



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

Issued by the Department of Transportation
on the 3rd day of June, 2020

Served: June 3, 2020

In the matter of

**Air China Limited d/b/a/ Air China; Beijing
Capital Airlines Co., Ltd.; China Eastern
Airlines Corporation Limited; China Southern
Airlines Company Limited; Hainan Airlines
Holding Co. Ltd.; Sichuan Airlines Co., Ltd.;
and Xiamen Airlines**

Docket DOT-OST-2020-0052

NOTIFICATION AND ORDER DISAPPROVING SCHEDULES

Summary

The U.S. Department of Transportation (the Department), responding to the failure of the Government of the People's Republic of China (China) to permit U.S. carriers to exercise the full extent of their bilateral right to conduct scheduled passenger air services to and from China, is suspending the scheduled passenger operations of all Chinese carriers to and from the United States. This order will become effective on June 16, 2020, unless effective sooner pursuant to Ordering Paragraph 2 below.

Background

Civil aviation relations between the Government of the United States of America (USG) and the Government of China are governed by the U.S.-China Civil Air Transport Agreement, as amended ("the Agreement"), concluded on September 17, 1980, and subsequently amended. The Agreement establishes, among other things, rights for the carriers of both parties to provide certain air services between the two countries. For airlines designated by the USG, these rights include, among others, the right to "operate combination and all-cargo services with full traffic

rights... [f]rom any point or points in the United States...to any point or points in the 'People's Republic of China open to scheduled international services” subject to frequency limitations in the case of certain Chinese points.¹ The Agreement also establishes that “each Party shall take all appropriate action to ensure that there exist fair and equal rights for the designated airlines of both Parties to operate the agreed services on the specified routes so as to achieve equality of opportunity, reasonable balance and mutual benefit.”²

By Order 2020-5-4, issued May 22, 2020, in the present docket, we fully described how the Chinese aviation authorities have failed to permit U.S. air carriers to exercise fully their bilateral rights with respect to the provision of scheduled passenger services between the United States and China. We recall that discussion below.

As air transportation demand between the United States and China decreased in late January 2020, the three U.S. carriers operating scheduled passenger flights between the United States and China (American Airlines, Inc. (American), Delta Air Lines, Inc. (Delta), and United Airlines, Inc. (United)) drew down their scheduled U.S.-China combination services by the beginning of February 2020. Chinese carriers also suspended some, but not all, of their U.S.-China scheduled combination services. In early January 2020, among U.S. and Chinese carriers, there were approximately 325 weekly scheduled combination flights operated between the two countries. By mid-February, only 20 weekly scheduled combination flights by four Chinese carriers remained in the market. In mid-March, Chinese carriers increased service levels to 34 weekly flights.

On March 26, 2020, the Civil Aviation Authority of China (CAAC) issued a “Notice on Further Reducing International Passenger Flights during the Epidemic Prevention and Control Period” (“the CAAC Notice”), which provides that Chinese airlines could maintain just one weekly scheduled passenger flight on one route to any given country. Pursuant to the CAAC Notice, foreign airlines could maintain just one weekly scheduled passenger flight on one route to China. Furthermore, the CAAC Notice provides that Chinese and foreign carriers are required to use their international passenger flight schedules from March 12, 2020, as a maximum limit of the capacity, in terms of frequency of passenger service, that they may maintain in any given international market until further notice. By March 12, U.S. airlines had completely ceased flying passenger service to and from China; however, Chinese carriers generally maintained a degree of passenger service during that timeframe. In establishing an arbitrary “baseline” date of March 12, 2020, as well as the other restrictions cited above, the CAAC Notice effectively precludes U.S. carriers from reinstating scheduled passenger flights to and from China and operating to the full extent of their bilateral rights, while Chinese carriers are able to maintain scheduled passenger service to and from each foreign market served as of the baseline date, including the United States. The Department views these restrictions as inconsistent with the Agreement and has voiced its objections to the CAAC.

¹ U.S.-China Civil Air Transport Agreement, Annex I, Section I and Annex V.

² U.S.-China Civil Air Transport Agreement, Article 12, Paragraph 2.

U.S. carriers had originally planned to reinstate scheduled passenger services to China in early June 2020. United and Delta announced their intent to resume scheduled passenger services on various routes and submitted applications to the CAAC at the beginning of May 2020. In light of the failure of the CAAC to approve U.S. carrier applications, the Department intensified its engagement with the CAAC regarding the Notice, and, in particular, raised objections that the Notice is inconsistent with the terms of the Agreement. The Department highlighted two primary concerns: (1) that the Notice imposes capacity limitations beyond those contemplated in the Agreement; and (2) that the Notice creates an environment that affords Chinese carriers more favorable treatment than U.S. carriers, thereby denying U.S. carriers a “fair and equal opportunity to compete.”

The USG has repeatedly raised with the CAAC its objections to the CAAC Notice and its inconsistency with the Agreement. During a call on May 14, 2020, the Department addressed with the CAAC the inability of U.S. carriers to resume scheduled passenger service and exercise their full bilateral rights, emphasizing that the CAAC Notice established restrictions for U.S. carriers that are inconsistent with the Agreement. In response, the CAAC informed the Department that China is considering removing the March 12 schedule pre-condition; however, the restriction to once-weekly service on one route to China would remain in place.

Against this background, on May 22, 2020, the Department issued Order 2020-5-4 to impose Phase 1 schedule filing requirements under 14 CFR Part 213 of the Department’s regulations to cover all of the scheduled combination services of the captioned foreign air carriers operating to and from the United States.

Subsequent Development

On May 25, 2020, the CAAC submitted a letter to the Department asserting that its Notice is not inconsistent with the Agreement because its provisions “equally apply to all domestic and foreign carriers, being fair, equal and transparent.” The CAAC says it does not “wish to be obliged to respond by taking countermeasures on U.S. carriers” and urges the Department to revoke its order. Meanwhile, the CAAC remains unable to communicate definitively to the Department a time at which its Notice will be revised to allow U.S. carriers to reinstate scheduled passenger flights.

Decision

We have fully described how the CAAC has failed to permit U.S. carriers to exercise fully their rights under the Agreement. We find no basis in the CAAC’s May 25th letter to anticipate a change in CAAC policy that would point to a satisfactory resolution.

Therefore, based on the facts before us, we continue to find that the Government of China has, over the objections of the U.S. Government, impaired the operating rights of U.S. carriers and denied U.S. air carriers the fair and equal opportunity to exercise their operating rights under the

Agreement, and thus has acted contrary to the Government of China's obligations under Annex I, Section I; Annex V; and Article 12(2) of the Agreement.

In light of these facts, which present a situation in which the Chinese aviation authorities have authorized no U.S. carrier scheduled passenger operations between the United States and China, we conclude that these circumstances require the Department's action to restore a competitive balance and fair and equal opportunity among U.S. and Chinese air carriers in the scheduled passenger service marketplace. We, therefore, conclude that the public interest requires the suspension of all Chinese carrier scheduled passenger air services between the United States and China.³ We will effectuate this under the Part 213 process by requiring all the affected Chinese carriers to reduce their level of scheduled passenger frequencies to zero.

Our overriding goal is not the perpetuation of this situation, but rather an improved environment wherein the carriers of both parties will be able to exercise fully their bilateral rights. Should the CAAC adjust its policies to bring about the necessary improved situation for U.S. carriers, the Department is fully prepared to revisit the action it has announced in this order.

ACCORDINGLY,

1. We disapprove all of the existing schedules for combination services filed by Air China Limited d/b/a/ Air China; China Eastern Airlines Corporation Limited; China Southern Airlines Company Limited; and Xiamen Airlines pursuant to Order 2020-5-4;
2. The disapproval specified in Ordering Paragraph 1 shall be effective on June 16, 2020, or otherwise immediately upon affirmative approval by the President of the United States;
3. We may amend, modify, or revoke this Order at any time and without hearing; and
4. We will serve this Order on Air China Limited d/b/a/ Air China; Beijing Capital Airlines Co., Ltd.; China Eastern Airlines Corporation Limited; China Southern Airlines Company Limited; Hainan Airlines Holding Co. Ltd.; Sichuan Airlines Co., Ltd.; and Xiamen Airlines; all certificated U.S. carriers operating large aircraft; the Embassy of the People's Republic of China

³ The Department has learned through diplomatic channels that Chinese carriers may be using passenger charter operations as a way of circumventing the CAAC Notice limitations on scheduled passenger services and thereby further increasing their advantage over U.S. carriers in providing U.S.-China passenger services. The Department is also concerned that some of the applications submitted to it for a number of these charter operations may not have accurately reflected the true nature of the services involved. All such charters are subject to prior approval by the Department, and, in light of these concerns, as well as the failure of China to honor the ability of U.S. carriers to exercise the rights to which they are entitled under the Agreement to operate scheduled passenger service, the Department intends to exercise its prior approval power as to any future Chinese carrier passenger charter applications with the highest degree of scrutiny. No Chinese carrier should assume that approval of any such applications will necessarily be forthcoming.

in Washington, D.C.; the Civil Aviation Authority of China (CAAC); the Department of State; the Transportation Security Administration; and the Federal Aviation Administration.

By:

JOEL SZABAT
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(SEAL)

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