BEFORE THE
DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.

TACA INTERNATIONAL AIRLINES, S.A.
LINEAS AEREAS COSTARRIOCENSES S.A.
AVIATECA S.A.
NICARAGUENSE DE AVIACION, S.A.
TACA DE HONDURAS S.A. DE C.V.
TRANS AMERICAN AIRLINES, S.A.
for registration of trade name under 14 C.F.R. 215

Docket OST-04-17355

OPPOSITION OF
CONTINENTAL AIRLINES, INC.

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March 23, 2004
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TACA INTERNATIONAL AIRLINES, S.A. : LINEAS AEREAS COSTARRILOCENSES S.A.
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In the guise of registration of a trade name, six airlines have proposed to conduct all their operations under a single name using the code of what appears to be their controlling member, TACA.\(^1\) This consortium of all but one of the large airlines based in Central America seeks to evade well-established codesharing principles and jointly brand six different airlines of six different countries. Approval of such a radical proposal would have far-reaching effects, particularly since comparable alliance branding would have to be permitted reciprocally for U.S.

\(^1\) Common names are used for airlines.
carriers serving Central America, including Continental’s partnership with COPA, and similar applications would soon follow from South America, where Lan-Chile is building a multi-national empire similar to TACA’s, and Europe, where the U.S. is negotiating with the European Union regarding the rights of transborder mergers and alliances.

Since the proposal by TACA International Airlines, S.A. (the “real” TACA), Lineas Aereas Costarricenses, S.A. (a Costa Rican airline), Aviateca (a Guatemalan airline), Nicaraguense De Aviacion, S.A. (a Nicaraguan airline), TACA de Honduras (the Honduran “TACA”), and Trans American Airlines, S.A. (a Peruvian airline which already does business as “TACA Peru”) would raise numerous serious issues, including consumer confusion, competition concerns about joint pricing and scheduling and related ownership and control issues, a give-away of expansive bilateral rights to multiple countries, and seventh freedom, cabotage, liability and safety concerns.

Continental strongly opposes the proposal by the “real” TACA and its five affiliates and urges the Department to deny it. Since the application is really for a new type of codesharing beyond the Department’s current codeshare policy, the carriers seeking such authority must at the very least meet the applicable standards for long-term codesharing authorization in Part 212 of the Department’s regulations. The applicants are not seeking to create an alliance code, and brand, but rather to use the primary carrier’s code and brand for other airlines, as if
Lufthansa utilized its “LH” code to brand and replace all Star Alliance flights. The Department must amend its codeshare rules and standards pursuant to normal rulemaking procedures before any such authority is granted.

Continental states as follows in support of its position:

1. The six applicants, through common counsel, claim that using the “real” TACA’s “TA” designator code and selling the services of all six carriers as if they were the services of the “real” TACA would enable them “to market and sell their services more efficiently” despite the footnotes, qualifiers, oral advice to consumers and additional language they propose to provide to reduce the consumer deception inherent in their proposal. The TACA name and “TA” code are already well-recognized throughout the aviation community and among Central American travelers and shippers as belonging to a single Salvadorian airline, and the six applicant carriers admit they seek to replace the “six brand names” with that Salvadorian airline’s name and code. Although the six airlines also say they want

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2 Since the “TA” code is already a code used by the “real” TACA, that code cannot be used except on segments where the “real” TACA holds authority and the carrier operating the segment holds a statement of authorization from the Department permitting it to display the “real” TACA’s code. Moreover, all of the carriers involved must comply with the Department’s rules governing consumer notification of codeshare services in Part 257 and its policy statement on passing off of carrier identity between carriers (§ 399.82).

3 The Department, not IATA, determines what codesharing is permitted on flights serving the U.S. The fact that IATA apparently does not prohibit use of the same code by multiple airlines would not allow the Department to abdicate its own responsibility to regulate codesharing.
to establish this single identity to compete with “members of worldwide alliances,” the applicants refuse to play by the rules applicable to those worldwide alliances.\footnote{The Department has been so concerned about common branding by international alliances that it has specifically required alliance partners “to obtain prior approval from the Department if they choose to operate or hold out service under a common name or use ‘common brands’” even after they have been granted antitrust immunity. \textit{(See, e.g., Order 2001-1-19, Docket OST-00-7828, at 16)} The six airlines seeking to use the common TACA name and the common TACA “brand” do not have antitrust immunity from the Department, and operating under a common brand would require them to coordinate pricing and scheduling actions in ways that would likely violate the antitrust laws.}

The six applicants cannot seriously contend that they lack the ability to market their services effectively without common branding and a single code. The six codesharing airlines already offer 70.8% of the weekly departures in Costa Rica, 75.3% of the weekly departures in El Salvador and more weekly departures in Panama than Continental and COPA combined. With their marketing strength in each of the Central American countries, 25% of the Central America-U.S. departures and their ability to codeshare with one another and American, the “real” TACA and its partners are already formidable competitors in Central America. With codesharing already approved between these airlines and American Airlines, the U.S. airline with the largest presence at the key Miami gateway and the largest U.S.-flag presence in Central America,\footnote{American and the TACA carriers together offer more than half of the weekly U.S.-Central America departures.} these six airlines cannot justify extraordinary relief to further enhance their marketing capabilities, and the
Department must not alter its codeshare policies to enable this Central American consortium of airlines to become even stronger.Absent explicit bilateral provisions authorizing such service, there is no basis for granting the six airlines’ request.

2. The six applicant airlines have not even alleged any benefit to consumers from their proposal. Indeed, they could not, since the consumer benefits attributable to codesharing can all be achieved pursuant to normal codesharing. Marketing six separate airlines under a single name and a single carrier code can only confuse consumers, and the additional footnotes and explanations proffered by the applicants may only further confuse those consumers who read them after being lured in by marketing which implied they were buying services on the “real” TACA and seeing the “real” TACA’s familiar airline code.

3. Although the potential benefits to consumers are non-existent, the risks to consumers from granting the six applicants’ request are real. How can a group of six airlines offer a “common brand” without agreeing on “common” prices?

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6 If the six carriers were nationals of the same country and were merged into a single entity or even wholly owned by a single entity, operating under a “common brand” might well be acceptable, but these conditions have not been met in this instance.

7 U.S. “open skies” agreements permit carriers to “enter into cooperative marketing arrangements such as blocked-space code-sharing or leasing arrangements,” not “common branding,” and specifically require that the airlines involved “meet the requirements normally applied to such arrangements.” (See, e.g., Article 8.7 of the Air Transport Agreement Between the Government of the United States of America and the Government of the Republic of El Salvador, May 8, 1997 (emphasis added)). Continental knows of no agreement to permit common branding.
How can they place their “common” code on all flights offered or operated by each of the six airlines without agreeing on routes and capacity? While such agreements may be acceptable among wholly-owned families of carriers or carriers holding antitrust immunity, they are not acceptable for six airlines from six separate countries. Before giving any serious consideration to the applicants’ request, the Department and the Department of Justice would have to investigate the relationships among the six airlines, explicit and implicit agreements among them regarding pricing and scheduling, their actual conduct in “Grupo TACA” operations, marketing and sales today, and their plans for their “common brand” services. The airlines seeking to offer a common brand and code also have codesharing authority with American Airlines, the U.S. airline with the largest market presence in Central America, and the application fails to explain how use of the TA code for each of the six airlines would affect the use of the TA* code on American flights. When the TA* code appears on American flights, would the notes explain both which of the six airlines were marketing the flight and that the flight is operated by American? According to the Department’s listing of codeshare authorizations, the Grupo TACA airlines will publish the “designator code of only one TACA Group affiliate on each city-pair flight operated by American Airlines,” a restriction which would be effectively eliminated by use of a common code for all six airlines.

4. When the TACA Group sought to codeshare with American Airlines, the Department of Justice concluded that the benefits of the proposed codesharing
were slight and the agreement presented risks to competition, and the Department imposed specific conditions to reduce the risks to competition posed by that codesharing arrangement. Since similar risks are presented by the current proposal, the Department could not act favorably on common branding by the “real” TACA and the other applicants, even after a full investigation, without imposing conditions prohibiting a joint alliance committee, requiring the parties to “maintain separate pricing, inventory and yield management” with services to be “managed, marketed and sold independently by each of the applicant partners,” and precluding the “sharing of more information concerning current or prospective fares or seat availability for passengers than they individually make available to airlines and travel agents generally.” (See Order 98-5-26)

5. Significantly, three of the airlines seeking this authority are nationals of countries which are rated in IASA Category 2 (Aviateca/Guatemala, TACA de Honduras/Honduras and NICA/Nicaragua). Although flights operated by these carriers within and beyond Central America would carry the same “TA” code as the “real” TACA and be held out as “TACA” brand flights, U.S. customers would actually be flying on airlines supervised by aviation authorities the U.S. has concluded do not meet ICAO safety standards. Passengers would be unaware of this potential cause for concern unless they read the notes the six airlines say they would provide, check the nationality of the airline specified in the note, and ascertain the IASA category of the airline’s home country. In sharp contrast, the
Department will not permit U.S. airlines to place their codes on such airlines because the Department is “unable to make a public interest determination about the level of safety” of the codeshare service.\textsuperscript{8} Thus, the “real” TACA is seeking to further extend the unfair advantage it already holds by identifying airlines from non-complying countries as part of a common TACA brand.\textsuperscript{9}

6. Although the application asserts that the common branding would not facilitate their engaging in cabotage or offering unauthorized seventh-freedom service, their claims amount to no more than “trust us.” With joint routing and scheduling facilitated by common branding and a common code, the group of airlines would be able to schedule their flights to maximize their opportunities to engage in transportation between U.S. points by their distribution of flights among participating carriers and creative use of route allocation to qualify flights for the

\textsuperscript{8} See the Department’s “Code-share Safety and Program Guidelines,” February 29, 2000 at 2. The “real” TACA today is placing its code on flights operated by Aviateca offering connections to passengers traveling between the U.S. and points in Central America beyond the “real” TACA’s gateways. Indeed, TACA’s website already indicates that it operates “three hubs: one in San Jose, Costa Rica, which facilitates connections to South America; one in San Salvador, which facilitates connections to Mexico, the United States, and Europe; and the third in Lima, Peru, which facilitates connecting flights to major cities in South America.” Thus, TACA may already be claiming the common brand it hopes to exploit further with the Department’s acquiescence.

\textsuperscript{9} Although TACA Ecuador is not an applicant in this proceeding, the TACA “TA” code and common brand would doubtless cover TACA Ecuador’s flights and operations between Central America and Ecuador and allow all six airlines effectively to sell common branded on-line codeshare service between the U.S. and Ecuador via Central America, despite the fact that Ecuador refuses to allow codesharing by U.S. airlines and is classified as Category 2 in the IASA program.
carriage of what would otherwise be cabotage or seventh-freedom traffic as well as making representations to the traveling public and travel agents about their common system which would make the common branding misleading. Adequate enforcement would be difficult, if not impossible.

For the foregoing reasons, Continental urges the Department to deny the application by the “real” TACA and five of its affiliated airlines for authority to turn name registration into common branding and de facto antitrust immunity and to consider fully the implications of common branding proposals before authorizing any such activities by multiple airlines of various countries.

Respectfully submitted,

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March 23, 2004
CERTIFICATE OF SERVICE

I certify that I have this date served the foregoing document on counsel for TACA and all parties served with its joint application in accordance with the Department’s Rules of Practice.

[Signature]

Johnnie Jackson

March 23, 2004
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