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Order 2000-2-21

Served: February 15, 2000

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

Issued by the Department of Transportation  
on the 15th day of February, 2000

Application of

**AUSTRIAN AIRLINES,  
OSTERREICHISCHE LUFTVERKEHRS AG**

for an exemption from Subparts K and S of Part 93 of  
Title 14, Code of Federal Regulations pursuant to 49  
U.S.C. § 41714(b)(1)

Docket OST-99-6672-3

**ORDER GRANTING EXEMPTION**

**APPLICATION**

On December 16, 1999, Austrian Airlines, Osterreichische Luftverkehrs AG (Austrian) requested an exemption from 14 C.F.R. Part 93, Subparts K and S, under 49 U.S.C. § 41714(b)(1), to the extent necessary to enable it to introduce a new daily nonstop, round-trip flight between Vienna, Austria, and Chicago, Illinois (O'Hare International Airport), using Airbus A330 and/or A340 equipment (both Stage 3 aircraft). Austrian requests two slot exemptions to accommodate an O'Hare arrival at 2:00 P.M. and an O'Hare departure at 5:00 P.M. Austrian hopes to commence these operations on or about March 26, 2000, and continue them through the 2000 summer season<sup>1</sup>.

In support of its request, Austrian states that it had made a timely request for the additional slots with the Federal Aviation Administration (FAA) for the 2000 summer season, but the FAA informally notified the carrier that Austrian's request, along with those of other carriers, exceeded the number of slots that FAA could allocate. Austrian notes that currently there is no single-plane service between Vienna and Chicago (O'Hare). Austrian contends that its proposed first nonstop service would provide significant new service and connecting opportunities in the Vienna-Chicago market. Further, Austrian asserts that Austrian and United Air Lines, Inc., would submit a request for code-share authorization<sup>2</sup> and that grant of the requested slot exemptions would maximize the public interest benefits associated with improved service and additional competitive choices provided by the proposed code-share

<sup>1</sup> The summer season begins April 2, 2000, and ends October 28, 2000.

<sup>2</sup> Austrian and United are members of the Star Alliance. On January 18, 2000, United and Austrian filed a joint application for statements of authorization under 14 C.F.R. 212 to engage in reciprocal code-sharing on each other's services (Docket OST-00-6803).

relationship. Austrian argues that grant of its application is fully consistent with the objectives of the U.S.-Austrian Open Skies Agreement and the Department's Statement of International Aviation Policy. Finally, Austrian asserts that its application is similar to other slot exemption requests granted by the Department.

## **RESPONSIVE PLEADINGS**

On December 30, 1999, the City of Chicago filed an answer in support of the Austrian application. Chicago argues that grant of Austrian's request would improve intergateway and intragateway competition and provide significant economic benefits for the Chicago area. Chicago also contends that approval of the Austrian application would significantly improve service from the Midwest to Austria, as well as from the United States generally to Austria.

## **STATUTORY BACKGROUND**

Subparts K and S of 14 C.F.R. Part 93 designate Chicago's O'Hare International Airport, New York's John F. Kennedy International and LaGuardia Airports, and Ronald Reagan Washington National Airport as high density traffic airports and prescribe certain air traffic rules for the operation of aircraft at these airports. These regulations limit the number of allocated Instrument Flight Rule (IFR) operations (takeoffs and landings) for specified classes of users during certain periods of the day.

Pursuant to 49 U.S.C. § 41714(b)(1), the Secretary of Transportation may, by order, grant exemptions from the requirements of Subparts K and S of 14 C.F.R. Part 93 (pertaining to slots at high density airports other than National), to enable air carriers and foreign air carriers to provide foreign air transportation using Stage 3 aircraft, if he finds such action to be in the public interest.

## **DECISION**

We will grant Austrian an exemption to enable it to perform one daily Vienna-Chicago scheduled flight arrival and one daily departure at O'Hare during the 2000 summer season.<sup>3</sup> We find that grant of this exemption authority is consistent with the public interest.

Grant of this application is also consistent with the objectives of the bilateral air services agreements between the U.S. and Austria which contemplate access to the market for carriers of either nation.

In reaching our decision, we recognize that Austrian filed a timely request with the FAA for these slots, and that due to hourly constraints the FAA has not been able to accommodate the

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<sup>3</sup> Austrian has requested that its exemption authority commence on March 26, 2000, rather than the April 2, 2000, summer season commencement date as defined by the Federal Aviation Regulations. March 26, 2000, is the beginning date of the Northern summer season as determined by the International Air Transport Association (IATA). We have consulted with FAA staff and determined that the inauguration of Austrian's service on the earlier date would not present operational concerns. However, in the future we will not routinely grant exemption authority outside the seasonal date spans outlined in the Federal Aviation Regulations.

4. The authority granted under this exemption is subject to all of the other requirements delineated in 14 C.F.R. Part 93, Subparts K and S;

5. We direct Austrian Airlines, Osterreichische Luftverkehrs AG to contact the Federal Aviation Administration's Slot Administration Office in order to determine the start-up date in consultation with that Office for the exemption authority granted here. The Federal Aviation Administration will assign slot withdrawal numbers for the slot exemption times listed in ordering paragraph 1;

6. The temporary slot allocation provided for in ordering paragraph 1 above is effective commencing on March 26, 2000, and expires on October 28, 2000;

7. We will serve this order on the Ambassador of Austria in Washington, D.C.; the City of Chicago; Austrian Airlines, Osterreichische Luftverkehrs AG, the Department of State (Office of Aviation Negotiations); and all other parties served with the application; and

8. We grant all motions to file otherwise unauthorized documents.

By:

**A. BRADLEY MIMS**  
Deputy Assistant Secretary for Aviation  
and International Affairs

(SEAL)

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applicant's request within the requested time frame. Moreover, we note that aviation relations with Austria are governed by the U.S.-Austria Air Services Agreement, which provides for the proposed Vienna-Chicago service, and that Austrian has been properly authorized by its government to provide scheduled foreign air transportation in the Vienna-Chicago market.<sup>4</sup>

As we have affirmed,<sup>5</sup> while 49 U.S.C. § 41714(b)(1) provides the Department with discretionary authority to grant slot exemptions for foreign air transportation at a high density airport, we do not view this authority as a substitute mechanism for the slot-allocation procedures outlined in Subpart S of 14 C.F.R. Part 93. We fully expect air carriers and foreign air carriers to follow and exhaust all appropriate procedures for slot acquisition, including all appropriate industry practices for slot acquisition, before filing a slot exemption request with the Department. In this case, Austrian followed those standard slot-allocation procedures.

Since grant of this exemption authority is dependent upon the applicant's existing U.S.-Austria operating authority, we attach the condition that this exemption authority be used only in the provision of Austrian's scheduled service between Vienna and Chicago O'Hare. Furthermore, in accordance with the requirements of the statute, all aircraft operations performed under this exemption shall be conducted by Stage 3 aircraft. We also note that grant of this exemption provides Austria with only a temporary slot allocation at O'Hare Airport and does not confer to the applicant any ability to sell, trade, transfer, or convey the authority.

This Order is issued under authority delegated in 49 C.F.R. 1.56(l).

**ACCORDINGLY,**

1. The Department grants a temporary exemption from 14 C.F.R. Part 93, Subparts K and S under 49 U.S.C. 41714(b)(1) to Austrian Airlines, Osterreichische Luftverkehrs AG to the extent necessary to enable it to operate one daily scheduled arrival at Chicago's O'Hare International Airport between 1:45 P.M. and 2:14 P.M. (local time) and one daily scheduled departure at Chicago's O'Hare International Airport between 4:45 P.M. and 5:14 P.M. (local time) in a pattern to be determined in consultation between Austrian Airlines, Osterreichische Luftverkehrs AG and the Slot Administration Office, FAA;
2. As a condition of approval, Austrian Airlines, Osterreichische Luftverkehrs AG may use this exemption authority only to provide scheduled service between Vienna, Austria, and the terminal point Chicago, Illinois (O'Hare International Airport);
3. As a further condition of approval, the Department directs that all aircraft operations granted under this exemption must be provided by Stage 3 aircraft;

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<sup>4</sup> While our findings in this matter will allow for the improvement of services in the Vienna-Chicago market, we emphasize that airline requests for exemption authority will be decided by the Department on a case-by-case basis.

<sup>5</sup> See Orders 97-4-1 at 4 and 97-3-31 at 5.