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Order 2000-10-14



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

Served: October 19, 2000

Issued by the Department of Transportation  
on the 16th day of October, 2000

U.S.-EGYPT THIRD-COUNTRY CODE-  
SHARE OPPORTUNITIES

Docket OST-2000-6982 - 7

**ORDER TO SHOW CAUSE**

**SUMMARY**

By this order, we have tentatively decided to authorize Delta Air Lines to serve Egypt via Paris under its code-share arrangement with Air France.

**BACKGROUND**

Under the Air Transport Agreement between the United States and Egypt, as amended June 24, 1997, three U.S. carriers may serve the U.S.-Egypt market under code-share arrangements with third-country carriers. The United States has designated the following three U.S. carriers and their partners: Delta /Swissair via Zurich; Northwest/KLM via Amsterdam; and United/Lufthansa via Frankfurt and Munich.<sup>1</sup>

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. Both Delta and American have presented submissions to the Department reflecting a desire to serve Egypt with their respective

<sup>1</sup> See Order 97-9-16, September 16, 1997. The Department granted Delta authority to provide third-country code-share service in the U.S.-Egypt market. Northwest and United were already providing such service and the Department allowed them to continue their service. Delta filed a timely renewal application under 14 CFR 377 to ensure that its authority would continue in effect beyond the expiration date (September 19, 1999), pending action on its renewal application.

code-share partners. Specifically, 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.-Egypt market with Air France over Paris to Cairo. Delta stated that these services would replace those previously provided with via Zurich Swissair. It also states that its services via the larger Paris hub will enhance Delta's code-share service since there are more nonstop services between the United States and Paris.

American filed an application seeking an authorization to operate code-share service in the U.S.-Egypt market via Zurich under its code-share arrangement with Swissair. American states that its designation is consistent with public interest since it will facilitate the expansion of its code-share service with Swissair and, thereby offer a greater number of competitive options to the traveling and shipping public.

American objected to Delta's notice, referring to the American-Swissair application and saying that Delta could not change its partner without Department selection procedures.<sup>2</sup> Delta replied that a comparative selection case was not necessary, saying that the Department had 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. 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.

### **TENTATIVE DECISION**

We have tentatively decided that Delta's proposed service via Paris with Air France is subject to our review before implementation and to competitive consideration with the application of American. We have further tentatively decided, upon such review and consideration, that Delta should be selected for Egypt third-country code-share services with Air France.

#### **A. THE PROCEDURAL QUESTION**

Delta's blanket authorization with Air France is subject to certain conditions where limited-entry markets are at issue. A condition specifically states that the 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 to determine whether Delta should be authorized to implement code-share service with Air France in the Egypt market.<sup>3</sup>

We first issued Delta a statement of authorization to operate third-country code-share services in the Egyptian market via Zurich with Swissair. Under the terms of the award, the authorization remained in effect only as long as the carriers retained the underlying authority and their code-

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<sup>2</sup> 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.

<sup>3</sup> In this regard, see Orders 2000-10-7 and 2000-9-12 (U.S.-Romania third-country code-share opportunities).

share agreement remained in effect. Based on Delta's own statements, the Delta-Swissair code-share arrangement is no longer in effect. The basis for Delta's designation for Egyptian code-share service, the Swissair statement of authorization, is thus no longer effective. Therefore, Delta stands positioned as a carrier seeking an entirely new code-share designation for Egypt, a limited-entry market. In these circumstances, we must review its request on the merits and in the circumstances presented, engage in carrier selection.<sup>4</sup>

## **B. CARRIER SELECTION**

Only one U.S. and one Egyptian carrier offer direct service between the United States and Egypt.<sup>5</sup> On the other hand, under our agreement with Egypt, three U.S. carriers can offer third-country code-share service. Thus, code-share opportunities under the agreement represent a valuable benefit for travelers in this market, providing the public with a variety of service options and the benefits that derive from competitive opportunities. In these circumstances, we tentatively conclude that the public interest requires that we act here to maximize the use of the bilateral code-share rights. Since one of the three Egypt opportunities is currently unused, this means acting to authorize another third-country code-share operation.

While both Delta and American have presented proposals that would offer benefits to the public, we tentatively find that Delta's proposal offers the greater overall benefits, and we thus tentatively conclude that Delta should be authorized to use the designation available for third-country code-share services to Egypt.

First, Delta would offer an additional weekly frequency. Delta and Air France would provide seven weekly services as opposed to six for American and Swissair. Furthermore, the Delta/Air France operation would be provided with somewhat larger-capacity aircraft. Air France serves the Paris-Cairo market with either B777 or Airbus 343 aircraft while Swissair serves the Zurich-Cairo market with Airbus 332 aircraft.<sup>6</sup> While American would provide nonstop connecting service to an additional U.S. city (ten versus Delta's nine), seven of those cities are the same as those to be served by Delta.<sup>7</sup> We tentatively believe that overall the benefits offered by American are outweighed by the service benefits offered by Delta.

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<sup>4</sup> 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 is warranted should not be interpreted as limited to such circumstances.

<sup>5</sup> These are Trans World Airlines and Egyptair.

<sup>6</sup> OAG Flight Guide, worldwide edition, September 2000. Air France's B777 aircraft have 270 seats and its Airbus 343 aircraft have from 215 to 252 seats. The seats in Swissair's Airbus 332 aircraft range from 196 to 230 seats.

<sup>7</sup> 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. (Source: Official Airline Guide for August 2000 as extracted by Back Information Services)

Under these circumstances, we tentatively conclude that Delta should be selected to provide third-country code-share service with Air France between the United States and Egypt.

### **ECONOMIC AUTHORITY**

Delta already holds the necessary underlying authority to conduct its proposed services and, thus, additional underlying authority for Delta would not be necessary. With respect to the statement of authorization for the proposed code-share services, Delta has a blanket statement of authorization for its code-share service with Air France, and has filed the necessary notice pursuant to this authorization to serve the Egypt market.

### **ACCORDINGLY,**

1. We tentatively select Delta Air Lines, Inc., to provide scheduled foreign air transportation of persons, property, and mail in the U.S.-Egypt market under its code-share arrangements with Air France (via Paris);
2. We direct all persons to show cause why we should not issue an order making final our tentative findings and conclusions;
3. We direct interested persons wishing to comment on our 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-2000-6982, 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.<sup>8</sup> ;
4. 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;<sup>9</sup>
5. If no objections are filed to our tentative decision on the award of the third-country code-share opportunity, we shall deem all further procedural steps to have been waived, and proceed to enter a final order;
6. We grant the motion of American Airlines to file otherwise unauthorized documents in the captioned docket;
7. To the extent not tentatively granted, we tentatively deny all requests in the captioned docket; and

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<sup>8</sup> 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.

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

8. We will serve this order on American Airlines, Inc.; Delta Air Lines, Inc.; the Ambassador of Egypt 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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