



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

Issued by the Department of Transportation
on the 22nd day of May, 2020

Served: May 22, 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

ORDER TO FILE SCHEDULES

Summary

By this Order, the U.S. Department of Transportation (the Department) is taking steps in response 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 China. Specifically, in this Order, we are imposing 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/from the United States.

Background

Civil aviation relations between the Governments of the United States (USG) and 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

As air transportation demand between the United States and China decreased in late January 2020, the three U.S. carriers operating scheduled passenger flights (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. Chinese carriers also suspended some, but not all, of their U.S.-China scheduled combination services. In early January, 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, 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 provided 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 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. passenger airlines had completely ceased flying passenger service to China; however, Chinese carriers generally maintained a degree of passenger service during that timeframe. In establishing an arbitrary “baseline” date of March 12, as well as the other restrictions cited above, the CAAC Notice effectively precludes U.S. carriers from reinstating scheduled passenger flights to China and operating to the full extent of their bilateral rights, while Chinese carriers are able to maintain scheduled passenger service to 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.

U.S. carriers plan to reinstate scheduled passenger services to China in the coming weeks. United and Delta have announced their intent to resume scheduled passenger services on various routes at the beginning of June, and have submitted applications to the CAAC. Neither carrier has received a response from CAAC. 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 of a “fair and equal opportunity to compete”.

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.

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.

Decision

Based on the facts before us, we 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 them 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.

These circumstances require the imposition of the schedule filing requirements of 14 CFR Part 213 outlined in this Order. We conclude that the public interest requires that the captioned carriers file their schedules so that we may determine whether the operation of the services contained in those schedules, or any part thereof, "may be contrary to applicable law or adversely affect the public interest." We are requiring these schedules to be filed no later than May 27, 2020.

ACCORDINGLY,

1. 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 shall file with the Department (via electronic mail to ScheduleFiling@dot.gov and in the above-referenced Docket), by May 27, 2020, any and all of their existing schedules for combination services, including code-share, common branding, and extra sections, between any point or points in the United States and any point or points not in the United States, which shall include:

- the type of equipment used or to be used,
- the frequency and day(s) of operation of each flight,
- the specific airport served at each point, and
- the time of arrival and departure at each point;

2. 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 shall file with the Department (via electronic mail to ScheduleFiling@dot.gov and in the above-referenced Docket) any and all of their proposed schedules for combination services, including code-share, common branding, and extra sections, between any point or points in the United States and any point or points not in the United States, including the information noted in ordering paragraph 1 above, the proposed effective date of such schedules, and the proposed termination date of such schedules (if known), at least 30 days prior to inauguration of service;

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

By:

JOEL SZABAT
Assistant Secretary
Aviation and International Affairs

(SEAL)

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