



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

Issued by the Department of Transportation
on the 17th day of June, 2002

**U.S.-TURKEY THIRD-COUNTRY CODE-SHARE
OPPORTUNITIES**

Docket OST-2002-11273

FINAL ORDER

SUMMARY

By this order, we make final our tentative decision in Order 2002-4-9 to select Delta Air Lines, Inc. (Delta), and United Air Lines, Inc. (United), to serve Turkey, under code-share arrangements with their respective third-country code-share partners, and to award each carrier seven weekly frequencies to perform its service.

BACKGROUND

On May 3, 2000, the United States and Turkey signed an open-skies agreement.¹ The new agreement permits U.S. carriers to provide unlimited bilateral code-share service immediately.² It provides for phased increases in third-country code-share services during a three-year transition period. Pursuant to our award of authority during the first and second years of the transition, Delta, Northwest Airlines, Inc. (Northwest) and United now provide service between the United States and Turkey under code-share arrangements with their respective code-share partners, Air France, KLM, and Lufthansa, via various points in Europe.³

The 2000 agreement provides that during the third year of the transition period, effective April 1, 2002, two additional airlines may be authorized to provide third-country code-share service and 14 additional frequencies will be available for third-country code-share services. Effective

¹ The agreement entered into force on August 13, 2001.

² Pursuant to that provision of the agreement, American Airlines offers service in the U.S.-Turkey market from New York and Chicago under its code-share arrangement with Turkish Airlines on the flights operated by Turkish Airlines. See Docket OST-2000-7151.

³ See Orders 2000-7-25, 2000-8-17, 2001-5-4 and 2001-6-11.

April 1, 2003, there will be no restrictions on the operation of third-country code-share combination services.

In response to a Department notice inviting applications, three U.S. carriers applied for the available opportunities: Continental Airlines, Inc. (Continental) with KLM, Delta with Alitalia-Linee Aeree Italiane (Alitalia), and United with Lufthansa. By Order 2002-4-9, we tentatively decided to select Delta and United to serve Turkey under third-country code-share arrangements with their respective partners, and tentatively allocated each carrier seven weekly frequencies for its services.

RESPONSES TO ORDER 2002-4-9

Continental filed an objection to our tentative decision. Delta and United filed answers to the objection.

Continental states that the allocation of all the available code-share frequencies to Delta and United would not provide any new service or competitive benefits but would only enhance the large antitrust-immunized alliances of these carriers at the expense of smaller, unimmunized alliances of airlines such as Continental. Continental argues that the tentative award here would impede its effort to develop its own global system of direct service that would compete with larger alliances. Furthermore, Continental states that the Department's decision to award the frequencies to the carriers with the most U.S. gateways will result in the large alliances becoming even more dominant. Continental argues that no passengers will benefit from the proposed services of Delta and United since their respective alliance partners already offer on-line service on the same routings and with the same elapsed times, and thus, the only change would be the carrier display in reservation systems. Moreover, Continental argues that, since Delta and United hold antitrust immunity for fares as well as services, adding the codes of these carriers on their respective alliance services will create no new price competition. Consequently, Continental states that its selection would ensure service competition because Continental competes directly with its code-share partners and with other carriers in the U.S.-Turkey market, and only Continental's selection would improve competition at a major gateway (Newark/JFK).

Both Delta and United state that Continental has not provided any new arguments or cited any error in the Department's tentative decision. They state that Continental proposes to be a new entrant but it plans to serve only one U.S. city, Newark, whereas Delta and United would serve a number of U.S. cities. In addition, they state that the New York area is already the best-served U.S. gateway to Turkey with nonstop services by two carriers as well as multiple existing third-country code-share services. They state that despite Continental's claim, immunized alliances bring new benefits to consumers such as price reductions and more U.S. flag on-line options. Delta and United also state that Continental is not an "independent" carrier because it has an extensive marketing alliance with Northwest and both carriers are co-participants in overlapping code-share alliances with KLM.

DECISION

We have decided to make final our tentative decision to authorize Delta and United to increase their services to Turkey under their third-country code-share arrangements with their respective partners.

In our show-cause order, we tentatively found that the selection of Delta and United would provide the greatest service improvements and would best enhance competition in the market. In reaching the tentative finding, we noted the number of U.S. cities that Delta and United proposed to serve, the improved elapsed times that their services would represent, and the increase in competitive service that would be provided.

Continental, the only objecting carrier, has provided no new arguments or evidence that persuades us to modify our tentative decision. Rather, it generally has reiterated arguments already raised and considered in our show-cause order.

With respect to these objections, we note that in Order 2002-4-9 we carefully analyzed the service proposals of all parties and the public benefits we saw stemming from those proposals. We understood that Continental, if chosen, would be a new entrant, a factor in its favor. However, in that order we stated, and we remain of the view, that the substantially greater public benefits offered by Delta's and United's proposals, compared with those offered by Continental's, justified granting the selection of Delta and United in this instance.

In this regard, we see no merit to Continental's assertions that new service offerings by a U.S. carrier derived from the operations of a foreign carrier code-share partner somehow do not constitute public benefits. We have never been so restrictive in our view of the marketing and service enhancements that code sharing can generate. In these circumstances, we have no reason not to credit the elapsed time savings from such services when held out for the first time as on-line U.S. carrier offerings. Similarly, Continental's negative assertions regarding inter-alliance competition are speculative and contrary to our own previous analytical findings, and therefore provide no persuasive basis to alter our tentative findings in this case.⁴

In short, Continental has failed to persuade us that the Delta and United proposals, which would expand the U.S. carrier competitive service offerings to a number of U.S. cities, somehow deserve less merit than Continental's proposal, which would benefit only a single U.S. city -- and a city already enjoying service to Turkey from a variety of carriers including Continental's own code-sharing partner Northwest.⁵

⁴ See, *International Aviation Developments: Global Deregulation Takes Off* (First Report), U.S. Department of Transportation, Office of the Secretary, December 1999; and *International Aviation Developments: Transatlantic Deregulation, The Alliance Network Effect* (Second Report), U.S. Department of Transportation, Office of the Secretary, October 2000.

⁵ We note that Continental's service proposal plans to use the same KLM flight for its third-country code-share service that Northwest now uses for its third-country code-share service.

ECONOMIC AUTHORITY

As discussed in our show-cause order, Delta and United already hold the necessary underlying authority to conduct their proposed services and, thus, additional underlying authority for these carriers is not necessary.⁶ In addition, each of the proposed code-share relationships holds blanket authority for their code-share services in the U.S.-Turkey market and each has filed the required notices for expansion of its services, subject to the completion of the carrier selection procedures here. With this final order, each relationship will hold all the necessary authority to commence the operations as authorized.⁷

ACCORDINGLY,

1. We make final our tentative findings and conclusions in Order 2002-4-9;
2. We select Delta Air Lines, Inc., and United Air Lines, Inc., to provide scheduled foreign air transportation of persons, property, and mail in the U.S.-Turkey market under their code-share arrangements with Alitalia-Linee Aeree Italiane (via Milan), and Lufthansa German Airlines (via Frankfurt), respectively;
3. We allocate seven weekly frequencies each to Delta Air Lines, Inc., and United Air Lines, Inc., for U.S.-Turkey third-country code-share services, subject to the following conditions:
 - (a) The frequencies will remain in effect only as long as each carrier continues to hold the necessary underlying authority to serve the U.S.-Turkey market and a third-country code-share authorization for these services, and
 - (b) As to any frequency with which either Delta Air Lines, Inc. or United Air Lines, Inc. does not begin service within 90 days, its frequency allocation with respect to that frequency expires automatically;⁸
4. We may amend, modify, or revoke the authority granted by this order at any time at our discretion without hearing;
5. To the extent not granted, we deny all requests in the captioned docket; and
6. We will serve this order on Continental Airlines, Inc.; Delta Air Lines, Inc.; United Air Lines, Inc.; the City of Chicago; the Houston Parties; the Ambassador of Turkey in

⁶ See Delta's certificate for Route 616 (Segment 3), route integration authority (Notice of Action Taken dated June 8, 2001, Docket OST-97-2338) and U.S-Italy certificate authority (Route 789, issued by Order 2000-4-5). See United's certificates for Routes 57 and 603 (Orders 83-3-77 and 91-2-5) and route integration exemption (Notice of Action Taken dated June 8, 2001, Docket OST-97-2126).

⁷ Order 2002-4-9 at 5. Delta provided such notice in its application in this docket and United had previously provided such notice in its application filed February 8, 2001, Docket OST-2001-8781.

⁸ As both carriers stated that they were prepared to begin their code-share services immediately, the 90-day dormancy period will begin on the date of service of this order.

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
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