

## MEMORANDUM OF UNDERSTANDING

1. Delegations representing the aeronautical authorities of the Government of India and the Government of the Netherlands met in The Hague on 16-17 May 2005 to discuss arrangements governing air services between their two countries. The talks were held in a friendly and cordial atmosphere. The composition of the two delegations is attached as Appendix "A".

### **Air Services Agreement**

2. Both delegations agreed to recommend to their respective Governments to amend the Route Schedule in paragraph 1 of the Annex to the Air Services Agreement (ASA) in the following manner:
  - To replace the words "Delhi, Calcutta or Bombay;" with "Delhi, Kolkata, Mumbai, Hyderabad or Chennai;".
3. Delegations discussed the Tariff Article and agreed to recommend to their respective Governments to delete paragraph (B) of Article VI of the existing ASA.
4. Both delegations agreed that each Contracting Party may designate one or more airlines to operate the agreed services on the specified air routes and to recommend to their respective Governments to amend the ASA accordingly.
5. The amendments to the ASA shall come into force in accordance with Article IX B and these arrangements will be applied administratively pending the required constitutional procedures.

### **Requirements of European Community Law**

6. The Netherlands delegation explained that it is obliged by European Community law to include certain standard provisions, in particular on designation of European Community airlines, in all its bilateral arrangements. It explained the meaning of these provisions and urged the Indian delegation to accept them. It explained that if these provisions were not accepted, any new arrangements between the Netherlands and India could only be applied on a provisional basis and would be subject to the approval of the European Commission.
7. The Indian delegation, while taking note of the request of the Netherlands side, advised that it needed more time to study these clauses. It was not possible to immediately confirm the incorporation of these clauses as these are under consideration of the Government of India. However, the entire issue would be discussed in the near future with the European Commission as part of the proposal for a European Union level Horizontal Agreement.

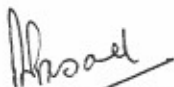
### **Capacity Entitlements**

8. Both sides decided to replace the earlier capacity arrangements mentioned in the Memorandum of Understanding (MOU) between the aeronautical authorities dated 10 January 1992 in paragraphs 1, 2 and 4 with new capacity entitlements with regard to

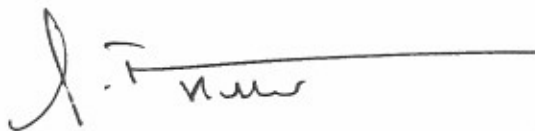
the operation of air services between and beyond their respective countries by their designated airlines under the Air Services Agreement of 24 May 1951 as set out below:

- (a) The designated airlines of the Netherlands shall be entitled to operate up to twenty-one services per week in each direction to/through India with any aircraft type in any configuration for passenger/cargo services, on the routes specified in the amended Paragraph 1 of the Annex to the Air Services Agreement as follows: seven frequencies as of the date of signature of this MOU; fourteen frequencies per week as from IATA winter season 2005; and twenty-one frequencies per week as from IATA summer season 2006. On these services no fifth freedom traffic rights shall be exercised between any points in India (except Kolkata) on the one hand and points in the Gulf Area and Middle East on the other hand. The designated airlines of the Netherlands shall operate not more than seven frequencies per week to/ from any one point in India.
- (b) The designated airlines of India shall be entitled to operate up to twenty-one services per week in each direction to/through the Netherlands with any aircraft type in any configuration for passenger/cargo services, on the routes specified in Paragraph 2 of the Annex to the Air Services Agreement, as follows: seven frequencies as of the date of signature of this MOU; fourteen frequencies per week as from IATA winter season 2005; and twenty-one frequencies per week as from IATA summer season 2006.
9. The Indian delegation informed that the Government of India had formulated a new policy in December 2004 regarding mandated commercial agreements. In accordance with this policy, the delegations agreed that henceforth there would be no mandated commercial agreements on any new services operated by foreign carriers, including new services on routes already operated. The existing mandated commercial agreements would continue a maximum period of five years and would cease as from 1 January 2010. However, the respective designated airlines would remain free to enter, at their own choice, into commercial agreements for their mutual benefit.
10. Delegations agreed to a code sharing arrangement attached as Appendix "B".
11. Both sides decided to review periodically and update the bilateral framework in accordance with Article IX of the ASA.
12. Without prejudice to paragraph 6, the MOU shall be effective as from the date of signature.

**Signed in The Hague on 17 May 2005**



-----  
**AJAY PRASAD**  
Head of Delegation of  
the Republic of India



-----  
**JACQUELINE TAMMENOMS BAKKER**  
Head of Delegation of  
the Kingdom of the Netherlands

Composition of Delegations

I. Indian Delegation

1. Mr. A. Prasad  
Secretary, Ministry of Civil Aviation
2. Ms. L. K. Ponappa  
Ambassador of India, Embassy of India
3. Mr. D. Pradhan  
Minister, Embassy of India
4. Mr. R.K. Singh  
Director, Ministry of Civil Aviation
5. Mr. V.K. Verma,  
Commercial Director, Air India
6. Mr. D. Kumar,  
Second Secretary, Embassy of India
7. Mr. P. Sagar,  
International Relations Department, Air India



## II. Netherlands Delegation

1. Mrs. J.A. Tammenoms Bakker  
Director General of the Directorate General of Civil Aviation and Freight  
Transport (DGTL),  
Ministry of Transport, Public Works and Watermanagement
2. Mr. H.E. Sierink  
Chief Negotiator DGTL,  
Ministry of Transport, Public Works and Watermanagement
3. Mr. E.F. Ch. Niehe  
Ambassador of the Netherlands, Royal Netherlands Embassy
4. Mrs. P. van Brandenburg-Kulkarni  
Policy Advisor DGTL,  
Ministry of Transport, Public Works and Watermanagement
5. Mr. J.G. Petit  
Deputy Transport Adviser, Ministry of Foreign Affairs
6. Mr. F. Gruber  
Government & Industry Affairs, KLM
7. Mr. H. Grisnigt  
Network Planning, KLM
8. Mr. H.J. Vonk  
Foreign Relations, Martinair



**Proposal by the Netherlands with regard to the inclusion of certain  
standard provisions as required by EU law in the ASA  
The Hague, 16-17 May 2005**

- (i) Add to Article VIII standard designation and revocation provision  
In view of the legal obligations of the Netherlands to the European Community, the other Contracting Party is only entitled to withhold the exercise of the rights granted under this Article from any airline established in an designated by the Netherlands if such airline does not have a valid Operating License in accordance with the European Community law or effective regulatory control is not exercised by the European Community Member State responsible for issuing its Air Operator's Certificate.
  
- (ii) Add definition to Article XIV with regard to  
Add paragraph (C): "References in this Agreement to nationals of the Netherlands shall be understood as referring to nationals of Member States of the European Community or the European Free Trade Association."
  
- (iii) Add to Article VI a new paragraph on Tariffs within the European Community  
Add the following (new) paragraph (B):  
"Notwithstanding the provisions in this Article, the tariffs to be charged by the designated airlines of India for carriage wholly within the European Community shall be subject to European Community law."
  
- (iv) Add to Article VII a new paragraph about fuel tax  
Add paragraph: "Nothing in this Agreement shall prevent the Netherlands from imposing, on a non-discriminatory basis, taxes, levies, duties, fees or charges on fuel supplied in its territory for use in an aircraft of a designated air carrier of India that operates between a point in the territory of the Netherlands and another point in the territory of the Netherlands or in the territory of another European Community Member State."

Code-sharing Arrangements

1. When operating or holding out the agreed services on the specified route(s), any designated airline of either Contracting Party may enter into cooperative marketing arrangements, whether as the operating or marketing airline, with
  - (a) an airline or airlines of the same Contracting Party; or
  - (b) an airline or airlines of the other Contracting Party; or
  - (c) an airline or airlines of a third country.
2. When a designated airline of a Contracting Party performs air services under cooperative marketing arrangements as the operating airline, the total capacity operated by that airline will be counted against the capacity entitlements of the Contracting Party designating the airline.
3. When a designated airline of a Contracting Party performs air services under cooperative marketing arrangements as the marketing airline with an airline of its own country or an airline of the other Contracting Party, the service offered by the marketing airline will not be counted against the capacity entitlements of the Contracting Party designating that airline.
4. When a designated airline of a Contracting Party performs air services under cooperative marketing arrangements as the marketing airline with an airline from a third country, the service offered will be counted against the capacity entitlements of both the marketing airline and operating airline.
5. All airlines operating or holding out the above services must hold the appropriate authority including route rights, traffic rights and capacity entitlement and meet the requirements normally applied to such arrangements.
6. The designated airlines of both Contracting Parties will, when holding services out for sale, in terms of code-share, blocked-space or other joint venture arrangements, make it clear to the purchaser at the point of sale which airline will be operating airline on each sector of the service and with which airline(s) the purchaser is entering into a contractual relationship.

