



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

Issued by the Department of Transportation on February 20, 2003

NOTICE OF ACTION TAKEN -- DOCKET OST-2001-10451

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: **Jersey European Airways (UK) Ltd. t/a FlyBE¹ & Delta Air Lines, Inc.**

Date Filed: January 29, 2003

Relief requested: (1) Amend exemption from 49 U.S.C. 41301 last granted September 10, 2001, in this docket, to permit FlyBE to conduct scheduled foreign air transportation of persons, property and mail between points in the United Kingdom (excluding London Heathrow and Gatwick airports) and the coterminal points Atlanta, GA, and New York, NY; via the intermediate point Brussels, Belgium, pursuant to a code-share arrangement with Delta. (2) Statement of authorization pursuant to 14 CFR 212 of the Department's regulations to permit Delta to display the airline designator code of FlyBE on flights operated by Delta between Brussels and Atlanta/New York.²

Applicant representative: Alexander Van der Bellen 202-663-8060 DOT analyst: Barbara Schools 202-366-2401

Responsive pleadings: None

DISPOSITION

Action: Approved

Action date: February 20, 2003

Effective dates of authority granted: February 20, 2003 - September 10, 2003³

is for approval (bilateral agreement/reciprocity): U.S.-U.K. aviation agreement

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

Standard exemption conditions (attached) Code-share conditions (attached)

**Action taken by: Paul L. Gretch, Director
Office of International Aviation**

We found that Jersey European (FlyBE) was qualified to perform its proposed operations.

Under authority assigned by the Department in its regulations, 14 CFR Part 385, we found that (1) our action 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 seven (7) 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*

¹ Jersey European Airways (U.K.) Ltd. formerly operated under the trade name "British European."
- The applicants stated that Delta will carry FlyBE traffic on a blind-sector basis in conjunction with FlyBE's existing services between regional U.K. points and Brussels.

³ The applicants requested that we grant the authority at issue here through September 10, 2003, coextensive with previously-granted authority in this docket.

**Attachment to Notice of Action Taken dated February 20, 2003, in Docket OST-2001-10451
Jersey European (FlyBE)/Delta Air Lines, Inc. Code Share Conditions**

The code-share operations authorized here are subject to the following conditions:

(a) Jersey European (FlyBE) 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-2001-10451.¹

(b) The code-sharing operations conducted under this authority must comply with 14 CFR 257 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; and that the passenger liability of the operating carrier be unaffected.

(c) The authority granted here is specifically conditioned so that neither carrier shall give any force or effect to any contractual provisions between themselves that are contrary to these conditions.

¹ We expect this notification to be received within 10 days of such non-effectiveness or of such decision.