

BEFORE THE  
DEPARTMENT OF TRANSPORTATION  
WASHINGTON, D.C.

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Joint Application of :  
 :  
 AMERICAN AIRLINES, INC. :  
 and : Docket OST-00-7088  
 THE TACA GROUP :  
 :  
 under 49 USC 41308 and 41309 for approval :  
 of and antitrust immunity for agreement :  
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AMERICAN AIRLINES, INC., et al., :  
 and THE TACA GROUP RECIPROCAL CODE- : Docket OST-96-1700  
 SHARING SERVICES PROCEEDING :  
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ANSWER OF  
CONTINENTAL AIRLINES, INC.  
TO MOTION

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April 12, 2000

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Continental<sup>1</sup> agrees with Delta that American and the TACA Group should be required to provide additional information to the Department on their proposal for antitrust immunity and renewal and amendment of codeshare authority and that all confidential information should be available for use in either proceeding. American and the TACA Group have failed to submit the information the Department must have to weigh the substantial anticompetitive impact of these

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<sup>1</sup> Common names are used for airlines.

applications for antitrust immunity and for removal of the Department's blocked-space condition on the Miami-Central America codeshare service by American and the TACA Group, although some additional information should be required.

Continental states as follows in support of its position:

1. When American and the TACA Group applied for authority to codeshare, the unmistakable consensus of this Department, the Department of Justice and other airlines was that codesharing between American and the TACA Group alone is anticompetitive.<sup>2</sup> Nonetheless, American and the TACA Group, which still dominate U.S.-Central America routes, have asked the Department to eliminate the conditions on their codeshare arrangement that the Department found were necessary to combat its anticompetitive effects. Since these conditions are the sole remaining restrictions on American/TACA Group codesharing to allow a modicum of competition on U.S.-Central America routes, the Department should be steadfast in requiring these conditions. Despite the serious concerns of this Department and the Department of Justice about the anticompetitive impact of the American/TACA Group codeshare arrangement, American and the TACA Group have also asked the Department for antitrust immunity to transform their dominance of U.S.-Central America routes and virtual monopoly of most Miami-Central America routes into an alliance immune from the antitrust laws which

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<sup>2</sup> See Order 98-5-26 and the Comments of the Department of Justice, January 28, 1998, Docket OST-96-1700 ("DOJ Comments").

preclude exploitation of monopoly power. Since codesharing between American and the TACA Group alone is de facto anticompetitive and granting them antitrust immunity would compound the harmful effects of their alliance and preclude even the possibility of codesharing between the TACA Group and other U.S. airlines, the Department should reject the American/TACA Group application for antitrust immunity out of hand.

2. Continental agrees with Delta that much more information is needed to enable the Department to assess the full measure of the anticompetitive impact of the American/TACA Group applications for antitrust immunity and renewal and amendment of their codeshare authority. Delta's list of additional information, however, does not include certain information essential to the Department's consideration of the American/TACA Group applications. Accordingly, Continental asks the Department to require American and the TACA Group to provide the following additional items of information:

- Explain in detail why American and the TACA Group claim the Department's Miami-Central America blocked-space condition in Order 98-5-26 is "entirely unworkable" on SABRE.<sup>3</sup> Provide a list of all blocked-space arrangements displayed on SABRE and explain in detail the nature of all differences between each of them and the unimplemented American/TACA Group blocked-space subject to the Department's Miami-Central America blocked-space condition. Provide copies of all documents, in English or with English translations, prepared by or on behalf of American and/or the TACA Group, that discuss, consider or analyze the Department's blocked-space condition or blocked-

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<sup>3</sup> See American's Codeshare Renewal and Amendment Application at 6.

space arrangements with other airlines. Describe in detail all efforts by American and/or the TACA Group to implement the Department's blocked-space condition. Explain in detail the estimated total cost of implementing the Department's blocked-space condition on SABRE and the amount of time required to complete such implementation.

- Specify whether the implementation of an antitrust-immunized alliance between American and the TACA Group would nonetheless allow another U.S. airline to codeshare with the TACA Group, and, if so, how.
- Provide copies of all documents prepared by or on behalf of American that discuss, consider or analyze any potential change in the alliance between American and the TACA Group if the TACA Group were to codeshare with another U.S. airline.

This information is needed to assess the rationale for the American/TACA Group request for removal of the Department's blocked-space condition on Miami-Central America codeshare service and to determine if antitrust immunity would allow the TACA Group to codeshare with other U.S. airlines to expand competition on U.S.-Central America routes. In addition, the following information has been required by the Department in other antitrust immunity proceedings, and should be required here:

- Provide copies of all documents, prepared by or on behalf of American, that reflect any consideration by American to seek additional antitrust-immunized alliances on U.S.-Latin America routes contemporaneous with or subsequent to the American/TACA Group alliance.
- Provide revenue forecasts for American/TACA Group codeshare operations with and without antitrust immunity. Provide copies of all documents, in English or with English translations, prepared by or on behalf of American and/or the TACA Group, that include revenue forecasts for American/TACA Group codesharing or antitrust immunity.

- Provide copies of all documents, in English or with English translations, prepared by or on behalf of American and/or the TACA Group, that discuss, consider or analyze route development, internal expansion, service expansion or marketing plans and strategies for providing air service between the U.S. and Central America and behind and beyond the U.S. and Central America.
- Provide copies of all documents, in English or with English translations, prepared by or on behalf of American and/or the TACA Group, that discuss, consider or analyze any preference for Miami as a U.S. gateway for Central America traffic or the competitive obstacles faced by other U.S. gateways.
- Provide copies of all documents, in English or with English translations, prepared by or on behalf of American and/or the TACA Group, that discuss, consider or analyze the availability of, or anticipated changes in, airport gates, facilities and/or slots at one or more of the points served by the TACA Group in Central America. Explain in detail the extent to which gates, facilities and slots at these airports may be affected by any expansion of service by the TACA Group or future traffic growth.

Unless and until American and TACA provide this information to the Department to complete their applications, the Department should not consider them further.

For the foregoing reasons, Continental urges the Department to require American and the TACA Group to provide the information Continental agrees is necessary to complete their applications, allow interested parties to use confidential information in both proceedings and decline to consider the American/TACA Group

applications further until American and the TACA Group submit such information to the Department.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that I have this date served the foregoing document on Delta's counsel and all persons served with Delta's motion in accordance with the Department's Rules of Practice.

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Thomas Newton Bolling

April 12, 2000  
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