



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

Issued by the Department of Transportation on May 17, 2004

NOTICE OF ACTION TAKEN -- DOCKET OST-2004-17624

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).

Joint Application of United Air Lines, Inc. and Thai Airways International Public Company Limited filed 4/23/2004:

XX Exemption for two years under 49 U.S.C. 41301 for Thai Airways International Public Company Limited (Thai) to provide the following service:

Scheduled foreign air transportation of persons, property and mail between points in Thailand and Honolulu via Osaka, Japan, and to add Osaka as an intermediate point on its existing services between points in Thailand and Chicago and between points in Thailand and San Francisco.¹ Thai intends to operate this service under a code-share arrangement with United Air Lines.

XX Statement of Authorization under 14 CFR Part 212 for United Air Lines to:

Display Thai's designator code on flights operated by United Air Lines between Osaka, Japan on the one hand, and Chicago, Honolulu, and San Francisco, on the other hand.

XX Statement of Authorization under 14 CFR Part 212 for Thai to:

Display United Air Lines' designator code on flights operated by Thai between Osaka, Japan and Bangkok, Thailand.

Applicant reps: Jeffrey A. Manley (202) 663-6670 DOT Analyst: Gerald Caolo (202) 366-2406

DISPOSITION

XX **Granted exemption request in part** (see below)

XX **Balance Dismissed** (i.e., for longer-term exemption authority)

The exemption authority granted was effective when taken: May 17, 2004, through May 17, 2005

The statements of authorization granted were effective when taken: May 17, 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 **Authority granted is consistent with the aviation agreements between the United States and Japan and between the United States and Thailand.**

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

¹ See Notice of Action Taken dated October 18, 1996, in Docket OST 96-1410

XX Holder's Foreign Air Carrier Permit (Thai)
XX Standard Exemption Conditions (attached)

Remarks: We note that Thai sought authority for a two-year period. However, as is our usual practice in conferring exemption authority in the circumstances presented, we are limiting the term of authority to one year. Thai may, of course, seek renewal of this authority.

Conditions:

The statements of authorization granted here to United Air Lines and Thai are is subject to the following conditions:

- (a) The statements of authorization will remain in effect as long as (i) United Air Lines and Thai 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) United Air Lines and/or Thai 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-2004-17624.²
- (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 passengers; 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.
- (d) The authority granted here is specifically conditioned so that neither United Air Lines nor Thai 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(n) of the Department's regulations, we found the applicants qualified to provide the 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.

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.*

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

Foreign Carrier Exemption 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, including, but not limited to, 49 CFR Part 1546 or 1550, as applicable. 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 International Principal Security Inspector (IPSI) to advise the IPSI 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.