

Ms T Goodwin  
Senior Air Services Negotiator  
Department for Transport  
Great Minster House  
Zone 1/26  
33 Horseferry Road  
London  
SW1P 4DR

31 July 2017

Dear Tamara

**APPLICATION BY BRITISH AIRWAYS PLC TO LEASE FOREIGN-REGISTERED AIRCRAFT**

Thank you for your email of 21 July 2017 requesting advice as to whether the following application complies with the requirements of Article 13.3 of Regulation (EC) 1008/2008.

|                                              |                                                                                                                        |
|----------------------------------------------|------------------------------------------------------------------------------------------------------------------------|
| <i>Applicant:</i>                            | British Airways Plc                                                                                                    |
| <i>Lessor:</i>                               | Qatar Airways Q.C.S.C                                                                                                  |
| <i>Aircraft:</i>                             | Nine Airbus A320, registrations A7-LAA, A7-ADA, A7-ADB, A7-ADC, A7-ADD, A7-ADE, A7-ADF, A7-ADG and A7-ADI <sup>1</sup> |
| <i>Type of lease:</i>                        | Wet                                                                                                                    |
| <i>Duration of lease:</i>                    | 2 August - 15 August 2017 (inclusive).                                                                                 |
| Publication in CAA Official Record Series 2: | 2234 - 21 July 2017 (Nos 2234)                                                                                         |

*Objections/representations*

1. The period for objections or representations ran from 21 - 28 July 2017. Comments on the application were received from 47 stakeholders and have been copied to the Department.

*EU Regulation (EC) 1008/2008*

2. Article 13.3 of Regulation (EC) 1008/2008 (the "Regulation") states that "A Community air carrier wet-leasing aircraft registered in a third country from another undertaking shall obtain

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<sup>1</sup> On 28 July 2017 British Airways revised its application to exclude A7-ADB and therefore to wet-lease eight, instead of nine, aircraft.

prior approval for the operation from the competent licensing authority”. It then sets out the conditions which must be met for the competent authority to grant such an approval.

#### *Competent Authority – Civil Aviation Authority*

3. Article 13.3(a) relates to safety and requires the Community air carrier to demonstrate to the satisfaction of the competent authority that all safety standards equivalent to those imposed by Community or national law are met. Regulation 16 of the Operation of Air Services in the Community Regulations 2009 (the “Statutory Instrument”) appoints the Civil Aviation Authority (the “CAA”) as the competent authority for the purpose of determining whether the safety standards set out in Article 13.3(a) are met. I can confirm that the CAA is satisfied in that regard.
4. We are forwarding to the Department the CAA’s lease approvals issued under the EASA Air Operations Regulation (EU) 965/2012, an exemption under Article 14.4 of Regulation (EC) 216/2008 from the need for third country pilot licence validations under Annex III of the EASA Aircrew Regulation (EU) 1178/2011, and the CAA’s Foreign Carrier Permit issued under Article 250 of UK Air Navigation Order 2016. Qatar Airways Q.C.S.C (QA) already holds a CAA Foreign Carrier Permit in respect of its UK/Qatar services and an EASA Third Country Operator authorisation issued under Regulation (EU) 452/2014.

#### *Competent Authority – Secretary of State*

5. Article 13.3(b) requires that one of three conditions be fulfilled by a Community air carrier in order to use a wet-leased aircraft registered in a third country. In accordance with Regulation 15 of the Statutory Instrument, the Secretary of State is the competent authority for the purpose of granting an approval under Article 13.3 of the Regulation and, under Regulation 8 of the Statutory Instrument, for determining whether one of the conditions set out in Article 13.3(b) is fulfilled, and also for the purposes of Article 13.4.

#### *Basis of Application*

6. In this case British Airways Plc (BA) states:
  - a. that the application conforms with condition (i) of Article 13.3(b) in that the lease is justified on the basis of “exceptional needs”.
  - b. that the application is in relation to the same aircraft<sup>2</sup> and on the same terms as that previously approved (subject to all necessary changes in relation to dates and flights to be flown), and subject to the same conditions as have been imposed by the CAA and Secretary of State for Transport in relation to that wet-lease.
  - c. that it seeks approval of this wet-lease in order to minimise significant impact on the consumer that would otherwise occur by reason of cancellation and delay due to the unavailability of Mixed Fleet cabin crew members of Unite.

#### *Reciprocity*

7. The Department confirmed in its email of 21 July 2017 that it does not intend to refuse this application on the grounds of a lack of reciprocity with Qatar (Article 13.4 of the Regulation).

#### *Background*

8. I refer to the CAA’s letters of 30 June 2017 and 14 July 2017 regarding the previous periods of industrial action undertaken by the Mixed Fleet Unite cabin crew. BA has now applied for a wet-lease to cover a further period of industrial action between 2-15 August 2017 inclusive.

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<sup>2</sup> excluding A7-ADB

9. Due to a technical issue in relation to aircraft registration A7-ADB, on 28 July 2017 BA confirmed that it does not intend to substitute this aircraft for the period sought and revised its application to request the use of eight, as opposed to nine, aircraft.
10. Although this is not the first occasion that there has been industrial action during this long-running dispute, we understand that during earlier strikes BA was able to wet-lease aircraft solely from within the Community. Because the Regulation states that Community carriers may freely operate wet-leased aircraft registered within the Community except where this would lead to endangering safety, the procedure followed for those wet-leases was different from the case now under consideration.
11. As with the two previous applications, the proposed industrial action takes place in a peak holiday period (which includes school summer holidays) when it is more difficult to lease alternative capacity from a Community carrier. BA states that it has again sought to secure aircraft capacity for the period in question from Community operators.
12. BA has identified and secured capacity from one Community operator that has one aircraft available for a total of four days within the application period (being capacity sourced from within the Community the consent of the Secretary of State is not required for that wet-lease). BA has identified limited further capacity on a second Community carrier, but states that the period of availability is not continuous and the aircraft type impractical to deploy on the routes and flight schedule required. Consequently this second aircraft would not assist BA in meeting the needs it has identified. BA states there is no availability from other Community carriers, and that the lack of adequate Community aircraft for lease over this period is the only reason that this application is being made.
13. The impact of any cancellation on consumers would be compounded by the higher load factors in the present peak season, meaning that fewer alternative seats are available. This would become cumulative as the disruption period continues, with further cancellations impacting greater numbers of passengers and even further reduced availability.
14. BA's application to wet-lease the eight QA aircraft covers the period 2 to 15 August 2017 (inclusive). It therefore runs consecutively from the previous period of industrial action which is planned to end on 1 August 2017.

#### *CAA leasing procedures*

15. The proposed lease is an extension of an existing lease, and the total period exceeds one month. The CAA's standard procedure for non-EU lease applications therefore applies. Where a leasing application needs to be determined more quickly than our 'standard' procedure would allow (i.e. allowing 10 working days for objections or representations), the CAA adjusts the period of time for submission of comments on a case-by-case basis. In each case the CAA will identify a period that is, in its reasonable opinion, appropriate.
16. In this case, BA was notified of the industrial action on 19 July 2017. BA submitted its application to extend the wet-lease on 20 July 2017. We accept that BA would have required time to establish what wet-lease capacity would be available in the EU market. This situation has therefore arisen relatively quickly, and consequently the CAA decided to reduce the usual period for objections or representations since there would be insufficient time for the Secretary of State to consider the CAA's advice and make a decision, bearing in mind that the lease is proposed to begin on Wednesday, 2 August 2017. The CAA nevertheless needed to give sufficient time to be made aware of and consider all the representations or objections that stakeholders wish us to take into account.