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

Order 2000-9-12

Served: September 15, 2000

Issued by the Department of Transportation
on the 13th day of September, 2000

**U.S.-ROMANIA THIRD-COUNTRY
CODE-SHARE OPPORTUNITIES**

Docket OST-2000-6903 - 8

ORDER TO SHOW CAUSE

SUMMARY

By this order, we have tentatively decided to (a) revoke the third-country code-share authorization of Continental Air Lines to serve the U.S.-Romania market, and (b) authorize American Airlines to serve Romania via Zurich under its code-share arrangement with Swissair and Delta Air Lines to serve Romania via Paris under its code-share arrangement with Air France.

BACKGROUND

Under Annex IV of the 1998 U.S.-Romania aviation agreement, the United States may designate four U.S. carriers to serve Romania under code-share arrangements with third-country carriers during a transition period. ¹ The United States designated the following four U.S. carriers and their partners for the following service patterns: Delta /Swissair via Zurich; Northwest/KLM via Amsterdam; United/Lufthansa via Frankfurt and Munich; Continental/Air France via Paris and Continental/Czech Airlines via Prague. ²

¹ Under Route A, the designated U.S. carriers may operate from points behind the United States via the United States and intermediate points to a point or points in Romania and beyond.

² See Order 99-3-29, March 31, 1999. The authorization for Delta /Swissair; Northwest/KLM; and United/Lufthansa became effective April 1, 1999. The authorization for Continental/Air France and Czech Airlines became effective November 1, 1999. As of November 1, 2001, there will be no limitations on the number of U.S. carriers that may provide third-country code-share service between the United States and Romania under the open-skies aviation agreement between the two countries.

Delta has since terminated its code-share relationship with Swissair and entered into an arrangement with Air France for international code-share services. American has now entered into a code-share arrangement with Swissair. The Department has granted both Delta/Air France and American/Swissair blanket statements of authorization that enable them to expand code-service operations into new markets subject to certain conditions.

DELTA NOTICE

On February 17, 2000, Delta filed a notice as required by the provisions of its blanket code-share authorization, stating that it proposed to implement services in the U.S.-Romania market with Air France over Paris to Bucharest. Delta stated that these services will replace those previously provided with Swissair.

American objected to that notice, stating that it had filed an application to serve Romania with Swissair and that Delta cannot change its partner without further Department procedures. By letter dated March 15, 2000, the Department notified Delta that it could not proceed with its plans until the Department completed consideration of the issues raised.

AMERICAN APPLICATION

On February 9, 2000, American filed an application seeking exemption authority for U.S.-Romania service via Zurich and one of the four third-country code-share authorizations for such service in order to serve this market under its code-share arrangement with Swissair.

In support of its request, American states that American and Swissair have a blanket statement of authorization to offer the proposed service; that the proposed service will facilitate the expansion of code-share services by the two carriers and thereby offer more competitive options to the traveling and shipping public; that although the four available designations for Romania code-share service have been awarded, the Delta/Swissair arrangement is ending, the Continental/Air France arrangement ended last year and the Continental/Czech Airlines arrangement was never implemented; that, therefore, two of the third-country code-share opportunities should be reassigned; and that American should be awarded one of them to operate its proposed service as soon as all the necessary government approvals are received.

RESPONSIVE PLEADINGS

American filed an answer to the Delta's notice. Delta filed a reply.³ Continental filed an answer to American's application.

American objected to Delta's notice because Bucharest is subject to entry limitations and Delta has no authority to operate code-share service there with Air France. It states that the Department awarded third-country code-share authority to Delta based on its specific proposal to serve this market under a code-share arrangement via Zurich with Swissair. American also argues that the Department found in another case that American could not move its frequencies

³ American filed a motion to file correspondence in this docket that it had sent to the Director, Office of International Aviation. We will grant the motion in the interest of a complete record.

to another market without prior authorization since the original award was granted for a specific market.⁴ American further states that Delta's notice of proposed service over Paris with Air France is not a mere technical change as characterized by Delta and that American has requested authority to serve the U.S.-Bucharest market via Zurich with Swissair when the code-share arrangement between Delta and Swissair terminates.

Delta replied that a comparative selection case is not necessary. Delta states that it holds authority to serve the U.S.-Bucharest market and that it will continue to use the limited-entry designation for its third-country code-share service. Delta further states that Department has already determined that Delta's code-share services are in the public interest and that carriers should be afforded the routing flexibility to change their intermediate points based on the needs of the marketplace. In addition, Delta states that the frequency case cited by American is not relevant here since Delta provided proper notice, its U.S.-Bucharest service is not changing and the Department imposed a special condition on American's service given the circumstances of that market. Last, Delta states that Paris is a larger market than Zurich and that its proposed service would enhance the benefits of its code-share services.

Continental states that American is mistaken about the status of the Continental/Czech Airlines code-share service because it is currently being provided between Prague and Bucharest and, therefore, this designation should not be reassigned to American. Continental further states that the Department should not deprive Continental and Czech Airlines of the ability to continue their Romanian code-share service since the Delta/Swissair designation via Zurich becomes available soon and all restrictions in the market expire October 31, 2001.

DECISION

We have tentatively decided that Delta's proposed service via Paris with Air France is subject to our review before implementation. We have also tentatively determined that, upon review of that proposal, American's proposal, and Continental's existing service pattern and frequency, Delta and American should be designated for Romania third-country code-share services, while Continental's Romania code-share designation should be withdrawn.

A. DELTA NOTICE

The blanket authorization with Air France is subject to certain conditions where limited entry markets are at issue. The condition specifically states that carriers cannot implement service in limited-entry markets until the Department has completed any necessary carrier selection procedures.

We have determined that such procedures are necessary before Delta would be able to implement code-share service with Air France in the Romanian market.

We first issued Delta a statement of authorization to operate third-country code-share services in the Romanian market via Zurich with Swiss Air. Under the terms of the award, the authorization

⁴ See 1999 U.S. Brazil Combination Service Case, Order 99-2-9, at 3.

remained in effect only as long as the carriers retained the underlying authority and their code-share agreement remained in effect. The basis for Delta's designation for Romania code-share service, the Swiss Air statement of authorization, is thus no longer effective. Therefore, contrary to Delta's arguments, its proposed change in partner and routing of its service via a new intermediate point is not a "mere technical" change. Rather, Delta stands positioned as a carrier seeking an entirely new code-share designation for Romania, a limited-entry market. In these circumstances, we must review its request on the merits.⁵

B. REVIEW OF MARKET AND AUTHORIZATION OF CODE-SHARE SERVICES

Currently, the only direct service between the United States and Romania is offered by a Romanian carrier. Four U.S. carriers may offer third-country code-share service. Thus, code-share opportunities under the agreement represent a significant benefit for travelers in this market. In these circumstances, we tentatively conclude that the public interest requires that we ensure that these opportunities maximize the level of U.S.-Romania services offered.

In this regard, we note that Northwest and United are currently offering third-country code-share services providing 14 and 16 weekly services in the U.S.-Romania market, with KLM and Lufthansa, respectively, which were the basis for the underlying Statements of Authorization for their designations. We also note that Continental, on the other hand, having also apparently terminated its codeshare with Air France, is not serving via Paris with Air France, and is now only serving Romania via Prague with Czech Airlines. Unlike the situations of Northwest and United, it is thus not providing the combined 9 weekly flights to travelers in the U.S.-Romania market with Air France and Czech Airlines that served as the basis for its designation. Rather, Continental only offers service with Czech Airlines at a level of no more than 4 weekly flights. We tentatively find that this change in the circumstances of the basis for its designation, has resulted in a significantly reduced service pattern in comparison with the now filed competing applications and may not provide public benefits warranting continuation of the limited available designation. Therefore, we tentatively find that we should review Continental's award along with the proposals of Delta and American to determine whether it should continue to be authorized to operate its Romania code-share service or whether its authority should be granted to another carrier.

Based on the above, we tentatively conclude that the designation of Delta is and that of Continental should be available for reallocation and that the proposals of Delta with Air France, American with Swissair and Continental with Czech Airlines should be given comparative consideration to determine which two carriers should be authorized to provide third-country code-share service in the U.S.-Romania market for the balance of the transitional service period.

After a careful review of the three proposals, we tentatively conclude that the proposals of Delta and American offer the greatest service and competitive benefits and that Delta and American should be authorized to use the designations available for third-country code-share services.

⁵ While in this case the Delta/Swissair code-share agreement had terminated, our decision here that a review on the merits of Delta's application was warranted should not be interpreted as limited to such circumstances.

Delta and American would offer 14 and 12 weekly services, respectively, with their partners, whereas Continental would offer services on only four weekly flights. Delta would offer nonstop-to-nonstop connecting service to nine U.S. cities, and American would do so to ten.⁶ Seven cities would receive competitive service from both carriers.⁷ Continental, on the other hand, would offer nonstop-to-nonstop connections to Newark only, a point that would also be served by American, and is now served by Northwest and United. Thus, the services by Delta and American would enable the greatest level of competitive service in the U.S.-Romania market from four U.S. airlines via four different European points to the largest number of U.S. cities. We tentatively conclude that the Delta and American services would provide the greatest use of the limited authorizations available.

We note that all limitations of third-country code-share services will expire effective November 1, 2001. Continental will be free at that time to resume its code-share service with Czech Airlines in the U.S.-Romania market.

ECONOMIC AUTHORITY

Delta already holds the necessary underlying authority to conduct its proposed service and, thus, additional underlying authority for Delta would not be necessary. American currently does not hold the necessary underlying authority but it has requested the necessary authority here. With respect to statements of authorization for the proposed code-share services, American and Delta have blanket statements of authorization for their code-share services with Swissair and Air France, respectively, and have filed the necessary notices pursuant to those authorizations to serve the Romania market. Should we finalize our tentative decision here, we would provide a period of 30 days to effectuate the termination of service by Continental.

ACCORDINGLY,

1. We tentatively select American Airlines, Inc. and Delta Air Lines, Inc., to be designated to provide scheduled foreign air transportation of persons, property, and mail in the U.S.-Romania market under their code-share arrangements with Swissair (via Zurich) and Air France (via Paris), respectively;
2. We tentatively grant American Airlines, Inc., exemption authority under 49 U.S.C § 40109 to provide scheduled foreign air transportation of persons, property and mail between a point or points in the United States and Romania via Zurich, Switzerland for a two year period;

⁶ Delta and Air France offer service to Paris from the following U.S. cities: Atlanta, Boston, Cincinnati, Washington, New York, Los Angeles, Chicago, Philadelphia, and San Francisco. American and Swissair offer service to Zurich from the following U.S. cities: Atlanta, Boston, Dallas/Ft. Worth, Newark, Washington, New York, Los Angeles, Miami, Chicago, and San Francisco. Continental and its partner Czech Airlines only serve Prague from Newark. (Source: Official Airline Guide for August 2000 as extracted by Back Information Services)

⁷ These are Atlanta, Boston, Washington, New York, Los Angeles, Chicago and San Francisco.

3. We tentatively revoke the designation of Continental for third-country code-share services in the U.S.-Romania market;
4. We direct all persons to show cause why we should not issue an order making final our tentative findings and conclusions;
5. We direct interested persons wishing to comment on our tentative findings and conclusions, or objecting to the issuance of the order described above, to file their comments or objections with the Department, Dockets, Docket OST-2000-6903, U.S. Department of Transportation, 400 Seventh Street, SW, Room PL-401, Washington, D.C. 20590, no later than 10 calendar days from the date of service of this order; answers thereto shall be filed no later than 5 calendar days thereafter.⁸ ;
6. If timely and properly supported objections are filed, we will afford full consideration to the matters or issues raised by the objections before we take further action;⁹
7. If no objections are filed to our tentative decision on the award of the third-country code-share opportunities, we shall deem all further procedural steps to have been waived, and will proceed to enter a final order;
8. We grant the motion of American Airlines to file documents in the captioned docket;

⁸ The original submission is to be unbound and without tabs on 8½" x 11" white paper using dark ink (not green) to facilitate use of the Department's docket imaging system. Alternatively, we encourage filers to use the electronic submission capability available through the Dockets/DMS Internet site (<http://dms.dot.gov>) by following the instructions at the web site.

⁹ As we are providing for the filing of objections to this tentative decision, we will not entertain petitions for reconsideration of this order.

9. To the extent not tentatively granted, we tentatively deny all requests in the captioned docket; and

10. We will serve this order on American Airlines, Inc.; Continental Airlines, Inc., Delta Air Lines, Inc.; the Ambassador of Romania in Washington, D.C.; the U.S. Department of State (Office of Aviation Negotiations); and the Federal Aviation Administration (AFS-220).

By:

SUSAN MCDERMOTT
Deputy Assistant Secretary for
Aviation and International Affairs

(SEAL)

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