



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

Issued by the Department of Transportation
on the 5th day of June, 2020

Served: June 5, 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

Summary

As discussed below, the U.S. Department of Transportation is modifying the decision reached in Order 2020-6-1 to permit Chinese carriers to operate, in the aggregate, a total of two weekly round-trip scheduled passenger flights to and from the United States, an aggregate level of scheduled passenger services that would be equivalent to that permitted by Chinese aviation authorities for U.S. carriers. This order will be effective immediately.

Background

On June 3, 2020, the Department issued Order 2020-6-1, concluding that the Government of China had, 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 U.S.-China Civil Air Transport Agreement (the Agreement).¹ The Chinese Government restrictions were embodied in a March 26, 2020 Notice issued by the Civil Aviation Authority of China (CAAC). Accordingly, the Department issued Order 2020-6-1 to suspend all

¹ The Department fully set forth the basis for its conclusions in Order 2020-6-1, and before that in Order 2020-5-4.

Chinese carrier scheduled passenger air services between the United States and China, effective as of June 16, 2020, or immediately upon affirmative approval by the President.

On June 4, 2020, CAAC revised its March 26th Notice. The revisions would enable U.S. carriers to provide one weekly passenger flight each, starting June 8, 2020. The revisions to the Notice also include “incentive measures” that would allow a carrier to increase or, alternatively, require it to decrease weekly frequencies based on criteria relating to the health status of China-arriving passengers on its flights. In addition, carriers seeking to serve a particular Chinese port of entry must secure permission from provincial authorities, in addition to the standard approval from CAAC.

Decision

We find that the CAAC’s revised Notice continues to preclude U.S. carriers from fully exercising their rights under the Agreement. Moreover, it continues to impede the ability of U.S. carriers to “achieve equality of opportunity,” considering that the CAAC will permit Chinese carriers, in the aggregate, to operate as many as four weekly passenger flights to the United States. As a general matter, we are troubled by China’s continued unilateral dictation of the terms of the U.S.-China scheduled passenger air transportation market without respect for the rights of U.S. carriers under the Agreement.

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.

We find that these circumstances continue to warrant 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 now requires the modification, effective immediately, of Order 2020-6-1 to permit the Chinese carriers currently providing scheduled passenger air services between the United States and China, in accordance with the schedules that were filed pursuant to Order 2020-5-4, to operate, in the aggregate, a total of two weekly round-trip scheduled passenger flights to and from the United States. CAAC may communicate to the Department by letter which carrier(s) it selects to operate each or both of these two services. This selection may be modified with 30 days’ written notice to the Department in advance of the proposed operations.

As the Department stated in Order 2020-6-1, the Department’s 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. The most recent CAAC action has not created that environment. However, should the CAAC adjust its policies to bring about the necessary improved situation for U.S. carriers, the Department is fully prepared to once again revisit the action it announced in Order 2020-6-1 and the present order.

ACCORDINGLY,

1. We modify Order 2020-6-1 to permit, in the aggregate, two weekly round-trip scheduled passenger operations to be operated by one or two of the Chinese carriers currently operating scheduled combination service to the United States in accordance with the schedules filed pursuant to Order 2020-5-4;
2. This order is effective immediately;
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; the Transportation Security Administration; and the Federal Aviation Administration.

By:

JOEL SZABAT
Assistant Secretary
Aviation and International Affairs

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