



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

Issued by the Department of Transportation
on the **22nd day of January, 1999**

Served: January 25, 1999

Complaint of

NORTHWEST AIRLINES, INC.

Against

**THE COUNCIL OF THE EUROPEAN
UNION AND THE GOVERNMENTS OF
THE 15 EU MEMBER STATES**

under 49 U.S.C. § 41310

Docket OST-99-5011

ORDER

On January 15, 1999, Northwest Airlines, Inc. (Northwest) filed a complaint under 49 U.S.C. § 41310 against the Council of the European Union and the Governments of the 15 EU Member States (referred to as the EU and the Member States). Northwest states that the EU is in the final stages of enacting a regulation that would restrict the use of hushkitted aircraft, and that, if enacted, the regulation would unreasonably restrict U.S. operators' access to Europe in contravention of U.S. rights under the Chicago Convention and bilateral air services agreements. Northwest urges the Department to take action to redress the economic harm caused by the EU regulation, which it argues constitutes an "unjustifiable or unreasonable...practice against an air carrier" and "imposes an unjustifiable or unreasonable restriction on access of an air carrier to a foreign market," warranting action under the statute. Northwest also filed an emergency motion, requesting that the Department require answers to its complaint within seven calendar days, *i.e.*, by January 22, 1999.

In support of its complaint, Northwest states that in March 1998 the European Commission proposed a rule, over the objection of the Administrator of the U.S. Federal Aviation Administration (FAA), that would ban the operation of many hushkitted and certain re-engined aircraft; that this proposal is in the final legislative stages before adoption, despite the firm rejection at the 32nd International Civil Aviation Organization (ICAO) Assembly of unilateral action by the EU and repeated U.S. government protests; and that, upon adoption, it will

immediately bind each of the Member States. Northwest argues that adoption of this regulation will violate the bilateral obligations of the Member States to allow operation of any aircraft that complies with ICAO standards, and will deprive U.S. operators of their fair and equal opportunity to compete, which is guaranteed by every U.S.-European bilateral air services agreement. Northwest further argues that the proposed EU regulation discriminates against non-EU operators because it restricts operations by carriers (mostly U.S.) that have chosen to meet ICAO "Stage 3" environmental standards by hushkitting existing aircraft, placing them at a disadvantage vis-à-vis carriers (mostly European) that chose instead to meet the Stage 3 standards by acquiring new aircraft. Northwest adds that the regulation also permits more flexibility for EU operators to use hushkitted aircraft within Europe. Finally, Northwest states that the regulation discriminates against U.S. manufactured aircraft since it was drafted in a way to target only U.S.-made aircraft, engines and hushkit equipment. As a result, Northwest argues that the regulation adversely affects the resale value of U.S. operators' aircraft substantially, diminishes the value of the U.S. commercial fleet, and serves to promote the European aerospace industry in a trade-distorting manner.

To redress the economic harm caused by the EU regulation, Northwest urges the Department, as a first step, to issue an order immediately under Part 213 of the Department's regulations, requiring airlines designated by France, Germany and the United Kingdom, the three European countries that have substantial aerospace interests that would benefit financially under the regulation, to file their current operating schedules, expressly identifying the equipment being used by aircraft type and registration number within 15 days of its order. It further urges the Department to direct these carriers to file amended schedules 15 days before using any equipment other than that identified in the initial schedules, also by aircraft type and registration number. Absent satisfactory and timely action by the EU to withdraw its regulation, Northwest urges the Department to proceed with further action under Part 213 against those airlines.

Section 41310 provides that the Department shall approve, deny, dismiss, or set a complaint for hearing, or institute other procedures proposing remedial action, within 60 days after receipt of the complaint. We may extend the period for taking action up to 90 days from the date of the complaint if we conclude that it is likely that the complaint can be resolved satisfactorily through negotiations. We may further extend the action deadline up to 180 days from receipt of the complaint, in 30-day increments, if we find that intergovernmental negotiations have progressed to a point that a satisfactory resolution of the complaint appears imminent.

In order to develop the record for our consideration of this matter, we invite interested persons to answer Northwest's complaint in Docket OST-99-5011. We will require that answers be filed no later than February 5, 1999. Answers filed should include all data, evidence, and arguments upon which the respondents rely to support their positions, and should cover all substantive and procedural issues that they wish the Department to consider. Replies to any answers should be filed no later than February 12, 1999.¹ While Northwest had sought a more expedited procedural schedule, we believe that the schedule established properly balances our desire to

¹ We assign to the Director, Office of International Aviation, the authority to dispose of all procedural questions arising in this proceeding, except for requests for oral evidentiary hearing, until further Department order.

consider this matter expeditiously and to provide all interested parties a reasonable opportunity to respond to the issues raised in Northwest's complaint.

After receipt and consideration of responsive pleadings and any supporting evidence submitted, we will issue a further order in this proceeding.

ACCORDINGLY,

1. We invite interested persons to file answers to the complaint of Northwest Airlines, Inc., in Docket OST-99-5011, no later than February 5, 1999; and if answers are filed, replies to those answers should be filed no later than February 12, 1999. ² Answers to the complaint and replies, if any, should be served upon the persons named in ordering paragraph 4, below;
2. If timely and properly supported answers are filed, we will give full consideration to the matters and issues raised by the answers before we take further action;
3. To the extent not granted, we dismiss the emergency motion of Northwest Airlines, Inc. in this docket; and
3. We will serve this order on all parties served with Northwest's complaint; the Ambassadors of the Delegation of the Commission of the European Communities, the Federal Republic of Germany, France, and the United Kingdom in Washington D.C.; the U.S. Department of State (Office of Aviation Negotiations); the Assistant U. S. Trade Representative (Office of the United States Trade Representative); the U.S. Department of Commerce (Office of Service Industries); and the Air Transport Association.

By:

CHARLES A. HUNNICUTT
Assistant Secretary for Aviation
and International Affairs

(SEAL)

*An electronic version of this notice is available on the World Wide Web at
http://dms.dot.gov/reports/reports_aviation.asp.*

² The original submission is to be unbound and without tabs on 8 1/2" x 11" white paper using dark ink (not green) to facilitate use of the Department's docket imaging system.