

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

Joint Application of)
)
AMERICAN AIRLINES, INC.;)
and THE TACA GROUP) Docket OST-00-7088
)
under 49 U.S.C. 41308 and 41309 for approval of)
and antitrust immunity for agreement)
)

)
AMERICAN AIRLINES, INC., et al.,)
and THE TACA GROUP RECIPROCAL) Docket OST-96-1700
CODESHARE SERVICE PROCEEDING)
)

**JOINT ANSWER OF THE TACA GROUP
AND AMERICAN AIRLINES, INC. TO
MOTION OF DELTA AIR LINES, INC.**

Communications with respect to this document should be addressed to:

For The TACA Group:

ROBERT D. PAPKIN
JAMES V. DICK
Squire, Sanders & Dempsey, LLP
1201 Pennsylvania Avenue, NW
Washington, D.C. 20004
(202) 626-6600
(202) 626-6780 (fax)

For American Airlines, Inc.:

HENRY C. JOYNER
Senior Vice President – Planning
American Airlines, Inc.
P.O. Box 619616, MD 5621
DFW Airport, Texas 75261

WILLIAM K. RIS, JR.
Senior Vice President – Government Affairs
American Airlines, Inc.
1101 17th Street, N.W., Suite 600
Washington, D.C. 20036

ARNOLD J. GROSSMAN
Vice President – International Affairs
American Airlines, Inc.
P.O. Box 619616, MD 5635
DFW Airport, Texas 75261

J. OTTO GRUNOW
Managing Director – International Affairs
American Airlines, Inc.
P.O. Box 619616, MD 5639
DFW Airport, Texas 75261

CARL B. NELSON, JR.
Associate General Counsel
American Airlines, Inc.
1101 17th Street, N.W.
Suite 600
Washington, D.C. 20036
(202) 496-5647
(202) 857-4246 (fax)

April 12, 2000

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

Joint Application of)	
)	
AMERICAN AIRLINES, INC.;)	
and THE TACA GROUP)	Docket OST-00-7088
)	
under 49 U.S.C. 41308 and 41309 for approval of)	
and antitrust immunity for agreement)	
)	

)	
AMERICAN AIRLINES, INC., et al.,)	
and THE TACA GROUP RECIPROCAL)	Docket OST-96-1700
CODESHARE SERVICE PROCEEDING)	
)	

**JOINT ANSWER OF THE TACA GROUP
AND AMERICAN AIRLINES, INC. TO
MOTION OF DELTA AIR LINES, INC.**

The TACA Group and American Airlines, Inc. hereby jointly answer the Motion submitted on April 3, 2000, by Delta Air Lines, Inc. to require TACA and American to produce additional documents and information in connection with the above-captioned joint applications for the renewal and expansion of the existing TACA/American codeshare authority and for antitrust immunity.

Delta's motion is simply another in a long string of attempts by Delta and other airlines to frustrate and delay implementation of a viable TACA/American alliance, and it should be flatly rejected as such. The material Delta wants the Department to obtain from American and TACA would not only be extremely burdensome for the applicants to develop and produce (indeed,

TACA literally could not produce much of the information as requested by Delta), it is also completely unnecessary for the Department's review and consideration of the pending applications. Ironically, Delta's request comes at a time when competition in U.S.-Latin American markets has never been stronger, and when consumers of air travel in those markets are benefiting as never before.¹

TACA and American have already provided the Department with more than sufficient information and documents with which to evaluate and approve the two joint applications. Anticipating the Department's need for relevant additional information and documents, the TACA/American immunity application specifically included responses to the same evidence requests that the Department issued in the Northwest/KLM/Alitalia antitrust immunity proceeding, Order 99-5-10, May 21, 1999. See Joint Application of American Airlines, Inc. and the TACA Group for Antitrust Immunity, March 17, 2000, at 31 and ff. The same data and documents are also relevant to the joint application of TACA and American for renewal and amendment of their codesharing authority.

Delta's "wish list" of evidence requests goes far beyond what is necessary to assess the pending applications, and ventures into the territory of pure harassment. Among the many particular problems with Delta's eight requests are these:

¹ Delta itself is playing a leading role in the expansion and increased competitiveness of U.S.-Latin American markets. According to Delta's Chairman and CEO, Leo F. Mullin, "Delta's growth in Latin America exceeds that of other major U.S. airlines. In fact," he continued, "DOT reports for the 12 months ending in September 1999 comparing Delta, American, Continental, and United show us in first place for annualized operating margin." Delta Press Release, April 11, 2000 (attached hereto). Mark Drusch, a Senior Vice President at Delta, singled out Delta's Costa Rica service as being particularly profitable. Aviation Daily, "Latin America Is Delta's Top Priority for Growth, Profits," April 12, 2000 (attached hereto). Delta claims that Atlanta is the fastest-growing gateway to Latin America, and, as Atlanta grows, Mr. Drusch predicted, Miami's control of Latin American service "will continue to shrink." Id. He proclaimed that "[t]he only thing limiting [Delta] now is bilateral opportunities." Id. Outside of the world of Departmental filings, in other words, Delta clearly does not see the American/TACA alliance as a competitive obstacle to its recent or to its future growth in this part of the world.

Request No. 1. Delta first asks that the joint applicants explain why their proposed arrangement is exclusive, citing Paragraph 9 of the Alliance Agreement. This request is a red herring: the arrangement is not exclusive. While the original 1996 agreement to which Delta refers included a partial exclusivity clause, one of the conditions of the Department's May 1998 approval of the TACA/American codeshare was the non-enforcement of any exclusivity provision. Final Order, Order 98-5-26, May 20, 1998, at 23. TACA and American agreed to that condition in 1998; they have adhered to that condition; and they will continue to adhere to that condition so long as it is in effect.

Request No. 2. Delta next asks that TACA detail its efforts to enter into codeshare arrangements with other U.S. carriers, and that it explain why it found any such proposals to be commercially unacceptable. Quite apart from the fact that TACA has not maintained any detailed records of its codeshare negotiations with other U.S. carriers, seeking this type of information would take the Department into a whole new level of regulation. The relevant question is whether the alliance under consideration is consistent with the public interest, not whether TACA should or should not have pursued particular negotiating strategies with particular carriers. The Department should not be placed in a position where it is asked to evaluate the relative commercial advantages or disadvantages of various proposals. If Delta has a specific complaint that competition has somehow been restricted by an alleged exclusionary agreement, of course, then it can and should file a complaint under 49 U.S.C. § 41712 (prevention of unfair practices and methods of competition). It will not do so, however, because no anticompetitive agreement has been or will be implemented.

Request No. 3. Delta's third putative request seeks copies of all studies, surveys, analyses, and reports which identify, examine, forecast, and/or quantify the effects and benefits

of the TACA/American codeshare alliance from May 20, 1998, when the codeshare agreement was initially approved, to the present. To the extent that TACA and American had any such documents, they were voluntarily produced on March 17, 2000, in Docket OST-00-7088.

Request No. 4. In this request, Delta would require TACA and American to provide absurdly detailed information concerning their prospective arrangements with third party airlines throughout the world. Indeed, the punitive request itself continues for more than a page in length. This request is plainly objectionable because it seeks competitively-sensitive information that has little if any bearing on the joint applications at issue or on competition in U.S.-Central America markets. TACA has codeshare arrangements with only two carriers other than American – Air France, which is Delta’s partner, and Avianca. Both of those codeshares are limited in scope. American has codeshares with many airlines around the world, all of which are a matter of public record at the Department. While American’s future intentions with respect to its codeshare partners would no doubt be of significant competitive interest to Delta, that has little to do with the joint applications at issue.

Request No. 5. Delta’s fifth request would require TACA and American to provide copies of all internal documents, since January 1996, that discuss, consider, or analyze the impact of the display of codeshare arrangements in computer reservations systems on travel agency bookings, airline sales, and airline market shares. This request concerns an issue that clearly transcends the TACA/American codeshare. To the extent that the treatment of codeshares in computer reservations systems warrant the Department’s attention, every existing and proposed codeshare arrangement is implicated; there is nothing unique about the TACA/American codeshare in this regard. It would therefore be unjustly discriminatory to single out the Department’s consideration of the TACA/American applications on this ground.

In any event, TACA and American do not believe they have any documents that would be responsive to Request No. 5.

Request No. 6. Delta asks (with multiple subordinate requests) that TACA and American provide traffic and revenue forecasts for all markets that will be affected by their codeshare arrangement. TACA and American do not have any such forecasts. Developing them would be a very burdensome, costly, and complicated endeavor, and one Delta is fully capable of doing on its own.

Request No. 7. This request asks TACA and American to identify the extent to which traffic and revenue forecasts for TACA/American will be stimulated versus diverted from other U.S. carriers (by carrier) if the revised codeshare and immunity applications are approved. Again, Delta itself has a sophisticated network forecasting model that should contain the necessary logic to measure stimulation and diversion; it is fully capable of performing its own analysis.

Request No. 8. Finally, Delta seeks detailed directional origin and destination data for all itineraries operated by American and/or TACA that involve a U.S.-Central America segment between a Central American city and Miami, arranged by quarter from April 1998 to the present, and grouped by airport origin, airport destination, directionality, number of directional coupons, operating carrier, and fare class. Delta can obtain the requested information itself from CRS marketing information data tapes (MIDT). TACA and American, moreover, already provide a statistically relevant sampling of the requested data each month to the Department.

* * * *

TACA and American filed their initial request for codeshare authority in 1996. Because of the opponents' requests for additional information and documents, and other stalling tactics,

approval of the initial codeshare was delayed for two years, while new competitive U.S. carrier service started soon after the Open Skies bilaterals with Central American nations were signed. The Department should reject Delta's renewed effort in connection with the pending applications to prevent the TACA Group from being able to enjoy the benefits that have been made available to numerous other carriers under Open Skies agreements with the United States.

Respectfully submitted,

Robert D. Papkin
James V. Dick
Squire, Sanders & Dempsey, LLP
1201 Pennsylvania Avenue, NW
Washington, D.C. 200004
(202) 626-6600
(202) 626-6780 (fax)

Counsel for
THE TACA GROUP

Carl B. Nelson, Jr.
Associate General Counsel
American Airlines, Inc.
1101 17th Street, N.W.
Suite 600
Washington, D.C. 20036
(202) 496-5647
(202) 857-4246 (fax)

April 12, 2000

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document by first-class mail on all persons named on the attached service list.

JAMES V. DICK

April 12, 2000