



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

Issued by the Department of Transportation on May 4, 1999

NOTICE OF ACTION TAKEN -- DOCKET OST-98-4486

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: **MNG Airlines Cargo Inc.**

Date Filed: September 22, 1998

Relief requested: Exemption from 49 U.S.C. 41301 to conduct charter foreign air transportation of property and between Turkey and the United States, and between the United States and third countries in conformity with the U.S.-Turkey Air Transport Agreement.¹

Applicant representative: Joanne Young 202-861-1532

Responsive pleadings: United Air Lines, Inc., filed an answer stating that while it had no objection to MNG's request to operate third and fourth freedom flights, reciprocity requires denial of any extrabilateral authority, and urged the Department to limit any authority granted to MNG to serve third countries to that authorized under the bilateral agreement. MNG filed a reply stating that it is not seeking extrabilateral authority, and that its application explicitly requests authority in conformity with the bilateral agreement.

DISPOSITION

Action: Approved

Action date: May 4, 1999

Effective dates of authority granted: May 4, 1999 - May 4, 2001

Remarks: The authority is provided for in the U.S.-Turkey Air Transport Agreement,² and the carrier's proposed operations conform to the provisions of the Agreement.³ We found, based on the record, that the carrier is substantially owned and effectively controlled by citizens of Turkey, properly licensed and designated, and operationally and financially qualified to undertake the proposed operations. Finally, the FAA has advised us that it knows of no reason to withhold this authority.

Except to the extent exempted/waived, this authority is subject: X Standard exemption conditions (attached)

**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) 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.

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¹ The Agreement provides for U.S.-third country charter flights "provided such traffic is carried via the carrier's homeland and makes a stopover in the homeland for at least two consecutive nights" (Annex II, Section 1(b)).

² With regard to United's concerns, we note that the carrier did not seek, and we have not awarded extrabilateral authority.

³ MNG proposes initially to operate three weekly charter flights with Airbus A300 aircraft between Istanbul and Bangor, Maine, with technical stops in Shannon, Prestwick or Reykjavik; between Bangor and Istanbul with technical stops in London or Shannon; between Istanbul and New York with technical stops in Reykjavik, Shannon and Gander, or Prestwick and Gander; and between New York and Istanbul with technical stops in Reykjavik, Gander and London, or Gander and Shannon.

FOREIGN AIR CARRIER 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) Except as specifically exempted or otherwise provided for in a Department Order, 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 (except as otherwise provided in the applicable bilateral agreement) 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).