



Order 97-3-31

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.

SERVED: March 21, 1997

Issued by the Department of Transportation
on the 21st day of March, 1997

Application of

**TURKISH AIRLINES
(TÜRK HAVA YOLLARI A.O.)**

for an exemption from Subparts K and S of
Part 93 of Title 14, Code of Federal Regulations
pursuant to 49 U.S.C. § 41714(b)(1)

Docket OST-97-2070

ORDER GRANTING EXEMPTION

APPLICATION

On January 14, 1997, Turkish Airlines (Türk Hava Yollari A.O.) requested an exemption from 14 C.F.R. Part 93, Subparts K and S, under 49 U.S.C. 41714(b)(1). Specifically, Turkish Airlines seeks the exemption to the extent necessary to enable it to provide foreign air transportation between Chicago, Illinois (O'Hare International Airport), and Istanbul, Turkey, using Airbus A340 equipment (a Stage 3 aircraft).¹ The applicant indicates that it plans to operate three round-trip flights per week, and that it intends to begin these operations on or about May 7, 1997.

In support of its request, Turkish Airlines says that its application is consistent with the U.S.-Turkey Air Transport Agreement, which allows Turkish carriers to operate to three points in the United States.² The applicant further states that the proposed service will be the first and only single-plane service in the Chicago-Istanbul market; will provide new and important benefits for the traveling and shipping public; and is consistent with the objectives of the

¹ Concurrently, Turkish Airlines filed a request for an exemption from 49 U.S.C. 41301 to conduct scheduled foreign air transportation of persons, property, and mail between Istanbul and Chicago, either nonstop or via authorized intermediate points. The Department approved the applicant's unopposed application, finding the request consistent with the U.S.-Turkey Air Transport Agreement. See Notice of Action Taken, dated February 21, 1997 (Docket OST-97-2071).

² Turkish Airlines holds operating authority from the Department to conduct scheduled foreign air transportation of persons, property and mail between Istanbul and New York via the intermediate points Brussels and/or Amsterdam; and to conduct charters pursuant to 14 C.F.R. Part 212. See Order 96-3-33 (Docket OST-96-1041).

Department's Statement of United States International Aviation Policy. The applicant argues that denial of the application would be contrary to the public interest and inconsistent with the U.S.-Turkey Air Transport Agreement and could not be reconciled with the Department's February 21, 1997, decision granting Turkish Airlines economic authority in the Chicago-Istanbul market.³

Turkish Airlines states that on or about October 3, 1996, it filed a timely request with the Federal Aviation Administration (FAA) for new international takeoff and landing slots at O'Hare International Airport for the summer 1997 season, consistent with 14 C.F.R. 93.217(a)(6).⁴ Turkish Airlines states that absent the slot allocation by the FAA or an exemption by the Department, it will be unable to implement the economic authority granted earlier to it by the Department.

RESPONSIVE PLEADINGS

On January 29, 1997, the City of Chicago, owner and operator of O'Hare International Airport, filed in support of the application. The City states that the proposed operations will provide significant benefits to passengers and shippers in the Chicago region and throughout the Midwest, and that the service is consistent with the U.S.-Turkey Air Transport Agreement. The City notes that while current passenger service between Istanbul and Chicago is considerable, service is available only on a one-stop/two-stop, change-of-gauge connecting basis.⁵ The City notes that Chicago is the fifth largest generator of U.S. passenger traffic to Turkey; and that Illinois' exports to Turkey are growing rapidly (\$127 million in 1995 as compared to \$68 million in 1994). The City urges the Department to grant the application.

On January 29, 1997, United Air Lines, Inc. (United) filed an answer opposing the request. United maintains that comity and reciprocity with Turkey does not support the grant of this application. United argues that Turkey has not granted it extra-bilateral authority to conduct certain code-share operations in the U.S.-Istanbul market, via Frankfurt, Germany.⁶ Moreover, United maintains that the Turkish Government has authorized Japan Airlines and

³ See fn. 1.

⁴ The applicant states that it plans to conduct this service at a frequency of three round-trip flights per week (Wednesday, Friday, and Sunday).

In January 1997, the FAA notified Turkish Airlines that it had confirmed its request for the allocation of slots to support its proposed Sunday round-trip operation. However, at that time, the FAA also informed the applicant that the remainder of its request (*i.e.*, the allocation of slots to support its proposed Wednesday and Friday operations), along with the requests of other foreign air carriers, exceeded the total number of slots that the FAA was able to allocate, consistent with 49 U.S.C. 41714(b)(2).

⁵ Official Airline Guide, February 1997.

⁶ United explains that it proposed to offer these services on flights to be operated under a code-share arrangement with Lufthansa German Airlines (Lufthansa). Under this arrangement, Lufthansa's aircraft would operate the routes carrying United's "UA" designator code between Frankfurt and Istanbul, and between certain U.S. gateways and Istanbul via Frankfurt.

Air France to conduct similar code-share operations in the Tokyo-Istanbul market via Paris. United, therefore, urges that this request be denied or deferred until the Government of Turkey allows United to conduct its proposed U.S.-Turkey code-share operations with Lufthansa.

Turkish Airlines filed a reply on January 31, 1997. The applicant notes that United's opposition to its request would have the Department deny Turkish Airlines the ability to implement its bilaterally-authorized service because of United's inability, over two years ago, to implement an extra-bilateral code-share operation in the U.S.-Turkey market. The applicant argues that there is no basis for such action. The applicant states that denial of its request would violate the U.S.-Turkey bilateral agreement, frustrate competition at O'Hare airport, and would be contrary to the public interest. Turkish Airlines asks the Department to grant its request expeditiously.

The City of Chicago filed a reply in support of the request and a motion to file an otherwise unauthorized document on February 10, 1997. We will grant the motion. The City restates its earlier arguments and asserts that single-plane service in the Chicago-Istanbul market is overdue; and it notes that the State of Illinois "reaps significant benefits from rapidly growing exports to Turkey." The City maintains that the applicant's proposed service will be beneficial in sustaining future economic growth.

Northwest Airlines, Inc. (Northwest) filed a reply and a motion to file an otherwise unauthorized document on February 11, 1997. We will grant the motion. Northwest joins United in urging the Department to deny the request, or defer action upon it, until the Government of Turkey allows U.S. airlines to conduct third-country, code-share operations in the U.S-Turkey market.

United filed a response and a motion to file an otherwise unauthorized document on February 11, 1997. We will grant the motion. United reaffirms its view that the Department should withhold the award of a "discretionary" slot exemption to Turkish Airlines until the Turkish government grants United the discretionary authority it seeks to conduct certain code-share operations.

STATUTORY BACKGROUND

Subparts K and S of 14 C.F.R. Part 93 designate Chicago's O'Hare International Airport, New York's John F. Kennedy International and LaGuardia Airports, and Washington, D.C.'s National Airport as high density traffic airports and prescribe certain air traffic rules for the operation of aircraft at these airports. These regulations limit the number of allocated Instrument Flight Rule (IFR) operations (takeoffs and landings) for specified classes of users during certain periods of the day.

Pursuant to 49 U.S.C. 41714(b)(1), if the Secretary of Transportation finds it to be in the public interest at a high density airport (other than Washington National Airport), the Secretary may grant by order exemptions from the requirements of subparts K and S of

14 C.F.R. Part 93 (pertaining to slots at high density airports), to enable air carriers and foreign air carriers to provide foreign air transportation using Stage 3 aircraft.

DECISION

We find that grant of this exemption is consistent with the public interest. In reaching this decision, we recognize that Turkish Airlines filed a timely request with the FAA for slots, and that due to hourly constraints the FAA has not been able to accommodate the applicant's request within reasonable times of Turkish Airlines proposed operations. Moreover, we note that aviation relations with Turkey are governed by the U.S.-Turkey Air Transport Agreement, which provides for the proposed Istanbul-Chicago service, and Turkish Airlines has been properly authorized by its government to provide scheduled foreign air transportation in the Istanbul-Chicago market. Our action here will provide the traveling public with an important new service and will enable Turkish Airlines to exercise authority to which it is entitled under the Agreement.

While the opposing parties would have us adopt measures that would effectively preclude the applicant from implementing bilaterally-agreed service, they do not provide us with a basis for such action. Likewise, we expect foreign governments to make it possible for U.S. carriers to implement their bilateral rights, including necessary access to airports. We do not find it in the public interest to withhold from the applicant the access necessary to implement agreed rights, on the grounds that the Government of Turkey has not been willing to grant extra-bilateral code-share authority.

In the case before us here, as we have stated, Turkish Airlines has a bilateral right to serve the Istanbul-Chicago market and has complied with the procedures for requesting slots. We therefore find it appropriate to provide the applicant with the exemption necessary to implement its proposed Istanbul-O'Hare Airport services.⁷ While we continue to share the concerns raised by United and Northwest, these carriers unfortunately do not have a bilateral right to conduct their proposed U.S.-Turkey operations. Furthermore, our actions here will ensure continued enhancement of air services between Turkey and the United States, and continue to provide the public with improved passenger and shipping options.

Finally, while 49 U.S.C. § 41714(b)(1) provides the Department with discretionary authority to grant slot exemptions for foreign air transportation at a high density airport, we do not view this authority as a substitute mechanism for the slot-allocation procedures outlined in Subpart S of 14 C.F.R. Part 93. We fully expect air carriers and foreign air carriers to follow and exhaust all appropriate procedures for slot acquisition, including all appropriate industry practices for slot acquisition, before filing with the Department for a slot exemption. Moreover, mindful of the various traffic constraints associated with O'Hare operations, we

⁷ While our findings in this matter will allow for the implementation of operations provided for under the U.S.-Turkey Air Transport Agreement, we emphasize that airline requests for these exemptions will be decided by the Department on a case-by-case basis.

direct Turkish Airlines to continue its efforts in conjunction with the FAA to secure needed slots from the existing allocation pool.

Since grant of this exemption is dependent upon the applicant's existing U.S.-Turkey operating authority, we attach the condition that this exemption authority be used only in the provision of Turkish Airlines' service between Istanbul and Chicago O'Hare. Furthermore, in accordance with the requirements of the statute, all aircraft operations performed under this exemption shall be conducted by Stage 3 aircraft. We also note that grant of this exemption provides Turkish Airlines with only a temporary slot allocation at O'Hare Airport and does not confer to the applicant any ability to sell, trade, transfer, or convey this exemption authority.⁸

This Order is issued under authority delegated in 49 C.F.R. 1.56(l).

ACCORDINGLY,

1. The Department grants a temporary exemption from 14 C.F.R. Part 93, Subparts K and S under 49 U.S.C. 41714(b)(1) to Turkish Airlines, Inc. (Türk Hava Yollari A.O.) to the extent necessary to permit Turkish Airlines to operate scheduled arrivals at Chicago's O'Hare International Airport on Wednesdays and Fridays at 12:55 P.M.; and to operate scheduled departures from Chicago's O'Hare International Airport on Wednesdays and Fridays at 3:00 P.M. (all times are local time);
2. As a condition of approval, Turkish Airlines may use this exemption authority only to provide service between Istanbul, Turkey and the terminal point Chicago, Illinois (O'Hare International Airport);
3. As a further condition of approval, the Department directs that all aircraft operations under this exemption must be provided by Stage 3 aircraft;
4. The authority granted under this exemption is subject to all of the other requirements delineated in 14 C.F.R. Part 93, Subparts K and S;

⁸ The FAA will assign the needed slot numbers.

5. We direct Turkish Airlines to notify the Federal Aviation Administration's Slot Administration Office as to the start-up date for the four exemptions granted here. The Federal Aviation Administration will assign slot withdrawal numbers for each slot exemption time listed in ordering paragraph 1;
6. We grant all motions for leave to file otherwise unauthorized documents;
7. The temporary slot allocation provided for in ordering paragraph 1 above is effective commencing on May 7, 1997, and expires on October 26, 1997; and
8. We will serve this order on the Ambassador of Turkey in Washington, D.C.; the City of Chicago; Turkish Airlines; Northwest Airlines, Inc.; United Air Lines, Inc.; the Department of State (Office of Aviation Negotiations); and all other parties served with the application.

By:

CHARLES A. HUNNICUTT
Assistant Secretary for Aviation
and International Affairs

(SEAL)

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