

BEFORE THE
DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.

ORIGINAL
DEPT. OF TRANSPORTATION
99 JUN -9 PM 4: 08

57143

Joint Application of)

AMERICAN AIRLINES, INC.)

and)

LINEA AEREA NACIONAL CHILE, S.A.)
(LAN CHILE))

Docket OST-97-3285 - 517

under 49 U.S.C. Sections 41308 and 41309 for)
approval of and antitrust immunity for alliance)
agreement)

MOTION FOR LEAVE TO FILE
REPLY OF DELTA AIR LINES, INC.

Communications with respect to this document should be addressed to:

D. Scott Yohe
Senior Vice President -
Government Affairs
DELTA AIR LINES, INC.
1275 K Street, N.W.
Washington, D.C. 20005
(202) 2 16-0700

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

Counsel for
DELTA AIR LINES, INC.

John Varley
Assistant General Counsel
Alexander Van der Bellen
Attorney
DELTA AIR LINES, INC.
Law Department #986
1030 Delta Boulevard
Atlanta, Georgia 30320
(404) 7 155408

June 9, 1999

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

June 9, 1999

	)	
Joint Application of	)	
	)	
AMERICAN AIRLINES, INC.	)	
And	)	Docket OST-97-3285
LINEA AEREA NACIONAL CHILE, S.A.	)	
(LAN CHILE)	)	
	)	
under 49 U.S.C. Sections 41308 and 41309 for	)	
approval of and antitrust immunity for alliance	)	
agreement	)	

MOTION FOR LEAVE TO FILE
REPLY OF DELTA AIR LINES, INC.

Delta Air Lines, Inc. ("Delta") hereby moves for leave to file this Reply to the Consolidated Answer of American Airlines, Inc. ("American") and Lan Chile, S . A. (the "Joint Applicants"). The Joint Applicants' answer contains erroneous and misleading assertions concerning the state of competition in the Southern Cone region of South America. The Department should accept Delta's Reply in order to correct the record on the important competition issues which the Department will be evaluating.

1. Delta's Objections expressed serious concerns about the competition analysis contained in the Show Cause Order because of its failure to examine the market structure characteristics of the Southern Cone region of

Motion for Leave to File
Reply of Delta Air Lines, Inc.
Page 2

South America, which is geographically isolated, lacks competitive hubs, and is dominated by American and its allies. Delta pointed out that in addition to the proposed Lan Chile arrangement, American owns a significant stake in Aerolineas Argentinas, the major national flag carrier of Argentina. Argentina is not only one of the most important destinations in South America, it maintains one of the most restrictive aviation regimes.

2. Delta and others also expressed serious concern about the combined impacts of an American-Lan Chile alliance and an American-Aerolineas Argentinas alliance. The Joint Applicants disavow any “tripartite linkage” in their Answer to the Department, while they tell a different story to the public. Thus, the Aviation Daily on June 3rd reported: “Lan Chile is considering an alliance with Aerolineas Argentina, with cross-equity ownership possibility. Both are new code-share partners with American Airlines. Sources say the three would form a marketing pact that would cover all of South America.” This confirms the validity of our concerns about American’s plans to blanket the Southern Cone with an anticompetitive alliance that would effectively foreclose competitive challenges by other airlines.

3. The Joint Applicants attempt to downplay the significance of an American-Lan Chile-Aerolineas Argentinas alliance by claiming that the U. S .-Chile open skies agreement “has lent momentum to the U.S.-Argentina talks”

Motion for Leave to File
Reply of Delta Air Lines, Inc.
Page 3

and may exert pressure on Argentina to follow Chile's lead. Delta is not aware of the negotiations the Joint Applicants are referring to, but they could not be referring to the U. S .-Argentina negotiations. Despite repeated good faith efforts by the United States to construct an acceptable transitional regime, the Argentine Government and Aerolineas Argentinas have balked at allowing any reasonable level of competition. The Joint Applicants' assertion that Argentina has "demonstrate[ed] a persistent bilateral commitment to open skies" lacks any basis in reality. Nevertheless, if the Joint Applicants truly believe that U.S. - Argentina open skies is in the offing, in light of the public confirmation of a tripartite relationship among American, Lan Chile and Aerolineas, it makes perfect sense for the Department to withhold action on the American-Lan Chile application until implementation of a fully liberalized, open skies agreement with Argentina.

4. The Joint Applicants state that Delta and other carriers "must face the reality that the only two options available are open skies with approval of the American-Lan Chile alliance . . . or the restrictive status quo, which promises no new opportunities at all. " Joint Applicants' Answer at 3. Delta well understands those choices and, in fact, has urged the Department to resist the empty bargain of an open skies agreement, coupled with a market-dominating anticompetitive alliance. As Delta stated, "approval of an antitrust immunized

Motion for Leave to File
Reply of Delta Air Lines, Inc.
Page 4

alliance between American and Lan Chile is too high a price to pay for an open skies agreement and would lessen competition and be detrimental to the public interest.” Delta Objections, p. 6.

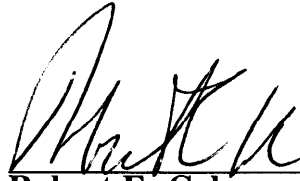
5. Contrary to The Joint Applicant’s claim, an open skies agreement with Chile would not result in any significant increase in direct services by other U.S. carriers to Chile. Instead, it would enable American and Lan Chile to enhance their domination by allowing them to increase significantly their combined frequencies, which would make it virtually impossible for Delta and other U.S. carriers to compete effectively against the increased dominance of the American-Lan Chile alliance.

6. In conclusion, in light of the likelihood that American, Lan Chile and Aerolineas Argentinas plan to join forces to establish a Southern Cone alliance, if the Department does not disapprove the American-Lan Chile alliance outright for the reasons set forth in Delta’s objections, then at the very least it

**Motion for Leave to File
Reply of Delta Air Lines, Inc.
Page 5**

should defer consideration of the alliance pending conclusion of bilateral negotiations with Argentina.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'R. E. Cohn', written over a horizontal line.

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

Counsel for
DELTA AIR LINES, INC.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion For Leave to File Reply Of Delta Air Lines, Inc. has been served this 9th day of June, 1999, by hand delivery (except where otherwise noted), upon each of the following persons :

Carl B. Nelson, Jr.
Associate General Counsel
American Airlines, Inc.
1101 17th Street, N.W., Suite 600
Washington, D. C. 20036

Charles J. Simpson, Jr.
Zuckert, Scoutt & Rasenberger, L.L.P.
888 17th Street, N.W., Suite 600
Washington, D. C. 20006

R. Bruce Keiner, Jr.
Lorraine Halloway
Crowell & Moring, LLP
1001 Pennsylvania Ave., N.W.
Washington, D. C. 20004

Bruce Rabinovitz
Jeffrey A. Manley
Kirkland & Ellis
655 15th Street, N.W.
Washington, D. C. 20005

Megan Rae Poldy
Associate General Counsel
Northwest Airlines, Inc.
901 15th Street, N.W., Suite 310
Washington, D. C. 20005

Donald T. Bliss
O'Melveny & Myers LLP
555 13th Street, N.W.
Suite 500 West
Washington, D. C. 20004

William H. Callaway
Zuckert, Scoutt & Rasenberger, L.L.P.
888 17th Street, N.W., Suite 600
Washington, D. C. 20006

Nathaniel P. Breed, Jr.
Shaw Pittman
2300 N Street, N.W.
Washington, D. C. 20037

R. Tenney Johnson
2121 K Street, N.W., Suite 800
Washington, D. C. 20037

Allan W. Markham
2733 36th Street, N.W.
Washington, D. C. 20007-1422

Marshall S. Sinick
Squire, Sanders & Dempsey, LLP
1201 Pennsylvania Ave., N.W.
Suite 500
Washington, D. C. 20004

Richard J. Fahy , Jr.
Consulting Attorney
Trans World Airlines, Inc.
900 19th Street, N.W., Suite 350
Washington, D. C. 20006

Michael F. Goldman
Bagileo, Silverberg & Goldman, LLP
1101 30th Street, N.W., Suite 120
Washington, D. C. 20007

Pierre Murphy
One Westin Center
2445 M Street, N. W., Suite 260
Washington, D. C. 20037

Alfred J. Eichenlaub
Polar Air Cargo, Inc.
100 Oceangate
1 5th Floor
Long Beach, CA 90802
(by Federal Express)

Peter Reaveley
Dade County Aviation Department
Miami International Airport
P.O. Box 592075
Miami, FL 33159
(by Federal Express)

David L. Vaughan
Kelley, Drye & Warren
1200 19th Street, N.W., Suite 500
Washington, D.C. 20036

James W. Tello
Filler, Weller & Tello, P.C.
117 N. Henry Street
Alexandria, VA 223 14-0784

Thomas V. Lydon
Director, Government Affairs
Evergreen International Airlines, Inc.
1629 K Street, N.W., Suite 301
Washington, D. C. 20006

John L. Richardson
Crispen & Brenner
1100 New York Ave, N. W., Suite 850
Washington, D. C . 20005

William C. Evans
Verner, Liipfert, Bernhard,
McPherson and Hand
901 15th Street, N.W., Suite 700
Washington, D. C. 20005

Aaron Goerlich
Boros & Garofalo, P.C.
1201 Connecticut Avenue, Suite 700
Washington, D. C. 20036

Irwin P. Altschuler, Esq.
Donald S. Stein, Esq.
Stephanie E. Silverman, Sr. Advisor
Manatt, Phelps & Phillips, LLP
1501 M Street, N.W., Suite 700
Washington, D. C. 20005- 1702

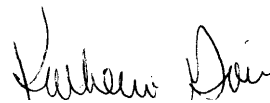
David Marchick
Deputy Assistant Secretary
for Transportation Affairs
U.S. Department of State
2201 C Street, N.W., Room 5830
Washington, D.C. 20520
(by first class mail)

Samuel Crane
President
Regional Business Partnership
(Newark)
One Newark Center
Newark, NJ 07102
(by Federal Express)

David M. O'Connor
Director, External Relations, U . S .
International Air Transport Association
1776 K Street, N.W., Suite 400
Washington, D. C. 20006

Roger W. Fones
Chief, Transportation, Energy
& Agriculture Section
Antitrust Division
Department of Justice
325 7th Street, N.W., Suite 500
Washington, D.C. 20530

Director of Aviation
Port Authority of New York
and New Jersey
One World Trade Center, Suite 65-N
New York, NY 10048
(by Federal Express)



Katherine Gaines