



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

Issued by the Department of Transportation  
on the 3<sup>rd</sup> day of June, 2002

Complaint of

**NORTHWEST AIRLINES, INC.**

Against

**THE COUNCIL OF THE EUROPEAN  
UNION AND THE GOVERNMENTS OF  
THE 15 EU MEMBER STATES**

under 49 U.S.C. § 41310

**Docket OST-99-5011**

**ORDER DISMISSING COMPLAINT AND TERMINATING PROCEEDING**

**SUMMARY**

By this order, we grant the motion of Northwest Airlines to dismiss, without prejudice, its complaint against the Council of the European Union (EU) and the Governments of the 15 EU Member States, and we terminate the proceeding in the captioned docket.

**BACKGROUND**

On January 15, 1999, Northwest filed a complaint under 49 U.S.C. § 41310 against the Council of the European Union and the Governments of the 15 EU Member States (referred to as the EU and the Member States) regarding EU regulations that would restrict the use of hushkitted aircraft. Northwest stated that the regulation would unreasonably restrict U.S. operators' access to Europe in contravention of U.S. rights under the Chicago Convention and bilateral air services agreements.

By Order 99-1-10, the Department invited all interested persons to answer Northwest's complaint in Docket OST-99-5011. British Airways PLC and Virgin Atlantic Airways Limited (filed

jointly); Lufthansa German Airlines; the Cargo Airline Association; Societe Air France; Quiet Technology Venture, Ltd.; the National Air Carrier Association; Pratt & Whitney; the Air Transport Association of America; AvAero; Federal Express Corporation; Fine Air Services, Inc.; Intrepid Aviation Partners, L.L.C.; United Air Lines, Inc.; Delta Air Lines, Inc.; Kitty Hawk Aircargo, Inc. and American International Airways, Inc. (filed jointly); the Nordam Group, Inc.; Burbank Aeronautical Corporation and ABS Partnership and Duganair Technologies, Inc. (filed jointly); ABX Air, Inc.; and the Association of European Airlines filed answers. Northwest filed a reply to the answers. The Cargo Airline Association filed an additional response.<sup>1</sup>

By a series of actions the Department extended the deadline for action on Northwest's complaint in order to facilitate a negotiated resolution to the issues raised.<sup>2</sup> The latest extension runs through June 3, 2002.

### **NORTHWEST'S MOTION TO DISMISS**

On May 21, 2002, Northwest filed a motion to dismiss, without prejudice, its complaint. Northwest notes that the European Parliament and the Council of Ministers of the European Union recently adopted a directive that repeals the provisions, which gave rise to the complaint at issue in this proceeding. However, Northwest requests that the dismissal be without prejudice to preserve Northwest's right to refile in the event the directive is construed and implemented in a manner as to prompt the same concerns raised in Northwest's original complaint.

We received no answers to Northwest's motion.

### **DECISION**

We have decided to grant Northwest's motion to dismiss its complaint, without prejudice to refile. Taking into account the Department's objectives under the statute, we have determined that it is in the public interest to dismiss the complaint and terminate the captioned proceeding.

### **ACCORDINGLY,**

1. We grant the request of Northwest Airlines, Inc. to dismiss its complaint in Docket OST-99-5011, without prejudice to refile;
2. We terminate the proceeding in Docket OST-99-5011; and
3. We will serve this order on all parties to the complaint of Northwest Airlines, Inc., in Docket OST-99-5011; the Ambassadors of the Delegation of the Commission of the European Communities, Germany, France, and the United Kingdom in Washington D.C.; the U.S. Department of State (Office of Aviation Negotiations); the Assistant U.S. Trade Representative

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<sup>1</sup>The additional response was accompanied by a motion for leave to file an otherwise unauthorized document. We granted the motion by Order 99-5-7.

<sup>2</sup>See Orders 2001-11-18, 2001-6-23, 2000-11-30, 2000-7-34, 2000-2-2 and Order 99-5-7 and orders cited therein at 2.

(Office of the United States Trade Representative); and the U.S. Department of Commerce (Office of Service Industries).

By:

**READ C. VAN DE WATER**  
Assistant Secretary for Aviation and  
International Affairs

(SEAL)

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