

BEFORE THE
DEPARTMENT OF TRANSPORTATION
WASHINGTON, D. C.

Joint Application of :
 :
 AMERICAN AIRLINES, INC. :
 and : OST-99-6227
 AEROLINEAS ARGENTINAS, S.A. :
 :
 under 14 CFR Part 212 for statements :
 of authorization to engage in reciprocal :
 codesharing services :

Application of :
 :
 AEROLINEAS ARGENTINAS, S.A. : OST-99-6225
 :
 under 49 USC 40109 for an exemption :
 (U.S.-Argentina codesharing with American :
 Airlines) :

Application of :
 :
 AMERICAN AIRLINES, INC. : OST-99-6226
 :
 under 49 USC 40109 for an exemption :
 (U.S.-Argentina and route integration; :
 codesharing with Aerolineas Argentinas) :

MOTION FOR LEAVE TO FILE AND JOINT REPLY OF
AMERICAN AIRLINES, INC. AND AEROLINEAS ARGENTINAS, S.A.

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American Airlines, Inc. and Aerolineas Argentinas, S.A. hereby jointly reply to the answers submitted on September 29, 1999 by Continental Airlines, Inc. and United Air Lines, Inc. To the extent required, American and Aerolineas move for leave to file in the interest of a complete record for the Department's consideration.¹

The joint applicants are seeking reciprocal code-sharing authority and associated exemptions that are fully consistent with the Memorandum of Consultations of August 12, 1999 between the Governments of the United States and Argentina (Appendix B, Annex 1, Section 1 attached to the MOC).² Approval of this application is a necessary prerequisite to bring into force provisions for new entry by additional U.S.-flag carriers in the U.S.-Argentina market.

Continental, an applicant for Newark-Buenos Aires and Houston-Buenos Aires authority in New U.S.-Argentina Combination Service Opportunities (OST-99-6210), "recognizes...that approval of an alliance between American and Aerolineas

¹Under 14 CFR 302.407, the applicants have a right to reply within seven days in the two exemption dockets (OST-99-6225 and OST-99-6226). The Department's rules do not provide for a reply in the codeshare docket (OST-99-6227).

²References in this pleading to the MOC encompass all of the Annexes and Appendices to the MOC.

Argentinas is necessary to open up opportunities for a new airline to serve Argentina" (p. 2), and urges that approval of the proposed codeshare be subject to certain conditions. Delta Air Lines, Inc., an applicant for Atlanta-Buenos Aires authority in OST-99-6210, did not file an answer, which we interpret as confirming Continental's observation quoted above. United, an incumbent which presently operates 50 percent of all U.S.-flag nonstop service between the U.S. and Argentina, "strongly opposes" the American/Aerolineas applications (p. 1), essentially repeating arguments it has unsuccessfully pressed in other proceedings.

As we show below, the Department should promptly approve the American/Aerolineas codesharing proposal. The joint applicants' arrangement will in itself bring competitive benefits to the marketplace, as recognized by the Department's Statement of United States International Air Transportation Policy, 60 Fed. Reg. 21841, May 3, 1995, and will lead directly to new entry by carriers such as Continental and Delta in the U.S.-Argentina market. United's obstructionist answer is retrogressive and anticompetitive, and should be recognized for what it is -- false and misleading complaining by an incumbent which is about to lose the privileged position it has long held in a closed market. The Department should reject United's

effort to undo the bilateral agreement achieved between the U.S. and Argentina in August.

These and other matters are discussed in more detail below.

I. CONTINENTAL

While not opposing approval of the American/Aerolineas codesharing request, Continental urges that approval should be limited to the authority available through May 31, 2001; that the same conditions imposed in the American/TACA codesharing approval should be imposed here; and that first-year authority should be granted only for codesharing over the U.S.-Argentina gateway-to-gateway routes the applicants currently serve (p. 2). American and Aerolineas oppose the imposition of such conditions.

Under Continental's first proposed condition, the only codesharing authority the applicants would receive would be gateway-to-gateway; the balance of their request, for services to beyond-gateway points in the U.S., Argentina, and third countries, would be deferred until the Department "can evaluate the results of their codesharing in the first year, the results of the American/Lan Chile alliance, and the impact of both alliances on competition" (pp. 3-4). This condition is unacceptable, and contrary to the intent of the recently-

concluded negotiations between the United States and Argentina.

The Government of Argentina has agreed to significant new entry by U.S. carriers, subject to approval of the full scope of the American/Aerolineas codesharing arrangement. In light of the lengthy delays in approvals of other U.S.-Latin America codesharing applications,³ it is unlikely that Argentina would be willing to accede to new services by U.S. carriers, such as Continental and/or Delta, until the Department has granted the American/Aerolineas codesharing application in full. In order to assure achievement of all the public benefits of the recently-concluded MOC, the joint application -- which is subject to all of the phase-in dates as specified in the MOC -- should be approved in its entirety.

Under Continental's second proposed condition, the conditions imposed in the American/TACA Group proceeding (Order 98-5-26, May 20, 1998) would be imposed here. Continental claims that competitive conditions in the U.S.-Central America and U.S.-Argentina markets are similar, and warrant similar

³For example, American and the TACA Group applied for codesharing authority on July 8, 1996, but final Order 98-5-26 was not issued until May 20, 1998; American and Lan Chile applied for codesharing authority on October 7, 1997, but final Order 99-9-9 was not issued until September 13, 1999.

treatment (p. 6). The Department should reject this condition as well.

Competitive conditions in the U.S.-Central America and U.S.-Argentina markets are quite different. United operates half of all U.S.-flag service to Argentina. LAPA, a competing Argentine airline, operates nonstop service between Buenos Aires and Atlanta. As United noted in its application of September 22, 1999 for Los Angeles-Buenos Aires frequencies (OST-99-6210), "[t]he Eastern and Central regions of the U.S. currently have access to multiple direct Argentina connections to services provided by United at Chicago; American, United, and Aerolineas Argentinas at Miami and New York, and the Argentine carrier, LAPA, at Atlanta" (p. 6).

Moreover, in the relatively short-haul U.S.-Central America markets (particularly from the Miami gateway), there are relatively few routings available via third-country points. Accordingly, the Department imposed certain conditions on American and the TACA Group to ensure competition. By contrast, in the long-haul U.S.-Argentina market, a variety of competitive on-line services via intermediate points are available, including, for example, services on Varig (a United Star Alliance partner) and Mexicana via points in Brazil and

Mexico. Coupled with the strong position in nonstop flights already enjoyed by United, and the certainty of new nonstop entry by Continental and/or Delta from U.S. hub cities such as Newark, Houston, and Atlanta, there is no justification for imposing the American/TACA Group conditions here.

Continental's third proposed condition would limit American and Aerolineas to first-year codesharing only on the nonstop gateway-to-gateway routes they presently serve (that is, Miami-Buenos Aires and New York-Buenos Aires). This proposal should be rejected out-of-hand because there is no such limitation in the MOC.

As provided in Attachment A, Section 1.B., Paragraph 3, "[f]rom September 1, 2000, through May 31, 2001: Airlines of the two Parties may code share together only on route segments between Argentina and the United States." The route segments include the coterminal points in each country for each carrier. Since American has the right to serve beyond its Argentine gateways to other gateway coterminal points in Argentina, and Aerolineas has the right to serve beyond its U.S. gateways to other gateway coterminal points in the United States, the carriers are not limited by Section 1.B, Paragraph 3 to codesharing only on the nonstop gateway-to-gateway routes they presently serve. Under the MOC, American and Aerolineas

are entitled to codesharing authority, in the first year, between and among the points named or selected on their respective route schedules. That is the authority they are seeking, and that is the authority they should be granted, consistent with the MOC. Continental's restrictive interpretation is wrong, and is contrary to the explanations of the scope of the initial codesharing authority given to the Government of Argentina during the recent bilateral negotiations.

Continental spends the balance of its answer arguing why it should be selected over Delta for the first new entry opportunity under the MOC. Whatever the outcome of that proceeding, the Department should promptly grant the American/Aerolineas codesharing application, without conditions, so that the public may benefit from the increased competitive service that will result not only from the proposed arrangement at issue here, but from substantial new services by Continental and/or Delta.

II. UNITED

Under the current restrictive bilateral agreement between the U.S. and Argentina, U.S.-flag service has long been limited to two carriers, as well as subject to strict frequency limitations. Today those carriers are United (successor to Pan American World Airways) and American (successor to Eastern Air

Lines), which each hold and operate 21 weekly frequencies.

When the MOC becomes effective following approval of the American/Aerolineas codesharing arrangement, the market will be open to substantial additional designations and frequencies. On September 8, 1999, the Department invited applications for the first two phases in New U.S.-Argentina Combination Service Opportunities (OST-99-6210), and on September 22, 1999 received requests from Continental (Newark/Houston-Buenos Aires) and Delta (Atlanta-Buenos Aires) as potential new entrants.

United also submitted an application (Los Angeles-Buenos Aires), but its motivation for doing so is quite puzzling, to say the least, given United's outright opposition here to the American/Aerolineas codesharing application -- approval of which is the essential predicate for new entry -- as well as United's professed interest in enhancing competition. United already operates half of all U.S.-flag frequencies to Argentina. If United had the slightest interest in improving competition in Argentina and in Latin America, it would not be trying to squeeze Continental and Delta out of contention in the upcoming carrier-selection proceeding, nor would it "strongly oppose" approval of the American/Aerolineas codeshare request.

The fact is that United does not want to open the U.S.-Argentina market to any additional competition, but instead wishes to preserve its 50 percent share of U.S.-flag service. As noted above, Continental properly recognizes that approval of the American/Aerolineas arrangement is necessary to provide opportunities for new U.S. airline service to Argentina. United has recognized the converse of this same proposition -- that disapproval of the American/Aerolineas arrangement will surely preclude opportunities for new service. That is the real motivation for United's opposition.

Most of United's lengthy (and repetitive) answer is a rehash of arguments that it unsuccessfully made in opposing the American/TACA Group and American/Lan Chile alliances. As it did in those other proceedings, United carefully ignores its own worldwide alliances, and seeks to deny to American and its partners the same benefits that United and its allies enjoy.

In Latin America, United is allied with Varig, by far the largest carrier in all of South America,⁴ and also has an

⁴On October 22, 1997, in announcing that Varig would join the Star Alliance, United said that "[w]ith flights to every major destination in South America, Varig opens up an entire continent to Star Alliance customers, providing increased global recognition and a wide range of other benefits." United noted that Varig "is the largest airline in Latin America, serving every major city on the continent...."

exclusive alliance with Mexicana, one of the largest carriers in Mexico. United currently holds antitrust immunity with Lufthansa, SAS, and Air Canada, and is the leading carrier in the worldwide Star Alliance, which presently includes (in addition to Lufthansa, SAS, Air Canada, and Varig), Thai Airways, All Nippon Airways, Air New Zealand, and Ansett Australia. United should not be heard to complain about the lack of alliance competition in Latin America, or any other region.

United also asserts, as it has in other pleadings, that American is dominant at the Miami gateway. American's strength at Miami is due to American's investments of billions of dollars in facilities and equipment to build Miami into a premier hub. United's decision to retrench at Miami in the early 1990s, and to devote its resources elsewhere, provides no basis for the Department to penalize Miami by preventing alliance arrangements at that gateway. If United wants to refocus its operations and rebuild its presence at Miami, it is free to do so at any time. United is perfectly capable of making its own strategic decisions -- and of living with the consequences of those decisions -- without regulatory interference by the Department with the alliances of its competitors.

Continuing to borrow from its prior pleadings, United argues that recent trends in the Miami-Central America market following the Department's approval of the American/TACA codesharing partnership are a harbinger of anticompetitive effects of an American/Aerolineas alliance (pp. 24-26). United persists in citing the wrong facts. United claims that total flights between Miami and nine principal Central American destinations declined by 13 percent for the year ended April 1999. In fact, a review of traffic data for the far more relevant U.S.-Central America market reveals that, while total flights have declined by a statistically insignificant three percent,⁵ frequencies to Central America from U.S. gateways other than Miami have increased dramatically. Specifically, frequencies from Atlanta have risen by 25 percent, Dallas/Ft. Worth by 50 percent, Newark by 20 percent, New York (JFK) by 63 percent, and New Orleans by 41 percent.⁶ Contrary to United's dire warnings, competition in the U.S.-Central America market appears alive and well.

United asserts that American holds a "controlling stake in Aerolineas" (p. 8). That is false. The fact is that

⁵The relatively marginal overall decline in frequencies may be attributed to United's withdrawal of service at Chicago and Washington (Dulles).

⁶OAG, July 1998/July 1999.

American holds a 10 percent interest in Interinvest, S.A., an Argentina company that owns Aerolineas. The other 90 percent of Interinvest, S.A. is owned by several parties unrelated to American. Furthermore, American's acquisition of even the modest holding it does have in Aerolineas is subject to conditions imposed by the Department of Justice, which prohibit any American representative from serving on the board of directors of Aerolineas, or any American executive from participating in the management of Aerolineas. Simply stated, American holds no "controlling stake" in Aerolineas.

United argues that in order "[t]o assure a fair and unbiased decision, the DOT officials responsible for concluding the recent U.S.-Argentina MOC should recuse themselves from any participation in the decisionmaking process" on the American/Aerolineas codesharing application (pp. 28-32). We see no reason for such an extraordinary action.

While United tries to suggest otherwise, the fact is that a number of recent bilateral agreements between the United States and other countries have rested on the assumption, implicit or explicit, that certain regulatory actions by the Department are a prerequisite to liberalized entry by U.S. carriers. Indeed, United itself pioneered this very concept when it promoted the "initialing" by Germany of an open skies

agreement on February 29, 1996, which would not be signed and made effective until the Department had issued a final order approving antitrust immunity between United and Lufthansa. We do not recall that United asked any DOT officials involved in the bilateral negotiations with Germany to recuse themselves from decisionmaking in its immunity proceeding with Lufthansa, and there is no reason why any such recusal is needed here.

Toward the end of its answer, United argues that if the American/Aerolineas application is nevertheless approved, the Department should not "immediately grant all of the extensive authorities American and Aerolineas request" (p. 33). However, if the Department does not grant now all the authority that American and Aerolineas are seeking, it would be acting at variance with the outcome of the prolonged negotiations between the United States and Argentina. United does not appear to have grasped that the grant of all of the authority requested does not mean that American and Aerolineas will be able to exercise that authority immediately. The ability to implement the full authority requested is clearly limited by the phase-in provisions of the MOC, and the joint applicants have specifically reflected those dates in their application. Nevertheless, the full grant of the authority requested is essential to confirm the regulatory approval for the full range of codeshare

operations that constituted an essential element of the bargain under which Argentina has agreed to open its market to new U.S. carrier services.

United concludes its answer by proposing that American and Aerolineas be required to respond to a 24-item evidence request based on the American/TACA Group proceeding. That should be rejected for the same reason, noted above in response to Continental, that the Department should not impose on American and Aerolineas the conditions imposed on American and the TACA Group by Order 98-5-26. In the U.S.-Argentina market, United operates half of all U.S.-flag service, and competing nonstop flights are available at Miami, New York, Chicago, and Atlanta. Moreover, numerous on-line routings are available via third countries, including services on Varig and Mexicana, two of United's alliance partners. Together with the certainty of new nonstop entry by Continental and/or Delta, there is no basis for imposing the American/TACA Group evidence request in this proceeding.

CONCLUSION

For the foregoing reasons, the Department should promptly approve the American/Aerolineas codesharing application in its entirety, and without conditions, so that the

competitive benefits of the recently-concluded MOC may be achieved without delay.

Respectfully submitted,

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