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Order 2001-1-4  
Served: January 8, 2001

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

Issued by the Department of Transportation  
on the 20th day of November, 2000

Application of

**AIR NEW ZEALAND LIMITED**

for an amended foreign air carrier permit under  
section 41301 of Title 49 of the U.S. Code

Docket OST-98-3864 - 4

**ORDER ISSUING FOREIGN AIR CARRIER PERMIT**

**Summary**

This order grants Air New Zealand Limited, an amended foreign air carrier permit to authorize scheduled and charter foreign air transportation pursuant to the Air Transport Agreement between the United States of America and New Zealand, signed June 18, 1997 (U.S.-New Zealand Open Skies Agreement).

**Application**

By application filed May 20, 1998, as supplemented August 30 and October 2, 2000, Air New Zealand requests amendment of its current foreign air carrier permit, last issued by Order 90-10-50, to authorize scheduled and charter foreign air transportation to the full extent provided for in the U.S.-New Zealand Open Skies Agreement.<sup>1</sup> In support of its application, Air New Zealand states that implementation of these new rights will provide substantial public benefits to passengers and shippers. It states that it has been operating to the United States for decades, and continues to be financially and operationally qualified to conduct the proposed operations. It also states that it has been designated under the Agreement, and is properly licensed by its homeland, to provide the services requested. Air New Zealand further states that, as required by its constitution, the company is substantially owned and effectively controlled by homeland nationals.

<sup>1</sup> Air New Zealand holds currently effective exemption authority to conduct these services (*see* Notice of Action Taken dated March 23, 2000, in Docket OST-97-2847).

We received no answers to Air New Zealand's application.

### **Decision**

We have thoroughly reviewed the record in this case, which is summarized in the attachment to this order, and have decided to grant the application using simplified Subpart B procedures.<sup>2</sup> The public was informed of the carrier's application by notices in the Federal Register and in the Department's Weekly List of Applications filed. The notices described the authority sought and gave interested persons an opportunity to submit evidence and objections to the award of the authority. These announcements provided the required notice and filing opportunities. Simplified procedures are appropriate in this case because there are no material, determinative issues of fact requiring other procedures.

We find that grant of this foreign air carrier permit is in the public interest. The authority is provided for in the U.S.-New Zealand Open Skies Agreement, and Air New Zealand has been designated under the Agreement to conduct the proposed operations. We also find that Air New Zealand is operationally and financially fit to conduct the proposed services.

### **Operational and Financial Fitness**

Air New Zealand has demonstrated that it is managerially and operationally fit to perform the foreign air transportation proposed. The carrier already has operated successfully to this country under previously issued authority. It holds effective authority from its homeland government for the operations proposed and states that it has had no safety or tariff violations in the preceding five years. The FAA has advised us that Air New Zealand conducts its operations to this country in accordance with Part 129 of the Federal Aviation Regulations.

Air New Zealand has demonstrated that it is financially fit to perform the foreign air transportation proposed. It has furnished financial information which indicates that it can operate without jeopardizing passenger or shipper funds.

### **Ownership and Control**

The record indicates that Air New Zealand is a publicly traded company with the majority of its shares held by citizens of New Zealand, including the Government of New Zealand which holds one share. It also indicates that Singapore Airlines Limited holds a 25 percent ownership interest in the company. The record also shows that the majority of its directors and management personnel are citizens of New Zealand.

<sup>2</sup> 14 CFR 302.201 *et seq.* Under Rule 33(b), we may, in our discretion, omit a tentative decision in proceedings under Subpart B and proceed directly to a final decision.

We conclude that the evidence supplied by the applicant appears to support a finding that it is substantially owned and effectively controlled by citizens of New Zealand, especially in view of Air New Zealand's constitution and the predominance of New Zealand citizens in key management positions. However, to the extent a question may exist concerning the non-homeland involvement in Air New Zealand, we find that waiver of our ownership and control standard, to the extent necessary, is warranted. There is no evidence that the ownership and control of the carrier would make grant of this authority inimical to U.S. aviation policy or interests.

### **Findings and Conclusions**

In view of the foregoing, and all the facts of record, we find and conclude that:

1. It is in the public interest to issue a foreign air carrier permit to the applicant in the form attached;
2. To the extent the authority conferred is the subject of a bilateral agreement, the applicant is qualified and designated by its government under the applicable agreement;
3. The applicant is fit, willing and able to perform properly the foreign air transportation described in the attached permit, and to conform to the provisions of the U.S. Code and to the Department's rules, regulations, and requirements;
4. The public interest requires that the exercise of the privileges granted by the attached permit be subject to the terms, conditions and limitations contained in and attached to this permit and to such others required by the public interest as the Department may prescribe;
5. The applicant appears to be substantially owned and effectively controlled by nationals of its homeland; however, as discussed above, to the extent necessary, we waive our ownership and control standard;
6. The issuance of this permit does not constitute a "major regulatory action" under the Energy Policy and Conservation Act of 1975, as defined in subsection 313.4(a)(1) of the Department's Regulations;<sup>3</sup> and
7. The public interest does not require an oral evidentiary hearing on this application.

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<sup>3</sup> Our finding is based on the fact that the permit issued will not result in a near-term increase in annual fuel consumption by the applicant in excess of 10 million gallons.

**ACCORDINGLY,**

1. We issue, in the form attached, a foreign air carrier permit to Air New Zealand Limited;
2. To the extent not granted, we deny all requests for relief in this docket;
3. Unless disapproved by the President of the United States under section 41307 of Title 49 of the U.S. Code, this order and the attached permit shall become effective on the 61st day after their submission for section 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 the Department's order under that section, whichever occurs earlier;<sup>4</sup> and
4. We will serve this order on the applicant and other parties in this docket.

By:

**FRANCISCO J. SANCHEZ**  
Assistant Secretary for Aviation  
and International Affairs

(SEAL)

*An electronic version of this document is available on the World Wide Web at:  
[http://dms.dot.gov/reports/reports\\_aviation.asp](http://dms.dot.gov/reports/reports_aviation.asp)*

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<sup>4</sup> This order was submitted for section 41307 review on November 20, 2000. On January 2, 2001, we received notification that the President's designee under Executive Order 12597 and implementing regulations did not intend to disapprove the Department's order.

*Foreign Air Carrier Permit Application of*

**AIR NEW ZEALAND LIMITED**  
**Docket OST-98-3864**

**Flag:** New Zealand

**Federal Register Notice:** 63 FR 30281, June 3, 1998

**Filing Date:** May 20, 1998, as supplemented August 30 & October 2, 2000

**Authority Sought:** Amendment of foreign air carrier permit, last issued by Order 90-10-50, to authorize scheduled and charter foreign air transportation to the full extent provided for in the Air Transport Agreement between the United States and New Zealand (U.S.-New Zealand Open Skies Agreement).

**Pleadings:** No answers were filed.

**Public Interest:** The U.S.- New Zealand Open Skies Agreement provides for the authority sought. Air New Zealand has been designated by its government under the Agreement to conduct these operations.

**Fitness:** Air New Zealand, incorporated in 1940, has a long history of operations between New Zealand and the United States. It currently holds exemption authority to conduct the operations at issue here (see Notice of Action Taken dated March 23, 2000, in Docket OST-97-2847). The carrier is properly licensed by its homeland, has had no safety violations or fatal accidents in the last five years, has experienced management, and appears financially sound:

<b>Financial Indicators</b> (\$ billions) as of:	<u>12/31/99</u>	<u>12/31/98</u>
Total Assets	\$2.322	\$2.107
Total Liabilities	1.198	1.086
Owners' Equity	1.124	1.021
Operating Profit (year ending)	.113	.087

DOT verifies compliance with 14 CFR 203 (Warsaw liability waiver), 205 (insurance requirement, and 129 (FAA operations specifications).

**Ownership and Control:** The record indicates that the majority of the carrier's shares are held by New Zealand citizens, including the Government of New Zealand which holds one share. It also indicates that Singapore Airlines Limited holds a 25 percent ownership interest in the company. The record also shows that the majority of its directors and management personnel are citizens of New Zealand. As previously discussed, to the extent a question may exist concerning the non-homeland involvement in Air New Zealand, we find that waiver of our ownership and control standard, to the extent necessary, is warranted. There is no evidence that the ownership and control of the carrier would make grant of this authority inimical to U.S. aviation policy or interests.

Issued By  
Order 2001-1-4

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

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**PERMIT TO FOREIGN AIR CARRIER**  
*(as amended and reissued)*

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**AIR NEW ZEALAND LIMITED**

A Flag Carrier of New Zealand

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 scheduled foreign air transportation as follows:

**Of persons, property and mail (combination services) between any point or points behind New Zealand, via New Zealand and any intermediate point or points to any point or points in the United States, and any point or points beyond.**

**Of property and mail (all-cargo services) between the United States and any point or points.**

The holder shall also be authorized to engage in charter trips in foreign air transportation, subject to the terms, conditions, and limitations of the Department's regulations governing charters.

In the conduct of charter operations authorized above, the holder may, without prior Department approval, carry charter traffic between the United States and a third country point, provided that such charter traffic (except with respect to all-cargo charters) is carried on a flight that serves New Zealand for purposes of carrying traffic between the United States and New Zealand.

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 New Zealand are or shall become parties.

This permit shall be effective on **January 2, 2001**. 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 bilateral right for the service authorized by this permit from the service which may be operated by airlines designated by the Government of New Zealand (or, if the right is partially eliminated, then the authority of this permit shall terminate in like part); (3) upon the effective date of any permit granted by the Department to any other carrier designated by the Government of New Zealand in lieu of the holder; or (4) upon the termination or expiration of the applicable air services agreement between the United States and New Zealand. However, clause (4) 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 New Zealand become parties.

The Department of Transportation has executed this permit and affixed its seal on **November 20, 2000**.

By:

**FRANCISCO J. SANCHEZ**  
Assistant Secretary for Aviation  
and International Affairs

(SEAL)

CONDITIONS OF AUTHORITY

ATTACHMENT  
Docket OST-98-3864

In the conduct of the operations authorized, the holder shall:

- (1) Not conduct any operations unless it holds a currently effective authorization from its homeland for such operations, and 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 Part 129, 91, and 36;
- (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 (and 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) 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)(2), 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 of origin, 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, comply with the Department's rules governing charters (including 14 CFR Parts 217 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 United States Code (formerly the Federal Aviation Act of 1958, as amended).