



DEPARTMENT OF TRANSPORTATION

Review of American/JetBlue Agreements

AGENCY: Office of the Secretary of Transportation (OST), Department of Transportation (DOT).

ACTION: Extension of waiting period.

SUMMARY: American Airlines, Inc. (American) and JetBlue Airways Corporation (JetBlue) have submitted cooperative agreements, including code-sharing and alliance agreements, to the U.S. Department of Transportation (Department) for review. The statute requires such joint venture agreements between major U.S. passenger airlines to be submitted to the Department at least 30 days before the agreements may take effect and authorizes the Department to extend the waiting period for these agreements beyond the initial 30-day period. The Department has determined to extend the waiting period for the American/JetBlue agreements for an additional 90 days.

DATES: The waiting period will now expire on November 19, 2020.

FOR FURTHER INFORMATION CONTACT: Todd Homan, Director, Office of Aviation Analysis, 1200 New Jersey Avenue, S.E., Washington, DC 20590 or (202) 366-5903.

SUPPLEMENTAL INFORMATION: On July 22, 2020, American and JetBlue submitted cooperative agreements, including code-sharing and alliance agreements, to the Department. We are informally reviewing the agreements submitted by the two carriers under 49 U.S.C. 41720. The statute requires such joint venture agreements between major U.S. passenger airlines to be submitted to the Department at least 30 days before the agreements may take effect. Pursuant to 49 U.S.C. 41720(a)(1), this requirement currently covers code-sharing agreements, long-term wet leases involving a substantial number of aircraft, and agreements concerning frequent flyer programs. By publishing a notice in the Federal Register, we may extend the waiting period by up to 150 days in the case of a joint venture agreement with respect to code-sharing and by up to 60

days for other types of agreements. At the end of the waiting period (either the 30-day period or any extended period established by us), the parties are free to implement their agreement unless the Department has taken action. If we determine that the agreements' implementation would constitute an unfair or deceptive practice or unfair method of competition, the Department would issue an order under 49 U.S.C. 41712 and institute a formal enforcement proceeding.

In the past, we have conducted the reviews authorized by 49 U.S.C. 41720 informally. The airline parties to joint venture agreements have filed the agreements directly with the Department staff that reviews them. Further, we have not established a docketed proceeding on any such agreements. As part of the Department's informal review of the agreements under Section 41720, we focus on whether they would reduce competition or would violate antitrust laws or principles. Our review is analogous to the review of notifiable mergers and acquisitions conducted by the Justice Department and the Federal Trade Commission under the Hart-Scott-Rodino Act, 15 U.S.C. 18a, since we are considering whether we should institute a formal proceeding for determining whether an agreement would violate section 41712.

In our review, we consult the Justice Department, which is responsible for enforcing the antitrust laws and may file suit and seek injunctive relief against the parties to an airline agreement, whether or not the agreement is subject to 49 U.S.C. 41720. We seek to avoid duplicative proceedings by this Department and the Justice Department.

Joint venture agreements featuring code-sharing and other forms of cooperation between separate entities do not constitute a merger and, in contrast to the antitrust-immunized alliances between U.S. and foreign airlines, are less likely to lead to a substantial integration of the partners' operations. Such agreements, however, would likely reduce competition if their terms or the resulting relationship among the airline partners would create the potential for collusion on price and service levels in markets where the airlines compete, or if the agreements and the airlines'

relationship could otherwise significantly reduce competition, for example, by unreasonably restricting each airline's ability to set its own fares and service levels.

The joint venture agreements submitted by the parties require the Department to undertake a detailed review of the carriers' submission and analysis of its impacts to competition, as well as analyzing the benefits of the transaction. While American and JetBlue submitted agreements on July 22, 2020, they are still negotiating and finalizing several alliance agreements material to the transaction. The two carriers also filed prior to completing their document production process. We need adequate time to review these documents once they are filed. Extending the waiting period will also facilitate the Department coordinating, as contemplated by 49 U.S.C. 41720(f), with the Antitrust Division of the Department of Justice, which is responsible for ensuring that the agreements comply with the antitrust laws of the United States. We have therefore determined to extend the waiting period by 90 days, from August 21, 2020, to November 19, 2020.

We understand the need to complete our review as expeditiously as possible, so that American and JetBlue will know our views on whether and under what terms they may go forward with the agreements. We may therefore terminate the waiting period upon earlier completion of our review.

Authority: 49 U.S.C. 41720(c)(2).

Dated: August 14, 2020.

**Joel Szabat,
Assistant Secretary
for Aviation and International Affairs.**

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