



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

Issued by the Department of Transportation on December 16, 1998

NOTICE OF ACTION TAKEN -- DOCKET OST 97-2972 and Undocketed

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: TYROLEAN AIRWAYS

Date Filed: October 3, 1997

Relief requested: Exemption from 49 USC section 41301 and Statement of Authorization under 14 CFR Part 212 to permit Tyrolean Airways to display the designator code of Delta Air Lines on flights operated by Tyrolean Airways between: (a) any points in Austria; and (b) any point or points in Austria and any point or points in any third country. The applicant, a regional partner of Austrian Airways, requests that the authority be effective through April 30, 1999 (that is, coextensive with the duration of the Department's approval of the Austrian/Delta code-share request for related services, filed April 11, 1997).

If renewal, date and citation of last action: New authority.

Applicant representative(s): J.E. Murdock III and Sheryl R. Israel, 202-663-8342

Responsive pleadings: None.

DISPOSITION

Action: Approved.

Action date: December 16, 1998

Effective dates of authority granted: The exemption and statement of authorization are effective from December 16, 1998, through April 30, 1999.

Basis for approval (bilateral agreement/reciprocity): United States-Austria Air Transport Agreement.

Except to the extent exempted/waived, this authority is subject to the terms, conditions, and limitations indicated:

Standard exemption conditions, and see below.

The authority granted under Part 212 is subject to the following conditions: (1) The authority to engage in the code-share operations described above shall automatically expire should Tyrolean Airways alter its contract of carriage, as evidenced by the copy on file in Docket OST-95-232, in a manner inconsistent with full implementation of the IATA Inter-carrier Agreement (MIA). (2) The code-sharing operations conducted under this authority must comply with 14 CFR 399.88 of the Department's regulations, and with any amendments to the Department's regulations concerning code-share arrangements that may be adopted. Notwithstanding any provisions in the contract between the carriers, our approval here is expressly conditioned upon the requirement that the subject foreign air transportation be sold in the name of the carrier holding out the service in computer reservation systems and elsewhere; that the carrier selling such transportation (that is, the carrier shown on the ticket) accept responsibility for the entirety of the code-share journey for all obligations established in its contract of carriage with the passenger; that the passenger liability of the operating carrier be unaffected; and that the operating carrier shall not permit the code of its U.S. air carrier code-sharing partner to be carried on any flight that enters, departs, or transits the airspace of any area for whose airspace the Federal Aviation Administration has issued a flight prohibition. (3) The authority granted here is specifically conditioned so that neither Delta nor Tyrolean shall give any force or effect to any contractual provisions between themselves that are contrary to these conditions. (4) We require Tyrolean and/or Delta to notify the Department (Office of International Aviation, X-45), by letter, no later than ten days before they begin initial code-share service under the code-share services authorized here. They shall notify the Department no later than 30 days before they begin any new code-share service under the code-share services authorized here. Such notice shall identify the market(s) to be served, which carrier (Tyrolean) will be operating the aircraft in the code-share market added, and the date on which the service will begin. (5) The authority to operate to/from third countries is subject to the condition that any service provided under the statement of authorization shall be consistent with all applicable agreements between the United States and the foreign

countries involved. Furthermore, (a) nothing in the award of this statement of authorization should be construed as conferring upon Delta rights (including code-share, fifth-freedom intermediate and/or beyond rights) to serve markets where U.S. carrier rights are limited unless Delta notifies us of its intent to serve such a market and unless and until the Department has completed any necessary carrier-selection procedures to determine which carrier(s) should be authorized to exercise such rights (The 30-day notice requirement applicable to this statement of authorization may be used for this notification as long as it comports with the specifications set forth above.); and (b) should there be a request by any carrier to use the limited-entry routes that are included in Delta's underlying authority by virtue of the statement of authorization granted here, but that are not being used by Delta, the holding of such authority will not be considered as providing any preference for Delta in a competitive carrier-selection proceeding to determine which carrier(s) should be entitled to use the authority.

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

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) the applicant was qualified to perform its proposed operations; (3) grant of the authority was consistent with the public interest; and (4) 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>.*