

**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, DC**

Issued by the Department of Transportation on January 24, 2005

NOTICE OF ACTION TAKEN -- DOCKET OST-2004-19148

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).

Application of **United Air Lines, Inc.** filed **9/15/04** for:

XX Exemption for at least two years under 49 U.S. C. 40109 to the extent necessary to permit United to display its designator code on flights operated by Deutsche Lufthansa AG (Lufthansa) and other carriers that operate flights on Lufthansa's behalf¹ on the following services:

Scheduled foreign air transportation of persons, property, and mail between points in Germany; between points in the United States and points in Germany, either nonstop or via third country intermediates; and between points in Germany and points in third countries, either nonstop or via third-country intermediates.²

The Air Carrier Association of America (ACAA) and Continental filed answers to United's application.

The ACAA stated that under United's proposal, a carrier could add code-sharing listings whether or not it could fly to a particular market on its own, and that United could list these flights even if it did not have authority to operate them and would not have to identify which of several carriers is actually operating. The ACAA maintains that United's proposal would have a major impact on consumer choice and the marketplace.

Continental did not object to United's request so long as comparable exemption authority is granted to Continental for code-share purposes. Continental urges the Department to grant the same broad code-share exemption authority currently held by American and United for code sharing with their U.K. partners to Continental and other carriers such as United and US Airways.

United filed a consolidated reply and agreed with Continental that the Department should establish a consistent policy and apply it to all code-share partnerships between U.S. and foreign airlines. United states that ACAA apparently misconstrues United's application, which would not affect the ultimate level of United's code sharing in international city pairs, but rather would enable United to expedite and reduce the cost of implementing additional code-share services with Lufthansa. United maintains that the Department has documented the many consumer benefits of international code-share alliances between U.S. and foreign carriers.

ACAA responded to United's consolidated reply and stated that it believes that once the Department completes a review of United's request and an analysis of the growth of code-sharing relationships, it will decide that the authorization requested by United should not be approved. The ACAA states that as a result of the continuing expansion of code-sharing involving multiple relationships, the Department should review the overall impact of code-sharing on consumers and competition before it considers any additional exceptions to the code-share requirements.

¹ Those carriers include Lufthansa CityLine, Air Dolomiti, Condor Flugdienst, and PrivatAir.

² United intends initially to use this authority to introduce scheduled combination service between the United States and Libya by displaying United's designator code on flights operated by Lufthansa between Frankfurt and Tripoli.

Applicant reps: Jeffrey A. Manley (202) 663-6670 DOT Analyst: Sylvia Moore (202) 366-6519

DISPOSITION

XX Granted (subject to conditions, see below)

The exemption authority granted was effective when taken: January 24, 2005, through January 24, 2007

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

XX The authority granted is consistent with the aviation agreement between the United States and the Federal Republic of Germany.

Except to the extent exempted or waived, this authority is subject to the terms, conditions, and limitations indicated: **XX Holder's certificates of public convenience and necessity**

XX Standard exemption conditions (attached)

XX Conditions attached to United/Lufthansa blanket statements of authorization (Order 98-4-8)

Remarks: We have decided to grant United exemption authority comparable to the exemption authority granted other carriers with similar requests pursuant to code-share arrangements with their foreign partners (*i.e.*, American/British Airways, Northwest/KLM, and US Airways/Lufthansa). With regard to the concerns expressed by the ACAA, we find that the conditions we have imposed, along with the regulations contained in 14 CFR Part 257, should provide the necessary degree of consumer protection. With regard to Continental's comments, we note that we are actively reviewing Continental's pending applications in Dockets OST-2004-19346 and OST-2004-19420 and expect to complete the process shortly.

On the basis of data officially noticeable under Rule 24(g) of the Department's regulations, we found the applicant qualified to provide the services authorized.

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 exemption authority was consistent with the public interest; and (3) grant of the authority would not constitute a major federal action under the Energy Policy and Conservation Act of 1975. To the extent not granted, 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 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

U.S. Carrier Exemption Conditions

In the conduct of the operations authorized, the U.S. carrier applicant(s) shall:

- (1) Hold at all times effective operating authority from the government of each country served;
- (2) Comply with applicable requirements concerning oversales contained in 14 CFR 250 (for scheduled operations, if authorized);
- (3) Comply with the requirements for reporting data contained in 14 CFR 241;
- (4) Comply with requirements for minimum insurance coverage, and for certifying that coverage to the Department, contained in 14 CFR 205;
- (5) Except as specifically exempted or otherwise provided for in a Department Order, comply with the requirements of 14 CFR 203, concerning waiver of Warsaw Convention liability limits and defenses;
- (6) Comply with all applicable requirements of the Federal Aviation Administration and with all applicable U.S. Government requirements concerning security, including, but not limited to, 49 CFR Part 1544. To assure compliance with all applicable U.S. Government requirements concerning security, the holder shall, before commencing any new service (including charter flights) to or from a foreign airport, contact its International Principal Security Inspector (IPSI) to advise the IPSI of its plans and to find out whether the Transportation Security Administration has determined that security is adequate to allow such airport(s) to be served; and
- (7) Comply with such other reasonable terms, conditions, and limitations required by the public interest as may be prescribed by the Department of Transportation, with all applicable orders and regulations of other U.S. agencies and courts, and with all applicable laws of the United States.

The authority granted shall be effective only during the period when the holder is in compliance with the conditions imposed above.