

BEFORE THE
OFFICE OF THE SECRETARY
U.S. DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.

Application of:)
)
TRANSPORTES AEREOS MERCANTILES)
PANAMERICANOS, S.A. (TAMPA)) Docket OST-00-6955
)
for an Emergency Exemption from)
49 U.S.C. § 40109)
(Colombia-Miami-Panama-Colombia/All Cargo))
)
)

**CONSOLIDATED REPLY OF TRANSPORTES
AEREOS MERCANTILES PANAMERICANOS, S.A.**

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March 10, 2000

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On February 17, 2000, Transportes Aereos Mercantiles Panamericanos, S.A. (“TAMPA”), pursuant to 49 U.S.C. § 40109 and Subpart D of the Department’s Procedural Regulations, filed an application for an exemption to authorize it to engage in foreign scheduled air transportation of property and mail on a Colombia-Miami-Panama-Columbia routing. TAMPA requested that this exemption be granted for a period of two years.

Answers were filed by Fine Air Services, Inc. (“Fine”) and Polar Air Cargo (“Polar”). Fine contends that “overall substantial comity and reciprocity” is lacking in the U.S.-Colombia market and, therefore, the Department should defer action on TAMPA’s application until the conclusion of the U.S.-Colombia bilateral talks scheduled for March 13-14, 2000. Answer of Fine at 4. Polar does not object to TAMPA’s application provided the Department also grant its pending application for Miami-Bogota all-cargo authority and that “assurance of routing flexibility” is provided by the Colombian government. Answer of Polar at 3.

Turning initially to the Polar answer, TAMPA welcomes even-handed competition in the U.S.-Colombia market and has never objected to an application of a U.S. carrier in a DOT proceeding. TAMPA takes no position on Polar's pending DOT application for exemption authority but notes that Polar's DOT application is a matter between Polar and the Department, not TAMPA. Any "routing flexibility" assurances involving the Colombian government can be raised by Polar or the Department in the upcoming bilateral negotiations. Delaying TAMPA's application for bilaterally guaranteed authority in a market where two U.S. carriers are already operating would be inappropriate.

As to Fine's answer, TAMPA responds as follows:

First, Fine does not argue that comity and reciprocity is lacking in the U.S.-Panama-Colombia market, nor does it cite recent examples where U.S. carriers were denied authority by the Colombian government to operate in that particular market. It cannot, of course, do so because the Colombian government has granted analogous requests by not just one but two U.S. carriers to fly between the United States and Colombia via Panama. In fact, substantial comity and reciprocity exists in the U.S.-Panama-Colombia market for these flights. The Colombian government has authorized (1) Federal Express to operate on a U.S.-Venezuela-Panama-Bogota-Panama-U.S. routing, and (2) Challenge Air Cargo to operate between the United States and Colombia via Panama. It is beyond question that reciprocity has been demonstrated by the Colombian government in the U.S.-Panama-Colombia market.

Second, the Department has applied an "analogous requests" standard in determining whether comity and reciprocity exist in a particular market. Thus, in a case involving code-sharing in U.S.-Canadian markets, the Department held that:

While code-sharing arrangements of the type at issue here are not provided for in our bilateral aviation agreements

with Canada, we find that approval is warranted on reciprocity grounds. In particular, we note that the Government of Canada has approved analogous requests by U.S. carriers to conduct code-sharing operations in U.S.-Canada markets. Order 94-2-14 at 5.

And, in a case involving reciprocity on the part of the government of Panama, the Department stated that:

Although the U.S.-Panama Air Transport Agreement does not provide for the nonscheduled Central America intermediate-point authority that Pacific International is seeking, we find that there is adequate reciprocity with Panama supporting Pacific International's request. We have the Panamanian authorities' assurance on the record of this case (by letter dated June 20, 1994) that they are prepared to grant analogous requests by U.S. carriers. None of the objecting U.S. carrier parties has provided us with a concrete basis to question this assurance. Order 95-1-38 at 5-6.

If the Department is prepared to find reciprocity in a market where the foreign government has provided "assurances" that it would grant analogous requests, reciprocity certainly exists where the foreign government has already granted analogous requests by U.S. carriers for authority in that particular market.

While Fine attempts to shoehorn comity and reciprocity into a broad "overall substantial comity and reciprocity" standard, such a standard is inconsistent with the long standing and appropriate "analogous request" standard established by the Department over the years.

Third, the authority sought by TAMPA is clearly provided in the U.S.-Colombia bilateral. The U.S.-Colombia Air Transport Agreement provides for service between Miami and Colombia via intermediate points. Even Fine concedes that the routing is consistent with the bilateral.

Finally, the overwhelming majority of TAMPA's scheduled flights in recent years have been third and fourth freedom flights between the United States and Colombia. TAMPA's primary focus remains the Colombia-U.S. market. Granting this authority would provide

balance in a market where two U.S. carriers have previously been authorized by the Colombian government to operate.

WHEREFORE, for the foregoing reasons, TAMPA respectfully requests that the Department grant it an exemption for a period of two years to enable it to provide scheduled foreign air transportation of property and mail on a Colombia-Miami-Panama-Colombia routing as more fully described herein.

Respectfully submitted,

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/s/ Joshua I. Romanow

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March 10, 2000

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was sent via facsimile this 10th day of March, 2000 to the following persons:

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