



Order 97-8-14

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, DC

Served August 27, 1997

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

Application of

**COMPANIA DE TRANSPORTURI
AERIENE ROMANE (TAROM)**

for an exemption under 49 U.S.C. section 40109

Docket **OST-95-550**

ORDER RENEWING EXEMPTION IN PART

Summary

By this order we are granting the exemption application of Compania de Transporturi Aeriene Romane (TAROM) to the extent that will enable the carrier to operate a total of three scheduled roundtrip flights per week between Bucharest and New York, and one scheduled roundtrip flight per week between Bucharest and Chicago, for a period of 60 days. We are denying the remainder of TAROM's request.

Background

Air services between the United States and Romania are governed by a 1973 Air Transport Services Agreement, which authorizes two weekly roundtrip frequencies by Romanian carriers to New York via specified intermediate points. As provided for in the Agreement, TAROM holds a foreign air carrier permit, issued by Order 85-2-72, to conduct scheduled operations between Romania and New York via points in the Czech Republic, Slovakia, Germany or France, Denmark, Belgium, the Netherlands and Montreal, Canada, at a frequency of two roundtrip flights per week, and to conduct charters subject to 14 CFR of the Department's regulations.

The carrier also holds certain authority outside the Agreement. On March 12, 1996, we last granted TAROM a temporary exemption to operate between Bucharest and New York via the intermediate points Timisoara, Romania, and Amsterdam, the Netherlands, at a frequency of three roundtrip flights per week (in addition to the two weekly Bucharest-New York flights it may operate under its permit authority); to operate between Bucharest and Chicago via Timisoara and Amsterdam at a frequency of two roundtrip flights per week; and to serve New York and Chicago as coterminal points, effective through March 12, 1997.¹ In granting this extrabilateral authority, we found that comity and reciprocity with Romania supported grant of this authority.

TAROM currently operates two Bucharest-New York flights per week, one Bucharest-Timisoara-New York flight per week, and one Bucharest-Timisoara-Chicago flight per week. No U.S. carrier currently conducts U.S.-Romania operations.²

Application

On March 7, 1997, TAROM requested a one-year extension of its exemption authority such as would enable it to operate a total of five roundtrip flights per week between Bucharest and New York via the intermediate points Timisoara and Amsterdam, and two roundtrip flights per week between Bucharest and Chicago via the intermediate points Timisoara and Amsterdam.³ In support of its application, TAROM stated that demand for its services had increased, and that renewal of its authority would permit it to continue to offer services that benefit the traveling public, expand U.S.-Romania relations, and encourage economic, social and cultural exchanges.

Answers

Answers in response to TAROM's application were filed by United Air Lines, Inc. (March 24 and 27), Northwest Airlines, Inc. (March 25), Delta Air Lines, Inc. (May 16), and the City of Chicago (May 12).⁴

United, Northwest and Delta urge the Department to deny TAROM's request to provide extrabilateral Romania-Chicago service unless and until the Government of Romania authorizes U.S.-carrier code-share services on an extrabilateral basis. Delta states that at a minimum TAROM should not be allowed to increase its Chicago-Bucharest frequencies beyond the single weekly flight it now operates. In support of their position, the carriers cite Romania's denial of Northwest's and Delta's requests to code share with third-country carriers to Bucharest.

¹ See Order 96-6-14. The exemption remained in effect beyond its prescribed expiration date based on 5 U.S.C. 558(c). See footnote 3, *infra*, and accompanying text.

² See Official Airline Guide, Worldwide Edition, August 1997.

³ TAROM invoked the automatic extension provisions of Federal law (5 U.S.C 558(c) as implemented by 14 CFR Part 377) to maintain its expired authority.

⁴ Each of the answering parties filed a motion for leave to file either a late pleading or an unauthorized document. TAROM, in its reply to Delta's answer, urged that we deny Delta's motion. In order that we may have a complete record in this proceeding, we have decided to accept all pleadings filed in response to TAROM's application.

Northwest states that by letters dated February 16, 1996, and March 20, 1997, the Romanian Ministry of Transport (MOT) rejected proposed code-share services under Northwest's commercial alliance with KLM Royal Dutch Airlines, and has taken the position that such services are outside the scope of the U.S.-Romania Agreement and that negotiations must first be conducted before those services can be approved. Delta states that, with realignment of its transatlantic and European services, it sought approval from Romania in January 1997 to implement code-share service to Bucharest in conjunction with its alliance agreements with Austrian Airlines and Swissair and that Romania's refusal to authorize Delta's code-share service is tantamount to forcing it to discontinue service to that country.

The City of Chicago states that for many years TAROM has provided convenient, reliable, and the only direct air service between Chicago and Romania. It states that, while acknowledging the legitimate interests of U.S. carriers with respect to third-country code sharing, it also recognizes the significant public interest considerations with respect to TAROM's Chicago-Bucharest service. It states that direct passenger and cargo air service is an essential element of the growing economic, cultural and religious ties between Romania and both Chicago and the Midwest.

Reply

TAROM filed a consolidated reply to United's and Northwest's answers.⁵ TAROM states that, while it does not oppose U.S.-carrier code-sharing arrangements in the U.S.-Romania market, there should be no linkage between third-country code-shares and TAROM's Chicago service. It states that code-share services operated by carriers of third countries are not equivalent to actual service by carriers designated under a bilateral agreement. It states that the comity and reciprocity factors which supported grant of this authority in the past remain in place, and the fact that the MOT has not immediately granted unprecedented U.S.-carrier and third-country code-share requests has no bearing on U.S.-Romanian reciprocity.

In a further reply filed after the submission of Delta's answer, TAROM states that Delta's commercial decision not to take advantage of negotiated, bilateral aviation rights available to it does not create an untenable situation.⁶ It states that the wide-ranging code-sharing rights U.S. carriers have requested remain properly the subject of government-to-government negotiations, and that the Romanian MOT has requested a meeting with U.S. aviation authorities to discuss the status of the U.S.-Romania Agreement. TAROM emphasizes that it has been providing an important service to the Romanian community in Chicago, and that such long-established, limited services are not the equivalent of wide-ranging rights completely outside the scope of the bilateral and the history underlying its authority.

⁵ On March 28, 1997, TAROM filed a motion requesting until April 30, 1997 to submit its reply. We orally granted the motion on April 1, 1997.

⁶ TAROM accompanied its pleading with a motion for leave to file. We will grant the motion.

Subsequent Developments

In response to a Romanian Government request, aviation consultations were scheduled for July 1997. However, Romania subsequently requested postponement until September 1997.⁷

Decision

We have decided to approve in part and deny in part TAROM's application. We will grant the carrier authority to continue its current level of operations. Specifically, we are granting the carrier exemption authority to operate one Bucharest-Timisoara-New York flight per week (in addition to the two weekly Bucharest-New York flights it operates under its permit authority), and one Bucharest-Timisoara-Chicago flight per week. We will make this authority effective immediately for a period of 60 days.⁸ We find that our action is consistent with the public interest. We will deny TAROM's request to operate beyond that time and to operate any additional frequencies. We find that the public interest warrants our limiting the authority requested by TAROM in this proceeding.

As noted above, for several years, we have granted TAROM's extrabilateral requests based on our past positive aviation relationship with Romania. However, we find that comity and reciprocity with Romania do not support our granting TAROM's full request for continued extrabilateral authority at this time.

We view with great concern the refusal of the Government of Romania to approve U.S.-carrier requests to serve Romania through code-sharing arrangements. U.S. carriers currently do not provide service to Romania, and thus are not making use of their rights under the Agreement. At the same time, TAROM is not only making substantial use of its rights under the Agreement, but also exercising valuable extrabilateral authority. Romania's refusal to allow U.S. carriers to conduct U.S.-Romania operations with their code-share partners precludes our carriers from conducting services in the U.S.-Romania market in the manner they believe to be economically viable.

Our concern is heightened by the request of the Government of Romania to postpone until September bilateral discussions originally scheduled for July. This postponement delays our efforts to reach a negotiated resolution of the code-share issue.

These factors, taken together, warrant action on our part to limit the scope and duration of TAROM's extrabilateral exemption authority in the manner discussed above.

⁷ We have confirmed dates to hold these consultations on September 16-18, 1997, in Washington, D.C.

⁸ Since the term of the authority we are granting here is for a period of fewer than 180 days, this authority is not a license with reference to an activity of a continuing nature under the provisions of 5 U.S.C. 558(c) as implemented by 14 CFR Part 377 of our regulations.

In view of the above, we find that, to the extent granted, this 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 Compania de Transporturi Aeriene Romane (TAROM) from section 41301 of Title 49 of the U.S. Code to permit it to operate one scheduled roundtrip flight per week between Bucharest and New York via Timisoara, and one scheduled roundtrip flight per week between Bucharest and Chicago via Timisoara;
2. The authority granted above shall be effective immediately for a period of 60 days from the date this order issues;
3. In the conduct of the services authorized Compania de Transporturi Aeriene Romane must adhere to the applicable terms, conditions and limitations of its foreign air carrier permit (Order 85-2-72);
4. We grant all motions for extension of time to file and for leave to file otherwise unauthorized documents;
5. To the extent not granted, we deny TAROM's application in this docket;
6. We may amend, modify or revoke this authority at any time and without hearing; and
7. We will serve a copy of this order on Transporturi Aeriene Romane, United Air Lines, Inc., Northwest Airlines, Inc., Delta Air Lines, Inc., the City of Chicago, the Ambassador of Romania 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)