

BEFORE THE
DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.

Joint Application of :
CONTINENTAL AIRLINES, INC. :
and : Docket OST-00-8577
COMPAÑÍA PANAMEÑA DE AVIACIÓN, S.A. :
under 49 U.S.C. §§ 41308 and 41309 for approval :
of, and antitrust immunity for, an alliance agreement :

JOINT REPLY OF CONTINENTAL AIRLINES, INC.
AND COMPAÑÍA PANAMEÑA DE AVIACIÓN, S.A.
AND MOTION FOR LEAVE TO FILE

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No one has opposed the Continental/COPA¹ request for antitrust immunity, and Houston has supported it. (See Houston Parties reply at 3) “American and the TACA Group have no objection to the Continental/COPA application” so long as their own request for antitrust immunity and renewal and amendment to their codeshare authority is “processed and granted on a parallel track” (American/TACA answer at 1), but their application has been side-tracked because of their own delay in providing additional information to the Department. An immunized American/TACA Group alliance would further dominate U.S.-Central America routes, particularly at the critical Miami hub, while an antitrust-immunized Continental/COPA alliance would be better able to compete with the

¹ Common names are used for airlines.

American/TACA Group alliance's current dominant position. Given the significant differences between these two requests for antitrust immunity, the Department should move swiftly to grant the Continental/COPA request for antitrust immunity whether action on the American/TACA Group request is delayed or expedited.

Continental and COPA state as follows in support of their position.

1. Continental and COPA have provided all information normally required by the Department for a complete antitrust-immunity application. (See Continental/COPA application at 19-24) The Department can proceed immediately, therefore, to consider the Continental/COPA application for antitrust immunity and approve it quickly since the application is non-controversial and unopposed.

Antitrust immunity will allow Continental and COPA to maximize the public benefits of their end-to-end alliance so they can compete more effectively with American and the TACA Group, which dominate U.S.-Central America routes.²

2. In sharp contrast to Continental/COPA, the American/TACA Group application for antitrust immunity and renewal and amendment of their codeshare authority is neither complete nor unopposed. The Department has required

² Although the immunized Continental/COPA alliance will be pro-competitive, Continental and COPA would not fully implement their alliance agreement without antitrust immunity because they could not be assured that certain activities contemplated by their agreement, such as schedule and fare coordination and yield management, would not face a legal challenge from competitors on antitrust grounds. The TACA Group has already complained about Continental's low fares between the U.S. and Central America. (See TACA Group complaint, October 28, 1999, Docket OST-99-6418)

American and the TACA Group to provide additional information to the Department “in light of the issues that have been raised” about their application for antitrust immunity, but American and the TACA Group have not complied with the Department’s order. (See Order 2000-7-8 at 2 and the American/TACA Group answer at 5, fn 3) Under these circumstances, the Continental/COPA application is already on a faster track and should not be delayed for consideration with the incomplete American/TACA Group application.

3. Unlike the Continental/COPA application, the American/TACA Group application is, at a minimum, highly controversial. The Department has already said the conditions imposed on the American/TACA Group codeshare authority, which American and the TACA Group now want removed, were necessary because “the market concentration, potential future barriers to entry, overall dominance and size of [American and the TACA Group] if not restricted in operation in the Miami-Central America overlap markets would likely have an anti-competitive impact.”³ Mere codesharing between American and the TACA Group raised significant competition concerns. Their request for removal of the conditions imposed on their codesharing to ameliorate those concerns and for antitrust immunity to conduct joint operations on routes they currently dominate raise significant new concerns which have already led the Department to require additional information

³ Order 98-5-26 at 18. See also DOJ comments, Docket OST-96-1700, January 28, 1998, at 11-12.

American and the TACA Group have so far failed to provide. (See Order 2000-7-8)
No such concerns are raised by the Continental/COPA application, which should be approved promptly, as other non-controversial antitrust-immunity applications have been.⁴

4. Continental and COPA move for leave to file an otherwise unauthorized document under Rule 6 (c) of the Department's Rules of Practice. This joint reply responds to arguments contained in the answer of American and the TACA Group. Acceptance of this joint reply will provide a more complete record on which the Department can base its decision on the Continental/COPA application and will not prejudice any party.

⁴ See, e.g., Order 2000-5-13 (approving the American/Swissair/Sabena antitrust-immunity application).

For the foregoing reasons, Continental and COPA urge the Department to approve, on an expedited basis and without regard to the American/TACA application, their alliance agreement under 49 U.S.C. § 41309, and to grant antitrust immunity for the alliance agreement pursuant to 49 U.S.C. § 41308.

Respectfully submitted,

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January 24, 2001

CERTIFICATE OF SERVICE

I certify that I have this date served the foregoing document on counsel for American and the TACA Group and the persons served with the American/TACA answer in accordance with the Department's Rules of Practice.

/s/ Thomas Newton Bolling

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January 24, 2001

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Joint Reply of Continental and COPA
Page 8

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