



Atlas Air, Inc.
801 17th Street, NNW, Suite 201
Washington, DC 20006

April 1, 2020

Docket Section
U.S. Department of Transportation
1200 New Jersey Avenue, SE
Washington DC 20590

Re: Docket DOT-OST-2020-0036, Application of Tampa Cargo S.A.S. d/b/a Avianca Cargo for an Exemption

Ladies and Gentlemen:

On March 26, 2020, Tampa Cargo S.A.S. d/b/a Avianca Cargo ("Tampa") filed an application for an exemption to operate "all-cargo services between points in the United States and any point or points." For the reasons stated below, Atlas Air, Inc. opposes grant of the authority in its current form and grant of any exemption authority until completion of investigation into Tampa's current ownership and control.

1. The Application Is Vague as To the Route Authority Sought and May Include Cabotage

In its application Tampa states that it seeks to offer all-cargo services "between points in the United States and any point or points" (emphasis added). Yet the December 14, 2018 U.S.-Colombia Memorandum of Consultations ("MOC") to amend the U.S.-Colombia Air Transport Agreement (the "Agreement") of May 10, 2011 will, upon entry into force, allow Colombian airlines to operate all-cargo service "between the United States and any point or points (emphasis added)."¹ Tampa's formulation of its requested authority, together with Tampa's general reliance on 49 U.S.C. § 40109,² leads us to question whether Tampa may be seeking to operate cabotage services in addition to any 7th freedom services authorized by the bilateral. Tampa should be required to clarify the precise nature of the route authority sought before the Department further considers this application and, in particular, to state whether or not it is seeking cabotage authority.

2. Before the Department Even Considers Granting an Exemption, It Must Reevaluate and Make Findings About TAMPA's Ownership and Control

It is the Department's well-established practice to evaluate the ownership and control of foreign air carrier applicants before granting requests for substantial new route authority. This is true not

¹ <https://www.state.gov/u-s-colombia-memorandum-of-consultations-and-ad-referendum-amendment-of-december-14-2018/>

² There are a variety of subsections of 49 U.S.C. § 40109, including subsection (g), allowing the Department to authorize cabotage in certain enumerated circumstances.

only for initial awards of authority to new applicants but also when substantial new grants of authority have been requested. See, e.g., Application of Silk Way West Airlines Limited Liability Company, Order 2016-8-7; Application of Hainan Airlines Co., Limited, Order 2013-11-36.

The Department's grant of an exemption and issuance of a foreign air carrier permit to Tampa in 2012 was based on findings that Tampa "is substantially owned and effectively controlled by citizens of Colombia." Order 2012-9-5 at 2. At the time, Tampa was "a privately held-company and [] an indirect wholly-owned subsidiary of Aerovias del Continente Americano S.A. (Avianca), a licensed foreign carrier of Colombia that is substantially owned and effectively controlled by citizens of Colombia." Id. at 2 n. 4.

We cannot say with any degree of certainty where substantial ownership and effective control of Tampa now resides but are comfortable asserting it is very different from what it was eight years ago. According to published reports, moreover, it is unclear whether Tampa today is substantially owned and effectively controlled by citizens of Colombia. From what we can glean, Tampa is a subsidiary of Avianca Holdings S.A.³ It is unclear where that company is established, but its SEC reports show a Panamanian registration and address.⁴ The Executive President and Chief Executive officer of Avianca Holdings is Anko van der Werff, whose citizenship is unknown.⁵ The majority owners of Avianca Holdings are BRW Aviation LLC, incorporated in Delaware, and Kingsland Holdings Ltd., apparently a Bahamian company.⁶ BRW Aviation apparently owns most of the equity but may no longer hold a controlling interest following its breach of loan conditions and resulting litigation.⁷ The second shareholder, Kingsland Holdings, which now may be in control.⁸ Kingsland Holdings is chaired by Roberto Kriete, a citizen of El Salvador, who late last year arranged together with United Airlines to loan \$250 million to Avianca Holdings.⁹

The information above demonstrates that the Department needs to reevaluate the ownership and control of Tampa and its parent, Avianca Holdings, and make appropriate findings. Only after doing so can it determine whether Tampa should be awarded valuable 7th freedom cargo rights as an airline of Colombia.

³ <http://aviancaholdings.com/English/about-avianca-holdings-sa/default.aspx>.

⁴ <http://d18rn0p25nwr6d.cloudfront.net/CIK-0001575969/bb787ab1-4acd-477a-89ee-8dc1e02606f2.pdf>

⁵ <http://aviancaholdings.com/about-avianca-holdings-sa/default.aspx?section=avianca>

⁶ http://s22.q4cdn.com/896295308/files/doc_downloads/ownership-distribution/2020/01/20191231-CERTIFICADO-COMPOSICION-ACCIONARIA-AVH-diciembre-31-de-2019-ENG.pdf;
<https://www.sec.gov/Archives/edgar/data/1575969/000119312518339953/d642532dex22.htm>

⁷ <https://www.sec.gov/Archives/edgar/data/1575969/000119312519256953/d813015d6k.htm>

⁸ <https://www.financacolombia.com/control-of-avianca-new-york-court-issues-summary-judgement-in-favor-of-united-krietes-kingsland-holdings-against-brw-aviation-efromovich/>; <http://d18rn0p25nwr6d.cloudfront.net/CIK-0001575969/936da24b-db00-4859-a999-3ce1029fbcd4.pdf>

⁹ <https://www.avianca.com/us/en/about-us/news-center/avianca-news/terms-for-loan-to-avianca/>.

Respectfully submitted,

/s/

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All carriers served with Tampa application.