



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

Issued by the Department of Transportation on June 9, 2004

NOTICE OF ACTION TAKEN -- DOCKETS OST-2004-17983

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: **Eurofly S.p.A.**

Date Filed: May 27, 2004

Relief requested: Exemption from 49 U.S.C. § 41301 to engage in charter foreign air transportation of persons, property and mail between Italy and the United States.

Date and citation of last action: Eurofly previously held the authority described above; that authority expired by its terms on October 8, 2003 (see Notice of Action Taken, dated October 8, 2001, in Docket OST-2001-10310)

Applicant representative: Richard D. Mathias (202) 298-8660

DOT Analyst: Gordon H. Bingham (202) 366-2404

Responsive pleadings: None filed

DISPOSITION

Action: Approved

Action date: June 9, 2004

(We acted on Eurofly's request in less than the full 15-day period for filing answers with the consent of all parties served)

Effective dates of authority granted: June 9, 2004-June 9, 2006

Basis for approval (bilateral agreement/reciprocity): The U.S.-Italy Air Services Agreement

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

Standard exemption conditions (attached)

Special conditions/Part grant/Denial basis/Remarks. Based on the record in this case, we found that Eurofly is financially and operationally qualified to perform the services authorized above. However, due to the involvement of non-homeland entities in the ownership and control structure of Eurofly, the record in this case does not permit us to make definitive findings that Eurofly is substantially owned and effectively controlled by homeland citizens.¹ The record indicates that Alitalia, the flag carrier of Italy, holds a 20% interest in Eurofly.² The remaining 80% is owned by an investment fund in Luxembourg which in turn is owned by other Luxembourg funds.³ At the same time, we note that Eurofly's board of directors and all of its key management personnel are citizens of Italy. Further, based on the record, we found that Eurofly is properly licensed by the Government of Italy to perform the proposed services. Finally, there is no evidence on the record that would suggest that the ownership and control of Eurofly would make grant of this authority inimical to U.S. aviation policy and interests. Under the circumstances present, we find that it is consistent with the public interest to use our discretion and to waive our ownership and control standard in this instance. We have verified with the FAA that Eurofly holds effective FAR Part 129 Operations Specifications.

¹ While Eurofly states, in its application, its belief that it is ultimately owned and effectively controlled by Italian interests, it also states that, to the extent that we deem otherwise, it requests a waiver of the ownership and control requirements set forth in the U.S.-Italy Air Services Agreement.

² Prior to September 2003, Eurofly was a wholly-owned subsidiary of Alitalia.

³ The funds are managed by a Luxembourg company (Profilo Management Company) established for the exclusive purpose of managing the funds. Profilo Management Company is 100% owned by two Italian banks.

**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 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 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.