



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

Issued by the Department of Transportation on November 1, 2004

NOTICE OF ACTION TAKEN -- DOCKET OST-2004-18480

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: **Domodedovo Airlines**

Date Filed: June 22, 2004

Relief requested: Exemption from 49 U.S.C. § 41301 to engage in charter foreign air transportation of persons, property and mail between the Russian Federation, on the one hand, and the United States, on the other hand; and other charters in accordance with Part 212 of the Department's rules.

If renewal, date and citation of last action: New authority

Applicant representative: Glenn P. Wicks (202) 457-7790

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

Responsive pleadings: None filed

DISPOSITION

Action: Approved

Action date: November 1, 2004

Effective dates of authority granted: November 1, 2004-November 1, 2005

Basis for approval (bilateral agreement/reciprocity): The Annexes to the U.S.-Russia Air Transport Agreement (Agreement) expired on January 22, 2001. However, the operations proposed by Domodedovo are in conformance with the Annexes agreed to by both sides *ad referendum* on April 11, 2002. Both sides, as agreed, have initiated the necessary internal procedures for bringing these Annexes into force.

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

Standard exemption conditions (attached)

Special conditions/Partial grant/Denial basis/Remarks: Based on the record in this case, we found that Domodedovo is financially and operationally qualified to perform the services authorized above. However, due to the involvement of non-homeland citizens in the ownership and control of Domodedovo, the record in this case does not permit us to make definitive findings that Domodedovo is substantially owned and effectively controlled by homeland nationals. The record indicates that while the applicant is 50% owned by the Ministry of Property Relations of the Russian Federation, it is also 49.68% owned by a Russian company which in turn is owned by one Russian company (16%), 2 Cypriot companies (48%) and one Hong Kong company (36%). All of Domodedovo's directors and key management personnel are citizens of the Russian Federation. There is no evidence on the record that would suggest that the ownership and control of Domodedovo 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. The carrier is properly licensed and designated by the Government of the Russian Federation to perform the proposed services. By memorandum dated July 8, 2004, the FAA advised us that it knew of no reason why we should act unfavorably on Domodedovo's application.

In the conduct of the charter services authorized above, Domodedovo must adhere to (1) the conditions attached to this order, (2) FAA-approved flight routings, and (3) the Agreement and its Annexes. In accordance with sections 212.9(d) and (e) of the Department's rules, Domodedovo shall not perform any charter(s) unless specific authority in the form of a statement of authorization for such charter(s) has been granted by the Department. Applications for statements of authorization required above shall be filed in accordance with the procedures set forth in section 212.10.

**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.

Foreign Air 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.