BEFORE THE
DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.

In the matter of the joint application of

TACA INTERNATIONAL AIRLINES, S.A.
LINEAS AEREAS COSTARRICENSES 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-2004-17355

ANSWER OF
TACA INTERNATIONAL AIRLINES, S.A., LINEAS AEREAS COSTARRICENSES S.A.,
AVIATECA S.A., NICARAGUENSE DE AVIACION, S.A., TACA DE HONDURAS S.A.
DE C.V. AND TRANS AMERICAN AIRLINES, S.A.

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S.A., Nicaraguense de Aviacion, S.A., TACA de Honduras S.A. de C.V. and Trans American
Airlines, S.A.

DATED: October 25, 2004
BEFORE THE
DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.

In the matter of the joint application of
TACA INTERNATIONAL AIRLINES, S.A.
LINEAS AEREAS COSTARRICENSES S.A.
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Docket OST-2004-17355

ANSWER OF

TACA International Airlines, S.A. ("TACA"), Lineas Aereas Costarricenses S.A. ("LACSA"), AVIATECA S.A. ("Aviateca"), Nicaraguense de Aviacion, S.A. ("NICA"), TACA de Honduras S.A. de C.V. ("TACA Honduras") and Trans American Airlines, S.A. (d/b/a "TACA Peru") (collectively, the "TACA Carriers") submit this answer to the objections of Continental Airlines, Inc. ("Continental") filed in opposition to the Department’s show cause order tentatively approving the TACA Carriers’ proposed use of a single brand and common code in services to the United States.

Continental, the only objector to the show cause order and the TACA Carriers’ application, has failed to raise a single new reason why the Department should not finalize its show cause order. Every one of the objections interposed by Continental has been raised previously, considered thoroughly by the Department and rejected. The
TACA Carriers urge the Department to again reject Continental’s specious arguments and immediately issue a final order approving their application.

Whether the issue is compliance with IASA requirements, competition, reciprocity on the part of the TACA Carriers’ homelands, consumer notice or U.S.-Ecuador bilateral relations, the Department’s show cause order rightly found that the TACA Carriers’ proposal not only satisfies any possible concern but will lead to increased competition, greater consumer benefits and improved relationships with the TACA Carriers’ homeland governments. Continental has offered no persuasive reason why the Department should now abandon its explicit findings. The Department should therefore immediately issue a final order adopting the findings and conclusions set forth in its October 13, 2004, show cause order.

1. Continental claims that the TACA Carriers’ proposal will “create risks” to competition but nowhere explains what these risks are or how they will arise. As the Department’s show cause order found, however, approval of their application will enhance the TACA Carriers’ ability to compete with other carriers and thus benefit consumers. The only risk that will arise through approval of the TACA Carriers’ proposal will be to Continental’s ability to continue to exploit its immunized alliance
with Copa, under which the two are free to fix prices, set schedules and frequencies and otherwise function as a single firm in the Central America-U.S. market.¹

Nor is it accurate to state, as Continental does, that the TACA Carriers are in some way attempting to transform themselves into TACA International. As the TACA Carriers explained in prior filings with the Department, they seek only the ability to market their services under a single brand name and common code—each carrier will continue to hold and comply with its own U.S. operating authority as well as its own homeland license. As the Department noted in its show cause order, the TACA Carriers are requesting authority only to do what the Department’s orders have contemplated for many years—operate under a common brand.² No other changes in operations, pricing or scheduling will occur.

2. The TACA Carriers affirm they will comply with the disclosure conditions set forth in the Department’s show cause order applicable to use of the single brand and

¹ When this alliance is linked with Continental’s recently announced alliances with Delta and Northwest the risk to competition will be manifest, but it will not come from the TACA Carriers.
² Continental asserts that the Department’s willingness to consider use of a common name or brand has arisen only in cases involving grant of antitrust immunity and that a grant of immunity is a prerequisite to approval of a common brand. Continental has its facts wrong. The Department clearly had such a possibility in mind when it approved various TACA Carriers’ codeshare (not immunity) with American Airlines more than six years ago. The Department’s order specifically contemplated the possibility that the parties might seek approval to use a common name or brand. American Airlines, Inc., et al., and the TACA Group Reciprocal Code-Share Services Proceeding, Docket OST-96-1700, May 20, 1998, Order 98-5-26,
common code. Indeed, the TACA Carriers' proposal is premised upon those very conditions, which are products of the extensive exhibits submitted voluntarily by the TACA Carriers in support of their request. Disclosure will be made as required by the show cause order and as described in the TACA Carriers' application.

Continental's contrary argument is unavailing. In fact, the example cited by Continental involving TACA International's double connecting service between Los Angeles and Roatan only confirms the TACA Carriers commitment to consumer notice and disclosure. The service consists of three flight segments. The Los Angeles-San Salvador and San Salvador-San Pedro Sula segments are operated by TACA International under the TA code utilizing two different flight numbers and a change of aircraft in San Salvador. The third segment between the domestic Honduran points San Pedro Sula and Roatan is operated by Islena Airlines (with a change in flight number again at San Pedro Sula). Islena is a Honduran air carrier with which TACA International has a codeshare arrangement. This is entirely permissible and consistent with TACA International's U.S.

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p.24. The authority requested by the TACA Carriers is precisely the type of branding flexibility referred to by the Department when it approved this earlier codeshare-only arrangement.
operating authority and applicable disclosure requirements. Continental's own exhibits confirm that the nature and operators of the service are disclosed completely.\(^3\)

The nature of this service is similarly disclosed fully in the *Official Airline Guide*. Attached hereto are four pages from the October 2004 *OAG* showing each of the three flight segments cited by Continental. Page three of the attachment identifies the San Pedro Sula-Roatan flight segment as *TA152 and WC152*,\(^4\) alerting consumers that the flight is a codeshare flight and that they should consult the *OAG* further to determine the operator, consistent with industry practice and the requirements of Part 257.\(^5\) Page four of the attachment, which is taken from the back of the *OAG*, advises consumers that TA152 is operated by Islena Airlines. This is precisely the type of disclosure the TACA Carriers would provide under the terms of the show cause order and which they proposed in their application.

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\(^3\) Continental's exhibits confirm the website shows TACA International as the operator of the Los Angeles-San Salvador and San Salvador-San Pedro Sula segments and Islena as the operator of the domestic Honduran San Pedro Sula-Roatan segment. The nature and operators of all three flight segments are disclosed to consumers before they are offered an opportunity to book a flight or required make a purchase decision.

\(^4\) WC is Islena's designator code.

\(^5\) The other regulation cited by Continental—Part 399.82—applies by its terms to affiliations between an "air carrier and a foreign air carrier", not affiliations between foreign carriers. In any case, as the attachments demonstrate, the TACA Carriers have not engaged in any practice that could be considered unfair or deceptive and have instead clearly advised consumers of the nature of their services.
3. Nothing in the TACA Carriers’ proposal or the Department’s show cause order will affect safety adversely or is otherwise inconsistent with the strictures of the FAA’s IASA program. As the Department noted in its show cause order, the TACA Carriers already hold blanket codeshare and wet lease authority which is far broader than the relief they now seek. The TACA Carriers have observed all applicable IASA requirements in operating their codeshare and wet lease services and will continue to observe such requirements in utilizing a single brand and common code. No TACA Carrier domiciled in a Category 2 country will display on its Central America-United States flights a flight number dedicated to another TACA Carrier, unless the flight is operated under a permissible wet lease arrangement or is part of an existing service grandfathered under the IASA program.⁶

4. The TACA Carriers reaffirm that their homelands will permit similar branding arrangements by U.S. carriers and their partners. As the Department’s show cause order notes, in the event reciprocal treatment is not afforded a U.S. carrier by a TACA Carrier homeland the Department retains the authority to modify the approval

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⁶ Continental seems to want to create a requirement that carriers post notices regarding the IASA status of various countries. Not only does such a requirement not now exist, neither the FAA nor the Department has ever suggested that foreign carriers operating directly to the United States (including Continental’s partners based in Category 2 countries) should provide such notice, let alone those operating solely between foreign points or between points within their homelands.
granted to the TACA Carriers. With this reservation, the Department has ample power to ensure that no carrier is treated unfairly.

5. TACA Ecuador is not a party to the TACA Carriers’ application and would therefore be ineligible to offer TACA-branded service to the United States. In fact, TACA Ecuador is not currently an operating carrier. If in the future TACA Ecuador should decide to begin operations, the TACA Carriers anticipate any connecting service between Latin American points offered by the TACA Carriers in conjunction with TACA Ecuador would be provided on an interline basis, as is currently permitted. In any event, whatever bilateral concerns Continental has with regard to Ecuador should be raised directly with the Department, not in a proceeding in which no Ecuadorian carrier is even involved.

Conclusion

The TACA Carriers appreciate the Department’s willingness to consider their proposal and are confident that implementation of their plan will enhance their competitive posture in the Latin America-U.S. market. The TACA Carriers are committed to bringing the benefits of the single brand and common code to consumers at the earliest opportunity and hope to incorporate the brand and code into their winter schedules, which are now being finalized.
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With these considerations in mind, the TACA Carriers respectfully request that the Department deny Continental’s objections and immediately finalize its tentative approval of their proposal.

Respectfully submitted,

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DATED: October 25, 2004
CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Answer has this day been
served on all persons identified on the attached service list via email or telexcopier.

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DATED: October 25, 2004

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