



Order 97-3-44

Served: March 28, 1997

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

Issued by the Department of Transportation  
on the 28<sup>th</sup> day of March, 1997

Application of

**AIRLINE MANAGEMENT LIMITED**

for an exemption from 49 U.S.C. section  
41301  
and a statement of authorization pursuant to  
14 CFR of the Department's regulations

Docket **OST-97-2143**  
Undocketed

**ORDER**

**Summary**

This order grants Airline Management Limited (AML) an exemption to conduct charters between the United Kingdom and the United States, and other charters pursuant to the U.S.-U.K. aviation agreement and to Part 212 of the Department's regulations. It also grants AML a statement of authorization to conduct wet-lease operations on behalf of British Airways Plc between London (Gatwick) and Tampa, Florida, and San Juan, Puerto Rico.

**Applications**

By application filed February 21, 1997, AML, a foreign air carrier of the United Kingdom, requests an exemption from 49 U.S.C. 41301 to permit it to engage in charter foreign air transportation of persons and property between the United Kingdom and the United States, either directly or via intermediate or beyond points in other countries, with or without stopovers; between the United States and any point or points not in the United Kingdom or the United States, pursuant to the Air Services Agreement between the United States and the United Kingdom of Great Britain and Northern Ireland; and to conduct other charters pursuant

to Part 212 of the Department's regulations for a period of two years. AML requests that its application be considered under the 1989 U.S.-U.K. Exchange of Notes regarding reciprocal fitness determinations.

By application filed February 25, 1997, AML requests a statement of authorization under 14 CFR 212.4 to conduct long-term wet-lease operations for British Airways (BA) using DC-10-30 aircraft between London (Gatwick) and Tampa, and between London (Gatwick) and San Juan, during the period March 30, 1997, through March 30, 1998.

In support of its applications, AML states that the requested exemption authority is provided for in the U.S.-U.K. bilateral agreement and that it is qualified to perform properly the requested foreign air transportation.<sup>1</sup> It states that the proposed wet-lease services are in the public interest, will enable British Airways to conduct bilaterally agreed scheduled combination services in the London-Tampa and London-San Juan markets, and that under similar circumstances it believes the United Kingdom will grant reciprocal authority to U.S. carriers.

### **Responsive Pleadings**

During the period March 5-10, 1997, the Government of Puerto Rico and the Hillsborough County Aviation Authority each filed answers in support of AML's applications, stating that these communities have benefited greatly from services that BA has been providing by wet leasing from another U.K. carrier, and that approval of AML's applications is in the public interest and will ensure continuation of these operations.<sup>2</sup>

On March 19, 1997, Laker Airways, Inc., submitted an answer in opposition, stating that AML's applications were deficient and inconsistent with the Federal Aviation Act, Department regulations and the U.S.-U.K. Agreement.<sup>3</sup> It asserts that AML is a franchise of BA, with no aircraft, crew or other tangible resources, and has not shown that it has any capability to operate scheduled transatlantic services or that its application is in the public interest. It also asserts that BA is wet-leasing aircraft and crews to AML without applying for requisite Department authority.<sup>4</sup> Laker further asserts that AML will use BA's Gatwick slots without applying to the Gatwick Scheduling Committee while Laker is unable to obtain commercially viable slots for its startup Florida-U.K. services, that BA's use of its slots at Gatwick to facilitate AML's services is unfair and anticompetitive, and that the Department should not grant the authority requested without a thorough investigation.

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<sup>1</sup> AML incorporates by reference into this proceeding its concurrently-filed application for a foreign air carrier permit in Docket OST-97-2144

<sup>2</sup> On February 27, 1997, TWA filed an objection to the requested statement of authorization, which it subsequently withdrew on March 17, 1997.

<sup>3</sup> Laker requested an extension of time to file an answer. We will grant its request.

<sup>4</sup> On March 27, 1997, British Airways applied for a statement of authorization to the extent necessary to enable it to wet lease aircraft to AML in connection with the operations at issue here. We are granting that application by separate action.

AML filed a responsive pleading stating that its applications meet the Department's statutory and regulatory requirements, and that Laker's opposition is unsupported and without merit. AML states that it proposes to operate charter services which are provided for in the U.S.-U.K. aviation agreement, and that it has been designated and licensed by its government to do so. It further states that, although its exemption application is governed by the 1989 Exchange of Notes, it has submitted detailed information on the company's management, finances and related matters in its foreign air carrier permit application (Docket OST-97-2144), which it incorporated by reference into this proceeding. It states that it will dry lease aircraft from BA, those aircraft will be under the operational control of AML, and that flight crews will be obtained through a separate contract with BA and will be under AML's direction and supervision. AML asserts that Laker's answer appears to be an attempt to use AML's applications as leverage to obtain slots at Gatwick, is irrelevant to AML's applications, and should be rejected. As a final matter, AML states that Laker has provided no factual basis to support its unprecedented request for an investigation of AML's applications.

The Government of Puerto Rico and the Hillsborough County Aviation Authority also filed replies to Laker's answer.<sup>5</sup> The parties stress the importance of BA's services to their communities and state that Laker has presented no legitimate basis on which to deny AML U.S. operating authority.

## **Decision**

We have decided to grant AML the exemption authority and statement of authorization it seeks. We will make this authority effective immediately for a period of one year.<sup>6</sup>

We find that our action granting AML an exemption to conduct charter foreign air transportation is consistent with the public interest. The authority is provided for in the Air Services Agreement between the United States and the United Kingdom of Great Britain and Northern Ireland, and AML has been properly designated and licensed by the United Kingdom to operate the requested services. We also find that AML is operationally and financially qualified to conduct the proposed services, and substantially owned and effectively controlled by citizens of the United Kingdom. We make this finding based on the May 25, 1989, U.S.-U.K. Exchange of Notes, under which the aviation authorities of each country will normally accept, on a reciprocal basis, the other's fitness and citizenship determinations in regard to carriers seeking authority to conduct certain bilateral services, including the requested authority.

While wet-lease operations are not encompassed in the U.S.-U.K. Agreement and are therefore extrabilateral, we note that the services proposed by AML are in the nature of a continuation of a form of subservice that will enable British Airways to conduct its bilaterally

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<sup>5</sup> The parties accompanied their pleadings with motions for leave to file an otherwise unauthorized document. We will grant the motions.

<sup>6</sup> Although AML had requested a two-year authorization, the one-year duration of this authority is consistent with our usual policy of granting interim exemption authority. ( *See, e.g.*, Order 96-2-38.)

agreed scheduled combination services in the London-Tampa and London-San Juan markets, and find that approval is in the public interest.

We have carefully reviewed our action in the context of Laker's comments and of our aviation agreement with the United Kingdom, and we conclude that there are no material, determinative issues of fact requiring further investigation of AML's applications. Based on the record in this proceeding, and as discussed above, we have determined that continuation of wet-lease services to BA in the London-Tampa and London-San Juan markets is in the public interest, and that AML possesses the necessary management and technical capability to conduct the services at issue here. Moreover, the FAA has advised us that it knows of no reason why we should act unfavorably on AML's application. We are concerned that Laker does not yet have the slots that it desires to operate its Miami services, and we have urged U.K. authorities to do everything possible to assist in resolving the issue. However, we do not find it in the public interest to withhold the requested authority that will allow a continuation of an established form of subservice in the London-Tampa and London-San Juan markets while we continue to address the Laker issues.

In view of the above, we find that grant of the requested authority is consistent with Department policy and the public interest; and that our action does not constitute a major regulatory action under the Energy Policy and Conservation Act of 1975.

**ACCORDINGLY,**

1. We exempt Airline Management Limited from section 41301 of Title 49 of the U.S. Code to permit it to engage in charter foreign air transportation of persons and property between any point or points in the United Kingdom<sup>7</sup> and any point or points in the United States, either directly or via intermediate or beyond points in other countries, with or without stopovers; and between any point or points in the United States and any point or points not in the United Kingdom or the United States; and other charters pursuant to 14 CFR 212 of the Department's regulations;
2. We grant Airline Management Limited a statement of authorization pursuant to 14 CFR 212.4 of the Department's regulations to permit it to conduct wet-lease operations on behalf of British Airways Plc between London (Gatwick)-Tampa and between London (Gatwick)-San Juan;
3. The authority granted in ordering paragraphs 1 and 2 shall be effective immediately, and shall remain in effect for one year after the issue date of this order;
4. This authority shall be subject to the charter provisions of the Air Services Agreement between the United States and the United Kingdom of Great Britain and Northern Ireland, and to the exemption conditions attached to this order;

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<sup>7</sup> For the purpose of this exemption, "United Kingdom" means the United Kingdom of Great Britain and Northern Ireland, but not any territory outside the British Isles that may be under the sovereignty, protection, jurisdiction or trusteeship of the Government of the United Kingdom.

5. We grant the motions for extension of time to file and for leave to file otherwise unauthorized documents;
6. To the extent not granted or dismissed, we deny all requests for relief in this docket;
7. We may amend, modify or revoke this authority at any time and without hearing; and
8. We will serve a copy of this order on Airline Management Limited, the Government of Puerto Rico, the Hillsborough County Aviation Authority, Laker Airways, Inc., the Ambassador of the United Kingdom of Great Britain and Northern Ireland in Washington, D.C., the Department of State (Office of Aviation), and the Federal Aviation Administration (AFS-200).

By:

**CHARLES A. HUNNICUTT**  
Assistant Secretary for Aviation  
and International Affairs

(SEAL)

*An electronic version of this document is available on the World Wide Web at:  
<http://www.dot.gov/general/orders/aviation.html>*

**CONDITIONS OF AUTHORITY**

In the conduct of the operations authorized, the holder shall:

- (1) Not conduct any operations unless it holds a currently effective authorization from its homeland for such operations, and it has filed a copy of such authorization with the Department;
- (2) Comply with all applicable requirements of the Federal Aviation Administration, including, but not limited to, 14 CFR Parts 129, 91, and 36;
- (3) Comply with the requirements for minimum insurance coverage contained in 14 CFR Part 205, and, prior to the commencement of any operations under this authority, file evidence of such coverage, in the form of a completed OST Form 6411, with the Federal Aviation Administration's Program Management Branch (AFS-260), Flight Standards Service (any changes to, or termination of, insurance also shall be filed with that office);
- (4) Not operate aircraft under this authority unless it complies with operational safety requirements at least equivalent to Annex 6 of the Chicago Convention;
- (5) Conform to the airworthiness and airman competency requirements of its Government for international air services;
- (6) Comply with the requirements of 14 CFR Part 203, concerning waiver of Warsaw Convention liability limits and defenses;
- (7) Agree that operations under this authority constitute a waiver of sovereign immunity, for the purposes of 28 U.S.C. 1605(a), but only with respect to those actions or proceedings instituted against it in any court or other tribunal in the United States that are:
  - (a) based on its operations in international air transportation that, according to the contract of carriage, include a point in the United States as a point of origin, point of destination, or agreed stopping place, or for which the contract of carriage was purchased in the United States; or
  - (b) based on a claim under any international agreement or treaty cognizable in any court or other tribunal of the United States.

In this condition, the term "international air transportation" means "international transportation" as defined by the Warsaw Convention, except that all States shall be considered to be High Contracting Parties for the purpose of this definition;

- (8) Except as specifically authorized by the Department, originate or terminate all flights to/from the United States in its homeland;
- (9) Comply with the requirements of 14 CFR Part 217, concerning the reporting of scheduled, nonscheduled, and charter data;
- (10) If charter operations are authorized, comply with the Department's rules governing charters (including 14 CFR Parts 212 and 380); and
- (11) Comply with such other reasonable terms, conditions, and limitations required by the public interest as may be prescribed by the Department, with all applicable orders or regulations of other U.S. agencies and courts, and with all applicable laws of the United States.

This authority shall not be effective during any period when the holder is not in compliance with the conditions imposed above. Moreover, this authority cannot be sold or otherwise transferred without explicit Department approval under Title 49 of the U.S. Code (formerly the Federal Aviation Act of 1958, as amended).



