



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

Issued by the Department of Transportation on April 19, 1999

NOTICE OF ACTION TAKEN -- DOCKET OST-99-5466

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: **Asiana Airlines, Inc.**

Date Filed: March 30, 1999

Relief requested: Statement of Authorization under 14 CFR 212 of the Department's regulations to display the airline designator code of Gemini Air Cargo, Inc., on flights operated by Asiana between Seoul-New York; Seoul-New York/Chicago; and Seoul-Los Angeles pursuant to a blocked-space, code-share arrangement between the two carriers. Asiana stated that it wished to retain the option to change frequency on these routes or to provide block space/code-share service with Gemini on other Asiana routes between the United States and Korea.

Applicant representative: Moffett Roller 202-331-3300

Responsive pleadings: American Airlines, Inc., and Fine Air Services Inc., filed answers. American stated that it does not object to Asiana's request with respect to the named "initial routings," but does object to any request for open-ended, unspecified U.S.-Korea code-share authority. Fine stated the Department should not grant the requested authority until it determines that the doing-business problems historically encountered by other U.S. carriers (*i.e.*, Federal Express Corporation and World Airways, Inc.) in Korea have been resolved. Asiana replied that it is willing to accept the limitation sought by American. It further stated that neither Federal Express nor World objected to its application, and that the positive U.S.-Korea aviation relationship supports approval of its application.

DISPOSITION

Action: Approved, subject to the attached conditions

Action date: April 19, 1999

Remarks: We are granting Asiana a statement of authorization to conduct code-share operations for Gemini over the following routings: Seoul-New York; Seoul-New York/Chicago; and Seoul-Los Angeles. To the extent the carrier seeks authority to serve other, unspecified routes, we dismiss that portion of its application. We found that our action was in the public interest. Grant of this authority is consistent with the terms of the U.S.-Korea Air Transport Agreement and the underlying authorities held by Asiana and Gemini. With respect to Fine's answer, the record in this proceeding provides no basis for us to withhold the requested authority. Fine does not assert that it itself had suffered any doing-business problems in Korea, and no other U.S. carriers, including those specifically referred to by Fine (both of which were served with Asiana's application) raised any doing-business concerns or otherwise commented in this proceeding.

**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 grant of the authority was in the public interest. 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 ten (10) 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*

This authority is subject to the following conditions:

- (a) The statement of authorization will remain in effect only as long as (i) Asiana Airlines, Inc. and Gemini Air Cargo, Inc. 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.¹
- (b) Asiana and/or Gemini must promptly notify the Department if the code-share agreement providing for the code-share operations is no longer effective or the carriers decide to cease operating any or all of the approved code-share services. Such notices should be filed in Docket OST-99-5466.²
- (c) The code-sharing operations conducted under this authority must comply with 14 CFR 399.88 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 waybill) accept responsibility for the entirety of the code-share journey for all obligations established in its contract of carriage with the shipper; that the shipper liability of the operating carrier be unaffected; and that the operating carrier shall not permit the code of its U.S. code-sharing partner to be carried on any flight that enters, departs, or transits 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 Asiana nor Gemini shall give any force or effect to any contractual provisions between themselves that are contrary to these conditions.

¹ We note that the code-share agreement as submitted did not include provisions regarding exclusive dealings between the code-share parties. Should the parties subsequently decide to amend their code-share agreement to include any provision relating to an exclusive arrangement between the parties, that amended language must first be submitted for consideration by the Department.

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