENIA

FOR THE KINGDOM OF SPAIN

FOR THE KINGDOM OF SWEDEN

FOR THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

FOR THE EUROPEAN COMMUNITY

ANNEX 1

Section 1

As provided in Article 21 of this Agreement, the following bilateral air transport 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 March 16, 1989; amended June 14, 1995.

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

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

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

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

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

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

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

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

h. The Hellenic Republic: Air transport agreement, signed at Athens July 31, 1991; extended until July 31, 2006 by exchange of notes of July 19 and 25, 2005.

i. The Republic of Hungary: Air transport agreement and memorandum of understanding, signed at Budapest July 12, 1989; extended until July 12, 2006 by exchange of notes of July 12 and November 7, 2005.

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

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

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

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

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

m. The Republic of Malta: Air transport agreement, signed at Washington October 12, 2000.

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

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

p. The Portuguese Republic: Air transport agreement, signed at Lisbon May 30, 2000.

q. The Slovak Republic: Air transport agreement, signed at Bratislava January 22, 2001.

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

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

t. The United Kingdom of Great Britain and Northern Ireland: Agreement concerning air services, and exchange of letters, signed at Bermuda July 23, 1977; agreement relating to North Atlantic air fares, concluded March 17, 1978; agreement amending the 1977 agreement, concluded April 25, 1978; agreement modifying and extending the 1978 agreement relating to North Atlantic air fares, concluded November 2 and 9, 1978; agreement amending the

1977 agreement, concluded December 4, 1980; agreement amending the 1977 agreement, concluded February 20, 1985; agreement amending Article 7, Annex 2, and Annex 5 of the 1977 agreement, concluded May 25, 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 March 11, 1994; agreement amending the 1977 agreement, concluded March 27, 1997.

(Arrangements, being provisionally applied, contained in the memorandum of consultations dated September 11, 1986; arrangements contained in the exchange of letters dated July 27, 1990; arrangements contained in the memorandum of consultations of March 11, 1991; arrangements contained in the exchange of letters dated October 6, 1994; arrangements contained in the memorandum of consultations of June 5, 1995; arrangements contained in the exchange of letters dated March 31 and April 3, 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 (d) (Denmark-United States), (f) (France-United States), and (t) (United Kingdom-United States) of that section shall continue to apply, according to their terms.

Section 3

Notwithstanding Article 3 of this Agreement, U.S. 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, the Republic of 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 U.S. and Community airline may operate 3 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 3 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 authorized 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; and

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

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 sub-paragraphs 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 organized 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 organized 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 authorized 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.