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BEFORE THE
DEPARTMENT OF TRANSPORTATION
WASHINGTON, DC

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DOCKET SECTION

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 - 7

COMMENTS OF SOCIÉTÉ AIR FRANCE

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February 5, 1999

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COMMENTS OF SOCIÉTÉ AIR FRANCE

On January 15, 1999, Northwest Airlines, Inc. (“Northwest”) filed a complaint under the International Air Transportation Fair Competitive Practices Act (“IATFPCA”) against the European Union (“EU”) and the 15 EU Member States charging that a proposed EU rule on hushkitted aircraft would deny Northwest and other U.S. operators access to Europe in violation of bilateral agreement rights. The proposed EU rule in question, if implemented, is a “non-addition” rule that would bar addition of hushkitted Stage 2 aircraft to the fleets of EU-registered carriers after April 1, 1999, and bar operation of such aircraft in the EU by non-EU registered airlines after April 1, 2002 unless used on flights to and from the EU before April 1, 1999. Société Air France (“Air France”) submits these comments to Northwest’s complaint in response to the Department’s invitation in Order 99-1-10 dated January 22, 1999.

1. Northwest's complaint against the EU and the 15 Member States alleges that the proposed EU regulation on use of hushkitted aircraft would deny U.S. airlines access to Europe in violation of the Chicago Convention and bilateral civil aviation agreements. (Complaint, p. 2) As interim relief Northwest requests that DOT direct airlines of the UK, France and Germany to file schedules with DOT under Part 213 identifying equipment to be used on their flights serving the United States by aircraft type (Id., p. 3). While the EU through the EC and the Member States are the named respondents, and can be expected to state their views to the U.S. authorities in this or other forums, Air France is obliged to file these comments as it has been "targeted" by Northwest's proposed Part 213 schedule filing sanction.

2. Initially Air France must observe that it is rather bizarre that a complaint directed at an EU proposed regulation dealing with hushkitted aircraft would target for sanctions air carriers and of just three of the 15 Member States. Assuming any merit to Northwest's complaint, there is no merit to targeting the schedules of airlines of only three European countries especially as there is no linkage between these carriers' schedules and the EU authorities that would issue the proposed rule. If Northwest and the U.S. have legitimate questions concerning the proposed hushkitted aircraft ban that they want to raise with the EU and the Member States, they should be dealt with in an appropriate U.S.-EU forum that deals with environmental or aerospace industry issues, not as an effort at retaliation against airlines of three of the 15 Member States.

Northwest's explanation why the U.K., France and Germany were singled out is equally bizarre. Northwest states they were selected because they have substantial aerospace interests (Complaint, p. 3). But in its zeal Northwest conveniently overlooks other EU States with substantial aerospace interests such as the Netherlands and Italy. Of course, coincidentally, the

Netherlands and Italy are also Member States in which two of Northwest's European alliance partners are based.

3. More fundamentally, it is **doubtful** whether Northwest has made a case that is even actionable under IATFCPA, 49 U.S.C. § 41310. The statutory test under IATFCPA is whether U.S. carriers have been denied rights under bilateral air service agreements or whether the rule "imposes an unjustifiable or unreasonable restriction on access of an air carrier to a foreign market." 49 U.S.C. § 41310(c). As far as Air France can tell, neither has or will occur.

Northwest has not been denied any bilateral operating rights between the U.S. and France, or between the U.S. and any other EU country by the proposed "hushkitted aircraft" regulation. Its air service access to the French market -- or any other EU market -- has not been restricted. The proposed EU regulation affects **aircraft** types that are used on short- to medium- haul routes, not long-haul transatlantic routes. The rule does not affect the B-747s and DC-10s Northwest uses for its transatlantic services. In theory, Northwest could operate fifth freedom, short-haul routes within Europe under certain U.S. bilateral air transport agreements with Member States, but in fact Northwest does not choose to do so today. Therefore, there are **no** Northwest operations -- transatlantic or intra-Europe -- that are affected by the proposed "hushkitted aircraft" rule. In other words, Northwest's rights as a U.S. carrier under the U.S.-France or other U.S. bilateral agreements with EU Member States are unaffected by the proposed EU rule and its access to Europe has not been restricted by the rule. Northwest has not made out a case actionable under IATFCPA.

4. Moreover, the Department is in no position to make the findings required by Part 213 before the schedule tiling requirement sought by Northwest could be imposed. Section

213.3(c) specifically requires the Department to find **first** that French authorities over U.S. objections have limited or denied U.S. carrier operating rights, or denied exercise of rights secured by the U.S.- French civil aviation agreement. Obviously the proposed "hushkitted aircraft" rule is to be imposed by the EU not French authorities. As yet no U.S. rights have been denied by France, or anyone else for that matter. Furthermore, if and when implemented, the proposed rule will not deprive Northwest in any way of its ability to operate U.S.-France service under the bilateral agreement. As noted the long-haul aircraft Northwest utilizes on U.S.-France routes are not affected by the proposed EU rule.

Indeed imposition of Part 213 sanctions on Air France would be a U.S. violation of **the** new U.S.-France civil aviation agreement signed in June 1998. Article 11(4) provides that "neither Party shall require the filing of schedules...or operational plans by airlines" except on a non-discriminatory basis, which obviously would not be the case under Northwest's proposed sanction (emphasis supplied). Moreover, the April 1998 U.S.-France Memorandum of Consultations states that French carriers will no longer be subject to the Part 213 schedule tiling requirement. U.S.-France MOC, ¶ 16.


5 In truth Northwest's complaint is at its core a dispute affecting environmental and aircraft and engine manufacturing policy, not civil aviation **traffic** rights exchanged in bilateral aviation agreements. This is clear from Northwest's allegation that "the EU regulation has already depressed the resale market" for its hushkitted **aircraft** fleet,^{1/} and Northwest's targeting of the

^{1/} Northwest claims "The rule would artificially and dramatically limit the pool of possible buyers of U.S.-owned hushkitted **aircraft** because EU operators can no longer buy these **aircraft** from non-Europeans. ..." Complaint, p. 2.

UK, France and Germany which it identifies as “European countries that have substantial aerospace interests...” Complaint, pp. 13, IS. The Department’s IATFCPA procedures are not the proper forum for dealing with an aerospace industry complaint. While DOT’s IATFCPA procedures are an attractive venue for Northwest, it is the wrong one for this dispute. Northwest’s complaint is that it is being denied a market in Europe for resale of its used “hushkitted” DC-9 and B -727 fleet. That’s not an air services dispute that the Department traditionally would address under IATFCPA.

6. In sum, Air France’s position is that IATFCPA is the wrong forum for this dispute and Northwest’s complaint should be dismissed. However, should the Department continue to consider Northwest’s complaint it should reject the Part 213 filing requirement suggested. Such a sanction is totally unrelated to the alleged violations, unjustified under Part 213’s standard, in violation of the U.S.-France bilateral agreement if applied to Air France, and discriminatory if applied solely to the airlines of France, the UK and Germany,

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that I have this 5th day of February, 1999, served a copy of the foregoing
Comments on all persons on the attached Service List by first class mail, postage prepaid

A handwritten signature in black ink that reads "Michael Goldman". The signature is written in a cursive style with a horizontal line underneath the name.

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