



**UNITED KINGDOM
CIVIL AVIATION AUTHORITY**

DECISIONS ON AIR TRANSPORT LICENCES AND ROUTE LICENCES

1/98

Decision of the Authority on its proposal to vary licence 1B/10 held by British Airways Plc and licence 1B/13 held by British Midland Airways Limited heard on 23 March 1998.

Panel

Chairman: Mr D Andrew
Mr B Austin
Adviser: Mr D Batchelor
Secretary: Mr G J Elsbury

Objections to the Authority's proposal:

Objector: British Airways Plc represented by Mr R Webb QC

Objector: British Midland Airways Ltd, represented by Mr T Soames, Partner,
Norton Rose

THE NOTICE

1. On 20 February 1998 the Secretary of State, in exercise of his powers under regulation 3(5) of the Civil Aviation Authority Regulations 1991, gave notice to the Authority that in his opinion, by virtue of provision made by or under the terms of the Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Poland, signed at Warsaw on 2 July 1960, as amended, the United Kingdom's share of capacity on air transport services on the route London-Warsaw being a route specified under Route A of Schedule 1 of that Agreement would, within 6 months of the date of that notice, be insufficient to enable both British Midland Airways Limited and British Airways Plc to make available all the capacity which they planned to provide. This notice was published in the Authority's Official Record Series 2 on 10 March 1998.

THE PROPOSAL

2. Following the notice from the Secretary of State, the Authority published its proposal to vary the licences of British Airways (1B/10/347) and British Midland Airways (1B/13/63) in its Official Record Series 2 on 10 March 1998. After reciting the notice, this proposal stated that:

“2. The Authority is advised by the Secretary of State that UK airlines are entitled to operate up to 53% of the total capacity to be made available between London and Warsaw, which suggests that there are 83,221 return seats available to UK airlines in the summer 1998 season.

3. For these reasons, the Civil Aviation Authority, in exercise of its powers under Section 66 (2) of the Civil Aviation Act 1982, hereby proposes to vary route licence number 1B/10 held by BRITISH AIRWAYS PLC (BA) and route licence number 1B/13 held by BRITISH MIDLAND AIRWAYS LIMITED (BMA) so as to provide that the total number of return seats which may be made available between London and Warsaw by BA and BMA from 29 March 1998 until 24 October 1998 inclusive shall not exceed 83,221. The maximum number of return seats which may be made available by each airline will be determined by the Authority in the light of its statutory objectives and duties and the arguments advanced at the hearing.”

OBJECTIONS AND REPRESENTATIONS

3. British Airways (“BA”) exercised its right to be heard on the Authority’s proposal to vary its licence 1B/10 and made a representation in respect of the proposal to vary British Midland Airways’ licence. In its written representation BA argued that it would be inappropriate for the Authority to condition its licence in a way which prevented it from mounting the schedule it was currently selling and had long planned on the London/Warsaw route for summer 1998.

4. British Midland Airways (“BMA”) exercised its right to be heard on the Authority’s proposal to vary its licence 1B/13 and made a representation in respect of the proposal to vary British Airways’ licence. In its written representation BMA argued that the consumer interest would be best served if BMA were enabled to enter the London/Warsaw route in competition with British Airways and that a daily operation was the minimum economically viable frequency of service.

5. The Air Transport Users Council (“AUC”) made a written representation on the Authority’s proposal. It argued that it would be in the interests of consumers to provide BMA with access to the London/Warsaw route in the terms sought by BMA.

THE SCARCE CAPACITY PROBLEM

6. As the Authority's proposal above indicated, it was advised by the Secretary of State that under the terms of the bilateral air services agreement between the UK and Poland UK airlines were entitled to operate up to 53% of the total capacity to be made available between London and Warsaw. This arrangement applied on a seasonal basis, and based upon the filing lodged with the Department of the Environment, Transport and the Regions ("the Department") by LOT Polish Airlines for the forthcoming summer 1998 season, it appeared that there were 83,221 return seats available to UK airlines over the same period.

7. BA was already operating a double daily service on the Heathrow/Warsaw route with 170-seat B757 aircraft. In the summer 1998 season its plan was to continue with a double daily B757 operation until 9 August, when it planned to upgrade one of these services to a 235-seat B767 for the remainder of the summer season. BMA was not currently operating on the London/Warsaw route but was licensed by the Authority and designated by the Department under the terms of the bilateral agreement. It originally planned to enter the Heathrow/Warsaw market at the beginning of the summer 1998 season with a double daily service using 110-seat B737-500s. However, in view of the difficulties encountered by the UK in persuading Poland to agree to more liberal capacity arrangements, BMA modified its plans so that it now intended to operate a single daily B737-500 service from 1 June 1998. The combined seat capacity of the two carriers' proposed operations for the summer 1998 season therefore amounted to 92,575 seats, some 9,354 in excess of the bilateral entitlement.

8. At the commencement of the public hearing, the two airlines informed the Authority that they had reached an agreement with each other about their proposed operations for the summer 1998 season. Under this agreement, dated 23 March 1998, BA was to drop its plans to upgrade one of its services to a B767 and to continue instead with a double daily B757 operation throughout the summer, while BMA was to delay the commencement of its single daily B737 service until about 10 July. The effect of these two changes to the airlines' plans was to bring their combined capacity within the total available to UK airlines for the summer season under the current bilateral agreement. Should additional capacity subsequently become available for summer 1998, it could be utilised first by BMA to operate its single daily B737 service from an earlier date. The agreement was on the basis that nothing otherwise prevented BMA from operating the services it planned, and it did not cover any further increases in capacity which might become available.

ANALYSIS AND REASONS

In light of the agreement signed between BA and BMA dated 23 March 1998 to share out capacity for the summer 1998 season on the London/Warsaw route, it appears to the Authority that a situation of scarce bilateral capacity no longer applies. There is therefore no need for the Authority to vary the two airlines' route licences.

DECISION

10. The Authority withdraws its proposal to vary route licence number 1B/10 held by British Airways plc.

11. The Authority withdraws its proposal to vary route licence number 1B/13 held by British Midland Airways Ltd.

12. For the purposes of any appeal which may be made against this decision the 'decision date' (see Regulations 26(8)(a) and 27(4) of the Civil Aviation Authority Regulations 1991, as amended by the Licensing of Air Carriers Regulations 1992) is 31 March 1998.

G J Elsbury
For the Civil Aviation Authority
25 March 1998