

**BEFORE THE
DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.**

Joint Application of)	
)	
DELTA AIR LINES, INC.)	
SOCIÉTÉ AIR FRANCE)	OST-01-
ALITALIA-LINEE AEREE ITALIANE-S.P.A.)	
CZECH AIRLINES)	
)	
Under 49 U.S.C. §§ 41308 and 41309)	
for approval of and antitrust immunity)	
for alliance agreements)	

**JOINT APPLICATION OF
DELTA AIR LINES, INC., SOCIÉTÉ AIR FRANCE,
ALITALIA-LINEE AEREE ITALIANE-S.P.A.
AND CZECH AIRLINES
FOR APPROVAL OF AND ANTITRUST IMMUNITY
FOR ALLIANCE AGREEMENTS**

August 15, 2001

Communications with respect to this document should be sent to:

Michael F. Goldman
SILVERBERG, GOLDMAN &
BIKOFF, LLP
1101 30TH Street, N.W., Suite 120
Washington, DC 20007
(202) 944-3305

Counsel for AIR FRANCE

Richard D. Mathias
ZUCKERT, SCOUTT &
RASENBERGER, L.L.P.
888 Seventeenth Street, N.W.
Suite 600
Washington, DC 20006-3309
(202) 298-8660

Counsel for ALITALIA-LINEE
AEREE ITALIANE-S.P.A.

Allan Mendelsohn
Constance O'Keefe
MENDELSON & O'KEEFE
1201 Connecticut Avenue, N.W.
Suite 850
Washington, DC 20036
(202) 775-0680

Counsel for CZECH AIRLINES

D. Scott Yohe
Senior Vice President -
Government Affairs
DELTA AIR LINES, INC.
1275 K Street, N.W.
Washington, D.C. 20005
(202) 216-0700

John J. Varley
Assistant General Counsel
James Coblin
Attorney
DELTA AIR LINES, INC.
Law Department (#981)
1030 Delta Boulevard
Atlanta, GA 30320-2574
(404) 715-2872

Robert E. Cohn
Alexander Van der Bellen
SHAW PITTMAN LLP
2300 N Street, N.W.
Washington, D.C. 20037
(202) 663-8060

Counsel for
DELTA AIR LINES, INC.

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Delta Air Lines, Inc. (“Delta”), Société Air France (“Air France”), Alitalia-Linee Aeree Italiane-S.p.A. (“Alitalia”), and Czech Airlines (“CSA”) (collectively, the “Joint Applicants”), including their affiliates,^{1/} hereby jointly apply, under 49 U.S.C. §§ 41308 and 41309, for approval of and antitrust immunity for alliance agreements between Delta and Air France (Exhibit JA-1), Delta and Alitalia (Exhibit JA-2), and Delta and CSA (Exhibit JA-3), and for a coordination agreement among Delta, Air France, Alitalia, and

^{1/} The Joint Applicants request that any order granting immunity make clear that the immunity extends to their corporate affiliates. *See, e.g.*, Order 96-6-33, June 14, 1996, Appendix A.

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CSA (Exhibit JA-4) (collectively, the "Agreements"). This request encompasses all agreements between and among the Joint Applicants in furtherance of the attached Agreements, including implementing agreements and any transactions undertaken by the Joint Applicants pursuant to the Agreements. The Joint Applicants request that antitrust immunity be effective at the earliest possible date, but not later than November 1, 2001.

I. INTRODUCTION AND SUMMARY

The proposed alliance between and among Delta, Air France, Alitalia and CSA marks an important step toward bringing enhanced competition and efficiency to the transatlantic and worldwide air transportation marketplace. Antitrust immunized alliances, in combination with the open skies bilateral agreements they necessarily entail, have transformed the level, quality and competitiveness of international air service. Carriers now compete for international passengers on a broad network-to-network basis. There are currently three antitrust immunized alliance networks competing across the Atlantic, and the Delta/Air France/Alitalia/CSA alliance would bring a fourth new immunized alliance competitor to the marketplace.^{2/}

The Delta/Air France/Alitalia/CSA alliance is pro-competitive and pro-consumer, as it will provide substantial new benefits through combining the hub-and-spoke systems of the four carriers to form a single new integrated network. Although the Joint

^{2/} The three existing antitrust immunized alliances are: United/Lufthansa/SAS/Austrian, American/Swissair/Sabena and Northwest/KLM. Alitalia has already notified the Department that as of October 28, 2001, Alitalia will cease to be a member of the

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Applicants will continue to retain their corporate and national identities, the grant of antitrust immunity will enable the Joint Applicants to plan and coordinate services over their collective route networks as if there had been an operational merger.

The importance of improved alliance network competition is underscored by the Department's own recent report on *International Aviation Developments*, which concluded that "alliance-based networks are the principal driving force behind transatlantic price reductions and traffic gains."^{3/} Approval of the alliance Agreements and the grant of antitrust immunity will enable the Joint Applicants to form a new alliance that will significantly increase alliance-based network competition.

In the absence of immunity, it would be impossible for the carriers to engage in the close level of coordination necessary to integrate their activities into a truly effective alliance network. The carriers currently lack the necessary financial incentives to manage flight schedules and seat inventories in a manner that would maximize benefits to the overall network. Because the proposed cooperation and coordination activities contemplated by the Agreements would expose the Joint Applicants to the risk of challenge on antitrust grounds, the Joint Applicants cannot and will not proceed without

Northwest/KLM alliance. *See*, Notification of Alitalia dated August 10, 2001, Dockets OST-99-6501 and OST-01-9655.

^{3/} *International Aviation Developments: Transatlantic Deregulation, The Alliance Network Effect* (Second Report), U.S. Department of Transportation, Office of the Secretary, October 2000; and *International Aviation Developments: Global Deregulation Takes Off* (First Report), U.S. Department of Transportation, Office of the Secretary, December 1999 ("DOT Reports").

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antitrust immunity. Thus, antitrust immunity is necessary to achieve the pro-competitive and pro-consumer benefits of the proposed alliance.

Approval of the Joint Application is also necessary to achieve the important international policy objective of full open skies between the United States and France. France has announced its willingness to enter into an Open Skies Agreement, and the two Governments are expected to meet in September to initial such an agreement. The proposed Open Skies Agreement would immediately eliminate all remaining restrictions on routes, frequencies and designations. However, France has made clear that Air France's attainment of U.S. Government approval and antitrust immunity for an alliance with its chosen U.S. partner would be a precondition to implementation of the initialed Open Skies Agreement.

Delta, Air France, Alitalia, and CSA consider their alliance to be of vital strategic importance as they strive to compete with other transatlantic alliances. Indeed, Air France, Alitalia, and CSA consider that entering into an immunized transatlantic alliance with Delta is essential to their long-term competitive viability. The U.S.-Italy, U.S.-Czech Republic and contemplated U.S.-France Open Skies Agreements each specifically allow for this kind of airline alliance, and it is the clear understanding of each of these foreign governments that, by entering into open skies, its national carrier would receive favorable consideration for an immunized alliance with its chosen U.S. partner.

Uniform, consistent and fair application of regulatory policy requires the Department to accord the same legal authority to the Joint Applicants (*i.e.*, antitrust

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immunity) that has already been accorded to United, American and Northwest, and their respective European alliance partners. To do otherwise would create a double standard placing the Joint Applicants at a competitive disadvantage against the other immunized alliances. There are no significant competitive, commercial or aeropolitical distinctions between the proposed alliance and the other transatlantic alliances already approved by the Department.^{4/}

The proposed alliance, as set out in the Agreements and more fully described below, will involve coordination in such areas as marketing, sales, advertising, codesharing, frequent flyer programs, route and schedule planning, pricing, seat inventory, revenue management, revenue sharing, procurement, ground handling, airport facilities and support services, cargo and mail services, ticketing, information technologies, and distribution programs.

^{4/} See, e.g., Order 93-1-11 (Northwest/KLM); Order 96-5-27 (United/Lufthansa); Order 96-6-33 (Delta/Swissair/Sabena/Austrian); Order 96-11-1 (United/Lufthansa/SAS); Order 99-12-5 (Northwest/Alitalia/KLM); Order 2001-1-19 (United/Lufthansa/SAS/Austrian/Lauda).

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The alliance will significantly improve consumer convenience and choice, produce operating efficiencies and cost savings that will create enhanced value for passengers and shippers, increase competition in tens of thousands of city-pairs worldwide, and generate economic benefits for communities across the networks of the four carriers. Improved air services will increase tourism and encourage local economic development, generating growth in employment and tax revenues. The alliance will also benefit the employees and shareholders of each company. Delta, Air France, Alitalia, and CSA employees will benefit from growth opportunities at each of the carriers, and shareholders will enjoy improved returns resulting from synergies, cost efficiencies, and market growth.

The Delta/Air France/Alitalia/CSA Agreements are fully consistent with longstanding U.S. international aviation policy, which has encouraged global arrangements between U.S. and foreign carriers in order to benefit consumers and enhance competition. *See*, Statement of United States International Air Transportation Policy, 60 Fed. Reg. 21841, May 3, 1995. For all the following reasons, the proposed alliance Agreements should be approved on an expedited basis.

II. DESCRIPTION OF THE AGREEMENTS

This Joint Application involves the following four interrelated agreements: (1) a bilateral alliance agreement between Delta and Air France (Exhibit JA-1), (2) a bilateral alliance agreement between Delta and Alitalia (Exhibit JA-2), (3) a bilateral alliance agreement between Delta and CSA (Exhibit JA-3), and (4) a coordination agreement among Delta, Air France, Alitalia, and CSA (Exhibit JA-4). These agreements are

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comparable to those the Department has approved and immunized in other proceedings, in that they provide a general framework for subsequent definitive agreements covering all major functional areas of the airlines' operations.

If the Delta/Air France/Alitalia/CSA alliance is approved and antitrust immunity is granted, the Joint Applicants will then proceed to coordinate and integrate their operations in areas such as marketing, pricing, scheduling, planning, joint services, and related matters. Notwithstanding such cooperation and joint operations, each airline will retain its separate identity, brand, ownership, and control.

The Coordination Agreement's principal purpose is to enable the four carriers to enter into multi-party discussions and agreements to coordinate activities between and among themselves, and thereby avoid the inefficiencies, risks and costs of coordinating a multi-party, global alliance through a series of bilateral discussions and agreements.

Such cooperation between any two, three or among all four of the Joint Applicants would include, for example, joint Delta/Air France/Alitalia/CSA advertising and marketing programs, joint fare promotions, joint bids for government and corporate travel accounts, joint revenue sharing on certain routes, and code-sharing, flight and price coordination between and among the Joint Applicants, such as between Air France and Alitalia on transatlantic services.

Under the Coordination Agreement, the Joint Applicants would continue to be independent companies, but could discuss and plan coordinated service over their route networks, either bilaterally or among all four carriers, with a view to offering the public

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broader and more efficient travel options, permitting the four carriers to better serve the public and to compete effectively with other international carriers and carrier alliances.

A. Areas of Coordination.

The alliance agreements at issue contemplate the following key coordination activities:

1. Marketing and Sales Programs. The coordination and integration of sales and third-party marketing activities of the carriers and the establishment of joint marketing programs creating a seamless air transportation system (including frequent flyer and other similar programs) and selling a single product or set of products. This will enable the carriers to gain substantial efficiencies by developing a coordinated approach to sales and marketing, by establishing cooperative sales programs and by deploying the carriers' resources in the most efficient and productive manner.

2. Coordinated Schedules. The coordination of airline schedules, flight networks, route planning, and information systems to maximize sales through the interconnection of the carriers' systems.

3. Codesharing. The parties will continue and expand reciprocal codeshare operations on transatlantic routes and behind and beyond the respective U.S. and European gateways of each of the Joint Applicants. Delta already holds blanket reciprocal codeshare authority with Air France and CSA,^{5/} and Delta and Alitalia have

^{5/} See, Statement of Authorization approvals dated August 6, 1998 (Delta and Air France), and February 27, 2001 (Delta and CSA).

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applied for such authority. For the reasons explained below, antitrust immunity will substantially enhance the benefits of the existing and future codeshare arrangements between the parties.

4. Sharing of Revenue/Earnings. The sharing and/or pooling of revenues and earnings in particular alliance markets to ensure that each carrier is fairly compensated for both the value of its respective service and its contribution to the joint enterprise in order to maximize the incentive of each party to pursue services, sales and marketing initiatives for the benefit of the alliance.

5. Coordinated Commission Programs. The coordination of commission programs, including but not limited to agency, corporate and group commissions.

6. Standard Form Contracts. The coordination and standardization of contracts with respect to service providers, travel agents, general sales agents, corporations, organizations and individuals.

7. Joint Use of Accounting Data and Information Systems. The sharing, joint use and coordination of accounting data, information systems, information with respect to marketing, fares, frequent flyer programs, costs and revenues to assist in the development of the proposed alliance.

8. Coordinated Service Standards and Procedures. The development of mechanisms to promulgate, review and enforce the provision of uniform service standards such that the coordinated programs of the carriers will be considered to be seamless and transparent to the customer.

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9. Joint Advertising/Media Programs. The establishment of joint advertising and media programs that would jointly promote the alliance as a seamless, worldwide transportation network.

10. Joint Identities. The development of a joint identity or identities through jointly developed service marks which may include a single, master identity and/or individual local identities, the harmonization of existing identities and service marks of the applicants, the use of the jointly developed identities on aircraft exteriors and interiors, employee uniforms, facilities and ground equipment, stationery and other similar material.

11. Coordinated Pricing and Inventory Control. The establishment of common pricing and inventory control with respect to all coordinated services, including but not limited to retail fares, prorates, wholesale net fares and corporate discount programs.

12. Coordinated Cargo Programs. The development of coordinated cargo sales and marketing, including expansion of the Cargo Joint Venture for outbound U.S. international freight shipments entered into by Air France and Delta.

The foregoing areas of coordination will allow Delta, Air France, Alitalia and CSA to generate significant efficiencies and provide a broader range of enhanced and more competitive passenger and cargo services. The benefits and efficiencies of the alliance cannot be achieved to the same degree absent antitrust immunity.

B. Improvements and Efficiencies.

The proposed alliance would allow the carriers to develop mechanisms to enhance efficiencies, reduce costs and provide better service to the traveling and shipping public in the following ways:

1. Increased Transatlantic Service and Online Connections. The integration and coordination of the hub networks of the Joint Applicants on both sides of the Atlantic will generate greater levels of traffic support. Consequently, the Joint Applicants will be able to expand frequencies over transatlantic segments. By interconnecting the multiple hubs of the Joint Applicants, the alliance would be able to link Delta's extensive network of cities in the Americas with many destinations served by Air France, Alitalia and CSA beyond their respective European hubs. Exhibit JA-5.

The Joint Applicants would have the potential to offer online service in nearly 40,000 city-pairs world-wide. *Id.* This would give the Joint Applicants a new single network that is comparable in size to those operated by the existing transatlantic immunized alliances of United/Lufthansa/SAS/Austrian, American/Swissair/Sabena and Northwest/KLM. JA-6, 7, 8, 9.

Such service enhancements and expanded online service options can only be accomplished on an efficient basis through coordination and integration of schedules and route planning, combined network planning, and the establishment of a common financial objective.

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2. Expanded Access to Beyond and Behind Gateway Markets. The creation of joint services having a common financial objective is essential to the Joint Applicants' ability to expand online service, particularly in behind and beyond gateway markets. The establishment of services with a common financial bottom line, involving marketing, sales, prices and the allocation of revenues and earnings cannot be accomplished without antitrust immunity. In the absence of immunity, competitors cannot discuss and agree to integrated network coordination and must develop prorate arrangements in the context of "arms-length" negotiations to divide revenues between transatlantic and behind/beyond segments. Such a process often leads to a division of revenue that fails to accommodate one carrier's transatlantic passengers on the connecting airline's route network. In short, the absence of a common financial objective effectively forecloses online access at competitive prices for passengers traveling behind and beyond the gateway cities.

The GAO Report on international airline alliances concluded that: "With immunity, Northwest and KLM can develop formulas to set fares in all markets and, according to Northwest and KLM representatives, quickly enact fare reductions to attract traffic."^{6/} GAO further observed that: "[w]ithout immunity, airlines that are significant competitors cannot discuss pricing issues and must develop prorate agreements in 'arm's length' negotiations to divide revenues, a cumbersome process when thousands of city-pairs are involved." GAO Report at 29. Antitrust immunity will permit the Joint

^{6/} GAO Report, April 1995, GAO/RCED-95-99 ("GAO Report").

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Applicants to more efficiently divide revenues and gain better access to each others' behind gateway city-pairs.

3. Better Coordinated Hubs and Transatlantic Schedules. An immunized alliance will be able to offer a greater variety of transatlantic services. The alliance will be able to coordinate the respective networks and the transatlantic segments of each carrier to achieve more efficient network services and maximize service options for the traveling and shipping public. In the absence of immunity, the Joint Applicants independently schedule their services to maximize their individual positions, rather than those of the network. An antitrust-immunized alliance arrangement will establish common economic objectives that will allow the Joint Applicants to use their resources more effectively to operate transatlantic services on additional routes, as well as offer more choices of travel times throughout the day.

4. Expansion of Discount Fares. Currently, each carrier offers deep discount fares that are only available for travel on that carrier's system. The common financial objective of the alliance will enable the Joint Applicants to expand the availability of such deep-discount fares to cover their entire combined networks.

5. Availability of Discount Seats on Transatlantic Segments. The common financial objective of the alliance arrangements also will enable the Joint Applicants to provide greater levels of discount seats than would otherwise be available. Under the current arms-length codeshare arrangements, each carrier's incentive is to maximize the return on each seat operated. Consequently, if demand is high, neither carrier has the

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incentive to release seats to its codeshare competitor for resale by that carrier. The common financial "bottom line" and the coordinated pricing component of the alliance arrangement is essential to enabling the carriers to maximize network benefits by jointly filling seats at price efficient levels.

6. Inventory Control. The coordinated alliance can develop uniform and coordinated control of seat inventory to maximize management of capacity, thereby increasing utilization and efficiency, and reducing costs for the benefit of the traveling public.

7. Reduced Sales, Marketing and Reservations Costs. The alliance will permit the carriers to maximize economic efficiencies by coordinating sales, marketing, reservations and airport services and reducing redundant costs in those areas.

8. More Effective Equipment Utilization. The alliance will permit the carriers to optimize utilization of their aircraft. By coordinating their services, the carriers will be able to optimize the use of aircraft on routes where demand is higher and utilize smaller equipment on thinner routes.

9. Integrated Cargo Network. Shippers will also benefit from an the proposed immunized alliance. The Joint Applicants will be able to expand the existing Delta/Air France cargo joint venture and offer U.S. shippers an integrated transatlantic cargo network. Freight will move on the most efficient transatlantic routing, whether that be on an Air France or Alitalia freighter or in the bellies of the Joint Applicants' combination aircraft.

10. Quality of service. Delta, Air France, Alitalia, and CSA each has a long-established commitment to innovative and excellent service. Their proposed alliance will facilitate achievement of the highest level of customer service.

III. THE APPLICABLE LEGAL STANDARD FOR APPROVING AND GRANTING ANTITRUST IMMUNITY TO THE DELTA/AIR FRANCE/ALITALIA/CSA ALLIANCE

The Department has discretion to grant antitrust immunity to agreements approved under Section 41309 if it finds that immunity is required by the public interest. 49 U.S.C. 41308. In relevant part, the controlling statute provides that the Department “shall approve an agreement...when the Secretary finds it is not adverse to the public interest and is not in violation of this part.” 49 U.S.C. 41309(b).

The Department’s established policy is to grant antitrust immunity with respect to agreements that are found not substantially to reduce or eliminate competition, if (1) the Department concludes that antitrust immunity is required in the public interest and (2) the parties will not proceed with the transaction absent antitrust immunity. *See*, Order 96-6-33 at 9 (Delta/Swissair/Sabena/Austrian); Order 96-5-27 at 17 (United/Lufthansa); Order 93-1-11 at 11 (Northwest/KLM).

The proposed Delta/Air France/Alitalia/CSA alliance Agreements clearly satisfy this two-part test. First, the alliance is in the public interest since it will not substantially reduce or eliminate competition, but rather will stimulate more vigorous competition and expanded consumer choice. Second, the Joint Applicants categorically state that they will not carry out the collaboration, coordination and integration activities contemplated

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by the alliance agreements without antitrust immunity. In these circumstances, the Department should promptly approve and grant antitrust immunity to the alliance Agreements.

IV. APPROVAL OF THE DELTA/AIR FRANCE/ALITALIA/CSA AGREEMENTS WILL PROMOTE THE PUBLIC INTEREST

A. Joint Operations Will Enable The Alliance To Offer New And Improved Services

Substantial public benefits will accrue from an integrated alliance among Delta, Air France, Alitalia, and CSA. Those benefits, which closely mirror those achieved by other, previously immunized transatlantic alliances, include the ability to provide passengers and shippers with greater choice and improved, seamless service throughout an expanded international alliance route network while also increasing the scope of each carrier's frequent flyer program. In addition, the cost benefits and efficiencies that can be obtained from an integrated alliance operation will be passed on to customers in the form of superior service and increased availability of lower fares.

There is strong evidence, well known to the Department, demonstrating that international alliances generate substantial benefits for consumers. As observed by Charles A. Hunnicutt, former Assistant Secretary for Aviation and International Affairs, "[w]e have found that international alliances enhance, not reduce, competition. We have also determined that they have produced additional valuable public benefits, such as providing millions of consumers and thousands of communities with improved air service and lower fares" (remarks before the World Travel and Tourism Annual Conference, Berlin, Germany, March 8, 1999).

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Mr. Hunnicutt specifically noted that “the improved service and competition offered by [transatlantic] alliances have lowered fares in many international aviation markets” *Id.* Former Deputy Secretary Mortimer Downey elaborated that “[o]ur studies of the U.S. North Atlantic aviation market confirm that the existing airline alliances are competing and that their competition is producing substantial public benefits. For example, improved service and competition that alliances offer have resulted in a decline in average fares in U.S. - Europe markets. Since 1996, when a number of Open Skies Agreements went into effect, North Atlantic airline passenger traffic has increased by 8 percent annually” (remarks before the Global Air & Space ‘99 Conference, Crystal City, Virginia, May 3, 1999).

The full network benefits of the Delta/Air France/Alitalia/CSA alliance cannot be realized absent the Department’s grant of antitrust immunity. The Department has acknowledged that, without antitrust immunity, airlines may be prevented from forming alliances which offer significant competitive and efficiency benefits. *See*, Order 96-5-26 at 26 (Delta/Swissair/Sabena/Austrian) (“the potential antitrust liability for an agreement of this volume may deter the applicants from integrating their services as intended by the alliance agreements unless they have antitrust immunity”); Order 96-5-12 at 26 (United/Lufthansa) (the applicants “could be exposed to liability under the antitrust laws if we did not grant immunity”); GAO Report to Congressional Requesters, April 1995, p. 30 (“the key benefit of immunity... is the protection from legal challenge by other

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airlines,” which allows the participants “to more closely integrate their operations and marketing than they otherwise would for fear of legal reprisal”).

Legal, operational, and financial obstacles effectively preclude the formation of integrated international route networks either by merger or by the unilateral expansion of a single carrier’s system. *See*, Statement of United States International Air Transportation Policy, 60 Fed. Reg. 21841, 21842, May 3, 1995. Expansion by alliance remains the only option, and the feasibility of alliance formation is predicated on securing antitrust immunity. Delta, Air France, Alitalia, and CSA submit that the full public benefits offered by their proposed alliance cannot be obtained absent antitrust immunity. The establishment of a fully integrated alliance network depends on the ability of alliance carriers to coordinate prices, seat inventory, routes and schedules and sales and marketing programs; and to develop common strategic and financial objectives in order to compete with other antitrust-immunized international alliances. Such activities inevitably would expose the Joint Applicants to challenge on antitrust grounds. Therefore, the Joint Applicants have determined that it is not feasible to proceed with their proposed alliance absent antitrust immunity.

B. The Alliance Will Not Substantially Reduce Or Eliminate Competition In Any Relevant Market

In evaluating antitrust immunized alliances, the Department's policy is to "apply the standard Clayton Act test used in examining whether mergers will substantially reduce competition in any relevant market." Order 2001-5-1 at 7 (Continental-COPA). The Department considers whether the alliance "will substantially reduce competition by

eliminating actual or potential competition. . . so that [the parties to the alliance] would be able to raise prices above competitive levels or reduce service below competitive levels." *Id.* The proposed alliance would not give rise to any such negative competitive effects.

Virtually every significant transatlantic city-pair route between the United States and Continental Europe is or can be served by numerous major U.S. and/or European carriers on either a nonstop, single-plane or one-stop connecting basis. For this reason, the Joint Applicants submit that the U.S.-Europe market is the appropriate relevant market for analyzing the competitive effect of the alliance. Nonetheless, even when viewed at the country-pair or city-pair level, the Delta/Air France/Alitalia/CSA alliance will not substantially reduce or eliminate competition.

1. Global Competition.

The proposed alliance will significantly enhance competition in the global air transport services market. As the Department has recognized, there exists today “a worldwide aviation market in which travelers have multiple competing options for reaching destinations over multiple intermediate points.” Order 99-4-17 at 15 (American/Lan Chile show cause order). The global market is driven by a number of competing global network systems, including “integrated alliances that can offer a multitude of new online services to a vast array of city-pair markets, on a global basis.” *Id.* The addition of Delta/Air France/Alitalia/CSA to the ranks of competing global immunized alliances -- which include United/Lufthansa/SAS/Austrian (Exhibit JA-6),

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American/Swissair/Sabena (Exhibit JA-7) and Northwest/KLM (Exhibit JA-8) -- will create additional consumer choice and enhance competition in the international marketplace.

2. U.S.-Europe.

The combination of Delta, Air France, Alitalia, and CSA will not substantially reduce competition in the U.S.-Europe market. Moreover, approval of the alliance will secure the important benefits of full open skies between the United States and France, and build upon the expectations of Italy and the Czech Republic in entering into fully liberalized aviation agreements with the United States. France is one of the largest U.S. international aviation trading partners that has not yet acceded to full open skies, and its decision to join the open skies community will send a strong message to other countries that insist on restrictive aviation policies.

In terms of its impact on U.S.-Europe competition, the Delta/Air France/Alitalia/CSA alliance is very comparable to the United/Lufthansa/SAS/Austrian, American/Swissair/Sabena and Northwest/KLM alliances -- all of which the Department found to be consistent with competition and the public interest.

There is vigorous competition in the U.S.-Europe marketplace, with dozens of carriers operating hundreds of flights across the Atlantic. JA-11. Together, the Joint Applicants comprise 17.3 percent of U.S.-Europe passengers and 17.4 percent of U.S.-Europe nonstop seats. JA-10. This would establish the Joint Applicants as a mid-size alliance – slightly smaller than the United/Lufthansa immunized alliance group which has

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18.3 percent of passengers and 18.5 percent of seats – and somewhat larger than American/Swissair/Sabena with 14.1 percent of passengers and 14.1 percent of seats. *Id.* In terms of frequencies, the Joint Applicants would operate 18.9 percent of frequencies, compared to 18.8 percent and 16.7 percent for the United and American alliances, respectively. JA-12.

The extent of alliance competition in U.S.-Europe markets is illustrated by Exhibits JA-6, 7, 8. Air France, Alitalia and CSA's leading O&D city-pairs to and from the United States naturally include their respective hubs at Paris, Milan, Rome, and Prague, but each carrier also generates substantial online traffic to and from cities across Europe, in countries including Germany, Switzerland, Austria, Belgium and the Netherlands. Thus, the Delta/Air France/Alitalia/CSA alliance will be directly competitive with the United/Lufthansa/SAS/Austrian and Northwest/KLM and American/Swissair/Sabena alliances in providing online service to and from many beyond-gateway points in Europe.

Competition on transatlantic routes between the United States and Continental Europe is intense, and will remain so as passengers reap the benefits of an ever-increasing range of competitive alternatives, including nonstop and connecting services. The addition of the Delta/Air France/Alitalia/CSA alliance will enhance competition and help foster a dynamic transatlantic market as governmental restrictions on air services continue to ease.

3. Country-Pairs.

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Although the Joint Applicants submit that the only meaningful relevant market is the U.S.-Europe transatlantic market, the Department has in the past also examined country-pair markets and city-pairs overlaps. Each of the country-pairs at issue is or will be covered by an Open Skies Agreement.

The potential competitive concerns about the alliance Agreements in the country-pairs at issue here are no greater than the concerns the Department analyzed with respect to the U.S.-Netherlands, U.S.-Germany, U.S.-Austria, U.S.-Scandinavia, U.S.-Switzerland and U.S.-Belgium country-pairs. In each case, the Department determined that the proposed alliance group would not substantially reduce competition.

For example, when the Department examined the impact of Delta's previous immunized alliance in the U.S.- Austria, Belgium and Switzerland country-pairs it concluded: "In these country-pair markets, Delta and its foreign partners will have the largest market share. Nonetheless, based on our evaluation, we do not find that the proposed integration will enable the joint applicants to charge supra-competitive prices or to reduce service below competitive levels." Order 96-5-26 at 23. *See also*, Order 92-11-27 at 15 (Northwest/KLM).

The Joint Applicants' share of U.S. departures at Paris, Rome and Milan will be comparable, and in most cases lower, to that of the other immunized alliances at their respective European hubs. JA-13. For example, United/Lufthansa operate 60 percent of U.S.-Frankfurt flights, Northwest/KLM have 71 percent of U.S.-Amsterdam nonstop operations, and American/Swissair operate 79 percent of U.S.-Zurich departures. This

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compares to just 48 percent of U.S.-Rome, 51 percent of U.S.-Paris and 61 percent of U.S.-Milan flights for the Joint Applicants. *Id.* As noted above, the Department has routinely approved numerous alliances with similar or higher levels of operations.

(a) U.S.-France

There is already an abundance of competitive services between the United States and France (JA-14, 15), and the Open Skies Agreement that will be in place with France assures even more viable competitive service opportunities in the future. In addition to the services provided by the Joint Applicants, the following six carriers offer 153 competitive nonstop flights:

American (and TWA LLC). Between Paris and New York, Boston, Dallas/Ft. Worth, Chicago, St. Louis, Miami and San Jose. In fact, American is by far the leading U.S. carrier in terms of U.S.-France operations -- American operates twice as many weekly flights as Delta. JA-14.

Continental. Between Paris and Newark and Houston.

Northwest. Between Paris and Detroit.

United. Between Paris and Chicago, Washington, Los Angeles and San Francisco.

US Airways. Between Paris and Charlotte, Pittsburgh and Philadelphia.

Air Liberte. Between Paris and Los Angeles.

Thus, there is widespread competition in the U.S.-France marketplace from a geographically diverse assortment of nonstop gateways.

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Moreover, on-line connecting service between the United States and France is offered by the United/Lufthansa/SAS/Austrian alliance, the American/Swissair/Sabena alliance, the Northwest/KLM alliance, and a number of European carriers, such as British Airways, via their European gateways.

Competition in the U.S.-France market is flourishing, and it will continue to do so following approval of the Delta/Air France/Alitalia/CSA alliance.

(b) U.S.-Italy

There is also vigorous competition between the United States and Italy, under the auspices of a fully liberal open skies bilateral air service agreement. (JA-16, 17). In addition to the services provided by the Joint Applicants, the following five carriers offer 49 competitive nonstop flights:

American and TWA LLC. Between Chicago and Rome and Milan.

Continental. Between New York/Newark and Rome and Milan.

Northwest. Between Detroit and Rome.

United. Between Washington, D.C. and Milan.

US Airways. Between Philadelphia and Rome.

Online connecting service between the United States and Italy is offered by the United/Lufthansa/SAS/Austrian alliance, the American/Swissair/Sabena alliance, the Northwest/KLM alliance, and a number of European carriers, such as British Airways, via their European gateways. Moreover, under the U.S.-Italy Open Skies Agreement,

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there are unlimited opportunities for additional entry by U.S. carriers from any U.S. point.

As is the case with France, competition in the U.S.-Italy market is flourishing, and it will continue to do so following approval of the Delta/Air France/Alitalia/CSA alliance.

(c) U.S.-Czech Republic

Open skies also prevail between the United States and the Czech Republic. Delta does not operate nonstop service between the U.S. and Czech Republic (nor do Air France or Alitalia). CSA is the only nonstop service provider between the two countries, with 10 weekly flights between Prague on the one hand, and New York (JFK) and Newark on the other hand. Thus, the addition of CSA and its Prague hub into the proposed alliance is an end-to-end combination that will expand network service options, with no adverse competitive impacts. *See, e.g.* Order 96-11-1 at 15 (United/SAS).

CSA is one of the smallest transatlantic carriers with only a 0.4 percent share of frequencies and a 0.3 percent share of seats. Significantly, the United/Lufthansa/SAS/Austrian alliance carries almost twice as much traffic as CSA between the United States and the Czech Republic. JA-19. American/Swissair/Sabena, Northwest/KLM and other major European airlines also provide online services to the Czech Republic.

As is the case with France and Italy, competition in the U.S.-Czech Republic market is flourishing, and it will continue to do so following approval of the Delta/Air France/Alitalia/CSA alliance.

4. Hub-to-Hub Overlaps.

The only hub-to-hub overlap route on which two or more of the Joint Applicants operate aircraft is Atlanta-Paris, where both Delta and Air France provide service.^{7/} Delta and Air France note that flow traffic comprises the substantial majority of traffic on their Atlanta-Paris flights, and that local Atlanta-Paris passengers have an abundance of alternative nonstop-to-nonstop connecting options.

The proposed alliance will face strong competition for Atlanta-Paris passengers from every major transatlantic service provider from a variety of competing hubs, including, *inter alia*, United at Washington (Dulles) and Chicago, American at Chicago, Continental at Newark, and US Airways at Philadelphia, Charlotte and Pittsburgh. Lufthansa, KLM, British Airways and Swissair offer nonstop-to-nonstop connecting service from Atlanta to Paris via their European hubs.

5. Other Nonstop Overlap Routes.

Delta overlaps with Air France and Alitalia, respectively, on the New York-Paris, New York-Milan and New York-Rome nonstop routes. The Department has long recognized the unique and highly competitive nature of the New York gateway for

service to Continental Europe, and the Department has declined to impose carve-out limitations on alliances operating between New York and open skies countries in Continental Europe where there is both *de jure* and *de facto* open entry, and where connecting services from competing hubs can provide effective discipline. *See, e.g.* Order 96-6-33 at 11-16 (Delta/Swissair/Sabena/Austrian). There are no barriers to entry or other unique competitive concerns applicable to the proposed alliance that would warrant deviating from the Department's well-reasoned prior determinations concerning the availability of immunity for New York nonstop overlap routes to Continental Europe.

As was the case with Delta's prior alliance, New York is an essential part of the Delta/Air France/Alitalia/CSA alliance, and any limitations on antitrust immunity for the Joint Applicants' marketing and sales activities for New York-Europe routes would greatly impair the efficiency of the alliance's operations. *Id.*

The Department has correctly recognized that the large number of local O&D passengers traveling between New York and points in Europe makes it feasible for carriers to enter the market and establish point-to-point service without supporting network feed. *Id; see also*, JA-20.

New York is a magnet for international service to and from Europe. If a European carrier operates *any* service to the United States, it is likely to be at New York. A host of carriers, including small, unaligned carriers successfully operate point-to-point service

^{7/} Air France formerly operated aircraft on the Cincinnati-Paris route, but discontinued that service in June, 2001. Air France has not determined whether or not it will resume

between New York and destinations across the Atlantic. JA-20. Altogether, there are 38 carriers operating nearly 700 weekly nonstop flights between New York and points in Europe, which provides compelling evidence as to the open and highly competitive nature of New York-Europe nonstop marketplace. *Id.*

As to the particular overlap routes at issue, American and TWA LLC offer three daily directly competitive nonstop New York-Paris flights at JFK, and Continental provides double-daily nonstop service on the New York/Newark-Paris route.

Furthermore, just last year, United expressed an interest in providing service on the New York-Paris route. *See*, Application of United for a U.S.-France frequency allocation, Docket OST-00-7628. In the case of New York-Rome and New York-Milan, Continental operates daily nonstop service from New York/Newark. Additionally, US Airways operates nonstop flights to Paris and Rome less than 90 miles south of New York at Philadelphia.

Moreover, there are numerous onestop online connecting service that will provide strong additional competitive discipline on the three New York nonstop overlap routes to Paris, Rome and Milan. Each of these European cities is situated on the Continent, and can be effectively served without excessive backhaul by the three existing immunized alliances via one or more of their connecting hubs. Amsterdam, Brussels and Frankfurt are all less than an hour's flying time from Paris. Points in Italy are similarly well-within the primary catchment area of the competing alliance hubs. In addition, British Airways,

its own Cincinnati-Paris flights.

the single-largest transatlantic carrier, offers connecting service from New York via London to Rome, Paris and Milan.

Accordingly, the Delta/Air France/Alitalia/CSA alliance will not substantially reduce or eliminate competition in any relevant market. Competition will remain vigorous in the global market, in the U.S.-Europe market, between the country-pairs involved, and on the individual overlap routes.

V. APPROVAL AND GRANT OF ANTITRUST IMMUNITY FOR THE ALLIANCE WILL PROMOTE IMPORTANT U.S. AVIATION POLICY GOALS

The past several years have witnessed a remarkable expansion of airline service to and from the United States. Secretary Mineta has affirmed that he is “committed to pursuing all reasonable options for moving international aviation liberalization forward”^{8/} and approval of the Joint Applicants’ request is fully consistent with that objective. The commercial benefits of antitrust immunized alliances have proved a powerful tool for persuading restricted countries to open their doors to open skies, which, in turn, has put pressure on neighboring countries to do the same.

Much of the recent growth in international aviation has resulted from these U.S. initiatives – which are specifically detailed in the Department’s April 1995 Statement of International Air Transportation Policy. The U.S. open skies initiative has generated more than 50 open skies bilateral agreements between the U.S. and major trading partners

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in Europe, Asia, Africa and the Americas. The Department has described open skies as “a critical element of our international aviation policy” and that “Open skies agreements assure the most liberal operating environment for air services.” Order 99-4-17 at 19.

The Department has recognized that the progress of its open skies policy and the development of a series of competing international alliance networks are inextricably linked. Thus, in effect, the cultivation of such alliances has become a U.S. aviation policy objective. The Department recently found that “one of the major public benefits resulting from our success in signing open skies aviation agreements around the globe is the creation of new competitive airline alliances that we are now seeing to provide global aviation services. Markets in Asia, Europe, and North America are now an integral part of existing competing airline networks” (Order 99-4-17 at 20-21). The Department stated that “competition between and among these global alliances is likely to play a critically important role in ensuring that consumers. . .have multiple competing options to travel where they wish as inexpensively and conveniently as possible.” *Id.*

By this application, Delta, Air France, Alitalia, and CSA propose to add another competitive alliance to the global scene, providing additional travel options to consumers and disciplining the alliances that are already in place.

Failure to approve and grant antitrust immunity to the Joint Applicants would have significant negative consequences, not only in terms of relations between the United

^{8/}Remarks as Prepared for Delivery, U.S. Secretary of Transportation Norman Y. Mineta, Global Air & Space 2001, International Business Forum & Exhibition, Washington,

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States and France, Italy and the Czech Republic, but of U.S. international aviation policy in Europe. When the Department approved and immunized the Northwest/KLM alliance in 1993, it clearly was sensitive to the inevitable intersection between an Open Skies Agreement with a foreign country and granting antitrust immunity to a U.S. carrier forming an alliance with a carrier of that country. Indeed, the Department stated that “denial of antitrust immunity would contravene the spirit of the accord and be counterproductive to the United States’ relations with the Netherlands” (Order 93-1-11 at 12). Today, the substance of the U.S. open skies policy as well as the spirit of the U.S.-Italy and U.S.-Czech Republic and anticipated U.S.-France Open Skies Agreements provide equally compelling support for the Department’s approval of and grant of antitrust immunity to the Delta/Air France/Alitalia/CSA arrangements.

VI. OTHER APPROVAL ISSUES AND CONDITIONS

A. Computer Reservations Systems.

The grant of antitrust immunity here should also cover the coordination of (1) the presentation and sale of the carriers’ airline services in computer reservations systems, and (2) the operations of their respective international reservations systems. In the Northwest/KLM approval, the Department determined that, while the coordination of CRS activities arguably could reduce competition, that concern was not so significant as to outweigh the justification for granting antitrust immunity . The same conclusion applies with equal force in this proceeding. *See*, Order 93-1-11 at 15-16. The Joint

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Applicants recognize, however, that the immunity will not extend to the Joint Applicants' management of any interest they may have in individual CRSs. *See*, Order 98-10-20 at 18 (American/Lan Chile).

B. Duration Of Approval And Immunity.

The Joint Applicants request that the Department approve and grant antitrust immunity to their alliance for a five year term, consistent with the Department's five-year terms of approval for similar alliances. *See, e.g.* Northwest/KLM (Order 93-1-11); United/Lufthansa (Order 96-5-27); Delta/Swissair/Sabena/Austrian (Order 96-6-33) American/Canadian (Order 96-7-21); United/Lufthansa/SAS (Order 96-11-1) .

C. IATA Tariff Coordination.

In conjunction with the Department's approval and grant of antitrust immunity to their alliance, Delta, Air France, Alitalia, and CSA are prepared to consent to the imposition of the now-standard condition prohibiting participation in certain IATA tariff coordination activities. *See*, Order 96-6-33 at 17; Order 96-11-10 at 19; Order 99-4-17 at 22.

D. Use Of Common Service Name Or Brand.

The Joint Applicants are prepared to accept a condition equivalent to that imposed on other immunized alliances; if they choose to operate under a common airline name or brand, they will seek separate approval from the Department prior to such operations. *Id.*

E. O&D Survey Data Reporting Requirement.

The Joint Applicants are also prepared to accept a condition whereby Air France Alitalia, and CSA may be required to report full-itinerary Origin-Destination Survey data

of airline passenger traffic for all passenger itineraries containing a U.S. point, with the understanding that such data will be handled on a confidential basis by the Department.

The Joint Applicants will accept such a data reporting condition if it is consistent with that imposed on other immunized alliances. *Id.*

VII. ADDITIONAL INFORMATION

In order to expedite the Department's review of the Delta/Air France/Alitalia/CSA application, the Joint Applicants are providing the following additional information, modeled after information the Department has requested in recent similar antitrust immunity proceedings and the Department's guidance to the carriers. *See, e.g.,* Order 99-5-10.

1. Transatlantic Routes and Services.

The transatlantic nonstop routes of the Joint Applicants between Europe and North American are set forth in Exhibit JA-22. Delta, Air France, Alitalia, and CSA have no plans to implement any immediate significant service or equipment changes. The parties may make both service and equipment changes in the future, after they receive immunity and are able to discuss the coordination of services.

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2. Codeshare Partners.

A complete list of Delta's international codeshare partners is set forth in Exhibit JA-22. Lists of the respective beyond-gateway codeshare service points for Delta, Air France and CSA are set forth in exhibits JA-29, 30, 31, 32.

The Joint Applicants also request that the Department take note of the DOT's codeshare list, which provides a listing of all the Joint Applicants' authorized codeshare routes involving U.S.-Europe services, and that the Department take official notice of the OAG Airline Designator/Codeshare Table, which lists all of the Joint Applicant's world-wide codeshare partners.

The Joint Applicants state that none of their other existing codeshare relationships is expected to significantly affect transatlantic traffic flow, nor do the Joint Applicants have any plans under consideration to implement any additional codeshare or marketing agreements in the next year that would significantly affect transatlantic traffic flow.

Air France is party to a codeshare agreement with Continental, approved by the Department in 1998. The only codesharing currently engaged in by Air France and Continental is a limited blocked-space codeshare on Newark-Paris and Houston-Paris nonstop flights. There is no codesharing on any beyond-gateway sectors. Air France and Continental are currently participants in each other's frequent flyer programs.

Alitalia has notified the Department that its codeshare and marketing relationship with Northwest will end on October 28, 2001.

3. SkyTeam Alliance.

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The Joint Applicants are each members of the SkyTeam Alliance. The Joint Applicants will continue to participate in SkyTeam. The Joint Applicants' relationships with non-immunized SkyTeam members (and other non-immunized codeshare partners) will continue to be managed on an independent arms-length basis, just as they have been in the past.

4. Other Antitrust Immunized Relationships.

The Joint Applicants anticipate that Korean Air Lines may join the alliance as an antitrust immunized partner at some point in the future. There are no other potential immunized partners currently under active consideration. As noted, Alitalia will cease to be a member of the Northwest/KLM alliance on October 28, 2001.

5. Exchange of Equity.

The proposed arrangement does not involve any cross-ownership between the Joint Applicants. However, Air France and Alitalia acknowledge that if and when in the future their respective government stockholders agree to it, there could be a very limited (less than 5%) exchange of stock between Air France and Alitalia.

Similarly, Air France and Delta have discussed participation in CSA as minority shareholders (less than 15%) in CSA's equity, if and when the Czech Government determines that an initial public offering of CSA's stock is appropriate, and subject to the negotiation of mutually acceptable definitive agreements.

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6. Competitive Airport and Facilities Access.

Airport access, including necessary facilities, is generally available at each of the foreign applicants' transatlantic gateway airports for U.S. flag carriers seeking to begin or increase service. As at all busy international airports, there may be some congestion at peak hours. However, Air France, Alitalia, and CSA are unaware of any U.S.-flag carrier wishing to launch transatlantic service to France, Italy or the Czech Republic (or to increase existing service) that has not been able to do so because of airport access constraints.

7. CRAF Commitments.

The proposed alliance will have no impact on Delta's CRAF commitments.

8. Labor Issues.

The transaction raises no significant labor issues. Delta, Air France, Alitalia, and CSA will remain independent. The Joint Applicants believe that the long-term impact of the transaction will be positive for all existing employees and for the creation of new jobs, and no significant impact on unionized employees is anticipated under the Agreements.

9. Traffic Data.

a) Origin & Destination (O&D) traffic data for each of Air France's, Alitalia's and CSA's top 100 markets with a U.S. gateway as a passenger origin or destination point are provided at exhibits JA-34, 35 and 36. In accordance with the Department's instructions, points involving less than three passengers per day may be omitted.

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b) The Joint Applicants are providing in diskette form the data concerning traffic carried in transatlantic overlap markets where two or more of the Joint Applicants compete on a nonstop, online connecting, or codeshare basis. JA-23 to 28.

10. Document Production.

The Joint Applicants are submitting separately, under a joint motion for confidential treatment, internal documents comparable to those requested by the Department in recent antitrust immunity proceedings. A detailed description of the Joint Applicant's document production is set forth in exhibit JA-36.

CONCLUSION

For the foregoing reasons, Delta, Air France, Alitalia, and CSA urge the Department to approve their alliance, as set forth in the alliance Agreements, under 49 U.S.C. 41309, and to grant antitrust immunity under 49 U.S.C. 41208.

Respectfully submitted,

Michael F. Goldman
SILVERBERG, GOLDMAN &
BIKOFF, LLP
1101 30TH Street, N.W.
Suite 120
Washington, DC 20007
(202) 944-3305

Counsel for AIR FRANCE

Robert E. Cohn
Alexander Van der Bellen
SHAW PITTMAN LLP
2300 N Street, N.W.
Washington, D.C. 20037
(202) 663-8060

Counsel for DELTA AIR LINES,
INC.

Richard D. Mathias
ZUCKERT, SCOUTT &
RASENBERGER, L.L.P.
888 Seventeenth Street, N.W.
Suite 600
Washington, DC 20006-3309
(202) 298-8660

Counsel for ALITALIA-LINEE
AEREE ITALIANE-S.P.A.

Allan Mendelsohn
Constance O'Keefe
MENDELSON & O'KEEFE
1201 Connecticut Avenue, N.W.
Suite 850
Washington, DC 20036
(202) 775-0680

Counsel for CZECH AIRLINES

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