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Order 2002-1-14

Served: January 31, 2002



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

Issued by the Department of Transportation  
on the 5th day of December, 2001

Applications of

**AIR MALTA P.L.C.**

**BRITANNIA AIRWAYS AB**

for foreign air carrier permits under  
section 41301 of Title 49 of the U.S. Code

Dockets **OST-2000-7060**

**OST-2000-8155**

**ORDER ISSUING FOREIGN AIR CARRIER PERMITS**

The captioned applicants seek foreign air carrier permits under section 41301 of Title 49 of the U.S. Code in the indicated dockets. The applications are fully described in attachments to this order. Because the public interest bases for granting these applications are clear, the applicants' fitness is established by evidence of record and unchallenged, and there are no significant ownership and control questions, it is appropriate to use this simplified, Subpart B procedures to grant the requested authority.<sup>1</sup>

Each applicant has filed and perfected its application as required by 14 CFR Part 211 and served it as required by 14 CFR 302.1705. Each application was summarized in the Federal Register, as cited in its descriptive attachment, and in the Department's published weekly list of applications filed. These notices described the authority sought and gave interested persons an opportunity to submit evidence and objections to the award of the authority. No answers to these applications were filed.

<sup>1</sup> Under 14 CFR 302.210(a)(2), we may, in our discretion, omit a tentative decision in proceedings under Subpart B and proceed directly to a final decision (*see also* 14 CFR 302.213).

**Public Interest**

We find that grant of these foreign air carrier permits is in the public interest, and that each applicant is qualified to conduct the proposed operations. The authority we are granting is provided for in the Air Transport Services Agreement between the United States and the applicant's homeland, and each carrier has been designated by its government under that agreement. In each case where charter authority is conferred, that authority is consistent with our foreign carrier charter rule, 14 CFR Part 212.<sup>2</sup>

**Operational and Financial Fitness**

Except as noted, each carrier has demonstrated that it is financially, managerially, and operationally fit to perform the foreign air transportation proposed. The applicants already have operated successfully to this country under previously issued authority. They have furnished financial information and/or evidence of government backing which indicates that they can operate without jeopardizing passenger or shipper funds.

We have reviewed each applicant's evidence of managerial/operational fitness, and have consulted the Federal Aviation Administration with respect to each. Each applicant has shown by its evidence, its history of operations to this country, and/or other officially noticeable information, that it has competent management and can operate safely. Each 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 each applicant conducts its operations to this country in accordance with Part 129 of the Federal Aviation Regulations.

**Ownership and Control**

Except as noted, each applicant has submitted evidence to establish that it is substantially owned and effectively controlled by nationals, or the Government, of its claimed homeland. To the extent a question may exist concerning non-homeland involvement in the applicants, 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 carriers would make grant of this authority inimical to U.S. aviation policy or interests.

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<sup>2</sup> Under Part 212, unless otherwise ordered by the Department (or, previously, by the CAB), any foreign air carrier whose permit authorizes charters may perform Third and Fourth Freedom charters without limitation or specific prior approval, and may perform Fifth Freedom charters upon obtaining a specific statement of authorization from the Department.

### **Terms, Conditions and Limitations**

Each foreign air carrier permit is subject to the terms, conditions and limitations we consistently impose in the public interest. Since the authority is provided for in a bilateral agreement, the permit is made coextensive with that agreement.

### **Pendente Lite Exemptions**

Each carrier is operating under current exemption authority. Those exemptions will expire by their own terms 90 days after we submit this order for review under section 41307 of Title 49 of the U.S. Code.

### **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 each applicant in the form attached;
2. To the extent the authority conferred is the subject of a bilateral agreement, each applicant is qualified and designated by its government under the applicable agreement;
3. Each applicant is fit, willing and able to perform properly the foreign air transportation described in its 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 permits be subject to the terms, conditions and limitations contained in and attached to those permits and to such others required by the public interest as the Department may prescribe;
5. Each applicant is substantially owned and effectively controlled by nationals, or the Government, of its respective homeland; or that waiver of our ownership and control standard, to the extent necessary, is warranted;
6. The issuance of these permits 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 any of these applications.

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<sup>3</sup> Our finding is based on the fact that each 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 forms attached, a foreign air carrier permit to each applicant;
2. We grant all motions and requests to file documents out of time, to submit additional or supplementary materials, and to withdraw pleadings;
3. To the extent not granted, the applications and all motions and other requests in these dockets are denied;
4. 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 permits 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
5. We will serve this order on the applicants and other parties in these dockets.

By:

**Read C. Van de Water**  
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 review under section 41307 of Title 49 of the U.S. Code on December 5, 2001. On January 25, 2002, 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 MALTA P.L.C.  
Docket OST-2000-7060**

**Flag:** Republic of Malta

**Federal Register Notice:** 65 FR 16240, March 27, 2000

**Filing Date:** March 9, 2000

**Authority Sought:** Initial foreign air carrier permit to engage in scheduled foreign air transportation of persons, property and mail from points behind Malta, via Malta and intermediate points, to a point or points in the United States, and beyond; and charter foreign air transportation.

**Pleadings:** No answers were filed.

**Public Interest:** The authority is consistent with the provisions of the Air Transport Agreement between the United States and Malta entered into on October 12, 2000, and Air Malta has been properly designated by its homeland to conduct these operations.

**Fitness:** Air Malta has been providing air services since 1973 and serves 48 points in Europe, the Middle East and the Gulf. It currently holds exemption authority to conduct the requested services (*see* Notice of Action Taken dated October 13, 1999, in Docket OST-99-6242, and Order 98-3-22). 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> (\$ millions) as of:	<u>3/31/00</u>	<u>3/31/99</u>
Total Assets	\$372.3	\$388.8
Total Liabilities	273.4	278.1
Owners' Equity	98.9	110.7
Operating Profit (year ending)	6.8	6.8

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

**Ownership and Control:** Air Malta is substantially owned and effectively controlled by citizens of Malta. The record indicates that the Government of Malta holds 96.4 percent of Air Malta's shares, and the majority of the carrier's directors and key management personnel are citizens of Malta.

Issued By  
Order 2002-1-14

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

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***PERMIT TO FOREIGN AIR CARRIER***

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**AIR MALTA P.L.C.**

A Flag Carrier of Malta

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 of persons, property and mail as follows:

**Between any point or points behind Malta, via Malta and any intermediate point or points, to any point or points in the United States, and any point or points beyond.**

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 Malta for purposes of carrying traffic between the United States and Malta.

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 Malta are or shall become parties.

This permit shall be effective on January 25, 2002 . 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 Malta (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 Malta in lieu of the holder; or (4) upon the termination or expiration of the applicable air services agreement between the United States and Malta. 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 Malta become parties.

The Department of Transportation has executed this permit and affixed its seal on December 5, 2001.

By:

**Read C. Van de Water**  
Assistant Secretary for Aviation  
and International Affairs

(SEAL)

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CONDITIONS OF AUTHORITY

ATTACHMENT  
Docket OST-2000-7060

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 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;
- (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, comply (except as otherwise provided in the applicable bilateral agreement) 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 (formerly the Federal Aviation Act of 1958, as amended).

*Foreign Air Carrier Permit Application of*

**BRITANNIA AIRWAYS AB**  
**Docket OST-2000-8155**

**Flag:** Sweden

**Federal Register Notice:** 65 FR 69121, November 15, 2000

**Filing Date:** October 19, 2000

**Authority Sought:** Initial foreign air carrier permit to engage in charter foreign air transportation of persons, property and mail between Sweden/Denmark/Norway and the United States, and other charters pursuant to 14 CFR 212 of the Department's regulations.

**Pleadings:** No answers were filed.

**Public Interest:** The Air Transport Services Agreement between the United States and Sweden provides for the requested authority, and Britannia has been properly designated by Sweden to conduct these operations.

**Fitness:** The carrier started operations in 1985 under the name Transwede Airways AB,<sup>1</sup> and has been operating as Britannia Airways AB since 1998. The applicant currently holds exemption authority to conduct the requested services (*see* Notice of Action Taken dated December 19, 2000, in Docket OST-2000-8163). It is properly licensed by Sweden, has had no safety violations or fatal accidents in the last five years, has experienced management, and appears financially sound:

<b>Financial Indicators</b> (\$ millions) as of:	<u>12/31/99</u>	<u>12/31/98</u>
Total Assets	\$38.3	\$42.8
Total Liabilities	37.6	42.1
Owners' Equity	.7	.7
Operating Profit (year ending)	8.9	8.4

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

**Ownership and Control:** Britannia AB requests a waiver of our citizenship requirements, stating that it is owned, through a series of 100% wholly-owned subsidiaries, by Preussag AG, a publicly-owned German company. It also states that the majority of its board of directors and key management personnel are Swedish citizens. We will grant the carrier's request. Despite the presence of non-homeland interests, we find that there is nothing in the ownership and control of the carrier that would be inimical to U.S. aviation policy or interests. Therefore, we conclude that waiver of our standard requirement that substantial ownership and effective control of a foreign carrier rest in the hands of citizens of its homeland is warranted.

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<sup>1</sup> Transwede most recently held a foreign air carrier permit to conduct U.S.-Sweden/Denmark/Norway charters issued by Order 94-3-28, which expired by its own terms on March 15, 1999.

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

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***PERMIT TO FOREIGN AIR CARRIER***

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**BRITANNIA AIRLINES AB**

A Flag Carrier of Sweden

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 charter foreign air transportation of person and property as follows:

**Between any point or points in Sweden, Denmark and Norway  
and any point or points in the United States.**

The holder shall also be authorized to engage in other 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 is carried on a flight that serves Sweden, Denmark or Norway for purposes of carrying traffic between the United States and Sweden, Denmark, or Norway.

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 Sweden are or shall become parties.

This permit shall be effective on January 25, 2002 . 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 Sweden (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 Sweden in lieu of the holder; or (4) upon the termination or expiration of the applicable air services agreement that governs air services between the United States and Sweden. 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 Sweden become parties.

The Department of Transportation has executed this permit and affixed its seal on December 5, 2001.

By:

**Read C. Van de Water**  
Assistant Secretary for Aviation  
and International Affairs

(SEAL)

**CONDITIONS OF AUTHORITY**

ATTACHMENT  
Docket OST-2000-8155

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 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;
- (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, comply (except as otherwise provided in the applicable bilateral agreement) 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 (formerly the Federal Aviation Act of 1958, as amended).