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U.S. Department of Transportation
Office of the Secretary of Transportation

DEPARTMENT ACTION ON APPLICATION IN DOCKET OST-2001-10417-6

Delta Air Lines, Inc., Atlantic Southeast Airlines, Inc., Comair Inc. and Alitalia-Linee Aeree Italiane-S.p.A., Alitalia Team S.p.A., Alitalia Express S.p.A. and Eurofly S.p.A. - Blanket Statements of Authorization - U.S.-Italy Open-Skies Codesharing

Approved, in part, under assigned authority (14 CFR §385.13); balance deferred. *

Date of Action: **October 26, 2001**

for Director, Office of International Aviation

This action is subject to the conditions attached. Persons entitled to petition the Department for review of this action under the Department's regulations, 14 CFR §385.30, should file their petitions within ten days of the date of this action. This action is effective immediately, and the filing of a petition for review will not alter its effectiveness.

* We deferred action on that portion of the application relating to Eurofly, pending advice from the Federal Aviation Administration under Department of Transportation's code-share safety program guidelines. We have also deferred action on the application to the extent that it includes code-share services involving Yugoslavia, Syria and France.

Delta Air Lines, Inc., Atlantic Southeast Airlines, Inc., Comair Inc. and Alitalia-Linee Aeree Italiane-S.p.A., Alitalia Team S.p.A., Alitalia Express S.p.A. and Eurofly S.p.A. - Blanket Statements of Authorization - U.S.-Italy Open Skies Codesharing, Docket OST-2001-10417

Responsive Pleadings

United Air Lines filed an answer. The joint applicants filed a reply. [1]

United objects to the issuance of the blanket statements of authorization only to the extent that they involve service to Belgrade, Damascus, and points in France (Lyon, Nice, and Marseilles). United states that the Department has previously dismissed a United request to provide code-share service to Damascus and that United has deferred a request to code share to Belgrade, pending resolution of issues relating to restoration of U.S. service by the Yugoslavian carrier. In addition, United states that the applicants cannot provide code-share service to France because under the United States-France aviation agreement, the number of opportunities for carriers to offer third-country code-share services is limited and no opportunities are now available.

In their reply, the joint applicants state that open-skies negotiations are pending between the United States and France, and consequently, additional third-country code-share authority may become available. They also argue that the Northwest/Alitalia code-share alliance terminates soon which could make available an additional designation for France third-country code-share service. However, if necessary, the parties state that the Department could defer action on the application to the extent that it involves France until the issue can be resolved.

Decision

We have decided to grant the joint application of Delta Air Lines, Atlantic Southeast Airlines, Comair Inc. and Alitalia-Linee Aeree Italiane, Alitalia Team, and Alitalia Express for blanket statements of authorization to engage in reciprocal code-sharing services. The code-share services authorized are fully consistent with the U.S.-Italy open-skies aviation agreement. Furthermore, they will expand the range of price and service options available to the public. We, therefore, conclude that grant of the requested statements of authorization, to the extent not deferred here, is in the public interest.

We note that Alitalia-Linee Aeree Italiane does not operate services with its own aircraft. Rather, it wet leases aircraft from its three wholly-owned subsidiaries, Alitalia Team, Alitalia Express, and Eurofly, for the conduct of its authorized services. [2] Therefore, Alitalia's Statement of Authorization is limited to services operated under wet lease from the named wholly-owned subsidiaries. [3] The Statement of Authorization to Alitalia Team for these services is granted to the extent that it operates services under wet lease to Alitalia.

We have deferred action on award of authority to provide code-share service to Belgrade, Damascus and points in France (Lyon, Nice, and Marseilles). Such action is consistent with our current policy concerning authorization of services involving Belgrade and Damascus. With regard to France, we note that the joint applicants do not oppose deferral at this time.

[1] The joint applicants accompanied their pleading with a motion for leave to file. We will grant the motion.
[2] See Notice of Action Taken dated April 13, 2001, Docket OST-2001-9224 (Alitalia Team) and Notice of Action Taken dated October , 2001, Docket OST-2001-10534 (Alitalia Express).
[3] As noted above, we have deferred action on the joint action to the extent it involves code-share services on flights operated by Eurofly.

Application of Delta Air Lines, Inc., Atlantic Southeast Airlines, Inc., Comair Inc. and Alitalia-Linee Aeree Italiane-S.p.A., Alitalia Team S.p.A., Alitalia Express S.p.A. and Eurofly S.p.A. for Blanket Statements of Authorization - U.S.-Italy Open Skies
(Docket OST-2001-10417, filed August 14, 2001)

The authority granted is subject to the following conditions: [1]

(a) The statement of authorization will remain in effect only as long as (i) Delta Air Lines, Atlantic Southeast Airlines, Comair. and Alitalia-Linee Aeree Italiane, Alitalia Team, and Alitalia Express continue to hold the necessary underlying authority to operate the code-share services at issue, and (ii) the code-share agreement providing for the code-share operations remains in effect.

(b) Delta Air Lines, Atlantic Southeast Airlines, Comair. and/or Alitalia-Linee Aeree Italiane, Alitalia Team, and Alitalia Express must promptly notify the Department (Office of International Aviation) if the code-share agreement providing for the code-share operations is no longer effective or the carriers decide to cease operating any or all of the approved code-share services. [2] (Such notice should be filed in Docket OST-2001-10417)

(c) Delta Air Lines, Atlantic Southeast Airlines, Comair. and/or Alitalia-Linee Aeree Italiane, Alitalia Team, and Alitalia Express must notify the Department no later than 30 days before they begin any new-code service under the code-share services authorized here. Such notice shall identify the market(s) to be served, which carrier will be operating the aircraft in the code-share market added, and the date on which the service will begin. (Such notices should be filed in Docket OST-2001-10417)

(d) The code-sharing operations conducted under this authority must comply with 14 CFR Part 257 and with any amendments to the Department's regulations concerning code-share arrangements that may be adopted. Notwithstanding any provisions in the contract between the carriers, our approval here is expressly conditioned upon the requirements that the subject foreign air transportation be sold in the name of the carrier holding out such service in computer reservation systems and elsewhere; that the carrier selling such transportation (*i.e.* the carrier shown on the ticket) accept responsibility for the entirety of the code share journey for all obligations established in its contract of carriage with the passenger; and that the passenger liability of the operating carrier be unaffected. Further, the operating carrier shall not permit the code of its U.S. air 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.

(e) The authority to operate to third countries is subject to the condition that any service provided under the statement of authorization shall be consistent with all applicable agreements between the United States and the foreign countries involved. Furthermore, (a) nothing in the award of this blanket statement of authorization should be construed as conferring upon Delta Air Lines, Atlantic Southeast Airlines, or Comair rights (including code-share, fifth-freedom intermediate and/or beyond rights) to serve markets where U.S. carrier entry is limited unless Delta Air Lines, Atlantic Southeast Airlines, or Comair notifies the Department of its intent to serve such a market and unless and until the Department has completed any necessary carrier selection procedures to determine which carrier(s) should be authorized to exercise such rights; [3] and (b) should there be a request by any carrier to use the limited-entry route rights that are included in Delta Air Lines', Atlantic Southeast Airlines',

[1] The Statement of Authorization to Alitalia is limited to services operated under a wet lease from Alitalia Team and Alitalia Express on flights operated by these carriers. The Statement of Authorization for Alitalia Team with respect to services between the United States and Italy and between either the United States or Italy, on the one hand, and third countries, on the other, is limited to operations conducted on a wet-lease basis for Alitalia-Linee Aeree Italiane. The Statements of Authorizations to Alitalia Team and Alitalia Express for services between points in Italy and between Italy and third countries is granted to the extent necessary for these carriers to display Delta's airline designator code on their authorized European regional services.
[2] We expect this notification to be received within ten (10) days after such non-effectiveness or of such decision.
[3] The notice in paragraph (c) above can be used for this notification.

or Comair's authority by virtue of the blanket statement of authorization granted here, but that are not then being used by Delta Air Lines, Atlantic Southeast Airlines, or Comair, the holding of such authority will not be considered as providing any preference for Delta Air Lines, Atlantic Southeast Airlines, or Comair in a competitive carrier selection proceeding to determine which carrier(s) should be entitled to use the authority at issue.

(f) The authority granted here is specifically conditioned so that neither Delta Air Lines, Atlantic Southeast Airlines, Comair, Alitalia-Linee Aeree Italiane, Alitalia Team, nor Alitalia Express shall give any force or effect to any contractual provisions between themselves that are contrary to these conditions. [4]

We may amend, modify, or revoke the authority granted at any time without hearing at our discretion.

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http://dms.dot.gov//reports/reports_aviation.asp

[4] We note that the code-share agreement as submitted did not include provisions regarding exclusive dealings between the code-share parties. Should the parties subsequently decide to amend their code-share agreement or any other agreement between them to include any provision relating to an exclusive arrangement between the parties regarding their code-share services, that amended language must first be submitted for consideration by the Department.