AGREEMENT

between the European Community and the Government of Mongolia on certain aspects of air services

THE EUROPEAN COMMUNITY

of the one part, and

THE GOVERNMENT OF MONGOLIA

of the other part

(hereinafter referred to as 'the Parties')

NOTING that bilateral air service agreements have been concluded between several Member States of the European Community and Mongolia containing provisions contrary to Community law,

NOTING that the European Community has exclusive competence with respect to several aspects that may be included in bilateral air service agreements between Member States of the European Community and third countries,

NOTING that under European Community law Community air carriers established in a Member State have the right to non-discriminatory access to air routes between the Member States of the European Community and third countries,

HAVING REGARD to the agreements between the European Community and certain third countries providing for the possibility for the nationals of such third countries to acquire ownership in air carriers licensed in accordance with European Community law,

RECOGNISING that certain provisions of the bilateral air service agreements between Member States of the European Community and Mongolia, which are contrary to European Community law, must be brought into conformity with it in order to establish a sound legal basis for air services between the European Community and Mongolia and to preserve the continuity of such air services,

RECOGNISING that when a Member State has designated an air carrier whose regulatory control is exercised and maintained by another Member State, the rights of Mongolia under the safety provisions of the agreement between the Member State that has designated the air carrier and Mongolia shall apply equally in respect of the adoption, exercise or maintenance of safety standards by that other Member State and in respect of the operating authorisation of that air carrier,

NOTING that under European Community law air carriers may not, in principle, conclude agreements which may affect trade between Member States of the European Community and which have as their object or effect the prevention, restriction or distortion of competition,

NOTING that it is not a purpose of the European Community, as part of these negotiations, to increase the total volume of air traffic between the European Community and Mongolia, to affect the balance between Community air carriers and air carriers of Mongolia, or to negotiate amendments to the provisions of existing bilateral air service agreements concerning traffic rights,

RECOGNISING that provisions in bilateral air service agreements concluded between Member States of the European Community and Mongolia which (i) require or favour the adoption of agreements between undertakings, decisions by associations of undertakings or concerted practices that prevent, distort or restrict competition between air carriers in the relevant routes; or (ii) reinforce the effects of any such agreement, decision or concerted practice; or (iii) delegate to air carriers or other private economic operators the responsibility for taking measures that prevent, distort or restrict competition between air carriers in the relevant routes may render ineffective the competition rules applicable to undertakings,

HAVE AGREED AS FOLLOWS:

Article 1

General provisions

1. For the purposes of this Agreement, 'Member States' shall mean Member States of the European Community.

2. References in each of the agreements listed in Annex I to nationals of the Member State that is a party to that agreement shall be understood as referring to nationals of the Member States of the European Community.

3. References in each of the agreements listed in Annex I to air carriers or airlines of the Member State that is a party to that agreement shall be understood as referring to air carriers or airlines designated by that Member State.

4. This Agreement shall not create additional traffic rights beyond those laid down in bilateral arrangements between the respective Member States and Mongolia. The granting of traffic rights will continue to be carried out through bilateral arrangements between the respective Member States and Mongolia.

Article 2

Designation by a Member State

1. The provisions in paragraphs 2 and 3 of this Article shall supersede the corresponding provisions in the articles listed in Annex II(a) and (b) respectively, in relation to the designation of an air carrier by the Member State concerned, its authorisations and permissions granted by Mongolia, and the refusal, revocation, suspension or limitation of the authorisations or permissions of the air carrier, respectively.

2. On receipt of a designation by a Member State, Mongolia shall grant the appropriate authorisations and permissions with minimum procedural delay, provided that:

(i) the air carrier is established in the territory of the designating Member State under the Treaty establishing the European Community and has a valid Operating Licence in accordance with European Community law;

(ii) effective regulatory control of the air carrier is exercised and maintained by the Member State responsible for issuing its Air Operator's Certificate and the relevant aeronautical authority is clearly identified in the designation; and

(iii) the air carrier is owned, directly or through majority ownership, and it is effectively controlled by Member States and/or nationals of Member States, and/or by other states listed in Annex III and/or nationals of such other states.

3. Mongolia may refuse, revoke, suspend or limit the authorisations or permissions of an air carrier designated by a Member State where:

(i) the air carrier is not established in the territory of the designating Member State under the Treaty establishing the European Community or does not have a valid Operating Licence in accordance with European Community law;

(ii) effective regulatory control of the air carrier is not exercised or not maintained by the Member State responsible for issuing its Air Operator's Certificate, or the relevant aeronautical authority is not clearly identified in the designation;

(iii) the air carrier is not owned, directly or through majority ownership, or it is not effectively controlled by Member States and/or nationals of Member States, and/or by other states listed in Annex III and/or nationals of such other states;

(iv) the air carrier is already authorised to operate under a bilateral agreement between Mongolia and another Member State and Mongolia can demonstrate that, by exercising traffic rights under this Agreement on a route that includes a point in another Member State, the air carrier would be circumventing restrictions on traffic rights imposed by a bilateral agreement between Mongolia and that other Member State; or

(v) the air carrier holds an Air Operators Certificate issued by a Member State and there is no bilateral air services agreement between Mongolia and that Member State, and that Member State has denied traffic rights to the air carriers designated by Mongolia.

In exercising its right under this paragraph, Mongolia shall not discriminate between Community air carriers on the grounds of nationality.

Article 3

Safety

1. The provisions in paragraph 2 of this Article shall complement the corresponding provisions in the articles listed in Annex II(c).

2. Where a Member State has designated an air carrier whose regulatory control is exercised and maintained by another Member State, the rights of Mongolia under the safety provisions of the agreement between the Member State that has designated the air carrier and Mongolia shall apply equally in respect of the adoption, exercise or maintenance of safety standards by that other Member State and in respect of the operating authorisation of that air carrier.

Article 4

Compatibility with competition rules

1. Notwithstanding any other provision to the contrary, nothing in each of the agreements listed in Annex I shall (i) favour the adoption of agreements between undertakings, decisions by associations of undertakings or concerted practices that prevent or distort competition; (ii) reinforce the effects of any such agreement, decision or concerted practice; or (iii) delegate to private economic operators the responsibility for taking measures that prevent, distort or restrict competition.

2. The provisions contained in the agreements listed in Annex I that are incompatible with paragraph 1 of this Article shall not be applied.

Article 5

Annexes to the Agreement

The Annexes to this Agreement shall form an integral part thereof.

Article 6

Revision or amendment

The Parties may, at any time, revise or amend this Agreement by mutual consent.

Article 7

Entry into force

This Agreement shall enter into force on the day following the date of receipt of the last notification of the Parties in writing through diplomatic channels that their respective internal procedures necessary for its entry into force have been completed.

Article 8

Termination

1. Any of the Parties may at any time terminate this Agreement by giving the other Party a written notification through diplomatic channels. The termination shall be effective after six (6) months following the date of receipt of such notification by the other Party.

2. In the event that an agreement listed in Annex I is terminated, all provisions of this Agreement that relate to the agreement listed in Annex I concerned shall terminate at the same time.

3. In the event that all agreements listed in Annex I are terminated, this Agreement shall terminate at the same time.

IN WITNESS WHEREOF, the undersigned, being duly authorised, have signed this Agreement.

Done at Ulan Bator in duplicate, on the third day of April in the year two thousand and nine, in the Bulgarian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovene, Spanish, Swedish and Mongolian languages.

За Европейската общност
Por la Comunidad Europea
Za Evropské společenství
For Det Europæiske Fællesskab
Für die Europäische Gemeinschaft
Euroopa Ühenduse nimel
Για την Ευρωπαϊκή Κοινότητα
For the European Community
Pour la Communauté européenne
Per la Comunità europea
Eiropas Kopienas vārdā
Europos bendrijos vardu
Az Európai Közösség részéről
Ghall-Komunitá Ewropea
Voor de Europese Gemeenschap
W imieniu Wspólnoty Europejskiej
Pela Comunidade Europeia
Pentru Comunitatea Europeană
Za Európske spoločenstvo
Za Evropsko skupnost
Euroopan yhteisön puolesta
För Europeiska gemenskapen
Европын Хамтын Нийгэмлэгийг төлөөлж

За Правителството на Монголия
Por el Gobierno de Mongolia
Za vládu Mongolska
For Mongoliets regering
Für die Regierung der Mongolei
Mongoolia valitsuse nimel
Για την Κυβέρνηση της Μογγολίας
For the Government of Mongolia
Pour le gouvernement de la Mongolie
Per il governo della Mongolia
Mongolijas valdības vārdā
Mongolijos Vyriausybės vardu
Mongólia kormánya részéről
Ghall-Gvern tal-Mongolja
Voor de Regering van Mongolië
W imieniu Rządu Mongolii
Pelo Governo da Mongólia
Pentru Guvernul Mongoliei
Za vládu Mongolska
Za vlado Mongolije
Mongolian hallituksen puolesta
För Mongoliets regering
Монгол Улсын Засгийн Газрыг төлөөлж

ANNEX I

List of agreements referred to in Article 1 of this Agreement

Air service agreements between Mongolia and Member States of the European Community which, at the date of signature of this Agreement, have been concluded, signed and/or initialled, as amended:

— Air Transport Agreement between the Austrian Federal Government and the Government of Mongolia, signed at Vienna on 2 October 2007, hereinafter referred to 'Mongolia-Austria Agreement' in Annex II,

— Agreement between the Government of the Kingdom of Denmark and the Government of Mongolia relating to Air Services, done at Beijing on 19 June 1997, hereinafter referred to 'Mongolia-Denmark Agreement' in Annex II,

— Air Services Agreement between the Government of the Republic of Finland and the Government of Mongolia, done at Helsinki on 10 February 2000, hereinafter referred to 'Mongolia-Finland Agreement' in Annex II,

— Air Services Agreement between the Government of the Federal Republic of Germany and the Government of Mongolia, done at Bonn on 29 May 1998, hereinafter referred to 'Mongolia-Germany Agreement' in Annex II,

— Air Services Agreement between the Government of the Republic of Hungary and the Government of Mongolia, done at Ulan Bator on 13 September 1994, hereinafter referred to 'Mongolia-Hungary Agreement' in Annex II,

— Agreement between the Government of the Grand Duchy of Luxembourg and the Government of Mongolia for Air Services, done at Luxembourg on 18 March 1995, hereinafter referred to 'Mongolia-Luxembourg Agreement' in Annex II,

— Agreement between the Government of the Kingdom of the Netherlands and the Government of Mongolia for air services, done at The Hague on 9 March 1995, hereinafter referred to 'Mongolia-Netherlands Agreement' in Annex II,

— Agreement between the Government of the Polish People's Republic and the Government of the Mongolian People's Republic on air services, done at 26 May 1989 in Ulan Bator, hereinafter referred to 'Mongolia-Poland Agreement' in Annex II,

— Agreement between the Government of Romania and The Government of Mongolia concerning air services, done at Ulan Bator on 10 July 1990, hereinafter referred to 'Mongolia-Romania Agreement' in Annex II,

— Agreement between the Government of the Kingdom of Sweden and The Government of Mongolia relating to Air Services, done at Beijing on 19 June 1997, hereinafter referred to 'Mongolia-Sweden Agreement' in Annex II,

— Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Mongolia concerning air services, done at London on 1 March 2000, hereinafter referred to 'Mongolia-United Kingdom Agreement' in Annex II.

ANNEX II

List of articles in the agreements listed in Annex I and referred to in Articles 2 and 3 of this Agreement

(a) Designation by a Member State:

— Article 3, paragraph 5 of the Mongolia-Austria Agreement,

— Article 3, paragraph 4 of the Mongolia-Denmark Agreement,

— Article 3, paragraph 4 of the Mongolia-Germany Agreement,

— Article 3, paragraph 4 of the Mongolia-Hungary Agreement,

— Article 3, paragraph 4 of the Mongolia-Luxembourg Agreement,

— Article 3, paragraph 4 of the Mongolia-Netherlands Agreement,

— Article 3, paragraph 2 of the Mongolia-Poland Agreement,

— Article 3, paragraph 4 of the Mongolia-Sweden Agreement,

— Article 4, paragraph 4 of the Mongolia-United Kingdom Agreement.

(b) Refusal, revocation, suspension or limitation of authorisations or permissions:

— Article 4, paragraph 1(a) of the Mongolia-Austria Agreement,

— Article 4, paragraph 1(a) of the Mongolia-Denmark Agreement,

— Article 5, paragraph 1(a) of the Mongolia-Finland Agreement,

— Article 4 of the Mongolia-Germany Agreement,

— Article 4, paragraph 1(a) of the Mongolia-Hungary Agreement,

— Article 4, paragraph 1(a) of the Mongolia-Luxembourg Agreement,

— Article 4, paragraph 1(a) of the Mongolia-Netherlands Agreement,

— Article 3, paragraph 3 of the Mongolia-Poland Agreement,

— Article 3, paragraph 4(a) of the Mongolia-Romania Agreement,

— Article 4, paragraph 1(a) of the Mongolia-Sweden Agreement,

— Article 5, paragraph 1(a) of the Mongolia-United Kingdom Agreement.

(c) Safety:

— Article 6 of the Mongolia-Austria Agreement,

— Article 13 of the Mongolia-Finland Agreement,

— Article 12 of the Mongolia-Germany Agreement,

— Article 11 of the Mongolia-Hungary Agreement,

— Article 7 of the Mongolia-Luxembourg Agreement,

— Article 8 of the Mongolia-Netherlands Agreement,

— Article 7 of the Mongolia-Romania Agreement.

ANNEX III

List of other states referred to in Article 2 of this Agreement

(a) The Republic of Iceland (under the Agreement on the European Economic Area).

(b) The Principality of Liechtenstein (under the Agreement on the European Economic Area).

(c) The Kingdom of Norway (under the Agreement on the European Economic Area).

(d) The Swiss Confederation (under the Agreement between the European Community and the Swiss Confederation on Air Transport).