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

Issued by the Department of Transportation on July 17, 2002

NOTICE OF ACTION TAKEN -- DOCKET OST-2002-12017 - 2

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: **TNT Airways S.A.**

Date Filed: April 1, 2002

Relief requested:

Exemption from 49 U.S.C. § 41301 to engage in (1) scheduled foreign air transportation of property and mail from points behind Belgium via Belgium and intermediate points to a point or points in the United States and beyond; (2) all-cargo charters between any point or points in Belgium, via intermediate points, and any point or points in the United States, and beyond; and (3) other all-cargo charters subject to Part 212 of the Department's rules.

Statement of authorization under 14 CFR Part 222 of the Department's rules to conduct intermodal cargo services between any U.S. point and any other U.S. point, for an indefinite period.

If renewal, date and citation of last action: New authority

Applicant representative: William C. Evans and John R. Mietus, Jr. (202) 371-6000

Responsive pleadings: None filed

DISPOSITION

Action: Approved

Action date: July 17, 2002

Effective dates of the exemption authority granted TNT Airways: July 17, 2002-July 17, 2004

The statement of authorization granted to TNT Airways was effective when taken July 17, 2002, and will remain in effect indefinitely, subject to the conditions listed below:

Basis for approval (bilateral agreement/reciprocity): Air Transport Services Agreement with Belgium

Except to the extent exempted/waived, this authority is subject to the terms, conditions, and limitations indicated: Standard exemption conditions (attached)

Special conditions/Partial grant/Denial basis/Remarks: Based on the record in this case, we find that TNT Airways is financially and operationally qualified to perform the services authorized above. However, we are unable to find that TNT Airways is substantially owned and effectively controlled by Belgian nationals. Specifically, the applicant states that it is owned by two Dutch companies: Gelders Spetra International B.V. (0.1%) and TNT Post Groep N.V. (99.9%).¹ In spite of the fact that we are unable to find that TNT Airways is substantially owned and effectively controlled by homeland nationals, we find it appropriate to waive our ownership and control requirements. The carrier is properly licensed and designated by the Government of Belgium to perform the proposed services, and there is no evidence on the record which would suggest that the ownership of the carrier would be inimical to U.S. aviation policy or interests. By memorandum dated July 15, 2002, the FAA advised us that it knows of no reason why we should act unfavorably on TNT Airways' application.

¹ TNT Post Groep is owned as follows: the Dutch government and Dutch nationals (51%); United Kingdom nationals (19%); United States and Canadian nationals (combined 9.1%) and Belgian nationals (3%). The Dutch government is the only shareholder with more than 5% interest in TNT Post.

The statement of authorization granted to TNT Airways is subject to the condition that unless otherwise terminated at an earlier date pursuant to the terms of any applicable treaty, convention, or agreement, this authorization shall terminate (1) upon the effective date of any treaty, convention, or agreement or amendment, which eliminates the bilaterally authorized services, or (2) upon the termination or expiration of the September 5, 1995, Air Transport Agreement between the United States and Belgium. However, clause (2) shall not apply if the conduct of intermodal services as here authorized becomes the subject of any treaty, convention, or agreement to which the United States and Belgium shall become parties.

**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 (1) the applicant was qualified to perform the proposed operations; (2) our action was consistent with Department policy; (3) grant of the authority was consistent with the public interest; and (4) grant of the authority would not constitute a major regulatory action under the Energy Policy and Conservation Act of 1975. 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 seven (7) 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.

FOREIGN AIR CARRIER CONDITIONS OF AUTHORITY

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, and with all applicable U.S. Government requirements concerning security;
- (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).

