

Order 97-9-3

Served September 4, 1997



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

Issued by the Department of Transportation
on the 4th day of September, 1997

Joint Application of

**PAN AM CORPORATION
and
CARNIVAL AIR LINES, INC.**

for an exemption from the provisions of
49 U.S.C. 41105

Docket OST-97-2786

ORDER GRANTING EXEMPTION

Summary

By this order, we exempt Pan Am Corporation ("PAC") and Carnival Air Lines, Inc. ("Carnival"), from the provisions of section 41105 of Title 49 of the United States Code ("the Statute"), subject to certain conditions.

Background

On March 28, 1997, in accordance with the provisions of section 204.5 of our rules (14 CFR 204.5) that require air carriers to notify us of substantial changes affecting their operations, PAC and Carnival advised the Department that they had entered into an agreement whereby PAC -- the parent of the certificated air carrier Pan American World Airways, Inc. ("Pan Am") -- would acquire all of the outstanding common stock of Carnival. The agreement provides that Carnival, which would become a wholly owned subsidiary of PAC, would continue to be operated independently of Pan Am until plans for a merger of the two carriers are completed.¹

¹ The agreement further calls for Mr. Micky Arison, Carnival's majority shareholder, to make a capital investment of \$30 million in exchange for approximately 9.5 million shares of PAC stock, or about 42

On August 6, PAC and Carnival jointly filed an application in Docket OST-97-2787 seeking the Department's approval under section 41105 of the Statute of the *de facto* transfer² of the economic authorities held by Carnival to Carnival under the ownership of PAC.³ The applicants also filed, in Docket OST-97-2786, a joint application for an exemption from section 41105 to the extent necessary to allow PAC and Carnival to complete the acquisition pending the Department's action on their *de facto* transfer application.

In support of their exemption request, the applicants declare that they plan to consummate the purchase shortly after receipt of shareholder approval, which is expected in late August. Anticipating that the Department would not be able to complete its analysis and issue a decision on the transfer prior to the scheduled closing on the acquisition, PAC and Carnival seek an exemption from the Statute's requirement that the Department must approve the transfer prior to the closing. The petitioners further note that they have made the necessary filings with the Department of Justice and the Federal Trade Commission for approval of the transaction under the Hart-Scott-Rodino Antitrust Improvements Act, and have been granted an early termination of the required waiting period, indicating that the proposed acquisition does not present significant competitive issues requiring further review. PAC and Carnival add that, since the two air carriers will continue to operate independently for the foreseeable future, there will be no actual transfer of economic authority to PAC or Pan Am associated with the acquisition, and the acquisition could be reversed should the Department ultimately determine that approval of the *de facto* transfer was not in the public interest. PAC and Carnival also note that granting an exemption in such circumstances is consistent with the Department's past practice.⁴

percent of the shares outstanding. PAC would also obtain an additional \$30 million in capital by means of a private placement of a new series of convertible preferred stock.

² The Department has held that “[a] stock acquisition resulting in common control of two carriers having international route authority constitutes a *de facto* certificate transfer subject to section 401(h).” [Former section 401(h) of the Federal Aviation Act was recodified as section 41105 of the Statute.] *Federal Express Corporation and The Flying Tiger Line, Inc.*, Order 89-3-21, p. 2, note 2. *Also see, AMR Eagle, Inc. and Executive Air Charter, Inc.*, Order 90-2-1, January 24, 1990; and *Texas Air-TWA Acquisition Case*, Order 85-8-25, August 9, 1985, pp. 5-6.

³ Carnival holds interstate scheduled passenger certificate authority (Order 90-12-38); foreign scheduled passenger authority to serve the Bahamas, the Dominican Republic, Guyana, Canada, Costa Rica, and Venezuela (Orders 93-2-34 (Route 574), 95-10-13, 97-2-14, and 97-6-26); and authorizations to display on its domestic flights the airline designator codes of Iberia, a Spanish carrier, and SAETA, an Ecuadorian carrier, with respect to those carriers' services between their homelands and the United States. Pan Am holds interstate scheduled passenger certificate authority (Order 96-9-32); foreign scheduled passenger authority to serve the Dominican Republic and the Bahamas (Orders 97-3-35, 97-6-16, and 97-7-16); and authorizations to display on its domestic flights the airline designator codes of AeroPeru, a Peruvian airline, and APA International, a Dominican Republic airline, with respect to those carriers' services between their homelands and the United States.

⁴ *See Federal Express Corporation and The Flying Tiger Line, Inc.*, Order 89-1-60, issued January 31, 1989.

No answers to the exemption application have been received.

Decision

We will grant the applicants' request for an exemption from the provisions of section 41105 until we have ruled on the *de facto* transfer request, subject to the condition that Pan Am and Carnival will remain separate and independently operated corporations until such a ruling has been made. As we have previously held,⁵ requiring the postponement of scheduled market transactions until the applicable regulatory process has been completed is not necessarily in the public interest and can be unjustly punitive. In this instance, as long as Pan Am and Carnival remain separate entities, as the applicants have pledged, PAC could divest itself of Carnival should we disapprove the proposed transfer. Therefore, permitting the applicants to close on the acquisition pending an expeditious ruling on the transfer will enable them to proceed with their merger plans yet avoid an irreversible situation.

ACCORDINGLY,

1. We exempt Pan Am Corporation and Carnival Air Lines, Inc., from the provisions of section 41105 of the Statute, subject to the condition that Carnival Air Lines, Inc., shall be maintained as a separate corporation.
2. This authority shall be effective until 90 days after the Department issues its final order on the joint application of Pan Am Corporation and Carnival Air Lines, Inc., in Docket OST-97-2787 for approval of a transfer of route authority under section 41105 of the Statute.
3. We may amend, modify, or revoke this order at any time and without hearing.
4. We will serve a copy of this order on the persons listed in Attachment A.

By:

CHARLES A. HUNNICUTT
Assistant Secretary for Aviation
and International Affairs

(SEAL)

⁵ Order 89-1-60, p. 4.

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