



UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.

Issued by the Department of Transportation on March 26, 2004

NOTICE OF ACTION TAKEN -- DOCKETS OST-2003-16315 & 16314

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).

Applicant(s): **Air-India Limited & Asiana Airlines, Inc.**

Background: On October 10, 2003, Air-India Limited (Air-India) and Asiana Airlines, Inc. (Asiana) filed requests in these Dockets for authority that would enable them to conduct certain code-share services.¹ United Airlines, Inc. (United) responded to those filings, stating that it had filed a request with the Indian authorities seeking similar authority to code-share on Asiana's services between the United States and India, via Seoul. United further stated that India had approved its code-share request through December 31, 2003, and added that it would not oppose our granting the Air-India/Asiana requests, for a similar term, through December 31. On November 6, 2003, we approved in part, and deferred in part, action on Air-India/Asiana requests. Specifically, we approved both requests through December 31, 2003, and deferred action on the requests beyond that date.

On December 12 and December 15, 2003, respectively, Air-India and Asiana filed applications to extend their code-share services beyond December 31, 2003. Air-India noted that India's DGAC had extended United's authority to code-share with Asiana until March 27, 2004, and added that United authorized Air-India to represent that United would not object to an extension of Air India's exemption authority until March 27, 2004 (commensurate with United's authority to code-share with Asiana). On December 23, 2003, we approved in part and deferred in part, action on the requests. We approved both request through March 27, 2004, and deferred action on the requests beyond that date.

Current Requests: On March 18, 2004, Air-India requested that we extend its exemption authority for a term of one year. On the same date, Asiana requested that we extend its statement of authorization through October 30, 2004 (commensurate with the term of authority it anticipated that the Government of India would grant United to continue its code-share services with Asiana).

Responsive Pleadings: On March 23, United filed a consolidated answer noting that it had previously received temporary approvals from the Government of India to conduct code-share services between the U.S. and India, via Korea with Asiana. United stated that while it expected to continue to receive seasonal approvals from the Government of India, it has no objection to our granting the requests of Air-India and Asiana for longer terms, consistent with Department practice. United further stated that any approvals of the instant requests be made with the understanding that should the Government of India not be forthcoming with United's seasonal approvals, United reserves the right to request that we withdraw code-share approvals awarded Air-India and Asiana.

Revised Application: On March 25, Asiana filed supplemental comments in response to United's consolidated answer. Asiana stated that in light of United's position, Asiana was revising its application by asking that we approve its request for an indefinite period.

Asiana subsequently advised us that it had polled the interested parties and could confirm that no further comments would be filed.

¹ Specifically, Air-India requested a one-year grant of its exemption authority to engage in scheduled foreign air transportation of persons, property and mail between points in India, on the one hand, and San Francisco, Los Angeles, and Seattle, via Seoul, Korea (without Seoul-U.S. traffic rights), on the other hand, pursuant to a code-share agreement with Asiana. Asiana requested an indefinite statement of authorization to display Air-India's designator code ("AI") on flights operated by Asiana between Seoul, Korea, on the one hand, and Los Angeles, San Francisco, and Seattle, on the other hand.

Applicant representative: Marshall S. Sinick--(202) 626-6600 (Air-India)
 Gregory S. Walden--(202) 457-6135 (Asiana)
 DOT Analyst: Gordon H. Bingham (202) 366-2404

DISPOSITION

Action: Approved Action date: March 26, 2004
 (We acted on these applications without awaiting expiration of the prescribed answer period with the consent of all parties served with both carriers' requests)

With respect to United's comments, we note that our actions here, as stated below, are taken based on the understanding that we may amend, modify, or revoke the authority granted in this Notice at any time without hearing at our discretion.

Effective dates of the exemption authority granted Air-India---March 26, 2004-March 26, 2005
 Effective dates of the statement of authorization granted Asiana--Indefinite

Basis for approval (bilateral agreement/reciprocity): 1995 Memorandum of Consultations between the United States and India (1995 MOC) and U.S.-Korea Air Transport Agreement.

Except to the extent exempted/waived, this authority is subject to the terms, conditions, and limitations indicated:

Air-India's Foreign Air Carrier permit (Order 95-4-36), the 1995 MOC, and standard exemption conditions (attached)

Asiana Foreign Air Carrier permit (Order 2000-11-10) and standard exemption conditions (attached)

The code-share operations authorized here are subject to the following conditions:

(a) The statement of authorization will remain in effect only as long as (i) Asiana and Air-India continue to hold the necessary underlying authority to operate the code-share services at issue, and (ii) the code-share agreement providing for the code-share operations remains in effect.

(b) Asiana and/or Air-India must promptly notify the Department if the code-share agreement providing for the code-share operations is no longer effective or the carriers decide to cease operating any or all of the approved code-share services. Such notices should be filed in Dockets OST-2003-16314 and 16315.²

(c) The code-sharing operations conducted under this authority must comply with 14 CFR Part 257 and with any amendments to the Department's regulations concerning code-share arrangements that may be adopted. Notwithstanding any provisions in the contract between the carriers, our approval here is expressly conditioned upon the requirements that the subject foreign air transportation be sold in the name of the carrier holding out such service in computer reservation systems and elsewhere; that the carrier selling such transportation (*i.e.*, the carrier shown on the ticket) accept responsibility for the entirety of the code-share journey for all obligations established in its contract of carriage with the passenger; and that the passenger liability of the operating carrier be unaffected.

(d) The authority granted here is specifically conditioned so that neither carrier shall give any force or effect to any contractual provisions between themselves that are contrary to these conditions.

(e) We may amend, modify, or revoke the authority granted at any time without hearing at our discretion.

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

Under authority assigned by the Department in its regulations, 14 CFR Part 385, we found that (1) the applicant was qualified to perform the proposed operations; (2) our action was consistent with Department policy; (3) grant of the authority was consistent with the public interest; and (4) grant of the authority would not constitute a major regulatory action under the Energy Policy and Conservation Act of 1975. To the extent not granted/deferred/dismissed, we

² We expect this notification to be received within 10 days of such non-effectiveness or of such decision.

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 seven (7) 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

Foreign Carrier Conditions

In the conduct of the operations authorized, the foreign carrier applicant(s) 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, and with all applicable U.S. Government requirements concerning security. To assure compliance with all applicable U.S. Government requirements concerning security, the holder shall, before commencing any new service (including charter flights) from a foreign airport that would be the holder's last point of departure for the United States, contact its Principal Security Inspector (PSI) to advise the PSI 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;
- (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) Except as specifically exempted or otherwise provided for in a Department Order, 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, except as otherwise provided in the applicable aviation agreement, 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.