



Order 2009-1-21

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

Issued by the Department of Transportation
on the 29th day of January, 2009

Served: January 29, 2009

Application of

OY AIR FINLAND LTD.

for an exemption under 49 U.S.C. §40109 and an amended
foreign air carrier permit under 49 U.S.C. §41301

Dockets DOT-OST-2008-0324
DOT-OST-2007-28129

ORDER GRANTING EXEMPTION AND TO SHOW CAUSE

Summary

By this order we (1) grant the application of the referenced foreign air carrier for an exemption under 49 U.S.C. §40109, subject to conditions;¹ and (2) tentatively find that it is in the public interest to grant the applicant the amended foreign air carrier permit attached as Appendix B to this order.

Background

By Notice dated May 3, 2007, we invited foreign air carriers of the European Union (EU) to apply for Department economic authority to conduct operations to and from the United States under the U.S.-EU Air Transport Agreement. In that Notice, we stated that we anticipated handling these EU carrier requests on an expedited basis to ensure that affected EU carriers may receive the authority available to them under the new Agreement as quickly as possible. To that end, we stated our intent to process requests for this authority under the “streamlining” procedures set out in our August 23, 2005 Notice in Docket OST-2005-22228, in which we announced several steps designed to simplify our regulatory procedures for licensing foreign (and U.S.) air carriers. Our action in this Order serves to implement those streamlined regulatory procedures for the application involved in this proceeding.

¹ The conditions are attached as Appendix A.

Application

By application filed October 31, 2008, Oy Air Finland Ltd. (Air Finland), a foreign air carrier of Finland, requests an exemption under 49 U.S.C. §40109, and an amended foreign air carrier permit under 49 U.S.C. §41301, to engage in:

- a) foreign scheduled air transportation of persons, property and mail from any point or points behind any Member State of the European Union, via any point or points in any Member State and via intermediate points, to any point or points in the United States and beyond;
- b) foreign scheduled air transportation of persons, property and mail between any point or points in the United States and any point or points in any member of the European Common Aviation Area;
- c) foreign scheduled cargo air transportation between any point or points in the United States and any other point or points; and
- d) scheduled transportation authorized by any additional rights made available to European Community carriers in the future.²

The applicant provided evidentiary materials required by 14 CFR Part 211 of our regulations to support its requests for authority.³

No answers were filed to the application.

Decision

We have decided, consistent with our August 23, 2005 Notice referenced above, to grant the applicant's request for exemption authority, as described below and subject to conditions, and tentatively to grant, subject to show-cause procedures, its request for an amended foreign air carrier permit, also subject to conditions.

As an additional matter, Air Finland has requested that we grant it, in addition to authority currently contained in the U.S.-EU Agreement, authority to conduct scheduled transportation authorized by any additional route rights made available to European Community carriers in the

² Air Finland currently holds a foreign air carrier permit, issued by Order 2008-5-31 in Dockets DOT-OST-2008-0022 and DOT-OST-2007-28129, to engage in (a) foreign charter air transportation of persons, property and mail from any point or points behind any Member State of the European Union, via any point or points in any Member State and via intermediate points, to any point or points in the United States and beyond; (b) foreign charter air transportation of persons, property and mail between any point or points in the United States and any point or points in any member of the European Common Aviation Area; (c) foreign charter cargo air transportation between any point or points in the United States and any other point or points; (d) other passenger charters pursuant to the prior approval requirements set forth in 14 CFR Part 212 of the Department's regulations; and (e) charter transportation authorized by any additional rights made available to European Community carriers in the future.

³ Air Finland incorporated by reference the fitness and citizenship information contained in its previous filings in Dockets DOT-OST-2007-28129 and DOT-OST-2008-0022, stating that there has been no material change in that information.

future. We are granting the request of Air Finland for this authority by exemption (and tentatively granting it by foreign air carrier permit). We are, however, requiring Air Finland, before it commences any new service under this authority, to provide us with evidence that it holds a homeland license for that new service, unless it has already provided such evidence.⁴

With respect to the applicant's request for exemption authority, we find that grant of this authority, as conditioned, is consistent with the public interest. We also find that the applicant is financially and operationally qualified to perform the services authorized, and that it is substantially owned and effectively controlled in a manner consistent with the provisions of the U.S.-EU Agreement.⁵ We also find that the exemption authority sought by the applicant is encompassed by the U.S.-EU Air Transport Agreement.

Further, we note that the applicant is properly licensed by Finland to perform the proposed services. In addition, by memorandum dated January 14, 2009, the Federal Aviation Administration advised us that it knew of no reason why we should act unfavorably on the applicant's request. We have verified the applicant's compliance with 14 CFR Parts 203 (Warsaw liability waiver), and 205 (insurance requirements).

In view of the above, we find that grant of the requested exemption authority, as conditioned, for a two-year term, or until the requested permit authority becomes effective, whichever occurs earlier, is warranted.

Tentative Findings and Conclusions--Foreign Air Carrier Permit Application

We tentatively find and conclude that the public interest warrants granting the applicant an amended foreign air carrier permit, in the form attached as Appendix B and subject to the conditions attached.⁶ In particular, we tentatively find and conclude that the factors which support our grant of exemption authority to the applicant, as discussed above, also warrant granting the applicant the foreign air carrier permit it seeks.

In view of the foregoing and all facts of record, and acting under authority assigned by the Department in its regulations, 14 CFR Part 385, we tentatively find and conclude that:

1. It is in the public interest to issue the applicant an amended foreign air carrier permit in the form attached;
2. The applicant is fit, willing and able properly to perform the foreign air transportation described in the attached permit and to conform to the provisions of Title 49 of the U.S. Code, and to our rules, regulations, and requirements;

⁴ See Orders 2007-6-19 and 2007-10-1, and Orders 2007-7-13 and 2007-10-16, where we granted this authority to British Airways Plc. and Virgin Atlantic Airways Ltd., respectively.

⁵ We make this finding based on the Procedures for Reciprocal Recognition of Regulatory Determinations with Regard to Airline Fitness and Citizenship, adopted by the U.S.-EU Joint Committee on January 12, 2008.

⁶ The applicant's request for an amended foreign air carrier permit was summarized in the Department's published weekly list of applications filed. This notice described the authority sought and gave interested persons an opportunity to submit evidence and objections to the award of this foreign air carrier permit authority.

3. The applicant is substantially owned and effectively controlled by citizens of Finland;
4. The public interest requires that the exercise of the privileges granted by the permit should be subject to the terms, conditions, and limitations contained in the attached permit, and to such other reasonable terms, conditions, and limitations required by the public interest as we may prescribe;
5. The issuance of this foreign air carrier permit will not constitute a major regulatory action under the Energy Policy and Conservation Act of 1975, as defined in 14 CFR §313.4(a)(1) of our regulations;⁷
6. The public interest does not require an oral evidentiary hearing on the application; and
7. Our action with respect to this foreign air carrier permit should, unless disapproved by the President of the United States under §41307 of Title 49 of the U.S. Code, become effective on the 61st day after its submission for §41307 review, or upon the date of receipt of advice from the President or his designee under Executive Order 12597 and implementing regulations that he or she does not intend to disapprove this portion of the Department's decision under that section, whichever occurs earlier.

In view of the above, and acting under authority assigned by the Department in its regulations, 14 CFR Part 385, we find that (1) our actions are consistent with Department policy; and (2) with respect to the exemption authority we are conferring on the applicant, the applicant is qualified to perform those operations; and that grant of the exemption authority is consistent with the public interest and would not constitute a major regulatory action under the Energy Policy and Conservation Act of 1975.

ACCORDINGLY,

1. We grant the request of Oy Air Finland Ltd. for an exemption under 49 U.S.C. §40109 to permit it to conduct the services set forth below:
 - a) foreign scheduled air transportation of persons, property and mail from any point or points behind any Member State of the European Union, via any point or points in any Member State and via intermediate points, to any point or points in the United States and beyond;
 - b) foreign scheduled air transportation of persons, property and mail between any point or points in the United States and any point or points in any member of the European Common Aviation Area;
 - c) foreign scheduled cargo air transportation between any point or points in the United States and any other point or points; and

⁷ This finding is based on the fact that the grant of this permit will not result in a near-term net annual change in aircraft fuel consumption of 10 million gallons or more.

- d) scheduled transportation authorized by any additional rights made available to European Community carriers in the future;
2. Oy Air Finland Ltd. shall, before it commences any new service under subparagraph (d) of ordering paragraph 1 above, provide the Department, in Docket DOT-OST-2008-0324, with evidence that it holds a homeland license for that new service, unless it has already provided such evidence to the Department;
3. The exercise of the privileges granted above is subject to compliance by Oy Air Finland Ltd. with the conditions listed in Appendix A;
4. Our action granting the exemption authority described herein, subject to the provisions of ordering paragraphs 1 through 3 above, is effective immediately, for a period of two years from the issue date of this order, or until the attached permit becomes effective, whichever is earlier;
5. We may amend, modify, or revoke the exemption authority set forth herein at our discretion at any time and without hearing;
6. To the extent not acted upon above, we dismiss the applicant's request for exemption authority in Docket DOT-OST-2008-0324;
7. With respect to the applicant's request for an amended foreign air carrier permit in this proceeding, we direct all interested persons to show cause why our tentative decision on that application, set forth above, should not be made final;
8. Any interested person objecting to the issuance of an order making final our tentative findings and conclusions with respect to the applicant's request for an amended foreign air carrier permit shall, no later than twenty-one (21) calendar days after the date of service of this order, file with the Department and serve on the parties to this proceeding, a statement of objections specifying the part or parts of the tentative findings and conclusions objected to, together with a summary of testimony, statistical data, and concrete evidence to be relied upon in support of the objections; if objections are filed, answers to objections are due no later than seven (7) calendar days thereafter;
9. If timely and properly supported objections are filed, we will give further consideration to the matters and issues raised by the objections before we take further action;
10. In the event no objections are filed, all further procedural steps shall be deemed waived, and the Department will enter an order which will (subject to Presidential review under §41307 of Title 49 of the U.S. Code) make final our tentative findings and conclusions set forth in this order; and

11. We will serve a copy of this order on Oy Air Finland Ltd., the Embassy of Finland in Washington, D.C., the Department of State, and the Federal Aviation Administration.

By:

PAUL L. GRETCH
Director
Office of International Aviation

(SEAL)

Appendices

*An electronic version of this document is available on the World Wide Web at:
<http://www.regulations.gov>*

Foreign Air Carrier Exemption Conditions

Appendix A

In the conduct of the operations authorized, the foreign carrier applicant 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, the Transportation Security Administration, and with all applicable U.S. Government requirements concerning security, including, but not limited to, 14 CFR Parts 129, 91, and 36 and 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 Industry Representative (IIR) (formerly referred to as International Principal Security Inspector) to advise the IIR 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 a Member State of the European Union;
- (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.



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

PERMIT TO FOREIGN AIR CARRIER
(as amended)

OY AIR FINLAND LTD.

A Foreign Air Carrier of Finland

is authorized, subject to the following provisions, the provisions of Title 49 of the U.S. Code, and the orders, rules, and regulations of the Department of Transportation, to engage in:

Foreign scheduled and charter air transportation of persons, property and mail from any point or points behind any Member State of the European Union, via any point or points in any Member State and via intermediate points to any point or points in the United States and beyond;

Foreign scheduled and charter air transportation of persons, property and mail between any point or points in the United States and any point or points in any member of the European Common Aviation Area;

Foreign scheduled and charter cargo air transportation between any point or points in the United States and any point or points;

Other charters pursuant to the prior approval requirements set forth in the Department's regulations governing charters; and

Transportation authorized by any additional route rights made available to European Community carriers in the future; *provided*, that the holder shall, before it commences any new service under such additional route rights, provide the Department with evidence that it holds a homeland license for that new service (unless it has already provided such evidence to the Department). Such evidence shall be filed in Docket DOT-OST-2008-0324.

This permit and the exercise of the privileges granted in it shall be subject to the terms, conditions and limitations in both the order issuing this permit and the attachment to this order, and to all applicable provisions of any treaty, convention or agreement affecting international air transportation now in effect, or that may become effective during the period this permit remains in effect, to which the United States and the holder's homeland are or shall become parties.

This permit shall be effective on _____ . Unless otherwise terminated at an earlier date pursuant to the terms of any applicable treaty, convention or agreement, this permit shall terminate (1) upon the dissolution or liquidation of the holder to whom it was issued; (2) upon the effective date of any treaty, convention, or agreement or amendment, which shall have the effect of eliminating the right for the service authorized by this permit from the service which may be operated by airlines of the European Community and its Member States (or, if the right is partially eliminated, then the authority of this permit shall terminate in like part); or (3) upon the termination or expiration of the applicable air services agreement between the United States and the European Community and its Member States. However, clause (3) of this paragraph shall not apply if prior to such termination or expiration, the foreign air transportation authorized herein becomes the subject of another treaty, convention or agreement to which the United States and the European Community and its Member States become parties.

The Department of Transportation has executed this permit and affixed its seal on

By:

PAUL L. GRETCH
Director
Office of International Aviation

(SEAL)

Foreign Air Carrier Permit Conditions

In the conduct of the operations authorized, the foreign carrier applicant 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, the Transportation Security Administration, and with all applicable U.S. Government requirements concerning security, including, but not limited to, 14 CFR Parts 129, 91, and 36 and 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 Industry Representative (IIR) (formerly referred to as International Principal Security Inspector) to advise the IIR 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 a Member State of the European Union;
- (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.