



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

Issued by the Department of Transportation  
on the 13<sup>th</sup> day of March, 2020

**Joint Application of**

**HAWAIIAN AIRLINES, INC. AND  
JAPAN AIRLINES CO., LTD.**

**Docket DOT-OST-2018-0084**

**For Approval of and Antitrust Immunity  
for Alliance Agreements under 49 U.S.C. §§  
41308 and 41309**

**FINAL ORDER**

**I. SUMMARY**

By this Order, the Department of Transportation (the “Department”) makes final its tentative decision in Order 2019-10-15 (the Show Cause Order). The tentative decision had two parts. The first part tentatively granted approval of the alliance agreements between Hawaiian Airlines, Inc. (Hawaiian) and Japan Airlines Co., Ltd. (JAL) (collectively, the Joint Applicants) to the extent that these agreements are consistent with U.S. antitrust law.<sup>1</sup> The second part tentatively denied, without prejudice, a grant of antitrust immunity (ATI) because the Department tentatively determined that the Joint Applicants had not met the statutory and policy standards necessary to obtain a grant of antitrust immunity, and that the airline partners could proceed readily without a grant of antitrust immunity.<sup>2</sup>

After the Show Cause Order, the Joint Applicants submitted a substantial amount of new information intended to address the Department’s concerns about a grant of antitrust immunity. Whereas the initial application proposed a joint venture (JV) between Hawaii, Japan, and ten additional countries in Asia,<sup>3</sup> the new submissions included a new geographic scope, the introduction of a new business model to the U.S.–Japan market, and critical details about how

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<sup>1</sup> The commercial agreements include the following: a Commercial Cooperation Agreement (Appendix 1), a Joint Venture Agreement (Appendix 2), a Frequent Flyer Program Agreement (Appendix 3), an Amended Special Prorate Agreement (Appendix 4), and a Codeshare Agreement (Appendix 5). *See* Appendices 1-7 to Joint Application [PUBLIC], June 15, 2018. DOT-OST-2018-0084-0002.

<sup>2</sup> *See* Order 2019-10-5.

<sup>3</sup> The JV initially included passengers connecting over Japan to: China, Hong Kong, Indonesia, Malaysia, the Philippines, Singapore, South Korea, Taiwan, Thailand, and Vietnam. *See* [PUBLIC] Joint Application for Approval of and Antitrust Immunity for Alliance Agreements, June 14, 2018, DOT-OST-2018-0084-0001 at 12.

the new joint venture would operate that have not been fully examined on the record. The Joint Applicants have not provided for the Department or the public record the text of the revised agreements incorporating the proposed changes, nor further information and evidence needed to evaluate the rationale for, and viability of, the significant changes to the original application. Critically, the Joint Applicants still have not demonstrated how the JV would function in terms of revenue sharing, pricing and marketing, even as they have added complexity to its scope and operations. Under these circumstances, the Department cannot find that the new submissions are sufficient to warrant a grant of ATI at this time.

As discussed below, the Joint Applicants ask that we adopt the procedures deployed in the Delta–Virgin Australia joint venture case,<sup>4</sup> which they argue is analogous to the situation here. However, we see this matter as presenting substantially different circumstances than the Delta-Virgin Australia matter. The issue in that case was the necessary alignment of systems and business processes to ensure that the economic incentives contemplated in the agreements would produce public benefits proximate to the grant of ATI. Here, the Joint Applicants propose changes that would require significant modifications to the alliance agreements for which they seek ATI, and thus substantial additional review, as well as an opportunity for public comment.

## **II. SUMMARY OF THE RECORD**

On June 14, 2018, the Joint Applicants submitted their application seeking approval of, and a grant of antitrust immunity for, a joint venture agreement. The agreements would create a revenue-sharing partnership that included nonstop flights between Hawaii and Japan, as well as flights connecting from Hawaii via Japan to 10 other countries in Asia. The JV, as proposed at the time, excluded any nonstop flights between Hawaii and these countries. Flights to and from the mainland U.S. were also excluded under the proposed agreements.

The Department issued Order 2019-10-5 on October 3, 2019, tentatively approving the agreements to the extent they are consistent with U.S. antitrust law; however, the Department tentatively decided not to grant the Joint Applicants antitrust immunity, finding that while the commercial agreements would not substantially reduce competition, the agreements, as structured, did not require ATI because they would not offer any more public benefits than would likely be obtained through ordinary commercial cooperation agreements. The Department’s conclusion was based on a substantial review of the evidence provided up to that point. A review of the case record found inadequate support for granting ATI based on the service levels and commercial arrangements presented by the Joint Applicants. Because the Order did not grant ATI, and the commercial incentives for partnership with airlines outside the agreement remained largely the same, we imposed no conditions on the commercial agreements save that they comport with U.S. antitrust law.

## **III. SUMMARY OF RESPONSIVE PLEADINGS**

The Department invited public comment on the Show Cause Order, with a comment period originally scheduled to close on October 14, 2019. On October 7, 2019, the Joint

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<sup>4</sup> See *Docket* DOT-OST-2009-0155.

Applicants submitted a motion requesting an extension of the comment period, proposing that comments be due on November 12, 2019. The Department subsequently issued Order 2019-10-9 on October 11, 2019 extending the comment period to November 12, 2019.<sup>5</sup> The responsive pleadings are summarized below.

#### **A. All Nippon Airways**

All Nippon Airways (ANA) filed comments on November 21, 2019, asking that the Department revisit its tentative position expressed in the Show Cause Order that the agreements, even absent ATI, should be approved without the Department imposing an interline condition.<sup>6</sup> ANA expresses its concern that, even without ATI, Hawaiian has the ability, and under the proposed JV agreements the incentive, to foreclose interlining within the Hawaiian islands for connecting traffic carried by other carriers from Japan and Asia. ANA asserts that Hawaiian is effectively a monopoly carrier for international passengers traveling beyond Honolulu, and that an interlining condition will ensure that Hawaiian will not abuse its position with respect to intra-Hawaiian access for foreign carriers. As it did with the initial application, ANA takes no position on the public benefits claimed by the Joint Applicants.<sup>7</sup>

#### **D. Joint Applicants**

The Joint Applicants submitted an Answer that presented a significantly altered joint venture. The agreement now includes all traffic within the revenue sharing agreement, including nonstop Hawaiian flights to the ten Asian countries beyond Japan. The geographic scope has also been expanded to include cities in India and Russia. Additionally, the Joint Applicants plan to include the Tokyo–Guam market, a busy route that is part of the General Services Administration city-pair program for U.S. government and contractor travel. The Joint applicants have also decided to include JAL’s low-cost long-haul subsidiary ZIPAIR, which will operate on the busy Honolulu–Tokyo route. The Joint Applicants argue that there is a substantial number of connecting passengers that would benefit from the proposed JV, and that the Department has not fully considered these connecting markets. The Joint Applicants acknowledge gaps in their IT systems that preclude fully implementing the JV and offering a seamless customer experience. The Joint Applicants note that they have already made some enhancements to their IT systems.<sup>8</sup> In their response, they identify and prioritize key IT projects that would be implemented within six months, and request that the Department issue an Interim Order that would allow the Joint Applicants to continue developing their joint venture and postpone making a final decision until these investments have been made. In making this request, the Joint Applicants cite the procedures the Department used in the Delta–Virgin Australia case.<sup>9</sup>

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<sup>5</sup> The Department issued Order 2019-10-9 only after the Joint Applicants submitted a poll of airline representatives served by Show Cause Order 2019-10-5 to the case docket showing that no carriers objected to the date extension. *See* Hawaiian Airlines and Japan Airlines Polling Letter, October 9, 2019, DOT-OST-2018-0084-0042.

<sup>6</sup> *See* Answer of All Nippon Airways Co., Ltd., November 21, 2019, DOT-OST-2018-0084-0053 at 3.

<sup>7</sup> *See id.*

<sup>8</sup> *See* [Public] Response of Hawaiian Airlines Inc. and Japan Airlines Co., Ltd. to Order to Show Cause at 10, DOT-OST-20018-0084-0047, November 15, 2019.

<sup>9</sup> *See* Order 2010-11-22.

## IV. DECISION

The Department is finalizing its tentative decision in Order 2019-10-5, approving the commercial agreements to the extent that they comply with U.S. antitrust law, but denying a grant of ATI.<sup>10</sup> The Department determines, based on the record in the case, that the proposed commercial partnership between Hawaiian and JAL would not be anticompetitive. Our approval of these agreements means that the Joint Applicants can continue to coordinate and further explore how best to structure an arms-length partnership or, alternatively, revise other documents to reflect important changes they propose to implement to their commercial agreements. We reach our final decision by applying the decisional standards set forth in 49 U.S.C. §§41308 and 41309 to the specific facts of this case.

### A) Summary of the Proposed Changes

The Joint Applicants' response to our Show Cause Order introduces substantial changes to the originally proposed partnership. The Joint Applicants now propose an expanded geography that includes select cities in Russia and India.<sup>11</sup> The geographic scope will add the Tokyo – Guam market, a busy route that is part of the General Services Administration city-pair program for U.S. government and contractor travel. The Joint Applicants will also include destinations served by Hawaiian in the South Pacific.<sup>12</sup> The Joint Applicants further propose network scope changes, now including nonstop Hawaiian routes to Asian countries that, in the original application, were only included to the extent that passengers reaching these countries connected over Japan. The Joint Applicants now also propose to include JAL's new long-haul low-cost carrier ZIPAIR, introducing both a new carrier and a new business model to the important Honolulu–Tokyo market. The Joint Applicants provide evidence that their current arms-length codeshare is not achieving the expected results, reasoning that this will be improved with a grant of ATI. Lastly, the Joint Applicants have proposed IT improvements, grouped into two tranches of projects. The Joint Applicants explain that the first tranche – encompassing last-seat inventory access, PNR servicing across carriers, Hawaiian access to JAL seat maps, and allowing metal-neutral selling on Hawaiian's website – are priority projects that would be implemented within six months of a grant of ATI.<sup>13</sup>

### B) Delta – Virgin Australia as an Analog

In their response to the Show Cause Order, the Joint Applicants seek to invoke the procedures used in the Delta and Virgin Australia application for ATI.<sup>14</sup> The Joint Applicants

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<sup>10</sup> Order 2019-10-5 at 1.

<sup>11</sup> The Joint Applicants now plan to serve Vladivostok in Russia, along with New Delhi and Bangalore in India. *See* [Public] Response of Hawaiian Airlines Inc. and Japan Airlines Co., Ltd. to Order to Show Cause at 9. DOT-OST-20018-0084-0047, November 15, 2019.

<sup>12</sup> *See id* at 8.

<sup>13</sup> *See id* at 14-16.

<sup>14</sup> *See* [Public] Joint Application for Approval of and Antitrust Immunity for Alliance Agreements, July 7, 2010. DOT-OST-2009-0155-001. Virgin Australia included Virgin Australia Pty Ltd., Virgin Australia

argue that, in the Delta–Virgin Australia case, the Department also had concerns about Information Technology (IT) system functionality limiting the carriers’ ability to implement an effective joint venture. In response to the Department’s findings, Delta–Virgin Australia submitted additional information on the record. We then issued an Interim Order that required, among other things, that Delta and Virgin Australia report on the progress of IT system enhancements to support codesharing, and the date the needed upgrades were completed.<sup>15</sup> We ultimately approved the joint venture agreements between, and granted ATI to, Delta and Virgin Australia, subject to conditions.<sup>16</sup> As discussed below, we find that this case presents a very different fact pattern that precludes using the approach taken in the Delta–Virgin Australia case.

### **C) Proposed Network Changes**

The Joint Applicants have proposed network changes that include service to Vladivostok, Russia, along with New Delhi and Bangalore, India; however, the Joint Applicants did not provide details of the expected consumer benefits resulting from these changes.

The Joint Applicants say that they would now include Hawaiian placing its code on local Tokyo–Guam flights, and include the route in their revenue sharing agreement.<sup>17</sup> The Joint Applicants note that JAL currently serves the market, operating from Narita seven times each week. JAL will be doubling that service, operating 14 flights per week, beginning in June 2020.<sup>18</sup> While the Joint Applicants point out that opportunities exist for a joint venture to potentially increase traffic, this new capacity clearly does not require ATI to initiate, given that JAL had planned these services but did not include them in the originally-structured joint venture. The extent to which a revised joint venture that includes these services would generate additional public benefits otherwise unattainable without immunity for those JV agreements depends on how those services are incorporated and managed in the joint venture. Since the Joint Applicants have not provided any information on how this would be done, the Department is unable to make a determination.

The Joint Applicants propose to further expand the geographic scope of the joint venture by adding Honolulu–Pape’ete, Tahiti and Pago Pago, American Samoa. The Joint Applicants state that the agreement will also now include additional South Pacific points that Hawaiian might serve in the future. Hawaiian currently services Pape’ete once per week, year-round. The Joint Applicants state that they see opportunities to offer travel packages that include stops in both Hawaii and Tahiti. They further argue that schedule coordination between the Joint Applicants could result in better connecting options and increased frequency of Tokyo–Pape’ete

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International Airlines Pty LTD., d/b/a V Australia; Pacific Blue Airlines (NZ) Ltd., and Pacific Blue Airlines (AUST) Pty Ltd.

<sup>15</sup> See Order 2010-11-22.

<sup>16</sup> See Order 2011-6-9. As a condition of approval, Delta and Virgin Australia were required to maintain a specific level of capacity for two years from the date of issuance of the Order.

<sup>17</sup> See [Public] Joint Applicants Response to Show Cause Order 2010-9-4 at 7, DOT-OST-2009-0155-0033, October 13, 2010.

<sup>18</sup> See *id* at 7.

services.<sup>19</sup> Hawaiian currently flies to Pago Pago twice per week from Honolulu. This city pair market would be included in the Joint Applicants' codesharing. While the Department recognizes that the Joint Applicants are expanding possible consumer benefits, ATI is not required to achieve this connectivity. These additional markets reflect a broader code sharing arrangement, rather than the provision of services that, with ATI, will produce substantial benefits that would not otherwise occur.

The Joint Applicants propose to restructure their joint venture and revenue sharing agreements to include Hawaiian's nonstop routes to Asia, including the relatively large Honolulu–Seoul, South Korea market. The Department views these as beneficial changes demonstrating a greater commitment to network alignment between Hawaiian and JAL, with increased alignment of incentives fundamental to the provision of public benefits from a joint venture. Yet the findings from our Show Cause Order remain, in that while these changes demonstrate alignment, they do not indicate the provision of new services that would not exist absent ATI, nor is it clear how they will be incorporated into revised alliance agreements to ensure that additional public benefits will be realized through clear economic incentives.

#### **D) Introduction of ZIPAIR to the Hawaii – Japan Market**

The Joint Applicants now propose to include JAL's new low-cost long-haul subsidiary ZIPAIR. The initial application for ATI did not include ZIPAIR. The Department sought clarification on the Joint Applicants' strategy for ZIPAIR in Order 2018-8-16, where we requested further information to complete the evidentiary record. The Joint Applicants response to our inquiries into plans for ZIPAIR stated that, "JAL's individual five-year network plan for the Japan–Hawaii market, makes no provision for the entry of a new long-haul low-cost carrier (controlled by JAL) simply because no such plans currently exist."<sup>20</sup> The Joint Applicants' further explained that JAL's low-cost subsidiary would be clearly differentiated from JAL, and that it would be marketed separately.<sup>21</sup> The Joint Applicants elaborated that the entry of an independent low-cost subsidiary into the Japan–Hawaii market would have a limited impact on the public benefits expected from the proposed alliance.<sup>22</sup>

While the Joint Applicants' decision to include ZIPAIR in the JV responds to DOT questions about their collective capacity commitment to the Hawaii–Asia market, the Joint Applicants have not provided clarity into the specifics of this new strategy, nor have they revised the agreements accordingly. We note that the Joint Applicants, in choosing to bring ZIPAIR to the market, do so with forewarnings, stating: "While the LCC business model has promise in the Hawaii market, being an LCC does not guarantee success. Recent years have seen LCCs try to enter the market but fail to sustain service."<sup>23</sup> The Joint Applicants specifically cite Scoot

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<sup>19</sup> See [Public] Joint Applicants Response to Show Cause Order 2010-9-4 at 7, DOT-OST-2009-0155-0033, October 13, 2010.

<sup>20</sup> [Public] Response to Order Requesting Additional Information, November 27, 2018, DOT-OST-2018-0084-0023 at 18.

<sup>21</sup> See *id* at 19.

<sup>22</sup> See *id*.

<sup>23</sup> See [Public] Response of Hawaiian Airlines Inc. and Japan Airlines Co., Ltd. to Order to Show Cause at 59. DOT-OST-20018-0084-0047, November 15, 2019.

(which flew between Honolulu and Osaka, ceasing operations in June 2019) and Jin Air (which operates only in the summer peak between Seoul and Honolulu) to indicate the potential challenges to LCC success in the Hawaii–Asia market. The Joint Applicants point out that none of these LCCs serving Hawaii to Asia operated through a metal-neutral joint venture, and that ZIPAIR’s inclusion in the proposed JV will help ensure its success.<sup>24</sup> Yet the Joint Applicants fail to clarify, specifically, how ZIPAIR will be incorporated into the metal neutral joint venture and any revised agreements, and other strategic issues.<sup>25</sup>

The Joint Applicants refer to the Delta–Virgin Australia case and request that we grant an Interim Order that would allow Hawaiian and JAL to continue implementing these proposed changes. An important difference between this case and that of Delta–Virgin Australia centers on the basic operational strategy now presented by Hawaiian and JAL. In the cited Virgin Australia example, the carriers provided evidence that all four Virgin Australia subsidiaries were managed as a single network using a unified commercial and revenue management strategy.<sup>26</sup> Here, the integration of ZIPAIR, an entirely new carrier operating with a unique business model as compared to both Hawaiian and its parent JAL, remains unclear. We note that the exact structure of the revenue sharing agreement determines the extent to which carriers have aligned incentives that will lead to further consumer benefits otherwise unobtainable. With such important questions about the revised JV strategy and operation outstanding, the Department could not issue an Interim Order.

#### **E) IT Issues**

The Department recognizes the commitments by the Joint Applicants to enhance IT systems. The gaps that exist in this case are critical to the capability of the Joint Applicants to implement a JV and produce the expected consumer benefits. Specifically, Hawaiian notes an inability to establish last seat inventory control, a lack of PNR visibility, a lack of access to seat maps across carriers, and a lack of metal-neutral flight searching.<sup>27</sup>

There are critical differences in the fact pattern found in the Delta–Virgin Australia case than the one presented here. In the case of Delta–Virgin Australia, while there were concerns about system interoperability, the underlying functional capabilities of the respective Delta and Virgin Australia systems were robust and supported international codesharing. Delta and Virgin Australia explained that the interoperability concerns centered on communications between short- and long-haul carriers within the Virgin Australia group.<sup>28</sup> The system used for Virgin Australia’s long-haul operations (Amadeus) was fully compatible with Delta’s Deltamatic

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<sup>24</sup> *See id.*

<sup>25</sup> *See* [Confidential] Response of Hawaiian Airlines Inc. and Japan Airlines Co., Ltd. to Order to Show Cause, November 15, 2019, DOT-OST-20018-0084-0047 at 60 (discussing ZIPAIR strategy with respect to revenue-sharing, inventory management and pricing).

<sup>26</sup> *See* [Public] Joint Applicants Response to Show Cause Order 2010-9-4 at 26. DOT-OST-2009-0155-0033, October 13, 2010.

<sup>27</sup> *See* [Public] Response of Hawaiian Airlines Inc. and Japan Airlines Co., Ltd. to Order to Show Cause at 14-16. DOT-OST-20018-0084-0047, November 15, 2019.

<sup>28</sup> *See* [Public] Joint Applicants Response to Show Cause Order 2010-9-4 at 24-25. DOT-OST-2009-0155-0033, October 13, 2010.

system. In their response to our initial denial of ATI, Delta and Virgin Australia noted that their respective systems had at that time “the global aviation industry’s most advanced set of inter-airline system functionality.” In the current case, while the Joint Applicants note that they have industry-standard passenger service systems, they acknowledge that each airlines’ respective systems require further enhancements to implement the proposed JV.<sup>29</sup>

Hawaiian has acknowledged that cost has been a barrier to developing its systems.<sup>30</sup> The Department recognizes the expense of IT investments, and that the airline industry is a particularly capital-intensive one. Yet a grant of ATI is appropriate to enable consumer benefits that could not otherwise be obtained, and IT investments for international partnerships typically can be accomplished absent such regulatory relief. The Department also recognizes Hawaiian’s commitment to making investments to support its partnership with JAL and to a greater capability to provide public benefits. Nonetheless, the Department would need additional information on the specific capabilities of new joint business processes, and clarity on how these processes would be reflected in the joint venture agreements.

#### **F) Performance of the Codeshare and Marketing Agreements**

The Joint Applicants have submitted evidence that their arms-length codeshare and marketing arrangements are not performing as hoped.<sup>31</sup> Specifically, the Joint Applicants show a decline in codeshare passengers, even after initial success of their codeshare agreement that was implemented in March 2018.<sup>32</sup> Similarly, the Joint Applicants show that their marketing partnership under JALPAK has declined. Hawaiian seats sold on JALPAK from March to September 2019 were 41% lower than the number of seats sold in the same period a year prior.<sup>33</sup> The Joint Applicants argue that without ATI, the level of cooperation between the carriers will decrease, and that Hawaiian’s participation in JALPAK will ultimately fail, as the carriers lack the incentive to coordinate sales and distribution absent a fully-integrated metal-neutral revenue-sharing JV.<sup>34</sup> Our tentative finding in the Show Cause Order was that the Joint Applicants have not explored the limits of the existing arms-length agreements. The Joint Applicants have not fully explained why the deterioration of the codeshare and marketing partnerships occurred so quickly. The poor performance of the current partnership suggests implementation and strategic challenges that must be addressed before the Department can determine the impact of a grant of ATI.

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<sup>29</sup> See [Public] Response of Hawaiian Airlines Inc. and Japan Airlines Co., Ltd. to Order to Show Cause at 12-16. DOT-OST-20018-0084-0047, November 15, 2019.

<sup>30</sup> See Response to Order Requesting Additional Information at 43-47. DOT-OST-2018-0084-0023, November 27, 2018.

<sup>31</sup> See [Public] Response of Hawaiian Airlines Inc. and Japan Airlines Co., Ltd. to Order to Show Cause at 24-26. DOT-OST-20018-0084-0047, November 15, 2019.

<sup>32</sup> See *id.* at 25.

<sup>33</sup> See *id.* at 34.

<sup>34</sup> See *id.* at 36.



## **G) Connecting Passengers**

The Joint Applicants argue that the connecting passenger market within the scope of the proposed JV is significant.<sup>35</sup> The Department, in the Show Cause Order, pointed out that the vast majority of passengers in the market fly point-to-point. This tentative finding does not negate that passengers flow over Japanese gateways on flights with very high load factors and that little additional capacity exists to accommodate substantial additional connecting passengers. A typical benefit of grants of ATI is the ability for carriers to reduce “double marginalization” by combining networks to connect city pairs where a large amount of traffic is carried on connecting itineraries. In a metal-neutral partnership, the carriers have a shared financial incentive to serve these markets, and thus to increase trunk route capacity to carry the greater volume of connecting passengers. That is not the case for this JV, for which we tentatively found that the Joint Applicants “have not submitted compelling evidence to show the additional increments of capacity that could only be implemented with ATI.”<sup>36</sup> The Joint Applicants now propose changes in their capacity plans, but these rely on new capacity provided by ZIPAIR.<sup>37</sup> As explained above, key questions about how ZIPAIR will integrate with the JV have yet to be answered. Additionally, the Joint Applicants have made clear that there are risks associated with this new business model. Given the lack of clarity regarding additional trunk capacity to be provided by the JV, coupled with the currently-high load factors achieved through nonstop capacity, the Joint Applicants have not clearly demonstrated that they will deliver capacity not otherwise possible absent ATI.

## **H) Potential Foreclosure of Inter-Island Feed**

Finally, ANA asserts that, even without ATI, Hawaiian is incentivized to foreclose interisland feed and asks that the Department condition any approval, even without ATI, to require Hawaiian to interline with other carriers on interisland services.<sup>38</sup> We find that there is little likelihood that Hawaiian will change its current policy of interlining with carriers serving Hawaii given the realities of competition in the interisland market, particularly in light of the evidence regarding performance of the current codeshare agreement and marketing partnership.<sup>39</sup> As noted above, the Joint Applicants have supplied evidence showing that both codeshare passengers and JALPAK bookings have not performed as hoped, and in fact are seeing declines since Hawaiian and JAL entered their codeshare and marketing agreements. These facts make clear that the current commercial partnership between Hawaiian and JAL will not preclude third-party access to Hawaiian’s important intra-island network.

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<sup>35</sup> See *id.* at 41.

<sup>36</sup> See Order 2019-10-5 at 11.

<sup>37</sup> See [Public] Response of Hawaiian Airlines Inc. and Japan Airlines Co., Ltd. to Order to Show Cause at 57-58. DOT-OST-20018-0084-0047, November 15, 2019.

<sup>38</sup> See Answer of All Nippon Airways Co., Ltd at 3. DOT-OST-2018-0084-0053, November 21, 2019.

<sup>39</sup> See [Public] Response of Hawaiian Airlines Inc. and Japan Airlines Co., Ltd. to Order to Show Cause at 31-34. DOT-OST-20018-0084-0047, November 15, 2019.

**ACCORDINGLY:**

1. We approve the commercial agreements between Hawaiian Airlines, Inc. and Japan Airlines Co. Ltd. submitted in June 2018 as they relate to foreign air transportation, to the extent those agreements are consistent with U.S. antitrust law;
  - a. The above approval will become effective when the Joint Applicants submit finalized agreements including, but not limited to, any updated or revised agreements or appendices, provided that they do so within six (6) months of the date of the Final Order.
2. We deny without prejudice the request for antitrust immunity filed in Docket DOT-OST-2018-0084;
3. We grant all outstanding motions for leave to file late or unauthorized pleadings; and
4. We will serve this Order on all parties on the service list in this docket.

By:

**JOEL SZABAT**  
Assistant Secretary  
Aviation and International Affairs

(Seal)

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