



Order 97-8-21

Served August 27, 1997

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

Issued by the Department of Transportation  
on the 31<sup>st</sup> day of July, 1997

Application of

**LTU LUFTRANSPORT-UNTERNEHMEN SÜD  
GMBH. & CO. FLUGGESELLSCHAFT**

for a foreign air carrier permit under  
49 U.S.C. §41301

Docket OST-97-2066

**ORDER ISSUING AMENDED FOREIGN AIR CARRIER PERMIT**

**Summary**

This order issues an amended foreign air carrier permit to LTU Lufttransport-Unternehmen Süd GmbH. & Co. Fluggesellschaft (LTU Süd) authorizing it to engage in charter foreign air transportation of persons, property and mail between the Federal Republic of Germany and the United States pursuant to the bilateral aviation undertakings of the United States and Germany.

**Application**

By application filed January 13, 1997, LTU Süd requests that we issue it an amended foreign air carrier permit to conduct charter services between Germany and the United States consistent with the provisions of the open-skies aviation agreement between the United States and the Federal Republic of Germany (Germany).<sup>1</sup>

In support of its request, LTU Süd states that it has been designated by the Government of Germany to perform the proposed services; it is substantially owned and effectively

---

<sup>1</sup> By Order 91-7-38, we issued LTU Süd an initial foreign air carrier permit authorizing LTU Süd to engage in charter foreign air transportation of persons and property, separately or in combination, between Germany and the United States; and charters subject to 14 CFR Part 212. On March 3, 1997, we granted LTU Süd exemption authority to conduct charter services identical to those at issue here. See Order 97-4-5, Docket OST-97-2068.

controlled by citizens of Germany; and it is operationally and financially fit to perform the proposed services.<sup>2</sup>

No answers were filed in response to LTU Süd's permit amendment application.

### **Decision**

We have 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 Q procedures.<sup>3</sup> The public was informed of the application by notice in the Federal Register and the Department's published weekly list of applications filed.<sup>4</sup> The notice described the authority sought and gave interested persons an opportunity to submit evidence and objections to the award of the authority. 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, and that LTU Süd is qualified to conduct the proposed operations.

### **Public Interest Considerations**

On February 29, 1996, the United States and Germany concluded a Protocol which amended the 1955 U.S.-Germany Air Transport Agreement (the Agreement).<sup>5</sup> The new agreement, which incorporated all of the basic elements of an open-skies agreement, provides broad rights and other opportunities for the designated carriers of each side.

### **Operational and Financial Fitness**

We find that LTU Süd is operationally and financially fit to conduct the operations at issue here. LTU Süd is a partnership organized under the laws of Germany. LTU Süd commenced air transport operations in 1984, and was issued an initial foreign air carrier permit by the Department on July 16, 1991 (Order 91-7-38), authorizing LTU Süd to engage in charter foreign air transportation of persons and property, separately or in combination, between Germany and the United States; and to perform other charters in

---

<sup>2</sup> LTU Süd's application was accompanied by a motion under Rule 39 (14 CFR §302.39) to withhold certain financial information from public disclosure. In support of its motion, LTU Süd states that it is a limited partnership under German law, and as such, is not required by its government to disclose such information. LTU Süd states that it has not released such information to the public in many years, and that disclosure of such information would adversely affect LTU Süd's competitive interest vis a vis its German competitors and is not required by the public interest.

<sup>3</sup> 14 CFR §302.1701 *et seq.* Under Rule 29(b), we may, in our discretion, omit a tentative decision in proceedings under Subpart Q and proceed directly to a final decision.

<sup>4</sup> 62 FR (3938), January 27, 1997.

<sup>5</sup> The Protocol amending the Air Transport Agreement of July 7, 1955, was entered into force on May 23, 1996.

accordance with Part 212 of the Department's rules. That permit remains in effect. LTU Süd also holds Department exemption authority to conduct charter services identical to those at issue here.<sup>6</sup>

LTU Süd has experienced management and has had no safety violations, fatal accidents or tariff violations in the last five years. LTU Süd has been designated by its government and holds effective authority from its homeland to conduct the proposed operations.<sup>7</sup> The FAA's Air Transportation Division (AFS-200) has advised us that it knows of no reason why LTU Süd's request for an amended foreign air carrier permit should not be approved.<sup>8</sup>

LTU Süd has provided financial information which indicates that it can conduct the proposed services without jeopardizing passenger or shipper funds. As noted above, LTU Süd filed a motion under Rule 39 seeking confidential treatment of the financial information filed as part of its application. We have reviewed the documents under the disclosure guidelines of Rule 39 and have determined that they warrant confidential treatment. Because of the commercially sensitive nature of the information, we have determined that the documents fall within the Freedom of Information Act exemption for proprietary information and would adversely affect the competitive position of LTU Süd under 49 U.S.C. §40115.

### **Ownership and Control**

LTU Süd is a privately owned company.<sup>9</sup> All of its owners are German citizens. LTU Süd is one of six affiliated companies, known as the LTU Group, with common ownership, engaged in travel and tourism.<sup>10</sup> All of LTU Süd's officers, directors and key management personnel are citizens of Germany.

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 LTU Lufttransport-Unternehmen Süd GmbH. & Co. Fluggesellschaft an amended foreign air carrier permit in the form attached;
2. LTU Lufttransport-Unternehmen Süd GmbH. & Co. Fluggesellschaft is fit, willing and able properly to perform the foreign air transportation described in the attached permit

---

<sup>6</sup> Order 97-4-5.

<sup>7</sup> LTU Süd was issued a Declaration of Competency by Germany's Minister of Transport, Civil Aviation Department, on April 30, 1996.

<sup>8</sup> A copy of the FAA's May 22, 1997, memorandum has been placed in Docket OST-97-2066.

<sup>9</sup> LTU Süd is owned by Conle & Co. OHG, Mulheim/Ruhr (60.6%); Westdeutsche Landesbank Girozentrale (34.3%) and E.W. Graebner, Koln (5.1%). The majority owner, Conle & Co., is jointly owned by three citizens of Germany. Westdeutsche Landesbank is a public credit corporation, owned by five German companies.

<sup>10</sup> Another foreign air carrier of Germany under the LTU Group, holding Department authority, is LTU Lufttransport-Unternehmen GmbH. & Co. KG. (LTU). See Order 94-11-8.

and to conform to the provisions of the Act, and to our rules, regulations, and requirements;

3. The public interest requires that the exercise of the privileges granted by the permit should be subject to the terms, conditions, and limitations contained in the attached permit, and to such other reasonable terms, conditions, and limitations required by the public interest as we may prescribe;
4. The issuance of this foreign air carrier permit will not constitute a “major regulatory action” under the Energy Policy and Conservation Act of 1975, as defined in §313.4(a)(1) of our Regulations;<sup>11</sup> and
5. The public interest does not require an oral evidentiary hearing on the application.

**ACCORDINGLY,**

1. We issue, in the form attached, an amended foreign air carrier permit to LTU Lufttransport-Unternehmen Süd GmbH. & Co. Fluggesellschaft authorizing it to engage in charter foreign air transportation of persons, property and mail between any point or points in the Federal Republic of Germany; via intermediate points; and any point or points in the United States; and beyond;
2. LTU Lufttransport-Unternehmen Süd GmbH. & Co. Fluggesellschaft is also 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;
3. The exercise of the privileges granted above is subject to LTU Lufttransport-Unternehmen Süd GmbH. & Co. Fluggesellschaft’s compliance with the conditions listed in Attachment A;
4. We grant the motion of LTU Lufttransport-Unternehmen Süd GmbH. & Co. Fluggesellschaft to withhold from public disclosure certain financial information;
5. To the extent not granted, we deny all requests for relief in Docket OST-97-2066;
6. Unless disapproved by the President of the United States under §41307 of Title 49 of the U.S. Code, this order and the attached permit shall become effective on the 61st day after its submission for §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>12</sup> and

---

<sup>11</sup> This finding is based on the fact that the grant of this permit will not result in a near-term increase in fuel consumption in excess of 10 million gallons.

<sup>12</sup> This order was submitted for §41307 review on July 31, 1997. On August 22, 1997, we received notification that the President’s designee, under Executive Order 12597 and

7. We will serve a copy of this order on LTU Lufttransport-Unternehmen Süd GmbH. & Co. Fluggesellschaft; the Ambassador of the Federal Republic of Germany in the United States; the Department of State (Office of Aviation Negotiations) and the Federal Aviation Administration (New York IFO).

By:

CHARLES A. HUNNICUTT  
Assistant Secretary for Aviation  
and International Affairs

(SEAL)

Appendix A  
Page 1 of 2

## SUMMARY

### FOREIGN AIR CARRIER PERMIT APPLICATION

---

implementing regulations, did not intend to disapprove the Department's order.

**LTU Lufttransport-Unternehmen Süd  
GmbH. & Co. Fluggesellschaft**

**Flag:** The Federal Republic of Germany

**Federal Register Notice:** 62 FR (3938), January 27, 1997

**Filing Date:** January 13, 1997

**Authority Sought:** Amended foreign air carrier permit to engage in charter foreign air transportation of persons, property and mail consistent with the provisions of the open-skies aviation agreement between the United States and the Federal Republic of Germany.

**Pleadings:** No answers were filed in response to LTU Süd's application.

**Public Interest:** During February 1996, the United States and the Federal Republic of Germany concluded a Protocol amending the 1955 U.S.-Germany Air Transport Agreement which incorporated all of the basic elements of an open-skies agreement (the Agreement). The Protocol was entered into force on May 23, 1996. See February 29, 1996, Protocol between the United States and the Federal Republic of Germany, which amended the July 7, 1955, Air Transport Agreement.

**Fitness:** LTU Süd is organized under the laws of Germany and is privately owned. LTU Süd commenced air transport operations in 1984, and was issued an initial foreign air carrier permit by the Department on July 16, 1991 (Order 91-7-38). LTU Süd also holds Department exemption authority to conduct charter services identical to those at issue here (Order 97-4-5).

LTU Süd has experienced management and has had no safety violations, fatal accidents or tariff violations in the last five years. LTU Süd has been designated by its government and holds effective authority from its homeland to conduct the proposed operations.

## **Financial Indicators**

LTU Süd has provided financial information which indicates that it can conduct the proposed services without jeopardizing passenger or shipper funds.

DOT verifies compliance with 14 CFR Parts 203 (Warsaw liability waiver), 205 (Insurance requirements) and 129 (FAA Operations Specifications).

## **Ownership and Control:**

LTU Süd is one of six affiliated companies (LTU Group), with common ownership, engaged in travel and tourism. LTU Süd is owned by Conle & Co. OHG, Mulheim/Ruhr (60.6%); Westdeutsche Landesbank Girozentrale (34.3%) and E.W. Graebner, Koln (5.1%). All of LTU Süd's officers, directors and key management personnel are citizens of Germany.

Reissued by  
Order 97-8-21

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

-----  
PERMIT TO FOREIGN AIR CARRIER  
-----

**LTU Lufttransport-Unternehmen Süd  
GmbH. & Co. Fluggesellschaft**

A Flag Carrier of the Federal Republic of Germany

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 persons, property and mail, as follows:

**Between any point or points in the Federal Republic of Germany; via intermediate points; and any point or points in the United States; and beyond.**

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 the Federal Republic of Germany for purposes of carrying traffic between the United States and the Federal Republic of Germany.

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.

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 the holder's homeland are or shall become parties.

This permit shall be effective on August 22, 1997. 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 the Federal Republic of Germany (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 the Federal Republic of Germany in lieu of the holder; or (4) upon the termination or expiration of the applicable air services agreement between the United States and the Federal Republic of Germany. 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 the Federal Republic of Germany become parties.

The Department of Transportation has executed this permit and affixed its seal on August 22, 1997.

By:

CHARLES A. HUNNICUTT  
Assistant Secretary for Aviation  
and International Affairs

(SEAL)

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;
  - (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) 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 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).(41301/40109) 12/96