

Signs of a back-track on EU hushkit ruling

There are indications that pressure on the EU to push ahead with its ruling against hushkitted and re-engined aircraft is being reversed. This comes after apparent re-marketing problems with MD-80s, certified as re-engined DC-9s, which are affected by the EU ruling.

Signs have emerged that the ruling which prevents an increase in the number of Stage 3 hushkitted and re-engined aircraft from increasing in EU airspace may be under threat.

Omega Air of Ireland at the beginning of 2000 successfully achieved a ruling in the Royal Courts of Justice, London, that the clause in the EU's ruling stating that the number of re-engined aircraft with an engine bypass ratio of less than 3:1 would not be allowed to increase was unfair and not justifiable. This clause affects types like the 707 and 727 that have re-engining programmes using the Pratt & Whitney JT8D-200, which has a bypass ratio of less than 3:1.

However, although Omega won in London, the London court's ruling is not enough to have the clause removed or modified in the EU's ruling.

Overall, the EU's ruling basically has been formed to prevent the number of Stage 3 modified (either by hushkitting or re-engining) aircraft operating in EU airspace from increasing. One exception to this is aircraft re-engined with engines that have bypass ratios larger than 3:1.

Stage 2 certified aircraft on the registers of EU countries may still operate in EU airspace and have until

2002 to be modified. If they are modified they will have grandfather rights to continue operation.

Stage 3 modified aircraft that are already operating into EU airspace will also be allowed to continue. If Stage 2 aircraft or Stage 3 modified aircraft are sold to non-EU countries they will not be allowed to re-enter EU airspace. The implications of the ruling is that the number of Stage 3 modified aircraft operating in EU airspace cannot increase.

The further implications of this are that airlines with older fleets cannot increase their number of Stage 3 modified aircraft, and can only acquire aircraft certified as Stage 3 compliant at manufacture.

Those implications were thought to affect only small freight operators that rely on acquiring low capital-cost Stage 3 modified aircraft. But the ruling has met fierce opposition since its first announcement from hushkit and re-engining suppliers, as well as some major airlines. Besides the general anger at the fact that the EU has made its own ruling outside of the jurisdiction of the International Civil Aviation Organisation (ICAO), airlines with Stage 3 modified aircraft have had the

market—and market value—of their aircraft diminished by the ruling.

Northwest, for example, was believed to have been attempting to sell some of its hushkitted DC-9s into east European countries before placing orders for new aircraft. The presence of a strong used aircraft market is essential for major airlines to buy new fleets. It is estimated that the EU ruling has damaged the market value of hushkitted aircraft by about 30%.

More recent developments indicate that the effects of the ruling on used aircraft are wider than originally anticipated. Alitalia is reported to have been in the process of negotiating a sale of MD-80s to a north African airline, which intended to operate these aircraft into EU airspace. The sale was stopped when it was discovered that under its original certification, the MD-80 is regarded as re-engined DC-9. Moreover, this is with JT8D-200 engines, which have a bypass ratio of less than 3:1. The aircraft would thus be prevented from operating into EU airspace once they had been registered outside the EU. Crossair's MD-80 fleet is believed to have been affected in a similar way.

European carriers are angry at the damage done to the value of their fleets, and it is thought there is now pressure within Europe to get the EU to drop or modify its ruling.

Omega's victory in London, meanwhile, means it can now go to the European Court of Justice to challenge the whole regulation, and even get it annulled. Omega will fight on the basis that the ruling is illegal. This is the finding of the Irish and UK courts, which do not have the power to annul the ruling. Omega does not expect a ruling in the EU courts before late 2001.

The EU is now also being brought to arbitration by ICAO. The US has told the EU that if it delays arbitration the US government will lobby the world trade organisation to fight the ruling. Thus, there is the danger that debate over the ruling will start a trade war. ICAO is expected to go to arbitration before the end of 2000, after which the EU will have 90 days to remedy the ruling. This could mean the EU will withdraw the ruling, although Omega does not expect this to happen. Omega is still prepared to fight the ruling on its own in the European Court of Justice. 



The EU ruling concerning Stage 3 modified aircraft has wider-reaching consequences than originally thought. The MD-80 is certified as a re-engined DC-9, and has an engine bypass ratio of less than 3:1. This means airlines in non-EU countries will not be able to fly used MD-80s added to their fleets into EU airspace, thus damaging its used market prospects.