Dispute between U.S. airlines concerning U.S.-China routes

Daisuke Takagi

Japan International Transport Institute, USA

The increase in the number of flights to Haneda Airport planned for the 2020 summer schedule was forecasted to result in 12 slots being respectively allocated to the U.S. and Japan based on the previously conducted Japan-U.S. civil aviation talks. Four U.S. airlines (American Airlines, Delta Airlines, United Airlines, and Hawaiian Airlines) sent applications to the United States Department of Transportation for a total of 19 slots (total of 15 routes) by February 21, 2019 in aiming for the 12 slots that were provided to the USA. Although the slots for each airline will be determined moving forward through talks between the USA and Japan as well as talks between the authorities and the related airlines, Delta Airlines (USA; "Delta"), in aiming for slots into Haneda Airport, motioned for the DOT to correct the unequal treatment associated with arrivals from American Airlines (USA; "American") and United Airlines (USA; "United") into Haneda Airport. In administrative proceedings in the USA, regular businesses, etc. are able to petition their opinions and requests, etc. concerning government policies. The government discloses these motions on their websites. The same proceedings can be used for responses or counterarguments to any given motion.

American and United have provided counterarguments and expressed their own positions concerning Delta's motion, and American in particular has made a request to correct the unequal treatment of American in the USA and China airline routes if Delta is going to assert that correction is required for unequal treatment with Haneda. Given the extremely interesting development where the focus is homing in on discussions about the Haneda slots while approaches are also being made towards the Chinese market, which is becoming increasingly more important, this report will focus mainly on this point.

In proceeding with talks about the U.S.-China routes, first, a summary will be provided about Delta's motion that initiated the discussion. The following is a summary of the motion submitted by Delta on December 19, 2018.

1 Motion by Delta Airlines (December 19, 2018)

Delta has requested the DOT provide all airlines with U.S.-Haneda slots with flexibility ("flexibility" here refers to measures that will allow for freedom to change any given route destination without requiring prior approval from the airline authorities) for U.S. airlines operating with destinations from the USA to Haneda. The flexibility for the destination proposed in this motion should play the following important roles in promoting common interests, which include the following:

(1) Enable more prompt and efficient action to be taken against demand fluctuation in the U.S.-Tokyo market.

(2) Tighter coordination between the U.S.-Haneda slot environment and the Open Skies Agreement.

(3) Support in equalizing the playing field at Haneda for airlines like Delta who are not parties

involved in the business partnerships with Japanese airlines.

(4) Promote a competitive airline service environment between the USA and Haneda where market forces determine the destinations instead of the government.

Although Japan is an important, strategic factor for Delta in Asia, because Haneda is not completely open for operations with the USA, the flexibility of destinations is extremely important to allow U.S. airlines to adapt to Haneda's competitive environment. Due to restrictions on destinations, U.S. airlines are at a disadvantage compared with Japanese airlines that can freely change destinations in accordance with market conditions. Because Japanese airlines face no destination restrictions, all restrictions imposed by the authorities are invalidated by business collaboration partnerships (i.e., American and United) with Japanese airlines. In contrast, Delta only operates two slots to Haneda, and both of which have destination restrictions. Thus, Delta is more readily affected by stricter regulatory schemes, which puts Delta in a disadvantageous position compared with its competitors at Haneda, namely, American and (potentially), in the near future, Hawaiian. By repealing existing destination restrictions for operations by U.S. airlines at Haneda, and allocating the Haneda slots in a manner that allows the destinations to be freely set, the authorities can achieve their two goals, namely, respect the market base principles anticipated by the Open Skies Agreement, and address unequal competition caused by splitting up Haneda.

If this motion is acknowledged, then U.S. airlines will be able to secure the maximum benefit from the U.S.-Haneda destinations while more effectively dealing with consumer demand fluctuation. Acknowledging this motion will remove the unnecessary regulatory restrictions imposed by the DOT (and consequently consumers), and will further promote the government's efforts to "alleviate the regulatory burden on American citizens" as long as the administrative process is reasonable.

The flexibility of Haneda destinations is consistent with past precedents established by the authorities. In 2004, the authorities granted flexibility for airline company routes through a request by Delta. With regard to this matter, due to the destination restrictions on the routes operated by Delta and Continental Airlines whereas United and American have routes with no destination restrictions, the authorities have acknowledged Delta's concerns regarding administrative fairness and competitiveness. The authorities have recognized Delta's request and have provided the same flexibility to all four of the airlines that were designated for operation between the USA and Brazil. The precedent established for Brazil in 2004 supports the provision of destination flexibility with Haneda. At the same time, the authorities should exercise discretion to correct the inequality at Haneda in the same manner as it has corrected the competitive inequality between U.S. airlines with no flexibility and U.S. airlines that have routes with destination flexibility.

In response to Delta's motion, American submitted two documents to the DOT on January 7, 2019. American expressed support for Delta's motion on the condition that flexibility also be provided for China-bound routes, one of American's own business priorities.

2.1 Response by American Airlines regarding conditional support for Delta Airlines' motion (January 07, 2019)

American supports Delta's request to provide destination flexibility for all U.S. airlines with slots at Haneda Airport, but this support is limited to scenarios that satisfy the following two conditions:

1. The authorities provide the same destination flexibility to all airlines operating in U.S.-China Zone 1 ("Zone 1" refers to Beijing, Shanghai, and Guangzhou).
2. Flexibility would only come into effect after two

years from the time that airlines start operating routes authorized by the authorities.

Providing the same kind of destination flexibility for China Zone 1 in the same manner as requested for Haneda by Delta will create consistent rules for both marketplaces (Haneda and China), which will more importantly lead to the incorporation of sound, equal principles.

American and Delta agree "in seeking for market principles to be applied to support fairness and consistency." Delta and United enjoy a wide range of flexibility in being able to relocate many of their Zone 1 operations to new routes without approval from the authorities. Maintaining the inequality of these rules while providing flexibility to the Haneda slots will surely inhibit the application of fair market principles, which are critical for effective competition.

Delta stated the following about how the Haneda conditions, which Delta insists are "unfair, anti-competitive, and in conflict with public interests", are already more broadly available in China.

First, the China Zone 1 is essentially comprised of "destinations that are restricted by Open Skies countries" just like Haneda. Although the USA and China have not formed an Open Skies Agreement, there are currently no restrictions on routes between the USA and Chinese locations other than China Zone 1.

Second, the U.S.-China Zone 1 route capacity restrictions inhibit U.S. airlines from starting new services for Beijing, Shanghai, and Guangzhou just like the "extremely restricted slots" at Haneda.

Just as Delta is the only major U.S.-based network carrier that does not have a Japanese partner, American is the only U.S.-based network carrier that operates routes in China Zone 1 without a collaborative partnership in mainland China.

Fourth, Delta has more daytime slots at Haneda than other U.S. airlines, and American has the smallest number of routes among the U.S. airlines in China Zone 1. Additionally, Delta and United have flexibility to change destinations in China Zone 1 which is different to Haneda where all the slots held by U.S. airlines are restricted. In other words, Delta has a considerably better position at Haneda than American has in China Zone 1. If the authorities provide airlines flexibility at Haneda, then they should also provide the same flexibility to both Haneda and China Zone 1 as a matter of fairness and consistency in policy.

By asking airlines to wait two years on initially-approved routes before being able to utilize destination flexibility, the authorities can guarantee that there will be no detrimental impact on the approval given to operate routes for specific destinations, and that airlines are not proposing any destinations that they intend to immediately switch after receiving approval.

The authorities play an extremely important role in approving routes for airlines for specific destinations. However, given that market conditions and demand fluctuate, airlines are the best judges of market needs after receiving initial approval. Airlines should be provided with greater flexibility to effectively respond to market fluctuation in China Zone 1 and at Haneda in order to maximize public benefit. Thus, American Airlines requests approval for both its own petition for flexibility in China and Delta's motion for flexibility at Haneda, and for the authorities to require airlines to first operate initially approved routes for two years prior to exercising destination flexibility.

2.2 Motion by American Airlines concerning U.S.-China route flexibility (January 07, 2019)

American is the only U.S. airline company that operates between the USA and China without flexibility to change routes in China Zone 1 in accordance with market fluctuations. When Northwest Airlines, the predecessor of United and Delta, was first granted access to the market as a passenger airline, it was also able to use the routes in China Zone 1 based on this approval. As the authorities explained when allocating the China Zone 1 routes in 1999, the intention behind this flexibility was to allow both airlines to be able to respond to market fluctuation.

However, the same "flexibility for responding to market demand" was not provided to new market participants with respect to any allocation of routes in China Zone 1 thereafter. The authorities declared that they reversed their own policies for route allocation in 2000 and would not allow new recipients to "exceed the general route operation rights between the USA and China or route operation rights that are broader than what was specifically proposed for operations". In other words, all future approval relating to operations in China Zone 1 will be for fixed routes. Compared to Delta and United, American has no flexibility because it was only granted operations in China Zone 1 under these conditions. American is concerned that it will be required to carry out long administrative proceedings without being able to make the same changes for the U.S.-China network if it does not motion for the ability to relocate operations, and that routes will be re-allocated to other airlines like Delta and United. Thus, American will be burdened by additional steps for prior approval from the authorities and the risks of counterargument or opposition by other airlines in trying to launch the same kind of services itself.

Despite exerting the utmost efforts in trying to catch up to Delta and United since it entered the market in 2006, American has currently been left trailing behind all other airlines in terms of number of routes and passengers between USA and China. While Delta and United respectively enjoy long-term cooperative relationships with China Eastern Airlines and Air China, American has no collaborative partners in mainland China. Although the most recent non-alliance partnership between American and China Southern Airlines between the two countries is a necessary step towards American becoming a significant competitor in the U.S.-China market, this relationship has only just begun. The evident inability of American to change routes in China Zone 1 in accordance with evolving market needs or by forming a new partnership with China Southern Airlines can only be improved by granting uniform flexibility.

The authorities provided uniform route flexibility to all operators with routes in Brazil in 2004 based on the same conditions, and this flexibility was determined to be "consistent with public interests". If new operations in China Zone 1 cannot be started, or current operations cannot be modified without approval from the authorities, then only American will be unable to respond to market fluctuation. The absence of clear flexibility for American prevents American from being able to effectively satisfy passenger needs and inhibits its ability to compete with Delta and United in the U.S.-China market, therefore granting flexibility for China routes would be consistent with public interests.

American asserts that there is also a gap in the level of freedom provided for the same operations between U.S. airlines in China, and that it would be unfair to only approve flexibility for operations at Haneda while ignoring this. Just as described by Delta's own circumstances at Haneda, American is also at a competitive disadvantage in China given that it currently has no cooperative relationships with other airlines. American asserts that the precedents should be put first in administrative decisions, and argues that acknowledging flexibility for operations for all operating airlines based on past precedent for Brazil in 2004 would be consistent with public interests, and that conditions are exactly the same in China. In response to this, United made the following statement about how American's argument was erroneous.

3 United Airlines Counterargument (January 14, 2019)

American's declaration, which states that American is the "only" carrier with operation restrictions and no destination flexibility and that United has "many" operation with destination flexibility, is erroneous. American has 42 flight operations which are "restricted" between U.S.-China Zone 1. In contrast, United has 44 flight operations that are restricted between U.S.-China Zone 1. In other words, United has more flight operations than American. While United has a total of 63 flight operations between U.S.-China Zone 1, technically, only 19 of these flights (less than 1/3) are considered to have "no restrictions". Additionally, although these 19 flight operations technically have no restrictions, United is operating based on methods that do not allow commercial or economic changes without incurring severe detrimental impact to its U.S.-China franchise. Thus, there are zero operations that United is completely free to make changes to for its own intents and purposes.

Comprehensive destination flexibility is an absurd request that deviates from long-standing precedents set by the authorities. American and Delta are relying on the U.S.-Brazil precedent as the only precedent that supports their requests for destination flexibility. However, the decision made by the authorities in relation to U.S.-Brazil operations was carried out in June 2004, long after the authorities determined that they would not accommodate American's request for destination flexibility in China in 2000. It is also important to note that in July 2004, only one month after the authorities approved flexibility for Brazil, the authorities stated that "there is no need to address American's concerns about flexibility to change city location pairs at present", and maintains this stance to this day.

Recently, American has been profiting from its relationship with China Southern Airlines as a panacea for the Chicago-China route that is currently suspended. American cited its lack of a cooperative partnership in China to defend its application to exempt its idle Chicago-China slot(s). American stated that the expansion of a collaborative relationship with China Southern Airlines is consistent with "restoring suspended U.S.-China operations to achieve commercial sustainability". Additionally, American has recently been approved for alternating code share with China Southern Airlines, and has the same "strong sustainability" as the partnerships that have long been enjoyed by Delta and United. However, just a few weeks after these declarations, American stated that the relationship with China Southern Airlines "has only just begun", and that there is a need to approve flexibility as the "only" special remedy for the disadvantageous circumstances in the U.S.-China market in consideration of the fact that American has no alliance partnerships based in China. The assertion that the relationship with China Southern Airlines is "still young" is mutually exclusive from the assertion about preserving services between Chicago-China. Taking American's recent declarations at face value, the logical conclusion would be that the "still young" relationship between American and China Southern Airlines will not save the Chicago-China route, and that American does not have any plans or ability to resume these flights.

American lamented that it must face "risk of counterarguments" and existing processes established by the authorities for route allocation that American referred to as "additional steps", and American stated that "the existing licensing system that affects U.S.-China Zone 1 operations is damaging to American's ability to compete". Although their requests for destination flexibility are not only dependent on airline company profits, United Airlines, in contrast, fully supports having the authorities guarantee maximum public interest, and providing operations for new limited entry markets like China and Haneda for any given route selection to the most travelers and regional societies that deserve the primary focus. The primary objective of the authorities in the route allocation proceedings is to maximize public interests, namely, to allow the applicants to provide and maintain the best transportation services for the public. The recent requests for destination flexibility for U.S.-China and U.S.-Haneda bear risks that may compromise the processes established by the authorities and past selections. When putting passengers and regional societies first, the public interest supports the existing method of allotting valuable, restricted operations instead of destination flexibility that limits the focal point to airlines only.

United asserts that it has more restricted flights in China than American operations that can be performed flexibly in China, and that it is far from being able to flexibly operate in China. United also argued that providing flexibility associated with operations in Brazil as cited by Delta and American should be considered as a separate issue from China. United also pointed out that the contradiction between how American uses its partnership with China Southern Airlines as a powerful remedy to continue its suspension exemption, and how American uses its own argument for China route flexibility in a convenient means to make American appear as though its early-stage relationship somehow is inferior to Delta or United.

Given these circumstances, Delta, which first provided the statement relating to Haneda, provided the following response to American's statement.

4 Response by Delta Airlines (January 16, 2019)

Although Delta did not make any objection to the [American's proposed] flexibility for U.S. destinations for providing service to China, the important factors that are used as the basis for the need for destination flexibility by U.S. airlines at Haneda largely differ from that found in the U.S.-China market conditions. American has tied Delta's Haneda proposal to some other unrelated, limited market access (i.e., the Chinese market) which implicitly express American's commercial interests. The political environment for airlines at Haneda is considerably different from that found in the U.S.-China market. This is for the following reasons, among others:

(1) Although the USA and Japan (excluding Haneda Airport) have an Open Skies Agreement, the USA and China do not have such an agreement.

(2) Japan and the USA have both signed an Open Skies Agreement to form a basis for the intentions of the U.S. government to approve applications for antitrust immunity (ATI) between UA/ANA and AA/JAL. Currently, the UA/ANA and AA/JAL business partnerships are already benefitting from destination flexibility provided by the Japanese government. In particular, the UA/ANA business partnership holds a strong position in the market with almost half of all of the operating flights from the continental USA to Haneda.

Delta Airlines agrees with United Airlines about how "limited route operation rights should relate to consumers and regional societies". The UA/ANA and AA/JAL business partnerships acquired 8 of the 12 operating flights provided based on the 2016 proceedings. In contrast, China and the USA have not yet reached such an agreement, which has led to the ATI between U.S.-China airlines remaining as an unrecognized political problem belonging to the U.S. government. American's statement and United's counterargument intentionally ignore the distinction between these two markets despite participating in exempted business partnership agreements with Japanese airlines.

(3) The Delta's disadvantages at Haneda are directly attributed to the ATI policy framework for Japan established by the authorities, whereas the disadvantages in China asserted by American are not attributable to ATI policies. This is actually an issue that is completely unrelated to ATI. This is because U.S. airlines do not have any ATI with Chinese airlines.

Just as Delta emphasized in its petition for destination flexibility between the USA and Haneda, Delta supports policies that allow the market forces, instead of the government, to determine U.S. destinations in a competitive airline service environment. Flexible policies that adhere to the Open Skies Agreement will enable airlines to promptly and effectively respond to fluctuating economic conditions. However, the U.S.-China market still has not incorporated such an environment.

Although American is requesting that flexibility be provided to Delta between the USA and Haneda on the condition that American is also provided flexibility between the USA and China, American has not yet provided a valid reason that can link these two issues. Additionally, by taking action to expand the scope of Delta's proposal for destination flexibility at Haneda to political disputes across a broad scope that covers other markets throughout the world, it appears that American is trying to evade objections from Delta and United while issuing its own request for an exemption concerning the 90-day dormant terms that can be applied to 14 suspended passenger-cargo flights operating between the USA and China Zone 1.

Delta's counterargument is that it would be utter nonsense to try to bring China, which has a completely different market environment and political measures, into the debate on Haneda.

On February 7 of this year after each of the companies voiced their assertions as stated above, the DOT denied the motion by Delta Airlines dated December 19, 2018 in a written statement requesting the related U.S.-based airlines to submit applications for each of their desired slots at Haneda. The reasons are as follows.

5 Order by the DOT (February 07, 2019)

It is evident that approving Delta's request to provide consideration for destination flexibility in these proceedings would be a factor that would complicate, and cause controversy concerning, the airline company selection proceedings, and may also result in greatly delayed case resolution. The DOT concluded that these proceedings, which include a timely and prompt final decision by providing a deadline of October 2019 that is feasible for the selected airlines, should result in the protection of public interests.

Although the DOT made no particular mention concerning the destination flexibility in China petitioned for by American, when considering the stance of the DOT to not approve Delta's petition due to time constraints, it is evident that the DOT has no intention at present to address the U.S.-China routes, at least not in the context of the Haneda issue.

Thus, with the U.S. airlines being on an even playing field with respect to the Haneda routes, from the exchanges in the discussion described above, we can see how a major part of the global strategy of each company is comprised of determining how to operate Chinese routes more flexibly and effectively than competitors. When considering this issue from the viewpoint of Japan, while there has been increasing attention on how to split the slots with the USA, the Japanese government is going to be under pressure in making the political decision to distribute the remaining number of increased slots at Haneda to countries other than the USA. Among these countries, there is no doubt that China will be the country that receives the most preferential consideration. In retrospect, consideration will need to be provided for the certain degree of significance in the fact that attention will be given to these types of discussions in the future within the USA domestically. We will continue to focus on the topic trends mentioned in this report moving forward as well.

References

- Website “regulations.gov” https://www.regulations.gov/?tab=search
- Website (News on allocation of increased slots at Haneda) (https://www.aviationwire.jp/archives/167035)
- Motion of DELTA AIR LINES, INC.. Docket DOT-OST-2016-0048 (2018.12.19)
- ANSWER OF AMERICAN AIRLINES, INC. IN CONDITIONAL SUPPORT OF THE MOTION OF DELTA AIR LINES, INC., Docket DOT-OST-2016-0048 (2019.1.7)
- MOTION OF AMERICAN AIRLINES, INC. FOR U.S.-CHINA ROUTE FLEXIBILITY, Docket DOT-OST-2004-19077, Docket DOT-OST-2007-28567 (2019.1.7)
- CONSOLIDATED OBJECTION OF UNITED AIRLINES, INC., Dockets DOT-OST-2004-19077, DOT-OST-2007-28567, Docket DOT-OST-2016-

0048 (2019.1.14)

- ANSWER OF DELTA AIR LINES, INC., Docket DOT-OST-2004-19077, Docket DOT-OST-2007-28567 (2019.1.16)
- ORDER, Docket DOT-OST-2019-0014 (2019.2.7)