

## **DOT Review Background (July 1, 2003)**

The ownership and control of ASTAR Air Cargo (formerly DHL Airways) is currently under a competitor-driven investigation by the U.S. Department of Transportation. The company believes that the recent acquisition of the airline by a U.S. investor group will resolve any issues with regulators that may have existed regarding ASTAR Air Cargo citizenship and control, but doubts that the facts will mollify competitors, such as UPS and FedEx. Those companies have the elimination of ASTAR Air Cargo as a competitor in the overnight charter air cargo business as their sole and consuming goal.

### **Background**

The air cargo industry, according to the DOT, is the most dynamic and fastest changing sector of air transportation. Deregulated in 1979, it is highly competitive and has a cherished reputation for serving American consumers and industry with excellence. Its companies are organized in a number of ways: Atlas Air, for example, the largest operator of Boeing 747 all-cargo aircraft, provides contract services in the name of other, mostly foreign air carriers; other carriers, such as Emery no longer operate aircraft in their own name at all. The two largest parcel and express carriers, FedEx and UPS, operate a mix of their own equipment and charter services from others throughout the world.

ASTAR Air Cargo, like a number of other carriers, operates pursuant to long term contracts, using cost plus arrangements or simply by charters. By providing air carrier services for its customer, DHL Worldwide Express, ASTAR Air Cargo allows the DHL network to compete with the two clearly dominant companies in the express parcel market - UPS and FedEx.

U.S. certified airlines must be "citizens of the United States" as defined by federal aviation law and regulations promulgated by the DOT. This process is supervised and enforced by the DOT. An airline's citizenship status is regularly reaffirmed through "continued fitness reviews." A clearly defined body of law and DOT policy has evolved to provide safe harbors for compliance and assure "actual" day-to-day operational control by U.S. citizens. The DOT has advanced a well-accepted industry-wide policy of encouraging "informal," yet rigorous, Part 203 non-public reviews in continuing fitness evaluations. ASTAR Air Cargo has been a certified air carrier providing cargo airline services since 1972.

After a significant corporate restructuring in 2001 that resulted in the spin-off of the ground operation to a separate corporate entity (a foreign-controlled U.S. corporation, DHL Worldwide Express (USA)), ASTAR Air Cargo's new corporate structure and ownership were reviewed by the DOT, and the DOT affirmed ASTAR Air Cargo's continued status as a U.S. citizen air carrier.

U.S.-owned ASTAR Air Cargo is the largest of several airlines operating for DHL Worldwide in the United States. The 2001 airline restructuring was significant; the new

ground company, DHL Worldwide Express, had been owned by ASTAR Air Cargo and is now owned by foreign interests, DHL International Ltd., a Brussels-based company. DHL International is owned by Deutsche Post AG, -- the publicly held German postal operator. Thus, the restructuring resulted in the continuation of ASTAR Air Cargo's status as a U.S. owned and controlled airline under 49 USC 401 02 (a) (15).

Search the docket regarding [DOT's review](#). Note: when on the DOT's Document Management System Web site, enter the following docket numbers: 13089, 13580 or 13787.