

BEFORE THE
DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.

Petition of

AER LINGUS LIMITED

for temporary waiver of Part 257

:
:
:
:
:
:
:

Docket OST-99-

PETITION OF
AER LINGUS LIMITED
FOR TEMPORARY WAIVER

Communications with respect to
this document should be sent to:

R. Bruce Keiner, Jr.
Thomas Newton Bolling
CROWELL & MORING LLP
1001 Pennsylvania Avenue, N.W.
Washington, DC 20004-2595
(202) 624-2500

Counsel for
Aer Lingus Limited

May 25, 1999

BEFORE THE
DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.

Petition of

AER LINGUS LIMITED

for temporary waiver of Part 257

:
:
:
:
:
:
:

Docket OST-99-

PETITION OF
AER LINGUS LIMITED
FOR TEMPORARY WAIVER

Aer Lingus¹ petitions the Department for a temporary waiver of section 257.5 of the Department's regulations to the extent that it would require Aer Lingus to disclose a wet-lease from World Airways during the remainder of 1999. Aer Lingus states as follows in support of its request.

1. The Department's new rules on "Disclosure of Codesharing and Long-Term Wet Leases" which become effective July 13, 1999 require, among other things, that carriers involved in long-term wet-leases disclose to consumers in

¹ Common names of carriers are used.

May 25, 1999

schedules, oral notices, written notices and advertising the corporate identity of the wet-lessor if the wet-leased aircraft and crew are dedicated to a particular route(s) for a period of over 60 days. The Department decided to require notification because the airline selling the ticket “may bear no legal responsibility to the passenger,” because “passengers may prefer to avoid certain carriers because of prior negative experiences” and because passengers might be “misled . . . into thinking that they have purchased jet transportation because they dealt with a major carrier.” (64 Fed. Reg. 12837 at 12842, March 15, 1999) Although these rationales were addressed in the context of code-sharing, the Department said, “from the consumer’s perspective, wet leasing is indistinguishable from code-sharing: the passenger buys a ticket from one airline, but the aircraft is operated by another.” (*Id.* at 12839)

2. The Aer Lingus wet-lease from World, which was approved on March 30, 1998 for operations through October 31, 1999 provides for operations between New York and Belfast via Shannon. Aer Lingus has taken all steps possible to assure that “from the consumer’s perspective” the operation is viewed as an Aer Lingus operation. Aer Lingus not only bears legal responsibility to the passenger based on its contracts of carriage with the passenger but also has undertaken to provide its own “liability insurance for passenger, baggage, cargo, mail and aviation general third party liability insurances against all risks.” To assure seamless Aer Lingus service, the cabin crew on board the flights are Aer

Lingus employees, the configuration is an Aer Lingus configuration, the MD-11 jet aircraft is painted in Aer Lingus livery and Aer Lingus is responsible to passengers and shippers for meeting its own service standards.² Thus, notifying passengers that the flight is "operated by World Airways" would only serve to confuse the passengers without meeting any objectives of the Department's rules.

3. Since the Aer Lingus summer-seasonal wet-leases from World began last year without notification rules in effect, operating procedures, schedules and sales of numerous tickets have already taken place without the notifications which would be required as of July 13. Since the vast majority of seats will already have been sold for the peak season by July 13, the notification requirements would impose an undue burden relative to the number of passengers purchasing tickets after that date. Revising operating procedures and computer programs for wet leases³ which would continue only through October 31, 1999 on regular routes would also impose an undue burden and expense on Aer Lingus at this time.⁴

² Because the flight-deck crews are World employees and the aircraft is World's, however, the Department's definition of wet-lease is met.

³ Aer Lingus shares the difficulties described in the Air Transport Association of America ("ATA") May 24, 1999, petition for an extension of the effective date of the Department's new rules, and Aer Lingus's own petition would be moot if the ATA's petition is granted.

⁴ Aer Lingus may also wet-lease the World aircraft for the remainder of 1999 for ad hoc use without dedicating it to a particular route. If the aircraft is not dedicated to a particular route, the notification provisions will not, by their own terms, apply to the flights.

4. Perhaps most importantly, compliance with the Department's requirement would conflict with the security programs approved by the Federal Aviation Administration and Irish authorities for the Aer Lingus flights using the World aircraft. [Confidential]

For the foregoing reasons, Aer Lingus asks the Department to grant it a waiver of the requirement in Section 257.5 that it notify potential passengers that World Airways will be operating certain of its New York-Shannon-Belfast flights through October 31, 1999.

Respectfully submitted,

CROWELL & MORING LLP



R. Bruce Keiner, Jr.
rbkeiner@cromor.com



Thomas Newton Bolling
tbolling@cromor.com

Counsel for
Aer Lingus Limited

May 25, 1999
1620927