



US Department of
Transportation
Office of the Secretary
of Transportation

NOTICE OF ACTION TAKEN

DOCKET OST-97-3279 - 5

This serves as interim notice to the public of the action described below, taken orally by the Department official indicated; the confirming order or other decisional document will be issued as soon as possible.

Applicant: BRITANNIA AIRWAYS, GmbH

Date filed: December 23, 1997, as amended January 20, 1998, and as supplemented April 15 and April 16, 1998

Relief requested: Exemption from 49 USC section 41301 to permit the applicant, for a period of one year, to conduct: 1) passenger charter operations between Germany and the United States; 2) passenger charters between any point or points in the United States and any point or points in a third country, for services constituting part of a continuous operation that includes Germany-United States service; and 3) other charter operations in accordance with 14 CFR Part 2 12.

If renewal, date of last action(s): New authority.

Applicant representative: Lester M. Bridgeman, 334-432- 1414

Responsive pleadings: None.

DISPOSITION

Action: Approved

Action date: April 29, 1998

Effective date of authority granted: April 29, 1998, through April 29, 1999.

Basis for approval: United States-Germany Air Transport Agreement, as amended (Agreement).

Except to the extent exempted/waived, this authority is subject to the terms, conditions, and limitations of Appendix A.

Special conditions/Partial grant/Denial basis/Remarks: The authority is encompassed by the U.S.-Germany Agreement. Britannia Airways, GmbH, a German carrier, has been properly designated by its government under that Agreement. (In the conduct of these operations, Britannia Airways, GmbH, must adhere to all applicable provision of that Agreement; the carrier's proposed passenger charter operations to/from the United States that are not encompassed by the Agreement are subject to prior approval under Part 2 12.) We found, based on the record of this case and the companion application for a foreign air carrier permit in Docket OST-97-3274, that the applicant is operationally and financially qualified to conduct the proposed operations and is properly licensed by its homeland. Also, the FAA has advised us that it knows of no reason to withhold this authority. The application was unopposed.

In view of our bilateral relationship with Germany and the particular facts of this case, we deem it appropriate to waive our normal requirements that a foreign air carrier be substantially owned and effectively controlled by citizens of its licensing homeland to the extent necessary to grant the authority requested, notwithstanding some control uncertainties raised by the record. The record shows that a non-German carrier, Britannia Airways Ltd., has a significant interest in the applicant. ^{*}/ However, the record further shows that the United Kingdom carrier's influence is limited by a shareholders' agreement between it and the other two companies, both German, that own the applicant's stock. This shareholders' agreement, effective October 14, 1997, and provided in pertinent part for the record by a supplement to the application filed April 15, 1998, contains conditions approved by the German Government that limit the power and ability of Britannia Airways Ltd. to select directors, to influence policy, or to exercise control of the applicant. Among other things, Britannia Airways Ltd. (1) may appoint at most one of the three members of the Board of Directors, whose decisions are taken by majority vote, (2) may cast no more than 49% of total votes cast in shareholder proceedings, and (3) must deal at arms-length with the applicant in the provision of services, all such contracts requiring unanimous Board approval. Furthermore, the applicant stated its willingness to notify the Department of any material change in the shareholders' agreement and of any changes in its ownership interests and control relationships.

We found, taking into account all the particular circumstances of this case, including the terms of the shareholders' agreement, that there was nothing in the ownership and control of Britannia Airways, GmbH, that would be inimical to U.S. aviation policy or interests. Therefore, we concluded that a waiver, to the extent any may be necessary, of our standard requirement that substantial ownership and effective control of a foreign carrier rest in the hands of citizens of its homeland was warranted.

Under the circumstances of this case, in granting the ownership and control waiver, we are imposing the condition that Britannia Airways, GmbH, notify the Director, Office of International Aviation, within seven calendar days of effectiveness, of any material change(s) in any of the provisions in the shareholders' agreement, and/or changes in its ownership and control structure.

Action taken by: Paul L. **Gretch**, Director, Office of International Aviation, under assigned authority (14 CFR 385). (Petitions for review may be filed from now until 10 days after the service date of the confirming order/letter. Filing of a petition shall not stay the effectiveness of this action.)

^{*}/ Specifically, Britannia Airways Limited: 1) owns 43% of the applicant's stock (the remaining stock is owned by the German companies Merck Fink at 45% and Frosch Touristik at 12%); 2) has appointed one of the applicant's three directors (five of the applicant's seven directors/managers are German citizens, including the managing director); 3) leases equipment to the applicant; and 4) is the applicant's main creditor.

In the conduct of the operations authorized, the holder shall:

- (1) Not conduct any operations unless it holds a currently effective authorization from its homeland for such operations, and it has filed a copy of such authorization with the Department;
- (2) Comply with all applicable requirements of the Federal Aviation Administration, including, but not limited to, 14 CFR Parts 129, 91, and 36;
- (3) Comply with the requirements for minimum insurance coverage contained in 14 CFR Part 205, and, prior to the commencement of any operations under this authority, file evidence of such coverage, in the form of a completed OST Form 6411, with the Federal Aviation Administration's Program Management Branch (AFS-260), Flight Standards Service (any changes to, or termination of, insurance also shall be filed with that office);
- (4) Not operate aircraft under this authority unless it complies with operational safety requirements at least equivalent to Annex 6 of the Chicago Convention;
- (5) Conform to the airworthiness and airman competency requirements of its Government for international air services;
- (6) Comply with the requirements of 14 CFR Part 203, concerning waiver of Warsaw Convention liability limits and defenses;
- (7) Agree that operations under this authority constitute a waiver of sovereign immunity, for the purposes of 28 U.S.C. 1605(a), but only with respect to those actions or proceedings instituted against it in any court or other tribunal in the United States that are:
 - (a) based on its operations in international air transportation that, according to the contract of carriage, include a point in the United States as a point of origin, point of destination, or agreed stopping place, or for which the contract of carriage was purchased in the United States; or
 - (b) based on a claim under any international agreement or treaty cognizable in any court or other tribunal of the United States.

In this condition, the term "international air transportation" means "international transportation" as defined by the Warsaw Convention, except that all States shall be considered to be High Contracting Parties for the purpose of this definition;

- (8) Except as specifically authorized by the Department, originate or terminate all flights to/from the United States in its homeland;
- (9) Comply with the requirements of 14 CFR Part 217, concerning the reporting of scheduled, nonscheduled, and charter data;
- (10) If charter operations are authorized, comply with the Department's rules governing charters (including 14 CFR Parts 212 and 380); and
- (11) Comply with such other reasonable terms, conditions, and limitations required by the public interest as may be prescribed by the Department, with all applicable orders or regulations of other U.S. agencies and courts, and with all applicable laws of the United States.

This authority shall not be **effective** during any period when the holder is not in compliance with the conditions imposed above. Moreover, this authority cannot be sold or otherwise transferred without explicit Department approval under Title 49 of the U.S. Code (formerly the Federal Aviation Act of 1958, as amended).