

2nd October 2008

Blane A Workie, Chief
Aviation Civil Rights Compliance Branch
Office of the Assistant General Counsel for
Aviation Enforcement proceedings, C-70
US Department of Transportation
1200 New Jersey Avenue, SE, Room W96-322
Washington, D.C. 20590

**Re: SUPPLEMENT TO REQUEST FOR CONFLICT OF LAW
WAIVERS, OR IN THE ALTERNATIVE FOR A DETERMINATION
OF EQUIVALENT ALTERNATIVES, OF TUI TRAVEL PLC ON
BEHALF OF THE FOLLOWING AIRLINES: THOMSONFLY (UK);
TUIFLY NORDIC AB (SWEDEN); JETAIRFLY (BELGIUM) and
CORSAIRFLY (FRANCE), DOCKETS DOT-OST-2008-0272 and
DOT-OST-2008-0273**

Dear Ms. Workie:

Pursuant to 14 C.F.R. Sections 382.9 and 382.10 of the Department's regulations, TUI Travel PLC ("TUI Travel") submitted a request for waivers and/or equivalent alternative determinations on September 10, 2008. That request listed numerous conflicts with articles of the comparable European Community Disability Discrimination Rule Regulation (EC) No. 1107/2006 ("EC 1107"). TUI Travel hereby supplements its request to urge the Department to find, in addition, a conflict of law waiver for any operation at a European airport covered by EC 1107 so that if a carrier complies with EC 1107 such compliance will constitute compliance with Part 382.

In addition to the TUI airlines named above, more than 20 other European carriers and the Air Transport Association of America ("ATA") submitted waiver and/or equivalent alternative determination requests.¹ All of those requests cited conflicts with EC 1107, and ATA's request included a blanket waiver request

¹ British Airways, Virgin Atlantic, bmi, Flyglobespan, Thomas Cook, Monarch, Aer Lingus, Air France, KLM, Lufthansa, Condor, Air Berlin/LTU, Austrian, Iberia, Alitalia, Air One, Finnair, Olympic, LOT, CSA, Martinair, Pullmantur and SAS. On September 29, 2008, British Airways filed a supplemental request seeking a blanket waiver like the one contained herein.

based on the fundamental conflicts between the two regulatory regimes.² The desirability of such a blanket approach, in view of the fundamental conflict between EC 1107 and Part 382, is shown by the pending requests.

TUI Travel originally considered including such a blanket request but did not pursue that approach because we understood that the Department had indicated that waiver and equivalent alternative determinations must relate to specific and limited regulatory requirements with respect to inconsistent foreign law and regulations. After reviewing the requests submitted by ATA and other European carriers, and British Airways' supplement, however, it is apparent the goal of nondiscrimination and reconciliation of different but complementary regimes will be most efficiently and comprehensively achieved if the Department deems compliance with EC 1107 for operations at airports in Europe to constitute compliance with Part 382.

Although the objectives of the Department and the European Commission are the same, the methods each adopted to reach those objectives are different and must be reconciled. Most significantly, the European regulatory regime differs from Part 382 in that Articles 7 and 8, and Annex I to EC 1107 allocate responsibility to airport, not carrier, personnel for providing assistance at European airports. Pursuant to EC 1107 the airport assistance requirements allocated to airport personnel apply from arrival at the airport through the boarding process and from disembarkation from the aircraft to departure from the airport. Annex I specifically requires airport personnel to provide the assistance and make the arrangements necessary to enable passengers with disabilities to:

² The ATA waiver and equivalent alternative determination request included the following language:

We respectfully ask the Department to consider a conflict of law waiver for any operation covered by EC 1107. In other words, if a foreign carrier complies with EC 1107, the Department will consider the carrier to also have complied with Part 382. As mentioned above, EC 1107 comprehensively covers the same topics as Part 382, ensuring passenger access. In addition, the EC currently has resources from 26 National Enforcement Bodies to enforce regulations ensuring disabled passenger access to air transportation. Finally, recognizing EC regulations within the EC Member States recognizes the territorial jurisdiction of the EC and respects the public policy determinations made within that community.

This blanket waiver request appears primarily directed towards code-share flights operated between two European points, but the rationale applies equally to all operations at European airports.

- communicate their arrival at an airport and their request for assistance at the designated points inside and outside terminal buildings;
- move from a designated point to the check-in counter;
- check-in and register baggage;
- proceed from the check-in counter to the aircraft, with completion of emigration, customs and security procedures;
- board the aircraft, with the provision of lifts, wheelchairs or other assistance needed, as appropriate;
- proceed from the aircraft door to their seats;
- store and retrieve baggage on the aircraft;
- proceed from their seats to the aircraft door;
- disembark from the aircraft, with the provision of lifts, wheelchairs or other assistance needed, as appropriate;
- proceed from the aircraft to the baggage hall and retrieve baggage, with completion of immigration and customs procedures;
- proceed from the baggage hall to a designated point;
- reach connecting flights when in transit, with assistance on the air and land sides and within and between terminals as needed;
- move to the toilet facilities if required.

Annex I to EC 1107 also allocates to airport personnel responsibility for:

- ground handling of all necessary mobility equipment, including equipment such as electric wheelchairs subject to advance warning of 48 hours and to possible limitations of space on board the aircraft, and subject to the application of relevant legislation concerning dangerous goods;
- temporary replacement of damaged or lost mobility equipment, albeit not necessarily on a like-for-like basis;

- ground handling of recognized assistance dogs, when relevant;
- communication of information needed to take flights in accessible formats.

Consistent with the allocation of responsibilities described above, the European regulatory scheme provides for passengers with disabilities to notify carriers as to required special services 48 hours in advance of departure to allow for the necessary coordination.

In contrast, under Part 382, these responsibilities are primarily allocated to carriers and advance notice requirements for these services are prohibited.³ Moreover, Part 382 specifies that waiver/conflict requests involving this type of airport/carrier responsibility allocation issue should be limited to situations where the carrier is “precluded by law from supplementing the airport operator’s services.” (14 C.F.R. § 382.105) That position could require carriers to undergo the unnecessary expense of maintaining duplicative and redundant support systems at European airports. This would be tantamount to the EC mandating that US airports (not carriers) assume responsibility for these functions at US airports.

Neither European nor U.S. carriers can afford the financial and administrative resources required to develop and maintain redundant support systems. Those resources would be far better dedicated to providing meaningful support and assistance to passengers with disabilities. Nor should carrier and airport personnel and government regulators be tasked with the impossible assignment of reconciling overlapping and inconsistent regulatory regimes.

European and U.S. aviation regulatory authorities have worked together in the past to develop consistent regulatory approaches that accommodate differing cultural requirements and priorities in areas ranging from aviation security to competition, to individual privacy and data protection rights. Until such a harmonized approach can be developed concerning the specific requirements governing transportation of passengers with disabilities, the Department should at the very least acknowledge the legitimacy and efficacy of the regulatory requirements implemented by the European Commission after a notice and comment period comparable to that employed by the Department in connection with Part 382, by confirming that compliance with EC 1107 at European airports satisfies the corresponding requirements of Part 382.

For the foregoing reasons, TUI Travel supplements its September 10, 2008 waiver/equivalent alternative determination request by additionally

³ 14 C.F.R. §§ 382.25, 382.29.

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requesting the Department to consider a conflict of law waiver for any operation at a European airport covered by EC 1107 so that if a carrier complies with EC 1107 the Department will deem it to have also complied with Part 382.

Respectfully submitted,



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