

**BEFORE THE
DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.**

**AMERICAN AIRLINES, INC., et. al.,
and THE TACA GROUP RECIPROCAL
CODESHARE SERVICE PROCEEDING**

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) **Docket OST-96-1700**
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ANSWER OF DELTA AIR LINES, INC.

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April 3, 2000

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ANSWER OF DELTA AIR LINES, INC.

On March 17, 2000, American Airlines, Inc. (“American”) and the TACA Group (“TACA”) (collectively the “Joint Applicants”) applied for renewal and a substantial liberalization of their U.S.-Central America codeshare and related exemption authority. On the same date, American and TACA also applied for antitrust immunity to enable the Joint Applicants to fix prices, pool revenues, and market their services as if they were a single merged entity.

Delta Air Lines, Inc. (“Delta”) opposes any renewal or expansion of this anticompetitive codeshare arrangement.¹ The American/TACA codeshare application was approved in 1998 notwithstanding the serious concerns raised by the U.S. Department of Justice and the objections of Delta and other airlines. It was only through the imposition of significant conditions that the Department

¹ Delta will confine its remarks here to the codeshare renewal and expansion application, and will separately answer the Joint Application for Antitrust Immunity once the Department determines that application is complete.

was able to rationalize approval of this fundamentally anticompetitive codeshare arrangement.

American and TACA's "renewal" application seeks to eliminate substantially all of the necessary competitive safeguards that the Department insisted upon to try and mitigate the anticompetitive effects of this unhealthy codeshare arrangement. Moreover, the Department specifically stated that TACA's failure to enter into a competitive codeshare agreement with another U.S. airline – which TACA has not done -- would be considered a negative factor in deciding whether the American/TACA arrangement should be renewed. See Order 97-12-35 at 29 ("in reviewing any request for renewal of this proposed authority, and in its ongoing review of the conduct of these approved arrangements, the Department will consider the competitive structure of the market at that time, and consider whether the TACA Groups' failure to engage in code-share relationships with additional U.S. carriers has contributed to a market structure that does not continue to support the approval of a code-share arrangement . . .")

Not only has TACA failed to enter into a codeshare relationship with another U.S. carrier, but TACA's decision to seek antitrust immunity with American after so short a period of time makes it abundantly clear that the intent of this proposed arrangement from the outset was and remains to integrate the American/TACA carriers as a single entity and exclude competitors from U.S.-Latin America routes, and at the critical Miami gateway in particular. Thus, the Department's efforts to

ensure healthy competition through multiple codeshares at Miami has been entirely frustrated, and the American/TACA codeshare renewal conditions stated by the Department in Order 97-12-35 have not been met.²

Continuation of this codeshare, let alone on the completely unconditional basis proposed by American and TACA, is not in the public interest. The Department's original public interest and competition analysis concluded that the proposed arrangement would "further solidify American's position as the dominant carrier in Central America" and "raises serious concerns regarding future competition in the affected markets." Order 97-12-35 at 2, 26.

² As noted, Delta will address the issues raise by the Joint Applicants' antitrust immunity application in a separate answer. However, the provisions of the American/TACA alliance agreement relating to the formation of a "Joint Alliance Committee" (Article 9), and the exclusivity provisions related to "Other Agreements" (Article 10) are contrary to the Department's codeshare approval conditions that expressly prohibited these exact sorts of agreements between American and TACA.

In its Comments, the Department of Justice found that the benefits of the American/TACA codeshare arrangement were very slight, and that even with the Department's proposed conditions, the substantial risk to competition and the public interest could not be eliminated:

- “The claimed efficiency benefits that are unique to this transaction are very slight . . .” DOJ Comments at 2.
- “As recognized by the Department, *the risk of harm* to overlapping city-pairs [sic] markets in this case *is not trivial*. In the overlapping nonstop Miami-Central American city pairs, American and TACA have combined market shares ranging from a low of 88% to a high of 100%.” DOJ Comments at 11 (emphasis added).
- “If this Agreement held out the potential for conferring pro-competitive benefits on large numbers of passengers, it might be appropriate to approve it subject to condition crafted to minimize the accompanying competitive problems. *But, the Department should recognize that it cannot eliminate the risks to competition with any conditions that it might impose, and this agreement does not offer significant pro-competitive efficiencies.*” DOJ Comments at 11 (emphasis added).

The Joint Applicants' renewal application seeks to eliminate even the minimal competitive safeguard of a blocked-space codeshare capacity requirement at Miami, which the Department imposed to protect competition at that critical gateway. The Joint Applicants assert that limitations in SABRE CRS architecture and the computer programming necessary to accommodate a blocked-space arrangement for Miami-Central America routes is cost prohibitive, resulting in the Joint Applicants electing to codeshare only on non-Miami segments. While it may be commercially expedient for the Joint

Applicants to simply eliminate the Department's conditions designed to safeguard competition, it would not be consistent with the public interest to do so.

It is highly suspect for American to claim that it lacks the technology to develop simple blocked-space codeshare capability (which it would prefer not to do), when, at American's urging, SABRE has been able to accomplish much more difficult programming tasks, such as Alliance display preferences to support American's oneworld objectives. American is one of the industry leaders in CRS automation and, until recently, AMR was a major shareholder of SABRE. For its part, Delta has successfully developed the technology to support both blocked-space and free-sale codeshare arrangements.

American's dominance at Miami combined with Miami's unique importance as the largest gateway to Latin America with the largest number of local captive U.S.-Central America passengers, urgently requires, at a minimum, a blocked-space condition on any codeshare arrangement to ensure that these two primary competitors have appropriate incentives to sell against one another. The Department has previously found that: "Since no carrier besides American has a hub at Miami, it is unlikely that any other carrier could mount effective nonstop service in any of these Miami-Central America markets, even if the Joint Applicants charged supra-

competitive prices or reduced service below competitive levels.” Order 97-12-35 at 26.

In light of the unique dominance of American and the TACA Group at Miami, the Department imposed the blocked-space codeshare requirement:

“We find that these proposed conditions are necessary to guarantee that American and the TACA Group continue vigorous head-to-head competition in these specific markets. If each carrier is required to market its portion of an aircraft as best it can, once the blocked-space arrangements are made, each will also have a strong incentive to fill those seats, without the potential dilution of competition that may result from provisions permitting unsold seats to be exchanged.” *Id.* at 30.

The Department's proposed conditions were intended to “erect a wall of independence around each of the applicant’s marketing of services in these markets.” *Id.* The Joint Applicants’ renewal application, particularly when viewed in context of the simultaneously-filed antitrust immunity application, is intended to tear down the wall of independence that had been carefully constructed by the Department to protect the public interest.

Conclusion

TACA has plainly forsaken any possibility of entering into a procompetitive codeshare relationship with another carrier, and, as evidenced by the proposed revised renewal conditions and the concurrently filed antitrust immunity application, American and TACA are only intent on deepening their level of cooperation and grip on Central America services, particularly at Miami. In these circumstances, neither

the public interest requirement nor the Department's explicit codeshare renewal conditions have been satisfied, and the Joint Application must be denied.

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CERTIFICATE OF SERVICE

I hereby certify that I have, this 3rd day of April, 2000, served the foregoing Answer of Delta Air Lines, Inc., upon those persons listed on the attached service list by depositing copies thereof in the United States mail, first class, postage prepaid.

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