



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

Issued by the Department of Transportation on April 30, 1999

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

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).

Joint Applicants: **Delta Air Lines, Inc., Austrian Airlines, and Tyrolean Airways** Date Filed: March 1, 1999

Relief requested: Renew exemption from 49 U.S.C. 41301 and statement of Authorization under 14 CFR 212 of the Department's regulations to permit Tyrolean to display the designator code of Delta Air Lines on flights operated by Tyrolean Airways (in conjunction with Alliance services held out by Delta) between (1) any points in Austria; and (2) any points in Austria and any points in any third country.¹ The joint applicants request that the authority be granted on an indefinite basis.

If renewal, date and citation of last action: Notice of Action Taken dated December 16, 1998

Applicant representative: J. E. Murdock III 202-663-8342

Responsive pleadings: Northwest Airlines, Inc., and KLM Royal Dutch Airlines filed a joint answer stating that, while they have no objection in principle, the Department should not renew the requested authority until it first grants the pending Northwest/KLM blanket code-share application. Delta filed a reply stating that the Department's policy is to evaluate each application for code-share authority on a case-by-case basis, and that the issue raised by Northwest/KLM is unrelated, and should not be linked, to the Delta/Tyrolean renewal request.

DISPOSITION

Action: Approved in part; Remainder dismissed²

Action date: April 30, 1999

Effective dates of exemption authority granted: April 30, 1999 - April 30, 2001

Effective dates of statement of authorization granted: Indefinite, subject to the code-share conditions, below

Remarks: Grant of this authority is consistent with the U.S.-Austrian Air Transport Agreement, and will allow the carriers to continue to hold out their code-share services to the public. Absent our action, authority for these code-share operations would lapse. We already determined, in approving these operations initially, that grant of the authority was consistent with the public interest (Notice of Action Taken dated December 16, 1998, in the present docket). We saw nothing in the joint Northwest/KLM submission that persuaded us that the public interest would be served by permitting the authority for the Delta/Austrian/Tyrolean operations to lapse while we continue to consider the Northwest/KLM application.

¹ The applicants noted that Tyrolean's authorities were originally granted on December 16, 1998, effective through April 30, 1999 (coextensive with the duration of the Delta/Austrian blanket code-share statement of authorization). They requested that, since the authority is valid for a period of less than 180 days and not subject to the automatic extension provisions of the Administrative Procedures Act, the Department act prior to April 30, 1999, so that existing code-share services will not be disrupted.

² We dismissed that portion of the carriers' exemption application to conduct the operations beyond April 29, 2001, without prejudice to refile at a later date. The duration of this authority is consistent with our usual policy of granting interim exemption authority in cases such as that presented here.

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

Standard exemption conditions (attached)

This authority 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).

This authority is also subject to the following code-share conditions:

(a) The statement of authorization will remain in effect only as long as (i) Tyrolean and Delta continue to hold the necessary underlying authority to operate the code-share services at issue, and (ii) the code-share agreement providing for the code-share operations remains in effect.

(b) Tyrolean and/or Delta must 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 will be operating the aircraft in the code-share market added, and the date on which the service will begin. Such notices should be filed in Docket OST-97-2972.

(c) Tyrolean and/or Delta must promptly notify the Department if the code-share agreement providing for the code-share operations is no longer effective or the carriers decide to cease operating any or all of the approved code-share services. Such notices should be filed in Docket OST-97-2972.³

(d) The code-sharing operations conducted under this authority must comply with 14 CFR 399.88 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 requirements that the subject foreign air transportation be sold in the name of the carrier holding out such service in computer reservation systems and elsewhere; that the carrier selling such transportation (*i.e.*, 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. 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.

(e) The authority granted here is specifically conditioned so that neither Tyrolean nor Delta shall give any force or effect to any contractual provisions between themselves that are contrary to these conditions.

**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 grant of the authority was in the public interest. 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/reports/reports_aviation.asp*

³ We expect this notification to be received within 10 days of such non-effectiveness or of such decision.

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).