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Order 2001-11-18

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

Issued by the Department of Transportation  
on the 30<sup>th</sup> day of November, 2001

Served: December 5, 2001

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- 42

**ORDER GRANTING WAIVER**

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) regarding EU regulations that would restrict the use of hushkitted aircraft. Northwest states that 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.<sup>1</sup>

By Order 99-1-10, the Department invited all interested persons to answer Northwest's complaint in Docket OST-99-5011. British Airways PLC and Virgin Atlantic Airways Limited

<sup>1</sup>We summarized the complaint more fully in Order 99-1-10.

(filed jointly); Lufthansa German Airlines; the Cargo Airline Association; Societe Air France; Quiet Technology Venture, Ltd.; the National Air Carrier Association; Pratt & Whitney; the Air Transport Association of America; AvAero; Federal Express Corporation; Fine Air Services, Inc.; Intrepid Aviation Partners, L.L.C.; United Air Lines, Inc.; Delta Air Lines, Inc.; Kitty Hawk Aircargo, Inc. and American International Airways, Inc. (filed jointly); the Nordam Group, Inc.; Burbank Aeronautical Corporation and ABS Partnership and Duganair Technologies, Inc. (filed jointly); ABX Air, Inc.; and the Association of European Airlines filed answers. Northwest filed a reply to the answers. The Cargo Airline Association filed an additional response.<sup>2</sup>

By a series of actions the Department has extended the deadline for action on Northwest's complaint in order to facilitate a negotiated resolution to the issues raised.<sup>3</sup> The latest extension runs through December 1, 2001. On March 14, 2000, the U.S. Government invoked the dispute resolution procedures provided for under Article 84 of the Chicago Convention and filed a complaint with the International Civil Aviation Organization (ICAO).

On November 8, 2001, Northwest agreed to a further limited waiver of the statutory deadline, specifically through June 3, 2002, in light of recent, favorable press reports on settlement discussions between the United States and the European Union, under which the EU would replace its current noise regulation with other rules that could allow individual airports the flexibility to address their legitimate noise concerns in a non-discriminatory fashion. Northwest states that it is encouraged by this news and that it welcomes the progress that the U.S. Government has apparently made in resolving Northwest's concerns.

In light of these positive developments, Northwest states that it believes an additional waiver of the statutory deadline could lead to a final resolution to the matter. However, Northwest states that it would wish to review any settlement, including any new rules the EU adopts, to ensure that Northwest's concerns are adequately addressed. Northwest further states that it retains the option to withdraw its consent to a waiver of the deadline, particularly if the EU fails to act in good faith, unduly delays implementation, or considers other "discriminatory" measures contrary to Northwest's interests in this matter.

After careful consideration of Northwest's submission and other relevant factors, we believe that the public interest is best served by granting Northwest's waiver, and deferring the deadline for action on the complaint through June 3, 2002.

#### **ACCORDINGLY,**

1. We grant the request of Northwest Airlines, Inc. for a waiver of the statutory deadline in order to defer through June 3, 2002, the period for taking action on its complaint in Docket OST-99-5011; and

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<sup>2</sup>The additional response was accompanied by a motion for leave to file an otherwise unauthorized document. We granted the motion by Order 99-5-7.

<sup>3</sup>See Orders 2001-6-23, 2000-11-30, 2000-7-34, 2000-2-2 and Order 99-5-7 and orders cited therein at 2.

2. We will serve this order on all parties to the complaint of Northwest Airlines, Inc., in Docket OST-99-5011; the Ambassadors of the Delegation of the Commission of the European Communities, 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); and the U.S. Department of Commerce (Office of Service Industries).

By:

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

(SEAL)

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