



UNITED STATES OF AMERICA  
DEPARTMENT OF TRANSPORTATION  
OFFICE OF THE SECRETARY  
WASHINGTON, D.C.

Order 2024-12-15

Issued by the Department of Transportation  
on the 19<sup>th</sup> day of December, 2024

Served: December 19, 2024

Application of

**ARAJET, S.A.**

for an exemption from 49 U.S.C. § 41301

Docket DOT-OST-2015-0260

## ORDER GRANTING EXEMPTION

### Summary

By this Order, the U.S. Department of Transportation (“the Department”) grants, effective immediately and subject to our standard exemption conditions, the application of Arajet, S.A. (“Arajet”) for an exemption from 49 U.S.C. § 41301 to conduct its proposed Dominican Republic-U.S. scheduled combination services.<sup>1</sup>

### Application

By application filed March 1, 2023, Arajet, a foreign air carrier of the Dominican Republic, requested exemption authority under 49 U.S.C. § 40109(c) to authorize it to engage in scheduled foreign air transportation of persons, property, and mail between a point or points in the Dominican Republic via intermediate points and the U.S. coterminal points San Juan, Puerto Rico; Miami, Florida; and New York, New York, as contemplated by the Air Transport Agreement between the Government of the United States of America and the Government of the Dominican Republic signed July 22, 1986 (“the 1986 Agreement”).<sup>2</sup>

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<sup>1</sup> The conditions are attached at Appendix A.

<sup>2</sup> With respect to the portion of its application to serve New York, the applicant indicates that its request encompasses John F. Kennedy International Airport (JFK), Newark Liberty International Airport (EWR), and New York Stewart International Airport (SWF).

### Responsive Pleadings Filed<sup>3</sup>

Six individuals (hereinafter “the Objecting Parties”) initially filed objections to the Arajet application, accompanied by a variety of exhibits and other supporting materials.<sup>4</sup> Arajet filed a consolidated reply, and the Objecting Parties filed additional responsive pleadings, most of which are nearly identical to each other. Arajet subsequently notified the Department that it did not intend to respond to the additional filings made by the Objecting Parties. Later in the proceeding, an entity identified as Ava Airways SXM BV (“Ava Airways”) also filed a responsive pleading.

The Objecting Parties ask the Department to deny Arajet’s request for authority and for the most part all raise a broad scope of allegations and associated central arguments that are very similar to each other. They describe their views of what they contend is a problematic operating and organizational history of the applicant, from its establishment as Dominican Wings, S.A. in 2014, to a subsequent change in name to Fly Cana, and to ultimately its present form as Arajet. The Objecting Parties make numerous allegations of flaws and a lack of transparency in the homeland licensing action of Arajet undertaken by the Dominican Republic authorities. They assert their belief that the applicant is an unlawful entity operating with the support of nepotism and direct political support by various corrupt Dominican aviation authorities and other government officials. The Objecting Parties contend that the applicant has misrepresented its ownership and control information to the Department in the past as well as in the instant application, and in that connection, they argue that the Department should not grant Arajet’s request for waiver of the requirement that substantial ownership and effective control of Arajet rest with Dominican citizens. In some cases, they call into question the validity and/or applicability of the 1986 Agreement and maintain that granting the applicant’s request would result in unfair competition. They provide various related exhibits in their objections, including, among other things, documents such as previous filings made with the Department; certain licensing actions taken by the Department; Arajet shareholder listings; copies of air transport agreements; licenses, certificates, registrations, and similar documents issued by the Dominican Republic authorities; and excerpts from Dominican Republic aviation laws.

In reply, Arajet asserts that it has been licensed by the aviation authorities of the Dominican Republic to conduct U.S. operations and notes that it has also successfully completed the licensing processes in eleven other countries. It contends that the issuance of its various homeland licenses reflects the Government of the Dominican Republic’s formal confirmation of the carrier’s economic and operational authority pursuant to the provisions of the bilateral agreement that authorize Arajet’s proposed operations. Arajet maintains that, as a key cornerstone of air transport agreements, the Department has consistently given great weight and deference to the licensing processes and designation choices of its bilateral partners, and contends that the same should occur in this proceeding. By comparison, Arajet asserts that the Department would take a dim view of foreign licensing officials second-guessing the

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<sup>3</sup> A number of the responsive pleadings in this proceeding were not filed in conformance with our procedural regulations set forth in 14 CFR Part 302. However, in the interest of attaining a complete record in this proceeding, we will accept all pleadings filed.

<sup>4</sup> The Objecting Parties are as follows: Mr. Manuel Antonio Alvarez; Mr. Alfredo De Dios De La Cruz Carvajal; Mr. Willie Banks-Williams; Ms. Jocelyn Curiel; Mr. John Franco; and Mr. Christopher Labiche.

Department's licensing procedures and decisions in evaluating applications filed with the Department by its own U.S. carriers.

Arajjet asserts that the objections are riddled with inaccurate and misleading statements. It maintains that the Objecting Parties had every opportunity to raise their concerns in the Arajjet certification process in the Dominican Republic, but chose not to do so. Arajjet ultimately takes the position that the Objecting Parties cannot dispute the fact that Arajjet is duly licensed in the Dominican Republic and has been designated for the services that are requested in this proceeding. It argues that the Department has consistently recognized that the grant of exemption authority to a foreign carrier satisfies the public interest requirements where a foreign carrier has been properly designated to operate the requested routes under a bilateral air transport agreement, and reiterates that Arajjet fully satisfies this requirement. In addition, the applicant asserts that its proposed flights will serve many of the policy and public interest factors set forth in Section 40101 of the U.S. Transportation Code.

With respect to its request for a waiver from ownership and control requirements, Arajjet cites Department precedent in support of its position and contends that its non-Dominican Republic investors are almost entirely either U.S.-based entities such as Bain Credit, or citizens of countries that are parties to Open Skies Agreements with the United States -- such as the United Kingdom, Colombia, Ireland, Spain, Canada, or Portugal. Arajjet notes that the Objecting Parties offer no reason to believe that any of these relationships are in any way adverse to U.S. aviation policy or interests, because no such reasons exist. Arajjet further notes that the Dominican Republic is a major tourist destination for U.S. citizens, where U.S. carriers operated more than 52,000 passenger flights over the last year. Arajjet contends that grant of its requested exemption will create the possibility of a degree of balance in that market. Arajjet also expressed strong support for negotiations between the United States and the Dominican Republic toward an Open Skies Agreement.

In addition and, for the most part, nearly identical pleadings filed following the Arajjet reply, the Objecting Parties question the truthfulness of Arajjet's response in numerous respects and steadfastly reiterate their initial arguments in asking the Department to deny the Arajjet application. They continue to maintain that Arajjet is an unlawful entity, question the legality of the Arajjet certification process carried out by the Dominican aviation authorities, and raise issues with the carrier's history and ownership/control. They make specific reference to changes in Arajjet shareholder reports that occurred subsequent to their initial objections, in connection with restating allegations of nepotism and the involvement of "politically exposed persons" in the ownership of Arajjet. Some make an assertion that Arajjet should not be granted an exemption because they offer scheduled rather than charter service. Other allegations made include claims that Arajjet (1) engages in predatory pricing, (2) may have attempted to influence the licensing of U.S. carriers by the Dominican Republic aviation authorities, and (3) has misrepresented its Boeing aircraft order description. The Objecting Parties claim that the Federal Aviation Administration (FAA) must conduct a technical review of Arajjet and assert that there is a high possibility that a FAA International Aviation Safety Assessment (IASA) inspection of the Dominican Republic may take place. Some dispute Arajjet's assertion that their objections should have been raised in the homeland licensing of Arajjet in the Dominican Republic, whether due to a lack of awareness of the homeland licensing proceeding or for other reasons.

Subsequent to the passage of the procedural objection and reply periods associated with the Arajet application and the initial rounds of responsive pleadings filed, Ava Airways filed a responsive pleading in which it appears to raise issues with alleged improprieties by the civil aviation authorities of St. Maarten in its licensing of Arajet.

### **Subsequent Developments**

Two important developments that are relevant to this licensing proceeding took place in the U.S. aviation relationship with the Dominican Republic after the filing of the Arajet application.

First, with respect to bilateral developments, on August 2, 2024, the United States and Dominican Republic signed the 2024 U.S.-Dominican Republic Air Transport Agreement (“the 2024 Open Skies Agreement”) that supersedes the 1986 Agreement. Following ratification of the 2024 Open Skies Agreement by the Dominican Republic, it entered into force on December 19, 2024.

In the safety arena, the FAA conducted an IASA on the Instituto Dominicano de Aviación Civil (IDAC) of the Dominican Republic in 2023 through 2024. On September 13, 2024, the FAA announced that the Dominican Republic has maintained its IASA Category 1 (in compliance with International Civil Aviation Organization (ICAO) safety standards) rating.

### **Decision**

The Department has decided to grant Arajet’s request for exemption authority under 49 U.S.C. § 40109, subject to conditions. Specifically, we will grant Arajet exemption authority as specified in ordering paragraph one below.

In reaching our decision, we find that grant of the exemption authority to Arajet is consistent with the public interest, and that the applicant has demonstrated on the record that it is financially and operationally qualified to perform the services authorized.<sup>5</sup> In addition, we find that the authority we are granting Arajet is provided for in the 2024 Open Skies Agreement.<sup>6</sup> We have verified the applicant’s compliance with 14 CFR Parts 203 (Warsaw liability waiver) and 205 (insurance requirements). We also find that grant of the authority would not constitute a major regulatory action under the Energy Policy and Conservation Act of 1975.

We note that the applicant is properly licensed by its homeland to perform the proposed services. In this regard, we have carefully reviewed the allegations made by the Objecting Parties in which they assert concerns of illegalities or improprieties in the homeland licensing process of Arajet by the Dominican Republic, as well the purported problematic existence of government corruption and involvement of government officials in the ownership and/or organizational structure of the applicant or their influence in its licensing history. Taking into account the

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<sup>5</sup> The applicant filed a motion requesting confidential treatment of its financial submissions under the provisions of 14 CFR § 302.12. Good cause having been shown, we will grant this request.

<sup>6</sup> We note that the authority granted here is limited to the specific U.S. points provided for in Annex I of the 1986 Agreement as requested by Arajet in its application. However, Arajet may apply in the future for the broader authority provided for pursuant to Article 2 of the 2024 Open Skies Agreement.

record before us and the operative international aviation legal and bilateral framework in which we are required to consider the Arajet request, we find no persuasive basis upon which to challenge either the validity of the applicant's homeland operating authority or the process under which it was issued in the Dominican Republic. Nor do we find that the largely unsubstantiated claims of nepotism, corruption, or any other similar concerns set forth by the Objecting Parties warrant a determination that grant of the Arajet application would be contrary to the public interest. To the extent that the Objecting Parties may be able to further support their claims and wish to pursue them, they are matters that would be best addressed by the appropriate authorities of the Dominican Republic. Similarly, with respect to the filing of Ava Airways SXM BV, we also find that this licensing proceeding is not the appropriate forum for its concerns to be addressed.

With respect to safety considerations raised in this case, we note that on December 12, 2024, the FAA advised us that it knows of no reason why we should act unfavorably on Arajet's exemption application. In addition, as stated earlier in this Order, on September 13, 2024, the FAA announced that it had completed an IASA of the Dominican Republic IDAC that resulted in a Category 1 (in compliance with ICAO safety standards) rating. Moreover, we further note that Arajet itself will have to undergo FAA certification. In light of these factors, with regard to any safety-related concerns raised on the record by the Objecting Parties, we find no public interest basis that would call for denial of the Arajet application on those grounds.

With respect to the ownership and control of the applicant, the record as clarified by the applicant in its reply to the Objecting Parties indicates that Arajet is wholly owned by ARAJET Holdings Limited, a company formed in the United Kingdom. ARAJET Holdings Limited is owned 80 percent by Hulansera, S.L., a Spanish company, which in turn is wholly owned by Bain Capital Credit SSS Fund, a sub-fund of the Bain Capital Credit Global ICAV, an umbrella fund, with segregated liability between sub-funds, authorized by the Central Bank of Ireland ("Bain Capital Credit SSS"). Bain Capital Credit SSS is owned by various entities that are managed or advised by Bain Capital Credit, LP ("Bain Credit"). The remaining 20% of ARAJET Holdings is owned by the founders of Arajet and other shareholders. Victor Pacheco, a Dominican citizen and founder of Arajet, owns 7.394% of Arajet Holdings through his wholly owned Panamanian company, Pachas Inc. Michael Powell, a UK citizen, also owns 7.394%. The remaining shareholders in this group all own less than 5%. As for the control of the applicant, Mr. Pacheco, a Dominican citizen, serves as its CEO and President of the Board. The applicant's three remaining board members and several of its other identified key management personnel are U.S. citizens. Additional key management personnel include citizens of Ireland, Colombia, the United Kingdom, Venezuela, Spain, Portugal and Canada.

Based on the above, we are unable to find that the applicant is substantially owned and effectively controlled by citizens of the Dominican Republic. The applicant itself acknowledges this factor in its application, and in that connection, it requests that the Department waive the relevant homeland ownership and control requirements, asserting that the record and Department precedent support its waiver request. For their part, the Objecting Parties raise various concerns with past and current representations by Arajet of its ownership and control structure, and ask that the Department deny the applicant's request for an ownership and control waiver. We have considered the positions of both parties. Given the citizenship of the various ownership and

control interests involved in the carrier and decades of Department ownership and control waiver precedent, particularly in light of the recently concluded 2024 Open Skies Agreement, we see nothing in the ownership and control of the applicant that would be inimical to U.S. aviation policy or interests and call for denial of the requested waiver. Therefore, in the circumstances presented, we find that to the extent a question may exist as to the ownership and control of the applicant, a waiver of the 2024 Open Skies Agreement's ownership and control requirements is warranted.

We reject the assertion of the Objecting Parties that approval of Arajet's request would somehow result in unfair competition. We again note that the services at issue are bilaterally authorized, and we see nothing in the arguments presented that would lead us to not honor our obligation to comply with the provisions of the 2024 Open Skies Agreement. In any event, the injection of new services by another Dominican carrier into what is one of the U.S.'s largest tourist markets in North America, and one with a significant number of U.S. carriers providing a high volume of services, should present additional options to the traveling public and have only a favorable impact on competition.

We have also determined that the remainder of the Objecting Parties' other claims arguing for denial of Arajet's request fall short in merit and/or are not germane to this licensing proceeding. They include, among other things, allegations made regarding Arajet's pricing practices, the applicant's alleged attempt to exert influence in the licensing of U.S. carriers in its homeland, and claims related to its aircraft orders.

In sum and in view of the above factors, we find that grant of this exemption authority, as conditioned and for a two-year term, is warranted.

This Order is issued under authority redelegated by the Under Secretary of Transportation for Policy in 49 CFR § 1.25a(b)(6)(ii)(B), as directed by the Assistant Secretary for Aviation and International Affairs under 49 CFR § 1.60(b).

**ACCORDINGLY,**

1. We grant the request of Arajet, S.A. for an exemption from 49 U.S.C. §41301 to the extent necessary to permit it to engage in scheduled foreign air transportation of persons, property and mail between a point or points in the Dominican Republic via intermediate points and the U.S. coterminal points San Juan, Puerto Rico; Miami, Florida; and New York, New York;
2. The exercise of the privileges granted above is subject to compliance by Arajet, S.A. with the conditions listed in Appendix A;
3. Our action granting the exemption authority described herein is effective immediately, for a period of two years from the issue date of this Order;
4. We grant the request of Arajet, S.A. for confidential treatment of its financial submissions, consistent with the provisions of 14 CFR §302.12;

5. Our action here does not constitute a major regulatory action under the Energy Policy and Conservation Act of 1975, as defined in 14 CFR §313.4(a)(1) of our regulations;<sup>7</sup>
6. We may amend, modify, suspend, or revoke the exemption authority set forth herein at our discretion at any time and without hearing;
7. To the extent not acted upon above, we dismiss all requests for exemption authority in the above-captioned Docket; and
8. We will serve a copy of this Order on the applicant; the other parties to this proceeding specified in the body of this Order; the Embassy of the Dominican Republic in Washington, D.C.; the Department of State; the Federal Aviation Administration; and the Transportation Security Administration.

By:

**SETH GAINER**  
Deputy Assistant Secretary for  
Aviation and International Affairs

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<http://www.regulations.gov>*

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<sup>7</sup> This finding is based on the fact that the grant of the requested exemption will not result in a near-term net annual change in aircraft fuel consumption of 10 million gallons or more.

In the conduct of the operations authorized, the foreign carrier applicant shall:

- (1) Not conduct any operations unless it holds a currently effective authorization from its homeland for such operations, and it has filed a copy of such authorization with the Department;
- (2) Comply with all applicable requirements of the Federal Aviation Administration, the Transportation Security Administration, and with all applicable U.S. Government requirements concerning security, including, but not limited to, 14 CFR Parts 129, 91, and 36 and 49 CFR Part 1546 or 1550, as applicable. To assure compliance with all applicable U.S. Government requirements concerning security, the holder shall, before commencing any new service (including charter flights) from a foreign airport that would be the holder's last point of departure for the United States, contact its International Industry Representative (IIR) (formerly referred to as International Principal Security Inspector) to advise the IIR of its plans and to find out whether the Transportation Security Administration has determined that security is adequate to allow such airport(s) to be served;
- (3) Comply with the requirements for minimum insurance coverage contained in 14 CFR Part 205, and, prior to the commencement of any operations under this authority, file evidence of such coverage, in the form of a completed OST Form 6411, with the Federal Aviation Administration's Program Management Branch (AFS-260), Flight Standards Service (any changes to, or termination of, insurance also shall be filed with that office);
- (4) Not operate aircraft under this authority unless it complies with operational safety requirements at least equivalent to Annex 6 of the Chicago Convention;
- (5) Conform to the airworthiness and airman competency requirements of its Government for international air services;
- (6) Except as specifically exempted or otherwise provided for in a Department Order, comply with the requirements of 14 CFR Part 203, concerning waiver of Warsaw Convention liability limits and defenses;
- (7) Agree that operations under this authority constitute a waiver of sovereign immunity, for the purposes of 28 U.S.C. 1605(a), but only with respect to those actions or proceedings instituted against it in any court or other tribunal in the United States that are: (a) based on its operations in international air transportation that, according to the contract of carriage, include a point in the United States as a point of origin, point of destination, or agreed stopping place, or for which the contract of carriage was purchased in the United States; or (b) based on a claim under any international agreement or treaty cognizable in any court or other tribunal of the United States. In this condition, the term "international air transportation" means "international transportation" as defined by the Warsaw Convention, except that all States shall be considered to be High Contracting Parties for the purpose of this definition;
- (8) Except as specifically authorized by the Department, originate or terminate all flights to/from the United States in its homeland;
- (9) Comply with the requirements of 14 CFR Part 217, concerning the reporting of scheduled, nonscheduled, and charter data;
- (10) If charter operations are authorized, except as otherwise provided in the applicable aviation agreement, comply with the Department's rules governing charters (including 14 CFR Parts 212 and 380);
- (11) Comply with such other reasonable terms, conditions, and limitations required by the public interest as may be prescribed by the Department, with all applicable orders or regulations of other U.S. agencies and courts, and with all applicable laws of the United States; and
- (12) Be subject to all applicable provisions of any treaty, convention or agreement affecting international air transportation now in effect, or that may become effective during the period this exemption remains in effect, to which the United States and the holder's homeland are or shall become parties.

This authority shall not be effective during any period when the holder is not in compliance with the conditions imposed above. Moreover, this authority cannot be sold or otherwise transferred without explicit Department approval under Title 49 of the U.S. Code.