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Order 2000-7-8
Served: July 7, 2000

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

Issued by the Department of Transportation
on the 7th day of July, 2000

Joint Application of

**AMERICAN AIRLINES, INC.
and THE TACA GROUP**

for approval of and Antitrust Immunity for
an Alliance Agreement under exemptions under
49 U.S.C. §§ 41308 and 41309

Docket OST 2000-7088 - 12

**AMERICAN AIRLINES, INC. *et al.*,
and THE TACA GROUP RECIPROCAL CODE-
SHARE SERVICES PROCEEDING**

Docket OST 1996-1700 - 156

ORDER REQUIRING ADDITIONAL INFORMATION

Application

On March 17, 2000, American Airlines, Inc. ("American"), and its regional affiliates, and the TACA Group airlines ("TACA")¹ filed an application for approval of and antitrust immunity for an Alliance Agreement dated September 27, 1996. American and TACA each submitted additional evidence in connection with the application and filed a joint motion under 14 C.F.R. 302.12 (Rule 12) of our regulations requesting confidential treatment for this material. On the same date, American and the TACA Group (Docket OST-1996-1700) filed a joint application for renewal and amendment of their code-share authority and other related exemption authority.²

Responsive Pleadings

On April 3, 2000, Delta Air Lines, Inc. ("Delta") filed a motion asking the Department to require the Joint Applicants to produce additional documents and information that Delta claims are "vital" to our ability to make a decision, and for interested parties to comment on these applications. Delta also moved that the Department clarify that confidential

¹ Aviateca S.A., Lineas Aereas Costarricenses S.A., Nicaraguense de Aviacion S.A., TACA International Airlines, and TACA de Honduras S.A.

² See Order 98-5-26, issued May 20, 1998. The joint applicants invoked the automatic extension provisions of the Administrative Procedure Act, 5 U.S.C. 558(c), as implemented by 14 C.F.R. Part 377.

documents produced by the Joint Applicants in either proceeding may be used in reference to the other proceeding; and that objecting parties should also have the opportunity to file new or supplemental answers to the two proceedings, once the requested material has been produced by the applicants.³

On April 12, 2000, Continental Airlines, Inc. ("Continental") filed an answer supporting Delta's motion. Continental also asks the Department to direct the Joint Applicants to submit other supplemental information it maintains are "essential" to our determinations.

On April 12 and 20, American and the TACA Group filed answers opposing these requests. Essentially, they argue that each of these pleadings were filed to frustrate and delay the implementation of the proposed alliance, merely postponing for consumers the full benefits of the open-skies agreements. The Joint Applicants argue that they have already provided the Department with sufficient evidentiary materials for the Department to evaluate their requests.

Additional Information Requirements

Based on our preliminary review of the applications and comments, we have determined that in light of the issues that have been raised, certain additional information is relevant for a thorough assessment of these two applications. We therefore require American and the TACA Group to provide in English additional evidentiary information to the Department, produced by or on behalf of the Joint Applicants since May 20, 1998; specifically, that they:

1. Provide documents or information that were prepared by or for any officer, director, or individual exercising similar functions that evaluate or analyze potential code sharing or other cooperative agreements/arrangements between the TACA Group (as individual airlines or as a group) and any U.S. airline in the U.S.-Central America market.
2. Provide documents or information that discuss/consider interrelationships of this arrangement with other code-share and alliance arrangements in the U.S.-Central America and U.S.-South America markets. Also, provide corporate documents or information that discuss the integration of this arrangement with the oneworld alliance.
3. Provide analysis/information that shows the extent to which traffic and revenue forecasts for this arrangement will be stimulated versus diverted from other U.S. carriers.

³ To allow the Department sufficient time to consider the merits of this and other pleadings that might be filed in support or opposition to Delta's motion, we found it appropriate to suspend the procedural schedules in these two cases. At that time, we stated that we would rule on these matters by separate Department action. See Notice issued April 7, 2000.

4. Explain in detail why American and the TACA Group have been unable to implement on Sabre the Department's Miami-Central America blocked-space condition. Explain the differences between the blocked-space arrangements displayed on Sabre and the American-TACA blocked-space requirement. Describe in detail all efforts by American-TACA to implement the Department's blocked-space condition. Explain in detail the estimated total cost of implementing the Department's blocked-space condition on Sabre and the amount of time required to complete such implementation.
5. Provide corporate documents or information that discuss plans to seek additional antitrust-immunized alliances in the U.S.-Central America or U.S.-South America markets.
6. Provide copies of internal or third party documents/studies in the possession of the applicants that discuss or consider or analyze the impact of the display of code-share arrangements in computer reservation systems (including the multiple displays of flights under different codes) on travel agency bookings, airline sales, and airline market share.
7. Provide internal or third party studies, surveys, analyses and reports that were prepared by or for any officer, director, or individual exercising similar functions for the purpose of evaluating or analyzing the proposed agreements/arrangements with respect to traffic, revenue, and market share forecasts for all markets that will be affected by the proposed code-share arrangement.
8. Provide all studies, reports, and analyses that discuss route development, internal expansion, service expansion, or marketing plans or strategies, concerning the Joint Applicants' air services between the U.S. and Central America and the Joint Applicants' air services behind and beyond the U.S. and Central America.
9. Provide copies of the "FFP Agreements" and the "Services Agreement," defined as "Principal Agreements" by the Alliance Agreement.
10. Provide copies of all "written reports" submitted by the Joint Alliance Committee to the management of American and/or the TACA Group, as described under § 8 (b) of the Alliance Agreement.
11. Provide the Department with all redacted provisions of the Alliance Agreement.
12. Provide copies of all analyses, studies, or reports in the possession of the applicants which were prepared either by the staff of the applicants or by any third party (regardless of whether they were acting on behalf of the applicants) that address the issue of Miami's comparative advantage as a U.S. gateway/hub in the U.S.-Central America market.

Regarding Delta's Information Item 3: the Joint Applicants state that they have no additional information other than what they have already filed confidentially on March 17. With regard to the request by Delta and Continental about the Joint Applicants' exclusivity provision, we note that the Joint Applicants recognize that the Department earlier prohibited the enforcement of any exclusivity provision in their code-share arrangement. Order 98-5-26, issued May 20, 1998, at 23. The Joint Applicants state that they will continue to adhere to the Department's determinations on this matter. Finally, Delta asks the Department to require the Joint Applicants to provide a 100 percent sampling of their O&D data. Among other O&D data, the TACA Group has submitted information about its top 100 O&D markets to/from the United States for 1999. We note that this submission is consistent with our data requests in other similar cases. Furthermore, Delta does not provide the Department with a reason as to why the TACA Group data submission is insufficient for a thorough evaluation of this case.

Regarding Continental's Information Items 3 and 5: the Joint Applicants state that they possess no such documents. Continental also requested information about airport facilities at points served by the TACA Group in Central America. The Joint Applicants state that none of the affected airports is constrained by any lack of available gates, facilities, or slots. They further state that they possess no documents responsive to this request.

Other Issues

Consistent with American's recognition that the data and documents submitted in Docket OST-2000-7088 are also relevant to the request filed by American and the TACA Group in Docket OST-1996-1700,⁴ we will grant to counsel and outside experts for the interested parties in Docket OST-1996-1700 immediate interim access to all confidential materials filed in Docket OST-2000-7088. However, we will require that interested parties file appropriate affidavits in advance with the Department in Docket OST-2000-7088 and file a copy of such affidavit in Docket OST-1996-1700.⁵ Our actions here will make evidentiary materials available for use by interested parties in either of the pending cases.

Finally, when we have determined that the records of these cases are complete, we will announce an appropriate procedural schedule.

Accordingly,

1. We direct American Airlines, Inc., Aviateca S.A., Lineas Aereas Costarricenses S.A., Nicaraguense de Aviacion S.A., TACA de Honduras S.A., and TACA International Airlines S.A. to submit the additional evidentiary information set forth in this order;

⁴ See Joint Answer filed on April 12, at 2.

⁵ For a description of affidavit procedures, see Notice served April 7, 2000.

2. We direct the Joint Applicants to submit an original and five copies of the additional information requested in this order. The Joint Applicants shall also accompany all foreign language documents with English translations;
3. We grant to counsel and outside experts for the interested parties in Docket OST 1999-1700 immediate interim access to all confidential materials filed in Docket OST 2000-7088, subject to the procedures and restrictions set forth in the Department's Notice of April 7, 2000, Docket 2000-7088;
4. We defer consideration of this matter pending further notice;
5. Upon our determination that the applications are complete, we will establish a procedural schedule for comments and such other responsive pleadings as may be determined necessary to decide these matters fairly and expeditiously; and
6. We shall serve this order on American Airlines, Inc.; Aviateca S.A.; Lineas Aereas Costarricenses S.A.; Nicaraguense de Aviacion S.A.; TACA de Honduras S.A.; and TACA International Airlines S.A.; the Ambassadors of El Salvador, Costa Rica, Guatemala, Nicaragua, and Honduras in Washington, D.C.; the Department of Justice (Antitrust Division); the Department of State (Office of Aviation Negotiations); and all other parties served with the applications.

By:

A. BRADLEY MIMS
Acting Assistant Secretary for Aviation
and International Affairs

(SEAL)

*An electronic version of this document is available on the World Wide Web at:
http://dms.dot.gov/reports/reports_aviation.asp*