

DEPARTMENT OF FOREIGN AFFAIRS AND TRADE
CANBERRA

**Agreement between the Government of the Republic of Kenya and
the Government of Australia relating to Air Services**

(Nairobi, 24 May 2012)

Not yet in force
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AGREEMENT BETWEEN
THE GOVERNMENT OF THE REPUBLIC OF KENYA
AND THE GOVERNMENT OF AUSTRALIA
RELATING TO AIR SERVICES

The Government of the Republic of Kenya and the Government of Australia (hereinafter, "the Parties");

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

Desiring to promote an international aviation system based on competition among airlines in the marketplace and wishing to encourage airlines to develop and implement innovative and competitive services;

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 jeopardise the safety of persons or property, adversely affect the operation of air transport, and undermine public confidence in the safety of civil aviation;

Have agreed as follows:

ARTICLE 1

Definitions

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

- (a) “Aeronautical authorities” means for each Party the authority or authorities as notified in writing from time to time by one Party to the other Party;
- (b) “Agreed services” means services for the uplift and discharge of traffic as defined in Article 3, subparagraph 1 (c);
- (c) “Agreement” means this Agreement, its Annexes, and any amendments thereto;
- (d) “Air transportation” means the public carriage by aircraft of passengers, baggage, cargo, and mail, separately or in combination, for remuneration or hire;
- (e) “Airline” means any air transport enterprise marketing or operating air transportation;
- (f) “Capacity” is the amount(s) of services provided under the Agreement, usually measured in the number of flights (frequencies), or seats or tonnes of cargo offered in a market (city pair, or country -to-country) or on a route during a specific period, such as daily, weekly, seasonally or annually;
- (g) “Convention” means the Convention on International Civil Aviation, opened for signature at Chicago on 7 December 1944, and includes:
 - (i) any Annex or any amendment thereto adopted under Article 90 of the Convention, insofar as such Annex or amendment is at any given time in force for both Parties; and
 - (ii) any amendment which has entered into force under Article 94(a) of the Convention and has been ratified by both Parties;
- (h) “Designated airline” means an airline or airlines designated and authorised in accordance with Article 2 (Designation, Authorisation and Revocation) of this Agreement;
- (i) “Ground-handling” includes but is not limited to passenger, cargo and baggage handling, and the provision of catering facilities and/or services;
- (j) “ICAO” means the International Civil Aviation Organization;
- (k) “Intermodal air transportation” means the public carriage by aircraft and by one or more surface modes of transport of passengers, baggage, cargo and mail, separately or in combination, for remuneration or hire;

- (l) “International air transportation” means air transportation which passes through the air space over the territory of more than one State;
- (m) “Marketing airline” means an airline that offers air transportation on an aircraft operated by another airline, through code-sharing;
- (n) “Operating airline” means an airline that operates an aircraft in order to provide air transportation – it may own or lease the aircraft;
- (o) “Slots” means the right to schedule an aircraft movement at an airport;
- (p) “Tariffs” means any price, fare, rate or charge for the carriage of passengers (and their baggage) and/or cargo (excluding mail) in international air transportation, including transportation on an intra-or interline basis, charged by airlines, including their agents, and the conditions governing the availability of such price, fare, rate or charge;
- (q) “Territory” and “Stop for non-traffic purposes” have the meaning respectively assigned to them in Articles 2 and 96 of the Convention; and
- (r) “User charges” means a charge made to airlines by a service provider for the provision of airport, airport environmental, air navigation and aviation security facilities and services.

ARTICLE 2

Designation, Authorisation and Revocation

1. Each Party shall have the right to designate as many airlines as it wishes to conduct international air transportation in accordance with this Agreement, and to withdraw or alter such designations. Such designations shall be transmitted to the other Party in writing through diplomatic channels. Designation shall not be required for airlines exercising the rights provided for in Article 3, subparagraphs 1 (a) and 1 (b).
2. On receipt of such a designation, and of applications from a designated airline, in the form and manner prescribed for operating authorisations and technical permissions relating to the operation and navigation of the aircraft, the other Party shall grant appropriate authorisations without delay, provided that:
 - (a) the airline is substantially owned and effectively controlled by the Party and/or nationals of the Party designating the airline;
 - (b) the airline is qualified to meet the conditions prescribed under the laws, regulations and rules normally and reasonably applied to the operation of international air transportation by the Party considering the

application or applications, in conformity with the provisions of the Convention;

- (c) the airline holds the necessary operating permits; and
- (d) the Party designating the airline is maintaining and administering the standards set forth in Article 5 (Safety) and Article 6 (Aviation Security) of this Agreement.

3. When an airline has been so designated and authorised it may commence international air transportation, provided that the airline complies with the applicable provisions of this Agreement.

4. Either Party may withhold, revoke, suspend or limit the operating authorisations or technical permissions of an airline designated by the other Party, at any time, if the conditions specified in paragraph 2 of this Article are not met, or if the airline otherwise fails to operate in accordance with the conditions prescribed under this Agreement.

5. Unless immediate action is essential to prevent further non-compliance with subparagraphs 2 (b) to 2 (d) of this Article, the rights established by paragraph 4 of this Article shall be exercised only after consultation with the other Party.

6. This Article does not limit the rights of either Party to withhold, revoke, limit or impose conditions on the operating authorisation or technical permission of an airline or airlines of the other Party in accordance with the provisions of Article 5 (Safety) or Article 6 (Aviation Security) of 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 rights for designated airlines, to operate services on the route specified in Annex 1 and to make stops in its territory for the purpose of taking on board and discharging passengers, cargo and mail, hereinafter called the “agreed services”; and
- (d) the rights otherwise specified in this Agreement.

2. Nothing in this Article shall be deemed to confer on the airline or airlines of one Party the rights to uplift and discharge between points in the territory

of the other Party, passengers, their baggage, cargo, or mail carried for compensation.

ARTICLE 4

Application of Laws

1. While entering, within, or leaving the territory of one Party, its laws, regulations and rules relating to the operation and navigation of aircraft shall be complied with by the other Party's airlines.
2. While entering, within, or leaving the territory of one Party, its laws, regulations and rules relating to the admission to or departure from its territory of passengers, crew, cargo and aircraft (including regulations and rules relating to entry, clearance, aviation security, immigration, passports, advance passenger information, customs and quarantine or, in the case of mail, postal regulations) shall be complied with by, or on behalf of, such passengers and crew and in relation to such cargo of the other Party's airlines.
3. Neither Party shall give preference to its own or any other airline over an airline of the other Party engaged in similar international air transportation in the application of its entry, clearance, aviation security, immigration, passports, advance passenger information, customs and quarantine, postal and similar regulations.
4. Passengers, baggage and cargo in direct transit through the territory of either Party and not leaving the area of the airport reserved for such purpose may be subject to examination in respect of aviation security, narcotics control and immigration requirements, or in other special cases where such examination is required having regard to the laws and regulations of the relevant Party and to the particular circumstances. Baggage and cargo in direct transit shall be exempt from customs duties and other similar taxes.

ARTICLE 5

Safety

1. Certificates of airworthiness, certificates of competency and licences issued or rendered valid by one Party and still in force shall be recognised as valid by the other Party for the purpose of operating the agreed services provided that the requirements under which such certificates and licences were issued or rendered valid are equal to or above the minimum standards which may be established pursuant to the Convention.
2. If the privileges or conditions of the licences or certificates referred to in paragraph 1 above, issued by the aeronautical authorities of one Party to any person or designated airline or in respect of an aircraft used in the operation of the agreed services, should permit a difference from the minimum standards established under the Convention, and which difference has been filed with the International Civil

Aviation Organization, the other Party may request consultations between the aeronautical authorities with a view to clarifying the practice in question.

3. Each Party reserves the right, however, to refuse to recognise for the purpose of flights above or landing within its own territory, certificates of competency and licences granted to its own nationals or in relation to its registered aircraft by the other Party.

4. Each Party may request consultations at any time concerning safety standards in any area relating to aeronautical facilities, aircrew, aircraft or their operation adopted by the other Party. Such consultations shall take place within thirty (30) days of that request.

5. If, following such consultations, one Party finds that the other Party does not effectively maintain and administer safety standards in any such area that are at least equal to the minimum standards established at that time pursuant to the Chicago Convention, the first Party shall notify the other Party of those findings and the steps considered necessary to conform with those minimum standards, and that other Party shall take appropriate corrective action. Failure by the other Party to take appropriate action within fifteen (15) days or such longer period as may be agreed, shall be grounds for the application of Article 2 of this Agreement (revocation, suspension and variation of operating authorizations).

6. Paragraphs 7 to 10 of this Article supplement paragraphs 4 to 5 of this Article and the obligations of the parties under Article 33 of the Convention.

7. Pursuant to Article 16 of the Convention, it is further agreed that any aircraft operated by or, under a lease arrangement, on behalf of the airline or airlines of one Party on services to or from the territory of another Party may, while within the territory of the other Party, be made the subject of an examination by the authorized representatives of the other Party, on board and around the aircraft to check both the validity of the aircraft documents and those of its crew and the apparent condition of the aircraft and its equipment (in this Article called "ramp inspection"), provided this does not lead to unreasonable delay.

8. If any such ramp inspection or series of ramp inspections gives rise to:

- (a) serious concerns that an aircraft or the operation of an aircraft does not comply with the minimum standards established at that time pursuant to the Chicago Convention; or
- (b) serious concerns that there is a lack of effective maintenance and administration of safety standards established at that time pursuant to the Chicago Convention;

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

9. In the event that access for the purpose of undertaking a ramp inspection of an aircraft operated by or on behalf of the airline or airlines of one Party in accordance with paragraph 6 above is denied by the representative of that airline or airlines, the other Party shall be free to infer that serious concerns of the type referred to in paragraph 7 above arise and draw the conclusions referred in that paragraph.

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

11. Any action by one Party in accordance with paragraphs 7 or 10 above shall be discontinued once the basis for the taking of that action ceases to exist.

ARTICLE 6

Aviation Security

1. Consistent 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 provisions of the Convention on Offences and Certain Other Acts Committed on Board Aircraft, signed at Tokyo on 14 September 1963, the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on 16 December 1970 and the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 23 September 1971, its Supplementary Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, signed at Montreal on 24 February 1988, as well as with any other convention and protocol relating to the security of civil aviation which both Parties adhere to.

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

3. The Parties shall, in their mutual relations, act in conformity with the aviation security provisions established by ICAO and designated as Annexes to the Convention; they shall require that operators of aircraft of their registry or 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. Each Party shall advise the other Party of any difference between its national regulations and practices and the aviation security standards of the Annexes. Either Party may request consultations with the other Party at any time to discuss any such differences.

4. Such operators of aircraft may be required to observe the aviation security provisions referred to in paragraph 3 above required by the other Party for entry into, departure from, or while within the territory of that other Party. Each Party shall ensure that adequate measures are effectively applied within its territory to protect the aircraft and to inspect passengers, crew, carry-on items, baggage, cargo and aircraft stores prior to and during boarding or loading. Each Party shall also give positive consideration to any request from the other Party for reasonable special security measures to meet a particular threat.

5. When an incident or threat of an incident of unlawful seizure of civil aircraft or other unlawful acts against the safety of such aircraft, their passengers and crew, 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 thereof.

6. Each Party shall have the right, within sixty (60) days following notice (or such shorter period as may be agreed between the aeronautical authorities), for its aeronautical authorities to conduct an assessment in the territory of the other Party of the security measures being carried out, or planned to be carried out, by aircraft operators in respect of flights arriving from, or departing to the territory of the first Party. The administrative arrangements for the conduct of such assessments shall be mutually determined by the aeronautical authorities and implemented without delay so as to ensure that assessments will be conducted expeditiously.

7. When a Party has reasonable grounds to believe that the other Party has departed from the provisions of this Article, the first Party may request immediate consultations. Such consultations shall start within fifteen (15) days of receipt of such a request from either Party. Failure to reach a satisfactory agreement within fifteen (15) days from the start of consultations shall constitute grounds for withholding, revoking, suspending or imposing conditions on the authorisations of the airline or airlines designated by the other Party. When justified by an emergency, or to prevent further non-compliance with the provisions of this Article, the first Party may take interim action at any time. Any action taken in accordance with this paragraph shall be discontinued upon compliance by the other Party with the security provisions of this Article.

8. To mitigate the risks to aviation security, including any potential unlawful interference with civil aircraft, each Party shall give consideration to a request from the other Party to discuss arrangements for the deployment of In-Flight Security Officers, consistent with Annex 17 to the Convention.

ARTICLE 7

User Charges

1. Each Party shall use its best efforts to encourage those responsible for the provision of airport, airport environmental, air navigation, and aviation security facilities and services to levy charges on the airlines only on the basis that they are reasonable, non-discriminatory, and equitably apportioned amongst categories of users.
2. Reasonable charges reflect, but do not exceed, the full cost to the competent charging authorities of providing the facilities and services. This may include a reasonable return on assets, after depreciation. Facilities and services for which charges are made should be provided on an efficient and economic basis. For charges to be non discriminatory, they should be levied on foreign airlines at a rate no higher than the rate imposed on a Party's own airlines operating similar international services.
3. The Parties shall encourage the exchange of such information between the competent charging authorities and the airlines as may be necessary to permit a full assessment of the reasonableness of, justification for, and apportionment of the charges in accordance with paragraphs 1-2 of this Article.
4. Increased or new charges should only follow adequate consultations between the competent charging authorities and the airlines. Reasonable notice of any proposals for changes in user charges should be given to users to enable them to express their views before changes are made.

ARTICLE 8

Statistics

1. The aeronautical authorities of one Party may require a designated airline of the other Party to provide statements of statistics related to the traffic carried by that airline on services performed under this Agreement.
2. The aeronautical authorities of each Party may determine the nature of the statistics required to be provided by designated airlines under the above paragraph, and shall apply these requirements on a non-discriminatory basis.

ARTICLE 9

Customs Duties and Other Charges

1. Aircraft operated in international air transportation by the airlines of each Party shall be exempt from all import restrictions, customs duties, excise taxes, and similar fees and charges imposed by national authorities. Component parts, normal aircraft equipment and other items intended for or used solely in connection with the operation or for the repair, maintenance and servicing of such aircraft shall be similarly exempt, provided such equipment and items are for use on board an aircraft and are re-exported.

2. (a) Provided in each case that they are for use on board an aircraft in connection with the establishment or maintenance of international air transportation by the airline concerned, the following items shall be exempt from all import restrictions, customs duties, excise taxes, and similar fees and charges imposed by national authorities, whether they are introduced by an airline of one Party into the territory of the other Party or supplied to an airline of one Party in the territory of the other Party:

- (i) aircraft stores (including but not limited to such items as food, beverages and products destined for sale to, or use by, passengers during flight);
- (ii) fuel, lubricants (including hydraulic fluids) and consumable technical supplies; and
- (iii) spare parts including engines.

(b) These exemptions shall apply even when these items are to be used on any part of a journey performed over the territory of the other Party in which they have been taken on board.

3. The exemptions provided by this Article shall not extend to charges based on the cost of services provided to the airlines of a Party in the territory of the other Party.

4. The normal aircraft equipment, as well as spare parts (including engines), supplies of fuel, lubricating oils (including hydraulic fluids) and lubricants and other items mentioned in paragraphs 1 and 2 of this Article retained on board the aircraft operated by the airlines of one Party may be unloaded in the territory of the other Party only with the approval of the Customs authorities of that territory. Aircraft stores intended for use on the airlines' services may, in any case be unloaded. 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 until they are re-exported or otherwise disposed of in accordance with the Customs laws and procedures of that Party.

5. The exemptions provided for by this Article shall also be available in situations where the airline or airlines of one Party have entered into arrangements with another airline or airlines for the loan or transfer in the territory of the other Party

of the items specified in paragraphs 1 and 2 of this Article, provided such other airline or airlines similarly enjoy such reliefs from such other Party.

ARTICLE 10

Tariffs

1. Each Party shall allow each airline to determine its own tariffs for the transportation of traffic.
2. Unless required by national laws and regulations, tariffs charged by airlines shall not be required to be filed with the aeronautical authorities of either Party.
3. In the event that either aeronautical authority is dissatisfied with a tariff proposed or in effect for an airline of the other Party, the aeronautical authorities will endeavour to settle the matter through consultations, if so requested by either authority. In any event, the aeronautical authority of a Party shall not take unilateral action to prevent the coming into effect or continuation of a tariff of an airline of the other Party.

ARTICLE 11

Capacity

In the operation of the agreed services, the capacity which may be provided by the designated airlines of each Party shall be such as is decided between the aeronautical authorities of the Parties before the commencement of such services by the airlines concerned and from time to time thereafter.

ARTICLE 12

Commercial Opportunities

1. The airlines of each Party shall have the following rights in the territory of the other Party:
 - (a) the right to establish offices, including offline offices, for the promotion, sale and management of air transportation;
 - (b) the right to engage in the sale and marketing of air transportation to any person directly and, at its discretion, through its agents or intermediaries, using its own transportation documents; and

(c) the right to use the services and personnel of any organisation, company or airline operating in the territory of the other Party.

2. In accordance with the laws and regulations relating to entry, residence and employment of the other Party, the airlines of each Party shall be entitled to bring in and maintain in the territory of the other Party those of their own managerial, sales, technical, operational and other specialist staff which the airline reasonably considers necessary for the provision of air transportation. Consistent with such laws and regulations, each Party shall, with the minimum of delay, grant the necessary employment authorisations, visas or other similar documents to the representatives and staff referred to in this paragraph.

3. The airlines of each Party shall have the right to sell air transportation, and any person shall be free to purchase such transportation, in local or freely convertible currencies. Each airline shall have the right to convert their funds into any freely convertible currency and to transfer them from the territory of the other Party at will. Subject to the national laws and regulations and policy of the other Party, conversion and transfer of funds obtained in the ordinary course of their operations shall be permitted at the foreign exchange market rates for payments prevailing at the time of submission of the requests for conversion or transfer and shall not be subject to any charges except normal service charges levied for such transactions.

4. The airlines of each Party shall have the right at their discretion to pay for local expenses, including purchases of fuel, in the territory of the other Party in local currency or, provided this accords with local currency regulations, in freely convertible currencies.

5. (a) In operating or holding out international air transportation the airlines of each Party shall have the right, over all or any part of their route in Annex 1 to enter into code share, blocked space or other cooperative marketing arrangements, as the marketing and/or operating airline, with any other airline, including airlines of the same Party and of third parties. Subject to 5 (c) of this Article, the airlines participating in such arrangements must hold the appropriate authority or authorities to conduct international air transportation on the routes or segments concerned.

(b) Unless otherwise mutually determined by the aeronautical authorities of the Parties, the volume of capacity or service frequencies which may be held out and sold by the airlines of each Party, when code sharing as the marketing airline, shall not be subject to limitations under this Agreement.

(c) The aeronautical authority of one Party shall not withhold code sharing permission for an airline of the other Party to market code share services on flights operated by airlines of third parties on the basis that the third Party airlines concerned do not have the right from the first Party to carry traffic under the code of the marketing airline.

(d) The airlines of each Party may market code share services on domestic flights operated within the territory of the other Party provided that such services form part of a through international journey.

(e) The airlines of each Party shall, when holding out international air transportation for sale, make it clear to the purchaser at the point of sale which airline will be the operating airline on each sector of the journey and with which airline or airlines the purchaser is entering into a contractual relationship.

6. The airlines of each Party shall have the right to perform their own ground-handling in the territory of the other Party, or contract with a competing agent of their choice, including any other airlines which perform ground-handling, for such services in whole or in part. Each airline shall also have the right, in the territory of the other Party, to offer its services as a ground-handling agent, in whole or part, to any other airline. These rights shall be subject only to restrictions resulting from considerations of airport safety. Where such considerations preclude an airline from performing its own ground-handling or contracting with an agent of its choice for ground-handling services, these services shall be made available to that airline on a basis of equality with all other airlines.

7. The airlines of each Party shall be permitted to conduct international air transportation using aircraft (or aircraft and crew) leased from any company, including other airlines, provided only that the operating aircraft and crew meet the applicable operating and safety standards and requirements.

8. The Parties recognise that to give effect to the rights and entitlements embodied in the Agreement the airlines of each Party must have the opportunity to access airports in the territory of the other Party on a non-discriminatory basis.

9. In respect of the allocation and grant of slots to airlines at their national airports, each Party will:

- (a) in accordance with local slot allocation rules, procedures or practices which are in effect or otherwise permitted, ensure that the airlines of the other Party:
 - (i) are permitted fair and equal opportunity to secure slots; and
 - (ii) are afforded no less favourable treatment than any other airline in securing slots; and
- (b) ensure that in the event of any arrangement, procedure or practice which is either established with any third Party in relation to the grant of slots to the airlines of that Party or is otherwise permitted for a particular foreign international airline or airlines, such opportunities are extended to the airlines of the other Party.

10. The terms of paragraph 9 of this Article will be subject to the provisions of any laws or regulations introduced by the Parties for the allocation of slots at their national airports.

ARTICLE 13

Intermodal Services

The designated airlines of each Party shall be permitted to employ, in connection with international air transport, any surface transport to or from any points in the territories of the Parties or third countries. Airlines may elect to perform their own surface transport or to provide it through arrangements, including code share, with other surface carriers. Such intermodal services may be offered as a through service and at a single price for the air and surface transport combined, provided that passengers and shippers are informed as to the providers of the transport involved.

ARTICLE 14

Competition

1. Each Party shall allow a fair and equal opportunity for the designated airline(s) of both Parties to compete in providing the international air transportation covered by this Agreement.
2. Each Party shall take all appropriate action within its jurisdiction to eliminate all forms of discrimination or unfair competitive practices adversely affecting the competitive position of the airline(s) of the other Party.
3. Neither Party may unilaterally limit the volume of traffic frequency or regularity of service, or aircraft type(s) operated by the designated airline(s) of the other Party, in terms of this Agreement, except as may be required for customs, technical, operational or any other reasons under uniform conditions consistent with Article 15 of the Convention.
4. Either Party may require the filing of schedules or operational plans by airlines of the other Party for approval, provided such a requirement is applied on a non-discriminatory basis. If a Party requires filings it shall minimize the administrative burden of filing requirement and procedures on air transportation intermediaries and on the designated airline(s) of the other Party.
5. Any restrictions on the operations of the designated airline(s) of the other Party shall be in accordance with the terms of this Agreement or by such applicable conditions of the Convention.
6. The competition laws of each Party, as amended from time to time, shall apply to the operation of the airlines within the jurisdiction of the respective Party. Where permitted under those laws, a Party or its competition authority may, however, unilaterally exempt commercial agreements between airlines from the application of its domestic competition law. This does not obligate a Party or its competition authority to provide a reciprocal exemption.

7. Notwithstanding anything in paragraph 6 above, this Article does not preclude unilateral action by the airlines or the competition authorities of either Party.

ARTICLE 15

Consultations

1. Either Party may at any time request consultations on the implementation, interpretation, application or amendment of this Agreement.
2. Subject to Articles 2 (Designation, Authorisation and Revocation), 5 (Safety) and 6 (Aviation Security), such consultations, which may be through discussion or correspondence, shall begin within a period of sixty (60) days of the date of receipt of such a request, unless otherwise mutually decided.

ARTICLE 16

Amendment of Agreement

1. This Agreement may be amended or revised by agreement in writing between the Parties.
2. Any such amendment or revision shall enter into force when the Parties have notified each other in writing that their respective requirements for the entry into force of an amendment or revision have been met.
3. If a multilateral convention concerning air transportation comes into force in respect of both Parties, this Agreement shall be deemed to be amended so far as is necessary to conform with the provisions of that convention.

ARTICLE 17

Settlement of Disputes

1. Any dispute between the Parties concerning the interpretation or application of this Agreement, with the exception of any dispute concerning tariffs or the application of national competition laws, which cannot be settled by consultations or negotiations, or, where agreed, by mediation in accordance with Annex 2, shall, at the request of either Party, be submitted to an arbitral tribunal.
2. Within a period of thirty (30) days from the date of receipt by either Party from the other Party of a note through the diplomatic channel requesting arbitration of the dispute by a tribunal, each Party shall nominate an arbitrator. Within a period of thirty (30) days from the appointment of the arbitrator last appointed, the two arbitrators shall appoint a president who shall be a national of a third State. If within thirty (30) days after one of the Parties has nominated its

arbitrator, the other Party has not nominated its own or, if within thirty (30) days following the nomination of the second arbitrator, both arbitrators have not agreed on the appointment of the president, either Party may request the President of the Council of the ICAO to appoint an arbitrator or arbitrators as the case requires. If the President of the Council is of the same nationality as one of the Parties, the most senior Vice President who is not disqualified on that ground shall make the appointment.

3. Except as otherwise determined by the Parties or prescribed by the tribunal, each Party shall submit a memorandum within thirty (30) days after the tribunal is fully constituted. Replies shall be due within thirty (30) days. The tribunal shall hold a hearing at the request of either Party, or at its discretion, within thirty (30) days after replies are due.

4. The tribunal shall attempt to give a written award within thirty (30) days after completion of the hearing, or, if no hearing is held, after the date both replies are submitted. The award shall be taken by a majority vote.

5. The Parties may submit requests for clarification of the award within fifteen (15) days after it is received and such clarification shall be issued within fifteen (15) days of such request.

6. The award of the arbitral tribunal shall be final and binding upon the parties to the dispute.

7. The expenses of arbitration under this Article shall be shared equally between the Parties.

8. If and for so long as either Party fails to comply with an award under paragraph 6 of this Article, the other Party may limit, suspend or revoke any rights or privileges which it has granted by virtue of this Agreement to the Party in default.

ARTICLE 18

Termination

1. Either Party may at any time give notice in writing to the other Party of its decision to terminate this Agreement. Such notice shall be communicated simultaneously to the ICAO. The Agreement shall terminate at midnight (at the place of receipt of the notice to the other Party) immediately before the first yearly anniversary of the date of receipt of notice by the Party, unless the notice is withdrawn by mutual decision of the Parties before the end of this period.

2. In default of acknowledgement of receipt of a notice of termination by the other Party, the notice shall be deemed to have been received fourteen (14) days after the date on which ICAO acknowledged receipt thereof.

ARTICLE 19

Registration with ICAO

This Agreement and any amendment thereto shall be registered with the ICAO.

ARTICLE 20

Entry into Force

This Agreement shall enter into force when the Parties have notified each other in writing that their respective requirements for the entry into force of this Agreement have been satisfied.

IN WITNESS THEREOF, the undersigned, duly authorised thereto by their respective governments, have signed this Agreement.

DONE at Nairobi, this 24th day of May, 2012, in the English language.

For the Government of
Australia

For the Government of
the Republic of Kenya

ANNEX 1

Section 1

ROUTE SCHEDULE

The designated airline(s) of each Party shall be entitled to perform international air transportation between points on the following routes:

Route for the designated airline(s) of the Republic of Kenya:

<u>Points in the Republic of Kenya</u>	<u>Intermediate Points</u>	<u>Points in Australia</u>	<u>Beyond Points</u>
Any	Any	Any	Any

Route for the designated airline(s) of Australia:

<u>Points in Australia</u>	<u>Intermediate Points</u>	<u>Points in the Republic of Kenya</u>	<u>Beyond Points</u>
Any	Any	Any	Any

Notes:

1. The designated airline(s) of each Party may at their option omit points on any of the above routes provided that, with the exception of all-cargo services, the services commence or terminate in the territory of the Party designating the airline(s).
2. The traffic rights which may be exercised by the designated airline(s) at intermediate and beyond points on the above routes shall be jointly determined between the aeronautical authorities from time to time.
3. Between points in the territory of the other Party, the designated airline(s) of each Party may exercise own stopover rights only.

Section 2

OPERATIONAL FLEXIBILITY

Subject to Section 1 of this Annex, the designated airline(s) of each Party may, on any or all services and at the option of each airline, including under code sharing arrangements with other airlines:

- (a) perform services in either or both directions;
- (b) combine different flight numbers within one aircraft operation;
- (c) transfer traffic from any aircraft of any size or type to any other aircraft of any size or type at any point on the route,

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

ANNEX 2

MEDIATION PROCESS

1. The rules set out in this Annex apply where the Parties seeking an amicable settlement of their dispute have agreed to submit the dispute to mediation. The Parties to the dispute may agree to exclude, supplement or vary any of the rules contained in this Annex at any time.

The Party initiating mediation shall send to the other Party a written invitation to mediate under this Annex. The mediation commences following the receipt, by the Party initiating the mediation, of written notification by the other Party accepting the offer to mediate.

2. There shall be one mediator unless the Parties agree that there shall be two or three mediators. Where there is more than one mediator, they ought, as a general rule, to act jointly.

The Parties to the dispute shall seek to agree on the appointment of the sole mediator or mediators to be chosen preferably from the roster of suitably qualified aviation experts maintained by ICAO. The appointment of mediators shall be completed within twenty-one (21) days of receipt of the notification referred to at paragraph 1. Where the Parties fail to agree on the appointment of the mediator or mediators within that period, the Party initiating the mediation may terminate the mediation proceedings by notification addressed to the other Party or request the President of the Council of the ICAO to make the appointments.

3. The mediator shall hear the Parties, examine their claims and make proposals to the Parties with a view to reaching an amicable settlement. The mediator may draw the attention of the Parties to any measures which might facilitate an amicable settlement of the dispute.

4. The Parties shall cooperate in good faith with the mediator and, in particular, will endeavour to comply with requests by the mediator to submit written materials, provide evidence and attend meetings.

5. The cost of the mediation shall be borne equally by the parties to the dispute.

6. The mediation mechanism is without prejudice to the continuing use of the consultation process, the subsequent use of arbitration, or termination under Article 18 of this Agreement.

7. The mediation process is terminated when a settlement has been reached or when one Party to the dispute terminates the mediation by written notification to the other Party