

## MEMORANDUM OF CONSULTATIONS

### INTRODUCTION

1. Delegations representing the Government of the United Kingdom of Great Britain and Northern Ireland ("UK") and the Government of the United States of America met in Washington, D.C., on November 28, 2018, to discuss ongoing bilateral air services arrangements between the UK and the United States in light of the UK's forthcoming withdrawal from the European Union ("EU"). The composition of the two delegations is attached at **Attachment A**.
2. Discussions were held in a friendly and constructive atmosphere and built upon previous rounds of similarly friendly and constructive bilateral discussions.

### NEW BILATERAL AIR SERVICES ARRANGEMENTS

3. The delegations reached *ad referendum* agreement on the text of a draft bilateral Air Transport Agreement (the "Agreement"), which is attached at **Attachment B**.
4. The delegations expressed their expectation that they will submit the Agreement to their respective governments for approval, with the goal of its entry into force as soon as practicable after the date confirmed pursuant to paragraph 7.
5. Pending its entry into force, both delegations expressed their expectation that their respective aeronautical authorities will permit operations consistent with the Agreement on the basis of comity and reciprocity from the date confirmed pursuant to paragraph 7.
6. The delegations plan to consult regarding the appropriate mechanism to reflect that the UK will no longer be bound by the obligations of the EU-U.S. Air Transport Agreements ("EU-U.S. ATAs").
7. Both delegations noted their expectation that their governments will confirm via an exchange of correspondence their joint understanding of the date on which the EU-U.S. ATAs cease to apply to the UK, with such exchange occurring ideally at least one month prior to such date.
8. Both delegations expressed their expectation that they will consult periodically on developments regarding the terms of the UK's exit from the EU and the UK's future relationship with the EU.

### IMPLEMENTATION PERIOD

9. The UK delegation referred to Part Four of the draft agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (the "Withdrawal Agreement"), which would provide

for a transition or implementation period (the "Implementation Period"), during which the EU and UK propose that the UK will remain bound by the obligations stemming from international agreements concluded by the EU, or by the EU and its Member States acting jointly, and will continue to be treated as though it were an EU Member State for purposes of these agreements.

10. Further to the above, the UK delegation noted that the EU and the UK propose to notify the United States that, during the proposed Implementation Period, the UK is to be treated as an EU Member State for the purposes of international agreements concluded between the EU, or the EU and its Member States acting jointly, and the United States. In response, the U.S. delegation confirmed that the United States would work with the UK and EU to identify an appropriate mechanism for securing the continued application of the EU-U.S. ATAs to the UK during the proposed Implementation Period.
11. The delegations noted that references to the EU-U.S. ATAs in this Memorandum are to the following: the Air Transport Agreement between the United States of America and the European Community and its Member States, signed on April 25 and 30, 2007; the Protocol to Amend the Air Transport Agreement between the United States of America and the European Community and its Member States, signed on April 25 and 30, 2007, signed on June 24, 2010; and the Air Transport Agreement between the United States of America, the European Union and its Member States, Iceland, and the Kingdom of Norway, signed on June 16 and 21, 2011.

#### **GEOGRAPHICAL SCOPE OF THE AGREEMENT**

12. In discussing Article 2 (Grant of Rights) of the Agreement, the delegations recognized the importance of ensuring that the UK Overseas Territories (OTs) and Crown Dependencies (CDs) are covered by the Agreement. The UK delegation expressed its view that the OTs and CDs are included within the definition of "territory" in Article 1 (Definitions) of the Agreement and are otherwise encompassed within references to the United Kingdom throughout the Agreement.

#### **PROVISION OF AIRCRAFT WITH CREW**

13. In discussing Article 8 (Commercial Opportunities), Paragraph 7 of the Agreement, the U.S. and UK delegations noted the importance of liberal leasing arrangements. The UK delegation noted that the exact form in which the leasing provisions of Regulation (EC) 1008/2008 will be incorporated into UK domestic law is yet to be determined. Both delegations confirmed their understanding that the Agreement foresees a regime without time limitations on leasing arrangements, thereby offering airlines greater flexibility to maximize commercial relationships.



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## AIRLINE OWNERSHIP AND CONTROL

14. Both delegations highlighted their shared interest in the preservation of a robust and competitive transatlantic air services market. The delegations also noted their mutual interest in facilitating new entrant airlines in the U.S.-UK market in the hopes of increasing competition that benefits the consumer.
15. The UK delegation asked about the licensing of future UK airlines whose ownership and control structures would not meet the requirements of Article 3 (Authorization) of the Agreement. The U.S. delegation explained that the U.S. Department of Transportation ("DOT") licenses airlines to serve the United States consistent with the authorization provisions of the applicable air transport agreement and U.S. laws and regulations. The U.S. delegation further stated that, with respect to Article 3 of the Agreement, DOT has broad authority to waive ownership and control standards, and that DOT has a long-established practice of waiving such standards for airlines when all countries involved are Open-Skies partners. In response to further questions by the UK delegation, the U.S. delegation noted no concerns with the current ownership and control structures of the UK-licensed airlines serving the U.S.-UK market at this time.
16. In response to a question from the U.S. delegation about a UK airline that has its principal place of business in a jurisdiction within the territory of the United Kingdom outside Great Britain and Northern Ireland, the UK delegation expressed its view that references in the Agreement to ownership and control vested in the UK should be read as encompassing ownership and control vested in the Government or citizens of that jurisdiction, or both. The U.S. delegation reflected that this view is consistent with DOT's licensing practice of carriers of UK OTs and CDs.
17. The U.S. delegation also referred the UK delegation to the process for issuing operating authorizations and technical permissions set out in Title 14 of the Code of Federal Regulations, specifically Parts 211 and 302, which is available to the public, in addition to the Foreign Carrier Information Packet for new entrants that DOT makes available. The U.S. delegation noted that foreign airline applications, including those that request an ownership and control waiver, are routinely processed with minimum procedural delay. In accordance with its regulations, DOT conducts the review of a foreign airline's authority in a public proceeding in which any interested party may participate. In response to additional inquiry from the UK delegation, the U.S. delegation emphasized that, absent safety or security concerns, carrier operations remain unaffected during any ongoing review process.
18. The UK delegation noted Article 2(1) of Annex 4 to the Air Transport Agreement between the United States and the European Community and its Member States, signed on April 25 and 30, 2007, as amended (the "U.S.-EU Agreement"), regarding the ownership of third-country airlines. The U.S. delegation noted that Parties bound by the U.S.-EU Agreement may raise matters related to that agreement with one another as appropriate.

## PRICING



19. In discussing Article 12 (Pricing) of the Agreement, both delegations took note of certain instances when their respective aeronautical authorities may require access to certain information and that, in those instances, the authorities would endeavour to minimize the administrative burdens of such requirements.

## **SLOTS AT UK AIRPORTS**

20. Both delegations recognized the importance of allowing carriers, including new entrants, to seek new slots at congested airports based upon transparent and fair rules developed and implemented in consultation with stakeholders. The U.S. delegation inquired as to the future regime for the management of slots at UK airports, including for new entrants, after the European Commission is no longer involved in establishing slot policy or engaging in competition reviews, and the status of certain ongoing slot remedies as determined by the Commission and DOT. The UK delegation explained that, under the European Union (Withdrawal) Act 2018, existing EU legislation relating to slots will be retained within UK domestic law immediately following the UK's exit from the EU. The degree to which the UK continues, subsequently, to align with EU slot regulations will be a matter for the future relationship negotiations with the EU.

21. The UK delegation noted that the UK is developing a new Aviation Strategy, expected for publication in 2019. The development of the Strategy will include consultation with industry on how new airport capacity should be best allocated in the interest of the consumer - while also noting an ambition to remain compliant with existing IATA Worldwide Slot Guidelines and any other regulatory arrangements that affect slot allocation. Within this framework, the UK Department for Transport will invite industry views on options to deliver the objectives of capacity expansion, and of increasing competition and increasing connectivity, both domestic and international.

22. The UK delegation explained that the overarching principle that will guide the development of the Aviation Strategy in this area is that slot regulation should continue to be open, transparent and fair and ensure the most efficient use of constrained capacity in consumers' interest. The U.S. delegation expressed the interest of DOT to engage in a cooperative, informal dialogue with the UK Department for Transport to find creative and effective solutions to achieve the shared goal of allowing carriers, including new entrants, to access congested airports on both sides of the Atlantic.

23. The UK delegation also confirmed its commitment to continued recognition of the slot remedies (which expire in July 2020) determined by the European Commission and DOT in response to the joint venture agreement, established by UK, U.S., and other airlines, and noted that the UK Competition and Markets Authority had commenced a review of that agreement, as part of the normal course of business.

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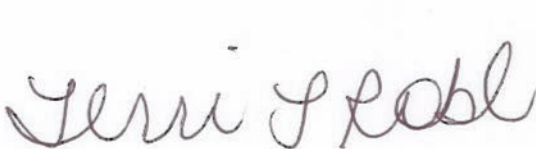
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## COMPETITION

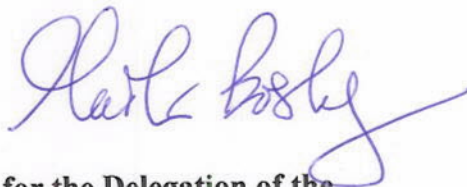
24. The delegations noted the importance of preserving and enhancing competition in the transatlantic market. In that regard, the U.S. delegation expressed its interest in developing a cooperative dialogue between DOT and the UK Competition and Markets Authority, which will be involved in international aviation competition matters. The delegations noted their intention to recommend that their respective competition authorities cooperate, as necessary, to promote fair competition in transatlantic air services, to produce compatible regulatory results, and to minimize differences in approach with respect to their respective competition reviews of carrier agreements.
25. The UK delegation inquired as to the ongoing immunized joint ventures involving U.S., UK, and EU airlines. The U.S. delegation noted that, notwithstanding the UK's withdrawal from the EU, DOT's approach to analyzing competition issues regarding such joint ventures would not change. The U.S. delegation further noted that DOT's approach is predicated on a continued liberal, open, and comprehensive transatlantic marketplace, including adequate competition and new entry opportunities. Regarding the inclusion of open entry opportunities for new business models and airlines in transatlantic joint ventures affecting U.S., UK, and EU airlines, DOT has stated in public orders that liberal aviation agreements among all relevant countries continue to be a predicate for approval. The delegations observed that the Agreement is such a liberal aviation agreement. The U.S. delegation noted that DOT looks forward to working with the appropriate UK authorities to ensure that the necessary conditions for existing and future joint ventures operating in the transatlantic market continue to exist after the UK withdraws from the EU.

## OTHER MATTERS

26. Both delegations recognize the benefits that can arise when open markets are accompanied by high labor standards with respect to international air transportation.
27. The UK delegation stated that the UK is committed to promoting the sustainable development of aviation. The UK delegation also noted the expectation that the UK would continue to follow the aviation environmental standards adopted by the International Civil Aviation Organization in Annex 16 to the Chicago Convention, subject to any differences the UK may file.



**for the Delegation of the  
United States of America**



**for the Delegation of the  
United Kingdom of Great Britain &  
Northern Ireland**

Signed on November 28, 2018 at Washington, D.C.



**U.S.-UK Bilateral Air Services Talks  
U.S. Department of State, Washington, D.C.  
November 28, 2018**

**United States Delegation**

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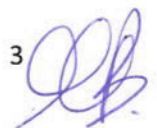
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## **United Kingdom Delegation**

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