FINAL ORDER

Summary

By this order, we make final our tentative findings and conclusions in Order 2004-10-5, and grant the six Central American carriers captioned above (the TACA Group) an exemption, as conditioned, to the extent necessary for them to register for their collective use the trade name “TACA” and use the designator code “TA” for all of their services to/from the United States.

Background

By Order 2004-10-5, dated October 13, 2004, we directed all interested parties to show cause why we should not grant the six TACA Group carrier applicants an exemption under 49 U.S.C. §40109 to the extent necessary to permit them to register under 14 CFR Part 215 to collectively use the trade name “TACA” and use the designator code “TA” for all of their services to and from the United States, for a period of one year and subject to a number of consumer-related and other conditions. In reaching this tentative decision, we noted that the issue of common branding by carriers was one that we recognized might be of interest to certain carriers; and that there were public benefits that could be realized from the use of the proposed common name/code by the TACA Group. We also said that approval of the TACA Group’s plan could serve to promote and further the healthy liberal bilateral aviation relationships we already have with the carriers’ homeland governments.
Objection to Order to Show Cause

On October 20, 2004, Continental filed an objection asserting that the “extraordinary extrabilateral authority that the Department proposes to give TACA and its five partners to market their services as if they were a single carrier would create risks to competition, confuse consumers and create concerns about related safety and consumer disclosure issues.”

Continental asserts that TACA and its partners will perforce be agreeing on fares and schedules as part of their common branding and that the Department should not be facilitating violations of the antitrust laws. Furthermore, according to Continental, based on the way TACA carriers are already holding out services, reliance on TACA to adhere to the Department’s protective conditions would appear misplaced. Continental states that consumers are likely to be misled about which TACA carrier is operating which services, a factor that would have implications not only from a consumer notice standpoint but also in connection with the IASA program. Continental asserts that the Department should not condone the holding out of flights operated by Category 2 country airlines as if they were flights of Category 1 country airlines. It states that at the very least, the Department should impose conditions precluding the TACA airlines from selling transportation under the TA* common branding code to and from the U.S. where any part of the transportation would be provided on flights operated by TACA carriers from non-Category 1 countries.

The TACA Group’s Answer

On October 25, 2004, TACA Group filed an answer stating that the Department has already addressed Continental’s concerns in the show-cause order. In reply to Continental’s assertion concerning the current holding out of certain flights by carriers affiliated with TACA, the TACA Group states that such holding out is in fact being done in compliance with Department regulations and requirements.

Decision

We have decided to finalize our tentative decision in Order 2004-10-5 and grant the TACA Group carriers an exemption under 49 U.S.C. § 40109, to the extent necessary to permit them to register under 14 C.F.R. Part 215 for their collective use the trade name “TACA” and use the designator code “TA” for all of their services to/from the United States, for a period of one year,

---

1 Objections of Continental at 2.
2 As an example of such a possibility, Continental states that “None of the conditions imposed in the tentative decision would preclude TACA Ecuador from using the “TA*” code and the TACA brand on its flights between Central America and Ecuador, allowing TACA to sell common-branded on-line 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.” Objections of Continental at 4.
3 Regarding Continental’s TACA Ecuador example, the TACA Group notes that 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.
and subject to the consumer-related disclosure and other conditions, set forth in that order. In taking this action, we affirm our tentative finding that the grant of this authority, as conditioned, would be in the public interest, providing important public benefits by increasing consumer awareness of TACA Group services and by advancing our aviation relationships with TACA Group carriers’ homelands. The TACA Group’s plan would increase consumer awareness of the Group’s services, and this could benefit the traveling public by promoting competition in the affected markets.

While Continental has again challenged, as it did prior to our show-cause order, the public interest bases for approval, raising issues of consumer notice, competition, and safety, it has failed to provide persuasive evidence to challenge the tentative findings we made on each of these points in our show-cause order. See Order 2004-10-5 at 6-7.4

Continental questioned whether the TACA carriers’ can be relied upon to comply with the various protective conditions we are imposing. We note that in their answer to Continental’s objections, the TACA carriers expressly affirm that they will comply with the Department’s disclosure conditions.5 Further, we intend to monitor closely the manner in which the TACA Group administers the use of its common brand under the authority we are granting its member carriers here, and we are prepared to take such action as may be necessary to ensure compliance with our conditions.

As to the concerns Continental raised about the misleading of consumers, particularly in connection with the IASA program, we will not hesitate to take appropriate action to address the matter should we see anything in the marketing of services by the TACA Group that we find to be misleading to consumers or otherwise contrary to the public interest.6

In light of the foregoing, and based on the record in this case, we have decided to make final our tentative findings and conclusions, as conditioned below, and find that it is in the public interest to do so.

**ACCORDINGLY,**

1. We make final our tentative findings and conclusions set forth in Order 2004-10-5;

2. We grant 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

---

4 With regard to Continental’s arguments about anticipated anticompetitive conduct on the part of the TACA carriers, we note that the applicants have not sought antitrust immunity, nor evinced a sense that such immunity would be needed for the behavior they contemplate.

5 Answer at 3.

6 We emphasize that nothing in our action here in any way relieves TACA Group carriers from complying with all applicable requirements of the FAA, including those relating to permissible operations by foreign air carriers from Category 2 IASA countries. We specifically note that nothing in our action here shall be deemed as permitting operations to or from the United States by any foreign air carrier lacking authority under 14 C.F.R. Part 129.
Airlines, S.A. (the TACA Group); an exemption under 49 U.S.C. section 40109, to the extent necessary to permit them to register under 14 C.F.R. Part 215 for their collective use the trade name “TACA” and use the designator code “TA” for all of their services in foreign air transportation to and from the United States;

3. In the implementation of the authority granted in ordering paragraphs 1 and 2 above, the TACA Group carriers must:

   a) Identify their flights to and from the United States under the common “TA” designator code, and stop using other two-letter designator codes. In addition to use of the “TA” code, each TACA Group carrier must identify its U.S. flights by using dedicated flight numbers specifically assigned to each carrier;

   b) Fully disclose their use of the common code. In this connection, advertisements must include notification to consumers that flights are operated by a TACA carrier affiliate, and must identify each TACA carrier’s full legal name as well as its common name in cases where the common name may not be apparent;

   c) In holding out their flights in all editions of the Official Airline Guide, have those flights shown with the “TA” designator code and a flight number from each TACA carrier’s dedicated series of flight numbers. Listed adjacent to the flight number must be an easily identifiable mark, such as an asterisk, diamond, arrow or plus sign, notifying consumers that they should consult the OAG further for the identity of the operating carrier. Disclosure of the operating carrier’s identity must be made in the back of the OAG in the section devoted to disclosure of code-share services, and must be presented in a manner that is consistent with code-share disclosures;

   d) Disclose the operating carrier’s identity in global distribution system (GDS) displays. In addition to the Group’s using the “TA” designator code coupled with a flight number from the dedicated series, appearing in the “segment sell” display immediately beneath each TACA carrier flight must be a statement identifying the operating carrier and the marketing carrier;

   e) Prominently disclose on each passenger’s itinerary the operating carrier’s identity, and the itinerary must show the flight’s origin and destination cities, the times of departure and arrival, and the flight number. Immediately under this information, the itinerary must clearly identify the operating and marketing carrier. In the case of multiple segments or roundtrip itineraries, the TACA carriers must clearly disclose the operating and marketing carrier for each flight segment;

   f) Disclose the operating carrier on each passenger’s ticket. Each ticket must show each flight number, taken from the dedicated flight-number series, with the “TA” code. Further, the passenger ticket must clearly show the operating carrier’s identity;

   g) Provide its reservation and customer services offices with disclosure notices that must be read to consumers before making reservations. This disclosure must notify each consumer of the identities of the operating and marketing carriers for the “TA” coded flight; and
h) Comply with the consumer-disclosure provisions of the Department’s regulations under 14 CFR Part 257;

4. In the conduct of the operations authorized above, the TACA Group carriers must comply with all orders, regulations and requirements of the Federal Aviation Administration, including, but not limited to, those contained in 14 CFR Part 129;

5. The authority granted above is effective on the date of service of this order and will remain in effect for a period of one year;

6. We may amend, modify, or revoke this authority at any time and without hearing, at our discretion; and

7. We shall serve this order on the TACA Group, Continental Airlines, Delta Air Lines, the Federal Aviation Administration (AFS-50), and the Department of State.

By:

KARAN K. BHATIA
Assistant Secretary
for Aviation and International Affairs

(SEAL)

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