

DOT'S OFFICE OF THE SECRETARY OF TRANSPORTATION AND CODE- SHARING



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DOT

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Overview

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- Code-Share in General
- History of Code-Share Arrangements
- DOT Code-Share Disclosure Rule
- Domestic Code Share Arrangements
- International Code Share Arrangements
- DOT Enforces Its Code Share Disclosure Rule
- Family Assistance Plans and Code-Share Arrangements



Definition of Code-Share

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- Definition: “Code-sharing arrangement” means an arrangement in which a carrier’s designator code is used to identify a flight operated by another carrier. 14 CFR 257.3.
- In practice, code-sharing reflects a marketing agreement allowing a direct air carrier to hold out and sell - in its own name - scheduled air transportation provided by another direct carrier
- Both carriers have economic authority from OST for the air service
- The marketing carrier’s contract of carriage applies and it is responsible for notice to the public of the code-share arrangement
- Safety licensing issues fall under the responsibilities of the FAA



Regulatory Background

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- Before deregulation, each carrier had to seek authority from the Civil Aeronautics Board (CAB) to provide scheduled service to each location it wanted to serve
- Once authority was granted, the carrier had to serve every authorized point
- Smaller markets often did not have the traffic to support frequent service by a large aircraft
- Subsidies were provided to service some smaller markets, but service frequency was limited



Origin of Code-Share Arrangements

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- Began in 1967 with scheduled service between Hagerstown, MD and Washington National Airport (DCA)
- Allegheny Airlines had authority, but it was not economical to serve that market with large aircraft, even infrequently
- With Department approval, Henson Aviation, an air taxi operator which had been serving Hagerstown since 1962, began to operate flights for Allegheny between Hagerstown, MD and DCA



Degrees of Integration

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- Varied depending on the agreement between carriers:
 - ▣ Could resemble on-line carriage (a connecting flight on the same carrier)
 - Service was integrated into the marketing carrier's scheduling
 - The operating carrier used the marketing carrier's trademark, logo, colors, etc
 - Marketing carrier provided reservation services and certain communication and ground handling services at some airports
 - Operating carrier guaranteed financial support if service unprofitable
 - ▣ Or could be more like interlining:
 - Connecting flight with another carrier but some aspects of passenger and baggage handling were coordinated



Perceived Benefits to Cities, Consumers & Carriers

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- Smaller communities that might not otherwise have scheduled air transportation could be served
- As a market developed, more frequent service could be offered
- Reduced or eliminated the need for a government subsidy
- A mainline carrier was able to hold on to smaller market passengers that continued their journey on “long haul” flights to larger markets



Code-Share Expansion Focused Concerns

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- After deregulation, code-shares expanded greatly
- Larger carriers developed hub and spoke operations, realized many markets could not be operated with large equipment (aircraft)
- Larger carriers expanded their arrangements with smaller carriers, usually commuter carriers
- In this environment, concern began to develop over code-sharing arrangements
 - ▣ Consumer and competitive concerns



Arguments in Favor of Banning or Regulating Code-Sharing

- It is inherently unfair to hold out a service as one's own when that is not the case
- Lack of uniformity - coordination and integration of operations continued to vary from carrier to carrier
- Passengers were not necessarily informed of the cooperative arrangement or what conditions of carriage to expect
- True identity of operating carrier not necessarily clear to passengers and travel agents in cases where the marketing carrier retained use of its airline designator code throughout the entire itinerary



Arguments in Favor of Regulating (Continued)

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- CAB received some complaints from consumers and competing airlines
- Complaints alleged
 - ▣ lost baggage due to of lack of interline agreement
 - ▣ customer confusion regarding
 - Identity of carrier (which ticket counter to use)
 - Type of equipment being operated (prop or jet)
 - Consumers flying a route they specifically sought to avoid
- Some thought the practice anticompetitive, in that smaller carriers benefited from the reputation of the larger carrier



Arguments Against Banning or Regulating Code-Sharing

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- Advocates of code-share arrangements pointed out as consumer benefits
 - ▣ Lower through fares
 - ▣ Easy connections because of proximity of gate and terminal space
 - ▣ Convenient connection times
 - ▣ Integrated baggage handling
- Some carriers voluntarily made significant efforts to inform the public of cooperative service arrangement through notice to agents, labeling in OAG, etc.



Initial Code-Share Disclosure Rulemaking

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In 1984, just before the sunset of the agency, CAB proposed to address code-sharing arrangements by rulemaking

- Basis of regulation: 49 U.S.C. 41712 (formerly sec. 411), which prohibits unfair and deceptive practices and unfair methods of competition by carriers and ticket agents
- CAB did not propose to define what services had to be provided or what legal relationship must exist between carriers to engage in code-share arrangements
- CAB's major concern was deception and consumer confusion, not competition
- The rulemaking was not completed before CAB's sunset in Dec 1984



DOT Issued Final Rule in 1985

14 CFR 399.88

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- Required that where two airlines used one designator code, the airlines were required to provide reasonable and timely notice:
 1. By identifying those flights in published schedules such as the OAG
 2. Orally during spoken communications with customers
 3. “Frequent, periodic notice” in advertisements of existence of relationship and carriers involved



Applicability of the 1985 Rule

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- The rule applied only to U.S. airlines, not foreign airlines or ticket agents
- Assumption was that travel agents would provide the information as a good business practice to retain customers
- At the time, ticket agents sold about 80% of tickets compared to 20% sold by carriers
- Importantly, the applicability of the rule to foreign airlines was extended through conditions on orders approving such arrangements



Domestic Code-Sharing Expansion

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- DOT study of the regional airline industry completed in 1986 found 16 of the 20 largest regional airlines had code-sharing arrangements with a major carrier
- RAA 1992 Annual Report: the 29 largest regional carriers had code-share relationships and 96% of regional carriers' passengers were involved code-share flights



Expansion to International Markets

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- Code-share also quickly expanded to international markets
- International expansion began with individual markets, then involved total route system alliances
- The CAB, and later the Department, encouraged international alliances as beneficial to consumers and U.S. carriers
- The right to engage in code-share arrangements continues to be included in Open Skies agreements between the U.S. and foreign countries



DOT's Strengthening of Code-Share Disclosure Rule

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- DOT began a review of the rule in 1994, citing as reasons for its action:
 - Consumer complaints, including
 - Mistakenly assuming jet service when propeller-driven aircraft involved
 - Learning for first time at the airport of the operating carrier, which they preferred not to use
 - Service held out as on-line actually was interline, with no real operational integration
 - Not knowing where to check in
 - Incompatibility of frequent flyer programs



Strengthening of Code-Share Disclosure Rule (continued)

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- Recent enforcement investigation showing only 30% compliance with then-current notice rule
- The current rule was made final/effective in 1999: Disclosure of Code-sharing Arrangements and Long-Term Wet Leases, 14 CFR Part 257.



Important Changes in Part 257

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- Expanded applicability
- Enhanced notice provisions
- Added long-term wet leases to notice requirement



Expansion of Part 257's Applicability

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- ❑ Expanded to include marketing of foreign air transportation in the U.S.
- ❑ Thus, applies to marketing and sales of such air transportation by foreign carriers
- ❑ Also expanded to include marketing and sales of all code-share flights by ticket agents



Enhanced Notice Provisions of Part 257

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- Requires notice of operating carrier's corporate name and any other name in which it does business
 - ▣ Old rule: only trade name required, e.g., "operated by Airline Express"
 - ▣ New rule: "operated by Dayton Aviation dba Airline Express"
- Required notice:
 - ▣ Notice in written or electronic schedules provided to the public
 - ▣ Oral notice to prospective passengers before booking a flight



Enhanced Notice of Part 257 (continued)

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- Written notice at the time of purchase
 - in any itinerary issued at purchase
 - in a separate notice if no itinerary is issued
 - on or with a ticket or, if ticketless, no later than check in
 - in any other manner agreed to by a purchaser
- Notice in all advertising
 - Can be generic if radio or TV (“some service provided by other carriers”)



Airline Safety and Federal Aviation Administration Extension Act of 2010

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- Enacted August 1, 2010
- Prohibits, by statute, as part of 49 U.S.C. 41712
 - ▣ Failing to provide, prior to purchase, the name of each carrier providing transportation on every flight segment of an itinerary
 - ▣ Failing to disclose the same information in the first Web site display following a search of a requested itinerary

Notice by Airlines to DOT of Domestic Code-Shares

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- 49 U.S.C. 41720
- Applies to major U.S. carriers (annual revenue of \$1 Billion+)
- Requires 30-days notice to DOT of any joint venture agreement, including code shares
- No DOT approval required, but review may be extended
- Purpose is review of arrangement for anti-competitive concerns



DOT Review of International Code-Shares

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- Operating carrier must obtain prior approval/statement of authorization (U.S./foreign; foreign/U.S.; foreign/foreign)
- Compliance with Foreign Air Carrier Code Share Safety Program
 - ▣ Established in 2000
 - ▣ where a U.S. carrier is placing its designator code on a flight operated by a foreign carrier
 - ▣ U.S. airlines must conduct safety audits of their foreign code-share partners as a condition of code-share authorization
 - ▣ Applies to such flights between the U.S. and a foreign point or flights wholly between two foreign points



International Code-Share Approval Process

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- Operating carrier requests a statement of authorization – docketed, public filing served on interested parties
- Approved if in the public interest
 - ▣ Completeness of application
 - ▣ Conformance with bilateral agreement/reciprocity
 - ▣ FAA clearance required, including on the safety audit report
- A report showing U.S. - foreign air carrier code share arrangements is available at
 - ▣ http://ostpxweb.dot.gov/aviation/X-40%20Role_Files/coderpt.pdf



DOT Vigorously Enforces Its Code-Share Disclosure Rule

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- 19 Enforcement Consent Orders re Violations under 399.88, the former disclosure rule
- 4 consent orders re Foreign Carrier Violations (code-share approval orders), one re non-carrier
- 9 Code-Share Orders covering violations under Part 257, the current rule
 - ▣ List of enforcement actions will be provided for the record
- Initiated by holding out calls or advertisements
- DOT continues holding out calls and conducts on-site reviews of airlines that include carrier compliance with the rule



Statutory Enforcement Authority

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- 49 U.S.C. 41712 – order to cease and desist from unfair/deceptive practices
- 49 U.S.C. 46301 – civil penalties of up to \$27,500 per violation and per day for each day each violation continues; \$2,500 if small business
- Can only be assessed after notice and hearing – most cases settled through consent order



Are Consumers Receiving Notice of Code-Share Arrangements?

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- Since 2000, a total of only 31 complaints recorded as a code-share problem (out of over 100,000 complaints)
- Possible explanations
 - ▣ Carriers are better at disclosure
 - ▣ Consumers are more aware of, and accepting of, code-shares
 - ▣ DOT compliance program



Aviation Disaster Family Assistance Act of 1996

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- 49 U.S.C. 1136
- Foreign Air Carrier Family Support Act of 1998, 49 U.S.C. 41313
- US Certificated Carriers and Foreign Air Carriers that operate any large aircraft (over 60 seats) are required to file Family Assistance Plans with DOT and NTSB
- DOT Enforces Compliance with Family Assistance Plans
- By statute, no new US carrier can receive certificate authority without first filing a Plan
- A carrier that fails to file or maintain a Plan would be subject to enforcement action or loss of its authority



Code-Share and Family Assistance Act

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- Responsibility in a code-share arrangement
 - ▣ We look to the carrier that physically operates the aircraft for primary responsibility in implementing the Family Assistance Plan
 - ▣ Code-share partners should plan for coordination of efforts where they both have Plans
 - ▣ Major carriers generally provide in Plans that they cover their regional code-share partners
 - ▣ If major carrier/commuter carrier code-share, we would expect the major carrier to implement its Plan in cooperation with its code-share partner



DOT Enforcement of Compliance with Family Assistance Plans

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- DOT's Aviation Enforcement Office in touch with NTSB within 24 hours after an accident to ensure that airlines are complying with their obligations under Family Assistance Plan
- Coordination regarding compliance with Plans is ongoing
- Failure to comply with the plan would be considered to be an unfair and deceptive practice in violation of 49 USC 41712.
- Information that a carrier is not responding properly would initiate an investigation and enforcement action, if warranted

