



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

Issued by the Department of Transportation  
on the 23<sup>rd</sup> day of May, 1997

**Served: May 30, 1997**

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Joint Application of

**UNITED AIR LINES, INC.**

and

**THAI AIRWAYS INTERNATIONAL  
PUBLIC COMPANY LIMITED**

Docket OST 96-1410

for exemptions pursuant to 49 U.S.C. 40109 and for  
Statements of Authorization under Parts 207 and 212  
of the Department's regulations

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**ORDER**

**Summary**

By this order we grant Thai Airways International a statement of authorization to engage in code-share operations with United Air Lines, Inc., on flights operated by Thai Airways in the Hong Kong-Bangkok, Thailand, and Tokyo, Japan-Phuket, Thailand, markets, for one year.<sup>1</sup>

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<sup>1</sup> Thai Airways holds Department authorities to conduct scheduled foreign air transportation of persons, property and mail between Thailand and: (1) the U.S. coterminal points Los Angeles, California/Dallas/Ft. Worth, Texas, via the intermediate points Tokyo and Seattle, Washington; (2) Guam, via the intermediate point Manila, Philippines; and (3) various U.S. points, on a code-share basis with United, on flights operated by United. Further, Thai holds Department authorities to: (1) serve Seoul, Korea, and Osaka, Japan, as intermediate points on its scheduled

## Background

By joint application filed May 28, 1996, United and Thai Airways requested grant of the following authorities: (1) an exemption for Thai Airways to conduct scheduled combination operations to various U.S. points on a code-share basis with United, on flights operated by United; (2) a statement of authorization for United to conduct code-share operations as requested in (1); and (3) a statement of authorization for Thai Airways to put United's airline designator code on Thai Airways' flights in the Hong Kong-Bangkok, Tokyo-Phuket, and Taipei-Bangkok markets. The authorities were requested for a two-year period.

In support, the applicants stated that the request is consistent with the U.S.-Thailand Air Transport Agreement (Agreement); that the requests would not preclude other U.S. carriers from operating code-share services to Thailand since United would not carry local traffic to third-country points on the proposed routings and, thus, no frequency allocations are necessary; and that grant of the requests would provide valuable consumer benefits. United stated that it has opposed a pending code-share arrangement between Delta Air Lines and All Nippon Airways (ANA) and requested that the Department defer action on the Delta/ANA application until the Government of Japan approves the United/Thai code-share application requested here.

## Responsive Pleadings

American Airlines and Delta filed answers to Thai Airways' code-share request and United filed a reply.<sup>2</sup>

American opposed the code share only to the extent that it involved the Hong Kong-Bangkok market. American stated that such service would involve code sharing with a third-country carrier and that the Department had dismissed a similar application made by American because the Hong Kong Government would not approve such operations.<sup>3</sup> American stated that the Thai/United code share services involving Hong Kong should be dismissed.

Delta stated that it did not object in principle to the request, but it did object to United's suggestion that action on the Delta/ANA code-share request should be deferred pending Japanese Government approval of the proposed code-share service by Thai and United between Tokyo and Phuket. Delta stated that its request with ANA involves "third and fourth freedom" services over

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combination operations between Thailand and Los Angeles; (2) serve Osaka as an intermediate point on scheduled all-cargo operations between Thailand and Los Angeles; and (3) conduct charters.

<sup>2</sup> American's answer was accompanied by a motion for leave to file an otherwise unauthorized document. We will grant the motion.

<sup>3</sup> The Department dismissed the request of American and Canadian Airlines International to code share between the United States and Hong Kong via Vancouver. See Order 96-3-64.

an existing route between the United States and Japan and is, thus, entirely different from the proposed service of United and Thai which involves services using a third-country carrier. Delta argued that there is no basis to withhold action on the Delta/ANA code share pending approval by Japan of the Thai/United operations.

United replied that neither Delta nor American raised any issue that would warrant withholding the requested authorizations. With respect to the Tokyo-Phuket market, United argues that there is no basis to accord preference to Delta's proposed code-share application since United is entitled to serve the Tokyo-Phuket market under the 1952 Agreement with Fifth Freedom rights, but has proposed to serve it on a blind-sector basis only; and thus, United argues that it is entitled to approval of its code share on equal footing as Delta.<sup>4</sup> With respect to American's objection, United maintains that the Department should reject American's proposal that the Hong Kong portion of its application be dismissed. In this regard, United argues that its proposed services over Hong Kong do not involve U.S.-Hong Kong code-share traffic and thus do not raise the same issues presented by American's proposed U.S.-Hong Kong code-share services via Vancouver.

### **Department Action**

By Notice of Action Taken October 18, 1996, in this Docket, the Department granted Thai Airways' uncontroverted exemption request as noted in (1), above, and United's uncontroverted request for a statement of authorization, as noted in (2), above, for one year, and deferred action on Thai Airways' request for a statement of authorization, as noted in (3), above. At the time that we took that action, Thailand was classified by the Federal Aviation Administration (FAA) as a Category 2 country under the FAA's International Aviation Safety Assessment (IASA) Program.<sup>5</sup>

Therefore, we were not prepared to grant Thai Airways any new or expanded operating authority that the carrier would operate on its own behalf.

### **Subsequent Developments**

On April 28, 1997, the FAA announced that, as a result of its reassessment of Thailand's civil aviation authority, it had placed the country in Category 1 (in compliance with International Civil Aviation Organization safety standards.)

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<sup>4</sup> United stated that it would, however, be prepared to have the Department defer action on its Tokyo-Phuket request. Consolidated Answer of United at 7.

<sup>5</sup> For a description of the IASA program and the categories associated with it, see 57 Federal Register 38342-43, August 24, 1992, and 60 Federal Register 55408-210, October 31, 1995.

## Decision

We have decided to grant Thai Airways' request to conduct code share operations on behalf of United in the Hong Kong-Bangkok and Tokyo-Phuket markets. The authority will be effective immediately for a period of one year.<sup>6</sup> As discussed below, the Department has already granted Thai Airways' code-share request in the Bangkok-Taipei market.

We find that approval of the proposed operations is consistent with the public interest. As an initial matter, the recently revised Category 1 status of Thailand removes the technical impediment which had earlier caused us to defer action on this portion of Thai Airways request.<sup>7</sup> Moreover, the aviation agreement and Memorandum Of Understanding between the United States and Thailand specifically provide for the proposed code-sharing operations, and the proposed United/Thai Airways services here will make use of those valuable opportunities. Furthermore, approval of the request allows for an expansion of the service options available to the traveling and shipping public.<sup>8</sup> United plans to expand its existing services in the Thailand market through the code-share operations and several U.S. cities could receive new or improved service providing them greater access to Thailand.<sup>9</sup>

We are unpersuaded by American's argument that our dismissal of American's application to serve the U.S.-Hong Kong market on a third-country code-share basis warrants dismissal of the United/Thai Airways application. Our aviation agreement with Hong Kong does not specifically provide for code-sharing operations. In response to American's proposal to serve Hong Kong via Vancouver using the services of a third-country carrier, Hong Kong stated that it was not prepared to permit U.S.-Hong Kong services operated on a third-country code-share basis. In light of Hong Kong's position, we dismissed American's application.<sup>10</sup> The United/Thai code-share services do not involve carriage of U.S.-Hong Kong traffic, but rather U.S.-Thailand traffic carried via Hong Kong on a blind-sector basis. We have previously authorized other blind-sector third country code share services over Hong Kong;<sup>11</sup> we have no reason to take a different approach with respect to the United/Thai Airways blind-sector code-share services involved here.

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<sup>6</sup> We find a one-year grant to be consistent with previous actions we have taken in applications of this type in circumstances comparable to those presented here.

<sup>7</sup> By Notice of Action Taken April 28, 1997, in this Docket, we granted Thai Airways' uncontroverted request to conduct code-share operations in the Taipei-Bangkok market, on behalf of United, on flights operated by Thai Airways, for one year.

<sup>8</sup> We find that Thai Airways is operationally and financially qualified to provide the proposed foreign air transportation code-share services. See Order 80-9-74.

<sup>9</sup> We recognize that our aviation agreements governing service to Hong Kong and Japan do not specifically provide for the proposed blind-sector services. Therefore, as we have noted in similar circumstances, United and Thai Airways will need to obtain the necessary approvals from these governments before commencing the authorized operations involving these countries. See, for example, Order 94-4-43 at 9.

<sup>10</sup> Order 96-3-64 at 4.

<sup>11</sup> See Statement of Authorization granted United on December 13, 1995, for services operated in the Los Angeles-India market via Hong Kong in conjunction with Air India.

We appreciate Delta's concerns over its proposed code-share with ANA in the U.S.-Japan market. Our decision to approve the United/Thai Airways Tokyo-Phuket code share is based on the fact that it involves blind-sector traffic only and, thus, no U.S.-Japan or Japan-Thailand traffic will be carried. The Delta/ANA code share, on the other hand, involves code-sharing in the U.S.-Japan market and raises significant issues involving our relationship with Japan. Given the clearly different nature of the applications, and the fact that the United/Thai operations are fully consistent with the aviation agreement and MOU with Thailand, we are not persuaded that our decisions with respect to the two applications should be linked.

**ACCORDINGLY,**

1. We grant Thai Airways International Public Company Limited a Statement of Authorization under Part 212 of the Department's regulations to permit it to engage in code-share operations with United Air Lines, Inc., on flights operated by Thai Airways between Hong Kong and Bangkok, Thailand, and between Tokyo, Japan, and Phuket, Thailand;
2. The authority granted above is effective immediately and shall remain in effect for a period of one year from the service date of this order;
3. In the conduct of the services authorized, we require Thai Airways to comply with the provisions of its foreign air carrier permit (Order 80-9-74); the Department's regulations governing scheduled and charter air services; and the applicable bilateral aviation agreements between the United States and Thailand and the other foreign countries involved in their authorized services;
4. The code-sharing operations authorized by this order are subject to the conditions that (a) Thai Airways comply with the provision of 14 CFR 399.88 of the Department's regulations and any amendments to the Department's regulations concerning code-share arrangements that may be adopted; (b) the subject foreign air transportation be sold in the name of the carrier holding out such service in computer reservation systems and elsewhere, and that the carrier selling such transportation accept all obligations established in its contract of carriage with the passenger (i.e., the ticket); and (c) the operator shall not permit the code of its U.S. carrier code-sharing partner to be carried on any flight that enters, departs or transits the airspace of any area for whose airspace the Federal Aviation Administration has issued a flight prohibition;
5. We dismiss, without prejudice, the joint application of United Air Lines, Inc., and Thai Airways International Public Company Limited in Docket OST-96-1410 to the extent that it seeks the requested authorization for a period of longer than one year;
6. We grant the motion of American Airlines, Inc., for leave to file an otherwise unauthorized document in this docket;
7. To the extent not granted or dismissed, we deny all other requests in this docket; and

8. We will serve this order on Thai Airways International Public Company Limited; United Air Lines, Inc.; American Airlines, Inc., Delta Air Lines, Inc., the Ambassador of Thailand in Washington, D.C., the Department of State (Office of Aviation Negotiations), and the Federal Aviation Administration (AFS-200).

By:

CHARLES A. HUNNICUTT  
Assistant Secretary for Aviation and  
International Affairs

(SEAL)

Docket Ost 96-1410--Joint Application of  
United Air Lines, Inc., and Thai Airways  
International Public Company Limited for  
exemptions and statements of authorization

Paul L. Gretch, Director  
Office of International Aviation, X-40

Charles Hunnicutt  
Assistant Secretary for Aviation  
and International Affairs

Please sign the attached order that grants a statement of authorization to Thai Airways in order to conduct code-share services on behalf of United in various markets.

Docket OST 96-1410: Joint Application of United  
Air Lines, Inc., and Thai Airways International  
Public Company Limited

Charles Hunnicutt  
Assistant Secretary for Aviation  
and International Affairs

Paulette V. Twine, Chief  
Documentary Services/TASC-SVC121.30

Please issue the attached order as soon as is possible.

Attachment  
Dennis Foley, X-45  
202-366-2399