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Order 2000-7-29



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

Issued by the Department of Transportation
on the 25th day of July, 2000

Served: July 25, 2000

Application of

AMERICAN AIR LINES, INC.

under 49 U.S.C. § 40109 for U.S.-India
exemption authority and third-country code-
sharing designation (Services with Swissair
and Sabena)

Docket OST-2000-7537-10

Notice of

**DELTA AIR LINES, INC. and
SOCIETE AIR FRANCE**

Codesharing Service to Mumbai and Delhi,
India

Undocketed

ORDER DISMISSING APPLICATION

Summary

By this order, we dismiss the application of American Airlines in the captioned docket. We also notify Delta Air Lines and Air France that they may proceed with their plans to engage in code-sharing services in the U.S.-India market as set forth in their notice dated June 22, 2000.

Background

Under a December 1995 Memorandum of Consultations between the United States and India, the United States may designate four U.S. airlines to engage in third-country code-sharing services in the U.S.-India market. By Order 97-2-6, the Department authorized Delta, United Air Lines, and Northwest Airlines to operate these services with their third-country code-share

partners.¹ Subsequently, Delta also was authorized to commence services with Austrian Airlines and Air France.² On February 19, 1998, the Department awarded the fourth designation to Trans World Airlines for code-share services in the New York-Delhi/Calcutta markets under a code-share arrangement with Royal Jordanian Airlines.³

Application

On June 16, 2000, American Airlines filed an application for exemption authority to engage in scheduled foreign air transportation of persons, property, and mail between points in the United States and points in India, via Zurich, Switzerland and Brussels, Belgium. American states that it seeks to operate these services under its blanket code-share arrangements with Swissair and Sabena. To implement these services, American further requests allocation of one of the third-country code-share designations under the 1995 U.S.-India Memorandum of Consultations.

In support of its application, American states that two of the four third-country code-share designations are or soon will be dormant making it possible to authorize American's proposed services with Swissair and Sabena. Specifically, American states that TWA has not implemented its code share with Royal Jordanian, and therefore, its designation is dormant and can be reallocated. American further states that Delta's initial authorization was for code-share services with Swissair, and that since that arrangement has been terminated, Delta's designation will also become dormant and be available for reallocation. American maintains that its proposal would provide service to three points in India from a broad range of U.S. gateways and would be superior to the services of either TWA or Delta.

Delta/Air France Notice

On August 6, 1998, the Department granted Delta and Air France blanket statements of authorization to engage in code-sharing services, subject to the requirement that the carriers notify the Department at least 30 days in advance of additional markets in which the carriers intend to operate services. The authorization also makes clear that the award does not confer on Delta any limited-entry route rights unless the Department has first completed any necessary carrier selection procedures to determine how the rights should be allocated. On June 22, 2000, Delta and Air France filed notice of their intent to operate services in the Paris-Delhi/Mumbai markets beginning on or about July 22, 2000. The carriers state that although services in the Paris-Delhi market had previously been approved, the carriers were not able to

¹ Delta proposed to serve the U.S.-India market with Swissair; United, with Lufthansa; and Northwest, with KLM.

² The code-share provisions under the MOC do not preclude the designated airlines from code sharing with more than one third-country airline. Services with Austrian were approved April 8, 1998, and services with Air France were approved August 6, 1998.

³ Notice of Action Taken dated February 19, 1998, Docket OST-99-3382. (See also Order 98-3-1). TWA and Royal Jordanian have filed a timely application for renewal and their authorities have remained in effect, pending final Department action on the renewal application.

implement the code share. They state that they are prepared to begin those services now and also to serve the Paris-Mumbai market.

Responsive Pleadings

Delta and TWA filed objections to American's application. American filed a consolidated reply. Delta, TWA, and American filed further responsive pleadings.⁴ American filed an objection to the Delta/Air France notice; Delta filed an answer.

Delta argues that its third-country code-share authorization is not dormant and will not become dormant soon. Delta states that it has been authorized to code share with three airlines in the U.S.-India market; that it operated those services with Swissair and Austrian for a period of time, but that its operations with Swissair had to be terminated because of restrictions by the Federal Aviation Administration (FAA) that prohibited direct or code-share flights from over flying Afghanistan; and that these same restrictions precluded Delta from implementing its code-share services with Air France. Delta contends, however, that on May 10, 2000, the restrictions regarding Afghanistan expired, thereby making it possible for Delta to implement its code-share services with Air France. Delta further states that although American is correct that it has or will discontinue its services with Swissair and Austrian, it will implement its previously approved U.S.-India code share with Air France and, therefore, its designation is not dormant and not available for reallocation.

Similarly, TWA argues that its designation should not be available for reallocation. TWA maintains that although the Department authorized its code share in February 1998, it did not receive Indian government approval until November 1999. Despite that approval, TWA states that the Indian government has not yet accorded approval to Royal Jordanian and that the Jordanian and Indian governments intend to meet in early August in an effort to resolve the remaining issues affecting implementation of the code-share services. TWA reiterates that it remains intent on implementing the code share approved by the Department in 1998 as soon as the issues between Jordan and India are resolved. In these circumstances, TWA maintains that its designation should not be reallocated.

American maintains that TWA's authorization is not being used and should be reallocated and that under the terms of the blanket code-share authorization, Delta's substitution of Air France for Swissair cannot be implemented until the Department completes any necessary carrier selection procedures to determine which airline should be awarded the route rights at issue.⁵

⁴ The subsequent pleadings were accompanied by motions for leave to file otherwise unauthorized documents. We will grant the motions.

⁵ American contends that Delta could have continued its India code-share services with Swissair notwithstanding the FAA overflight restrictions by circumnavigating Afghanistan; that Swissair was prepared to do so; and, thus, that Delta cannot rely on the Afghanistan restrictions for the dormancy of its Swissair code-share service.

Decision

We have decided to dismiss American's application. We find that no designations are currently available to authorize the proposed code-share operations.

Under the 1995 MOC with India, the United States can designate four U.S. carriers to operate third-country code-share services in the U.S.-India market. Those designations have been awarded to United, Northwest, Delta, and TWA. We disagree with American that any of the four designations are available for authorization of American's proposed services.

While we authorized TWA's code share in February 1998, TWA has been unable to implement that authorization because the requisite Indian government approval has not yet been forthcoming owing to differences between India and the government of TWA's third-country carrier Royal Jordanian. TWA has made clear on the record that the interested parties are working to resolve the issues affecting implementation of these code-share operations, and TWA has reiterated its intent to begin the approved code-share services once all the necessary government approvals have been obtained. In these circumstances, we do not believe that a withdrawal of TWA's code-share approval is warranted.

Similarly, contrary to American's contention, we do not find that Delta's designation should be withdrawn or that additional regulatory procedures are necessary for the carrier to implement its previously approved code-share services with Air France. Delta has stated that, since the unique FAA restriction on its operations has been removed, it will now resume India code-share service in the immediate future.⁶ We see no basis for withdrawal of the designation in these circumstances. Furthermore, as Delta holds Department approval for code-share services with all three airlines, and as such multiple third-country carrier relationships are permissible under the U.S.-India agreement, we do not view the termination of its relationship with Swissair as a basis for challenging the continuation of Delta's designation or otherwise triggering carrier selection procedures in this case.

We appreciate American's interest in serving India with its code-share partners. Should additional designations become available, American would be free at that time to refile an application for approval of third-country code-share services in the U.S.-India market.

ACCORDINGLY,

1. We dismiss the application of American Airlines, Inc. in Docket OST-2000-7537;

⁶ Although American has suggested that Delta and Swissair could have continued to operate their India code-share service over routings that did not involve Afghanistan, that suggestion does not give us a basis to question Delta's stated intent to resume service as specified in its notice once the unique circumstances affecting U.S.-India operations via Europe changed.

2. We determine that Delta Air Lines, Inc. and Air France may commence the code-share service included in their June 22, 2000 notice without any further procedures by the Department;
3. We grant all motions for leave to file otherwise unauthorized documents in the captioned proceedings; and
4. We will serve this order on American Airlines, Inc.; Delta Air Lines, Inc.; Trans World Airlines, Inc.; Air France; the Ambassador of India in Washington, D.C.; the United States Department of State; and the Federal Aviation Administration.

By:

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

(SEAL)

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