THE PRACTICAL NOMAD

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The Practical Nomad: How to Travel Around the World (3rd edition, 2004)
The Practical Nomad Guide to the Online Travel Marketplace (2001)
http://www.practicalnomad.com

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Docket Management Facility
USA Department of Transportation
400 Seventh Street, SW.
Nassif Building, Room PL–401
Washington, DC 20590–001, USA

Comments Re: OST Docket No. 2004–19083, Notice of Proposed Rulemaking (NPRM) to Amend 14 *Code of Federal Regulations* 257.5(d), "Disclosure of Code Sharing and Long-Term Wet Lease Arrangements", RIN 2105–AD49, 70 *Federal Register* 2372-2375 (13 January 2005), <http://dms.dot.gov/search/document.cfm?documentid=311330&docketid=19083>

COMMENTS:
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(I am a travel expert and consultant, consumer advocate for travellers, author of two books of consumer advice for travellers on issues including airline ticket purchasing and Internet airfare information, author and maintainer since 1991 of the Usenet FAQ on international airfares <http://hasbrouck.org/faq>, author/publisher of a Web site of consumer advice and information for travellers, and staff employee of an Internet travel agency.

These comments are submitted strictly on my own behalf, and as a traveller, travel agent, and independent consumer advocate. They do not necessarily represent the opinions or beliefs of my publisher, my employers, or any of my consulting clients.)

In response to a petition by United Airlines -- which places its flight numbers on "code-share" flights actually operated entirely by, and also advertised and sold under their own flight numbers by, more than a dozen of United's marketing "partner" airlines -- the Department of Transportation (DOT) has proposed by a Notice of Proposed Rulemaking at 70 F.R. 2372-2375 to amend its regulations in 14 C.F.R. 257 to require less detailed disclosures, in advertising by airlines like United, as to which airlines actually operate which code-share flights to which cities and/or airports. At the same time, the DOT has said that, "[W]e are aware of no reason why other aspects of the code-share rule need to be reviewed at this time."

As a traveller and consumer advocate, I urge you to:

(1) Withdraw the proposal to reduce the required disclosures in advertising of code-share flights; and

(2) Issue new regulations forbidding code-sharing (where the flight is not a genuinely joint operation or "pool" flight, or a wet lease operated exclusively for the carrier under whose code it is advertised and sold, but where the code-share flight is also advertised and/or sold under the code of the operating airline) as a deceptive business practice.

The language in United's own petition (Docket OST-2004-19083-1) exemplifies the fraud inherent in code-sharing. According to the petition (page 3), "United today offers service between Washington Dulles and State College, Pennsylvania by placing its designator code on flights operated by Shuttle America." But United does not "offer service" to or from State College. Shuttle America offers that service. United advertises, and sells tickets including transportation on those services by Shuttle America -- none of which advertising or sales of interline tickets at through fares depends in the slightest on placing United code-share flight numbers on those services.

Indeed, United's petition is premised on a fundamentally and completely false factual claim of "necessity" for code-sharing in order to provide (unspecified) consumer benefits:

> "These advertisements reflect the strength and breadth of United’s domestic and international networks, which offer approximately 3,600 departures per day at 191 airports.
>
> "In order to offer consumers the benefits of such an

expansive network, United, as a practical matter, must rely on the support of code-share services provided by a number of other carriers." (Petition of United, page 5)

In fact, none of the "benefits" of this "network" to consumers require code-sharing. Like all of the other airlines that have endorsed United's petition, United has had interline ticketing and baggage interchange agreements in place for decades that permit it to sell tickets and check baggage for transportation on hundreds of other airlines, to thousands of other places, with no need to label, advertise, or ticket those flights under its own code-share flight numbers.

Like other airlines based in the USA, United has been given partial exemption from Federal anti-trust laws in order to permit it to participate in IATA traffic conferences, in order to assure travellers of the benefits of IATA common fares permitting transportation on multiple airlines at a single through fare.

United also participates in more than a hundred bilateral interline ticketing and baggage interchange agreements, and publishes carrier-specific through fares with many airlines.

Interline operational agreements also permit United and the other petitioners to offer interline frequent-flyer mileage credits, schedule coordination, and other operational benefits to consumers -- completely independently of code-sharing.

Many foreign airlines, for example, offer, advertise, and sell through interline tickets between points they serve outside the USA and points they do not serve within the USA, using connecting services of US airlines between their gateways and those interior points in the USA, without code-sharing.

The benefits to consumers of interline agreements do not depend on code-sharing, and whether interline agreements benefit consumers is irrelevant to this rulemaking, except as evidence of the non-necessity and non-benefit to consumers of code-sharing.

As it is used in the regulation at issue, code-sharing is the practice of placing the flight number (code) of one airline -- as a label for purposes of reservations, ticketing, etc. -- on a flight actually operated by another airline.

Code-sharing is purely a labelling practice, and should be evaluated by the DOT as such. The function of a label, and particularly of a label on a consumer product or service, is to communicate, and specifically to communicate to consumers the nature of the product or service offered for sale.

The questions for the DOT in this rulemaking are thus:

(1) Whether the nature of the advertised or ticketed service to be provided is accurately described by code-share labelling;

(2) Whether any benefits accrue to consumers from code-share labelling (independent of the interline agreements which could, and in many cases do, exist without code-sharing); and

(3) Whether code-share labelling misleads consumers.

I believe that the overwhelming majority of travellers find code-sharing misleading. Yes, savvy and experienced travellers have learned that they cannot rely on the name of the airline specified on their ticket to tell them which airline will actually be operating the flight, or where they should check in. But, all else being equal, they would prefer that tickets indicate the operating airline for each flight.

To the extent that travellers accept code-sharing, it is because they want the benefits of interline ticketing, baggage, and frequent flyer agreements, and believe the lies they have been told by airlines -- such as those in United's petition -- that interlining is not possible without code-sharing.

When a flight is already available for sale under another airline's flight number, airlines such as the petitioners place their code-share labels on other airlines' flights for one and only one reason: because they believe that consumers will be more willing to buy tickets on those flights, or to pay higher prices for tickets on those flights, if they are labelled as flights of the code-share airline rather than of the operating airline.

To the extent airlines are correct in that belief -- and I believe that, in many cases, they are (and I presume that if they weren't, they would not be seeking permission for code-sharing or petitioning for this rulemaking) -- this is fraud.

Code-sharing on flights already available for sale through an interline agreement with the operating airline is engaged in for the sole purpose of misleading consumers about the actual operators of flights. It succeeds in misleading them, to their detriment when they do not experience attributes of the service that they had expected, such as a particular seat pitch or seating configuration, aircraft type, special meal selection, safety or equipment maintenance or crew training record, or expected terminal or gate area of arrival or departure.

At most, disclosures such as those required by the present or the proposed DOT regulations can only partially mitigate the inherently deceptive and fraudulent nature of code-sharing. United says in its petition that, "[C]ompliance with the letter of the regulation may serve more to confuse than to inform consumers." To the extent that is true, that is because the code-sharing itself is inherently confusing. That is grounds to forbid this misleading practice, not grounds to reduce the extent to which it should be disclosed.

For example, while itineraries usually indicate the operating airline, tickets and boarding passes -- the things travellers are required to have in hand while searching for a flight or gate, even if they don't have a printed itinerary -- do not. Indeed, IATA and airline rules provide no field on a ticket or boarding pass for the designation of the operating airline, and forbid the entry of other information in those fields.

A travel agent who wants to indicate on a ticket which airline actually operates a code-share flight is forbidden from doing so by airline ticket issuance rules and procedures.

While the DOT has not, according to the Notice of Proposed Rulemaking, conducted an assessment of the impact of the proposed rulemaking on small businesses, it should be noted that the majority of airline tickets are sold by travel agencies, most of which are small businesses, not by airlines. The burden of providing disclosures of code-sharing and operating airlines for each flight being considered by a potential travel customer thus falls primarily on travel agents. Eliminating code-sharing and its attendant burden of disclosures would have a substantial impact in reducing the regulatory burden on those mostly-small entities of compliance with the disclosure regulations.

As a travel writer, consumer advocate, and travel agent, I hear regularly from travellers who have been misled, inconvenienced, paid more than they would otherwise have been willing, or missed flights because of code-sharing that brings them no benefits. I urge you to revise your regulations to prohibit this deceptive airline business practice.

Respectfully submitted,

Edward Hasbrouck
14 March 2005

attachment: "Airline alliances and code-sharing",
<http://hasbrouck.org/articles/alliances.html>

These comments are also available on the Web at:
<http://hasbrouck.org/articles/
Hasbrouck_DOT_comments-14MAR2005.pdf>

Airline alliances and code-sharing

by Edward Hasbrouck, author of "The Practical Nomad"

<http://hasbrouck.org/articles/alliances.html>

International airline routes are generally much more complex, and involve more choices of airlines and connection points, than domestic flights within any single country, whether Mexico or the USA. That's why, for example, Orbitz.com's much-hyped software for finding multi-airline connections and combinations for trips within the USA doesn't work at all for international flights. For those, Orbitz.com, relies on a computerized reservation system ("CRS"), just like any other travel agent (although in Orbitz.com's case without offering any of the discounted consolidator ticket prices that give travel agencies their big advantage over buying tickets directly from the airlines).

It's a triumph of standardization and interoperability that the CRS's used by travel agents can give access to schedule and price information (although not complete price information -- no single source has that) and ticketing capabilities for hundreds of airlines, even very small ones with no offices abroad, through a single user interface. One of the things for which a CRS is most useful is booking and pricing journeys that involve flights on more than one airline.

That's essential for any trip around the world. Only four airlines (the original Pan Am, Air France, and more recently Aeroflot and United Airlines) have ever operated flights entirely around the world, and none of them currently does so. United Airlines still owns Pan Am's government-granted rights to fly a route around the world, but doesn't choose to use them. As long as governments let them get away with it, it's easier and cheaper to put their label on "code share" flights by other airlines, and just pretend to offer an around the world route system.

The best routes (best for travellers, that is) for many journeys involve travel on multiple airlines, and not necessarily ones with reciprocal agreements to promote each others' services. But you won't find those routes if you rely on the airlines themselves for advice: none of them will tell them about routes that involve travel on other airlines, except their own marketing partners. The only way you're likely to find out about those

routes is to go to a travel agency -- online or offline -- that's independent of any single airline or alliance.

Why, for example, did many of the teams on "The Amazing Race" [the reality television show about travel around the world] fly from Mexico City to London by way of Paris? That's unlikely to have been the route that would get them to London soonest. But it's the route that would have been suggested by the staff at Aeromexico, since Aeromexico is a partner in the Skyteam marketing alliance with Air France. This is exactly what airline alliances are designed to do for the airlines, and why they are bad for travellers. The racers were steered to the fastest route on a Skyteam marketing partner, rather than the fastest route on any airline.

Airlines claim code sharing and alliances enable them to offer better services like through ticketing, baggage transfers, and frequent flyer mileage credits between alliance partners. But that's a lie. None of those services requires alliances or code sharing. The international standards that the airlines themselves established decades ago through IATA permit all IATA member airlines, not just alliance partners, to publish through fares and establish interline ticketing and baggage transfer agreements. Any IATA-appointed travel agency can sell tickets on any IATA airline, including tickets at a single through fare for a multi-airline journey. And even alliance members often give frequent flyer mileage credit for travel on non-alliance airlines, without code sharing.

Code sharing is unnecessary for, indeed irrelevant to, any legitimate purpose or actual service. Code sharing doesn't enable an airline to fly to any more places. It just enables the airline to mislead travellers into thinking that they fly to places they don't. I call that fraud.

American Airlines' recent advertising campaign, for example, focused on the claim that American had increased the spacing between seats "throughout coach" on their flights. All else being equal (it usually isn't, since American is typically an expensive airline) travellers who relied on those ads as a basis for choosing a flight labeled, "American Airlines" over a flight by some other airline, had a right to expect more space. But no: thousands of code-share flights every day were being labeled with American Airlines flight numbers, despite being operated by other airlines that hadn't added more room between rows of seats.

That's not the worst of it, though. The real purpose of the major global airline alliances is to solidify the oligopoly of their participants, and to drive smaller non-participants and even large non-aligned airlines out of business -- so that the remaining airlines can raise prices, while travellers are offered fewer choices.

Exemptions from antitrust law to permit airlines to fix prices and routes together, as part of airline alliances, have gotten at least some critical scrutiny. But they are far from the worst of the government policies in favor of airline oligopolies and against the interests of air travellers, especially in the USA.

By law in the USA, licenses to carry passengers by air between points in the USA ("cabotage", in airline lingo) can be given only to "US persons". Airlines incorporated outside the USA, airlines with more than 25% ownership by non-USA entities, or airlines "controlled" by a foreign entity, regardless of actual ownership, are categorically barred from competing on routes within the USA -- the world's largest domestic airline market.

The primary victims of this xenophobia and protectionism, of course, are domestic travellers in the USA who are denied the additional competition, superior service, and lower prices that they can get from non-USA airlines on international routes.

For example, Richard Branson's Virgin Atlantic Airways already has subsidiaries operating flights within mainland Europe (Virgin Express) and within Australia (Virgin Blue). Only the restrictions on "foreign" competition prevented him from starting a similar domestic subsidiary in the USA. Having flown on Virgin Atlantic, I have little doubt that the service on "Virgin USA" would be substantially superior to that on typical USA airlines. (As of 2004, Branson is finally planning to invest in the startup of "Virgin America". But to satisfy USA law, he'll be restricted to minority ownership and to only 25% of voting rights, with a controlling majority partner in the USA.)

As for prices, figures from the Air Transport Association, the airlines' own lobbying organization, show that the average revenue per passenger mile (i.e. the average ticket price) for major USA-based airlines is substantially higher on their (protected) domestic routes within the USA than it is for those

same airlines on international routes (where they might have to compete with foreign airlines). Scarcely surprising: even within the USA, a wide variety of studies have shown that airfares between any two cities since airline "deregulation" in 1978 are an inverse function of the number of airlines offering service between those cities.

Air travellers in the USA get the worst of all worlds: prices artificially inflated by protectionism, taxes increased to support government subsidies, exemption of the airlines from state and local consumer protection laws, and a hands-off attitude by the federal government towards even the most egregious violations by the airlines of existing federal consumer fraud and truth-in-advertising laws.

I've interviewed some of the senior federal officials responsible for policing airlines in the USA, and I'm appalled by their lack of interest in doing their duty to protect the public against airline ripoffs.

In their defense, US Department of Transportation officials claim they don't have enough staff to do the job right. That's true, but they waste their limited resources logging quality-of-service complaints, when they should be putting their priority on stopping airlines from misleading the public, on a routine basis, about basic facts like which airline operates the flight (code sharing) or how much a ticket costs (advertising "half round-trip" prices for which nothing can be bought).

Yet it's the government of the USA, and airlines based in the USA, that are whining self-righteously about "open skies", "free markets", and the "unfair" protectionism of other countries' reciprocal restrictions on access to their much smaller, much less significant, domestic airline markets. Like so much else the airlines are saying in their quest for even more special treatment and subsidies from governments, it's pure hypocrisy, motivated by pure greed.

It's particularly unfair that taxpayers are required to subsidize air travel -- directly and indirectly -- more than such other means of transportation as Amtrak trains or public mass transportation. Ordinary people in the USA could afford to travel more by air, especially internationally, but they don't. Outside of a small "jet set", most people in the USA do their regular travelling by land, and fly only rarely. Most air travellers are

relatively wealthy. Government subsidies to air travel are among the most regressive taxes in the USA.

If airlines want true deregulation, they should accept truly open skies, including abolition of the restrictions on cabotage and foreign ownership, and truly free markets, including an end to government subsidies and bailouts. If, on the other hand, airlines want governments (i.e. taxpayers) to underwrite their continued operations, and grant them special privileges, they should accept a reinstatement of government regulation of prices and services (i.e. a return to regulation), to ensure that they use those government subsidies, and exercise those special privileges, in the public interest.

[Adapted in part from articles originally published AT: <http://hasbrouck.org/amazingrace3/index_3.html> and <http://hasbrouck.org/articles/mergers.html>. Last updated 28 October 2004.]