



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

Issued by the Department of Transportation on July 13, 1998

**NOTICE OF ACTION TAKEN -- DOCKET OST-98-3361**

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This serves as notice to the public of the action described below, taken by the Department official indicated (no additional confirming order will be issued in this matter).

Applicant: **Airbus Transport International s.n.c. (ATI)**

Date Filed: January 22, 1998

Relief requested: Exemption from 49 U.S.C. 41301 to conduct charter foreign air transportation of property and mail between France and the United States via intermediate points and beyond, and other charters pursuant to 14 CFR 212 of the Department's regulations.

Applicant representative: E. Tazewell Ellett 202-637-8644

Background: On February 5, 1998, we granted ATI exemption authority pursuant to 49 U.S.C. 40109(g) (Docket OST-98-3362) and from the provisions of section 41301 (Docket OST-98-3361) to the extent necessary to permit it to operate an emergency cabotage flight during the period February 5-13, 1998. We deferred action on the remainder of the carrier's request in Docket OST-98-3361 for long-term U.S.-France all-cargo charter authority. While we received no opposition to this limited grant of authority, Continental Micronesia, Inc. (CMI), and Northwest Airlines, Inc., filed answers in Docket OST-98-3361, stating that they did oppose granting ATI what was, at that time, broad extrabilateral charter authority, in light of France's failure to license CMI for Guam-Noumea authority and to permit Northwest to operate code-share services with KLM. On June 25, 1998, CMI withdrew its objection.

**DISPOSITION**

Action: Remainder Approved

Action date: July 13, 1998

Effective dates of authority granted: July 13, 1998 - July 13, 2000

Basis for approval: On June 18, 1998, the United States and France signed a Air Transport Agreement which encompasses the requested authority. The new agreement specifically provides for code-share services of the type proposed by Northwest. In addition, CMI has now received French approval to begin Guam-Noumea service.

We found that ATI is operationally and financially qualified to conduct the proposed service (*see* Notice of Action Taken of February 5, 1998 in Dockets OST-98-3362 & OST-98-3361). ATI is 99% owned by Airbus Industrie GIE, a French company, and that each of its key management personnel are French citizens. The record indicates that the capital stock of Airbus Industrie GIE is held by Aerospatiale (37.9%), a French company, Daimler-Benz Aerospace (37.9%), a German company, and British Aerospace (20%), a U.K. company. We found that, despite the presence of non-homeland interests in the carrier, and taking into account the particular circumstances of this case, there was nothing in the ownership and control of the carrier that would be inimical to U.S. aviation policy or interests. Therefore, we concluded that waiver of our standard requirement that substantial ownership and effective control of a foreign carrier rest in the hands of citizens of its homeland was warranted.

Except to the extent exempted/waived, this authority is subject to the terms, conditions, and limitations of the U.S.-France Agreement and standard exemption conditions (attached).

**Action taken by: Paul L. Gretch, Director  
Office of International Aviation**

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Under authority assigned by the Department in its regulations, 14 CFR Part 385, we found that (1) immediate action was required and was consistent with Department policy; (2) grant of the authority was consistent with the public interest; and (3) grant of the authority would not constitute a major regulatory action under the Energy Policy and Conservation Act of 1975. To the extent not granted/deferred/dismissed, we denied all requests in the referenced Docket. We may amend, modify, or revoke the authority granted in this Notice at any time without hearing at our discretion.

Persons entitled to petition the Department for review of the action set forth in this Notice under the Department's regulations, 14 CFR §385.30, may file their petitions within ten (10) days after the date of issuance of this Notice. This action was effective when taken, and the filing of a petition for review will not alter such effectiveness.

*An electronic version of this document is available on the World Wide Web at:  
<http://dms.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).