



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

Issued by the Department of Transportation on April 21, 2004

NOTICE OF ACTION TAKEN -- DOCKET OST-2003-15401

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 Continental Airlines, Inc. filed 6/11/03 for:

XX Exemption under 49 U.S.C. 40109 to provide the following service:

Scheduled foreign air transportation of persons, property, and mail between any point or points in the United States and any point or points in Portugal, directly and via intermediate points, and beyond Portugal to any point or points in third countries, and to integrate this authority with its existing certificate and exemption authority. Continental initially intends to operate this service pursuant to a reciprocal code-share arrangement with TAP Air Portugal but seeks broad authority to also operate its own flights.¹

Application of Continental Airlines, Inc. filed 6/11/03 for:

XX Statement of authorization under 14 CFR Part 212 to:

Permit Continental to display the designator code of TAP in conjunction with foreign air transportation of persons, property, and mail on flights operated by Continental between (1) points in the United States, (2) points in the United States and points in Portugal (either nonstop or via intermediate points in third countries), (3) points in the United States and points in third countries; and (4) points in Portugal and points in third countries.²

Application of TAP Air Portugal filed 6/11/03 for:

XX Statement of authorization under 14 CFR Part 212 to:

Permit TAP to display the designator code of Continental in conjunction with foreign air transportation of persons, property, and mail on flights operated by TAP between (1) points in Portugal, (2) points in Portugal and points in the United States (either nonstop or via intermediate points in third countries), (3) points in Portugal and points in third countries, and (4) points in the United States and points in third countries.

Applicant rep: R. Bruce Keiner, Jr. (202) 624-2615 (CO) DOT Analyst: Sylvia Moore, (202) 366-6519
William Karas (202) 429-6223 (TAP)

(See Reverse Side)

¹ TAP already holds the underlying route authority to operate the proposed code-share services. (See Notice of Action Taken dated April 5, 2002, in Docket OST-2000-7003.)

² Continental states in its application that the TAP code will also be displayed on flights operated by Continental's code-share partner, ExpressJet Airlines, Inc. ExpressJet does not require a statement of authorization since it operates only small aircraft as defined in section 298.2 of the Department's regulations (Section 212.1).

DISPOSITION

XX Granted (subject to conditions, see below)

The above action with respect to Continental's exemption authority was effective when taken: **April 21, 2004**, through **April 21, 2006**

The statements of authorization granted were effective when taken: **April 21, 2004**, and will remain in effect indefinitely, subject to the conditions listed below.

**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 Portugal.

Except to the extent exempted or waived, this authority is subject to the terms, conditions, and limitations indicated: **XX Continental's certificates of public convenience and necessity**
XX TAP Air Portugal foreign air carrier permit
XX Standard exemption conditions (attached)

The exemption authority granted is subject to the following conditions:

The authority granted to serve intermediate and beyond points is limited to countries with which the United States has signed open-skies agreements and/or countries for which the carrier holds authority to serve under certificates or exemptions issued by the Department, and for which it holds route integration authority, by virtue of either the present action or other action of the Department, and is subject to all conditions attached to that authority.

The route integration authority granted is subject to the condition that any service provided under this authority shall be consistent with the applicable bilateral aviation agreements between the United States and the foreign countries involved. Furthermore, (a) nothing in the award of this authority requested should be construed as conferring upon Continental additional rights (including code-share, fifth-freedom intermediate and/or beyond rights) to serve markets where U.S. carrier entry is limited unless Continental first notifies the Department of its intent to serve such a market and unless and until the Department has completed any necessary carrier selection procedures to determine which carrier(s) should be authorized to exercise such rights; and (b) should there be a request by any carrier to use the limited-entry route rights that are included in Continental's authority by virtue of the route integration and blanket code-share authority granted here, but that are not then being used by Continental, the holding of such authority will not be considered as providing any preference for Continental in a competitive carrier selection proceeding to determine which carrier(s) should be entitled to use the authority at issue.

The statements of authorization granted are subject to the following conditions:

(a) The statement of authorization will remain in effect only as long as (i) Continental and TAP 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) Continental and TAP must promptly notify the Department (Office of International Aviation) if the code-share agreement providing for the code-share operations is no longer effective or if the carriers decide to cease operating all or a portion of the approved code-share services. Such notices should be filed in Docket OST-2002-13609.²

(c) Continental and TAP must notify the Department no later than 30 days before they begin any new code-share service under the code-share services authorized here. Such notice shall identify the market(s) to be served, which carrier will be operating the aircraft in the code-share market added, and the date on which the service will begin. (Such notice should be filed in this Docket.)

(d) The code-sharing conducted under this authority must comply with 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 the 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. Further, the operating carrier shall not permit the code of its U.S. air carrier code-sharing partner to be carried on any flights that enter, depart, or transit the airspace of any area for whose airspace the Federal Aviation Administration has issued a flight prohibition.

(e) The authority to operate to third countries is subject to the condition that any service provided under the statement of authorization shall be consistent with all applicable agreements between the United States and the foreign countries involved. Furthermore, (i) nothing in the award of these blanket statements of authorization should be construed as conferring upon Continental additional rights (including code-share, fifth-freedom intermediate and/or beyond rights) to serve markets where U.S. carrier entry is limited unless Continental first notifies the Department of its intent to serve such a market and unless and until the Department has completed any necessary carrier selection procedures to determine which carrier(s) should be authorized to exercise such rights;³ and (ii) should there be a request by any carrier to use the limited-entry route rights that are included in Continental's authority by virtue of the route integration and blanket code-share authority granted here, but that are not then being used by Continental, the holding of such authority will not be considered as providing any preference for Continental in a competitive carrier selection proceeding to determine which carrier(s) should be entitled to use the authority at issue.

(f) The authority granted here is specifically conditioned so that neither Continental nor TAP shall give any force or effect to any contractual provisions between themselves that are contrary to these conditions.

On the basis of data officially noticeable under Rule 24(g) of the Department's regulations, we found Continental qualified to provide the exemption 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 authority was consistent with the public interest; and (3) 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, 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.

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

³ The notice in paragraph (c) above can be used for this notification.

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*

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. 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 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; 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.