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Order 2002-2-19

Served: March 5, 2002



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

Issued by the Department of Transportation
on the 28th day of February, 2002

Complaint of

UNITED AIR LINES, INC.

against

**THE EUROPEAN COMMISSION
AND NATIONAL IMPLEMENTING
AUTHORITIES**

under 49 U.S.C. §41310

Docket OST-98-4030 - 49

ORDER GRANTING WAIVER

On July 8, 1998, United Air Lines, Inc., filed a complaint under 49 U.S.C. §41310 against the European Commission (the Commission) and certain European national implementing authorities (the Governments of Germany, Denmark, Norway, and Sweden) (the Commission and these governments are referred to collectively as the Respondents). United argues that sanctions against the Respondents are necessary to redress actions proposed by the Commission against United's alliances with Deutsche Lufthansa AG (Lufthansa) and Scandinavian Airline System (SAS) which will preclude United and its alliance partners from exercising rights specifically provided for under the open-skies aviation agreements between the United States and the individual European countries involved. United argues that such action is essential to ensure the continued viability of the U.S. Government's open-skies policy in Europe.¹

By Order 98-7-16, the Department invited all interested parties to file answers to United's complaint in Docket OST-98-4030. Deutsche Lufthansa AG, Northwest Airlines, Delta Air

¹We summarized the complaint more fully in Order 98-7-16, July 27, 1998.

Lines, Scandinavian Airlines System, American Airlines, the City and County of San Francisco, the City of Chicago and the Metropolitan Washington Airports Authority, and the Economic Strategy Institute filed answers. American and United filed replies. Northwest filed a rejoinder.²

By a series of actions the Department extended, to facilitate a negotiated resolution to the issues raised, the period for taking action on United's complaint.³ The latest extension runs through March 3, 2002.

On February 7, 2002, United offered an additional limited waiver of the statutory deadline through June 2, 2002. United notes that since the filing of its complaint a new Commission is in place and is undertaking a review of the issues that prompted United's complaint. United states that the Commission and United/Lufthansa/SAS are engaged in a dialogue to resolve all outstanding issues concerning the remedies that the carriers offered to address the Commission's antitrust concerns. United further states that it understands that the Commission is continuing to negotiate with certain European Union (EU) Member States certain changes to their national laws that the Commission believes will enhance the effectiveness of the private remedies offered by the parties.

However, United states that it does not expect these discussions to be completed before expiration of the current March 3, 2002, extension of the statutory deadline. In order to afford the Commission and the parties a further opportunity to resolve this matter, United states that it is prepared to waive the statutory deadline in this matter through June 2, 2002.

After careful consideration of United's request and other relevant factors, we believe that the public interest will best be served by granting United's waiver and deferring the deadline for action on the complaint through June 2, 2002.

ACCORDINGLY,

1. We grant the request of United Air Lines, Inc. for waiver of the statutory deadline in order to defer through June 2, 2002, the period for taking action on its complaint in Docket OST-98-4030; and
2. We will serve this order on Air Transport International LLC; American Airlines, Inc.; Amerijet International, Inc.; Arrow Air, Inc., Challenge Air Cargo, Inc.; Continental Airlines, Inc.; Delta Air Lines, Inc.; DHL Airways, Inc.; Economic Strategy Institute; Emery Worldwide Airlines, Inc.; Evergreen International Airlines, Inc.; Federal Express Corporation; Northwest

²Northwest's pleading was accompanied by a motion for leave to file an otherwise unauthorized document. We granted the motion by Order 98-10-7.

³See Orders 2001-11-19, 2001-8-24, 2001-5-35, 2001-3-3, 2000-12-4, 2000-9-1, 2000-7-22, 2000-4-24, 2000-1-22, and 99-10-22 and orders cited therein.

Airlines, Inc.; Polar Air Cargo, Inc.; United Air Lines, Inc.; United Parcel Service Co.; US Airways, Inc.; World Airways, Inc.; Lufthansa German Airlines; Condor Flugdienst; Scandinavian Airlines System; Scanair; Maersk Air; Blue Scandinavia AB; Premiair A/S; Nova Airlines, AB; Deutsche BA Luftfahrtgesellschaft mbH; Eurowings Luftverkehrs AB; Hapag-Lloyd Fluggesellschaft; Lufthansa Cargo, AG; Transwede Airways AB; LTU Lufttransport-Unternehmen GmbH; Britannia Airways; Sterling; Air Sweden; Finnair Oy; the Ambassadors of the Delegation of the Commission of the European Communities, the Federal Republic of Germany, Norway, Denmark, and Sweden 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); the Air Transport Association; the National Air Carrier Association, Inc.; the City and County of San Francisco; and the City of Chicago and the Metropolitan Washington Airports Authority.

By:

READ C. VAN DE WATER
Assistant Secretary for Aviation
and International Affairs

(SEAL)

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