

BEFORE THE
DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.

Joint Application of :
: AIR CANADA :
THE AUSTRIAN GROUP :
BRITISH MIDLAND AIRWAYS LIMITED :
DEUTSCHE LUFTHANSA AG :
POLSKIE LINIIE LOTNICZE LOT S.A. :
SCANDANAVIAN AIRLINES SYSTEM : OST-2005-22922
SWISS INTERNATIONAL AIR LINES LTD :
TAP AIR PORTUGAL and :
UNITED AIR LINES, INC. :
: :
for approval of and antitrust immunity :
for alliance agreements under 49 U.S.C. :
41308 and 41309 :

**MOTION OF AMERICAN AIRLINES, INC. TO REQUIRE
SUBMISSION OF ADDITIONAL DOCUMENTS AND DATA**

Communications with respect to this document should be addressed to:

HENRY C. JOYNER
Senior Vice President -
Planning
American Airlines, Inc.
P.O. Box 619616, MD 5628
DFW Airport, Texas 75261

DON CASEY
Managing Director -
International Planning
American Airlines, Inc.
P.O. Box 619616, MD 5635
DFW Airport, Texas 75261
(817) 967-2483
don.casey@aa.com

WILLIAM K. RIS, JR.
Senior Vice President -
Government Affairs
American Airlines, Inc.
1101 17th Street, N.W.
Washington, D.C. 20036

CARL B. NELSON, JR.
Associate General Counsel
American Airlines, Inc.
1101 17th Street, N.W.
Washington, D.C. 20036
(202) 496-5647
carl.nelson@aa.com

R. BRUCE WARK
Associate General Counsel
JEFFREY A. OGAR
Attorney
American Airlines, Inc.
P.O. Box 619616, MD 5675
DFW Airport, Texas 75261
(817) 967-3812
bruce.wark@aa.com
jeffrey.ogar@aa.com

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**MOTION OF AMERICAN AIRLINES, INC. TO REQUIRE
SUBMISSION OF ADDITIONAL DOCUMENTS AND DATA**

American Airlines, Inc. hereby moves the Department to require that the Joint Applicants ("Star")¹ submit additional documents and data before the Department deems the application complete and establishes a procedural schedule. Star's initial production raises questions about the proposed alliance similar to those raised in the recent SkyTeam antitrust immunity docket (OST-2004-19214). Given the decisional standard applied to SkyTeam in Order 2005-12-12, Star

¹ For the purposes of American's motion, we assume that the Department will grant Star's motion to consolidate filed on December 23, 2005. That motion seeks to add Air Canada as a party and to coordinate the bilateral United/Air Canada immunity with Star's existing and proposed multilateral immunity. United and Air Canada also filed a motion on December 23, 2005 to broaden their existing immunity to include third country markets given the full open skies agreement between the U.S. and Canada (which takes effect in September 2006). In those two motions, the Joint Applicants explicitly asked that the United/Air Canada request for broadened immunity be considered and decided in OST-2005-22922 (See 12/23/05 Star Motion, OST-2005-22922 p. 3; 12/23/05 United/Air Canada Motion, OST-1996-1434 p. 2 n. 3).

should be required to provide additional information demonstrating that the expanded alliance is in the public interest and does not substantially reduce or eliminate competition.

I. STAR SHOULD PRODUCE DATA OR DOCUMENTS EXPLAINING THE PROPOSED ALLIANCE'S PURPORTED NETWORK EXPANSION

As the Department noted in Order 2005-12-12, "[p]ast cases invariably involved alliances that combined end-to-end networks, even though the partner airlines in some cases had a few overlapping routes" (p. 35). Such was not the case in SkyTeam's recent application to merge the Delta/Air France/Alitalia/Czech and Northwest/KLM alliances, as only 8,700 new city-pairs would have been created, none of which was of a significant size (Id.). As a result, the Department tentatively found that SkyTeam's proposed network expansion was insufficient to justify antitrust immunity (Id.).

Star claims that its proposed alliance would add 32 new cities to its network on an immunized basis (Exhibit JA-8, p. 1). Star then claims that the addition of those 32 new cities would create 4,864 new immunized city-pairs, accounting for almost 300,000 passengers per year (Exhibit JA-8, p. 2). However, American's preliminary review of Exhibit JA-8 raises a number of questions about these figures which are unanswered by Star's initial production of documents. These questions warrant a closer look.

A. Star's List of 32 New Cities

Star's list of 32 new cities includes cities that (a) Star no longer serves; (b) are already served by existing members of Star's immunized alliance; and (c) create no new connectivity for U.S. passengers. For example, the first of these 32 cities - Ajaccio,

France (AJA) - is listed as being served by Swiss (Exhibit JA-8, p. 1). A review of the July 2005 OAG (upon which Exhibit JA-8 is based) shows that Swiss had only two weekly frequencies between AJA and Zurich. A review of the February 2006 OAG shows that Swiss now has no current service to AJA. Star should produce data and documents updating Exhibit JA-8 to reflect current schedules, actual weekly frequencies and explanations for schedule changes.

Likewise, a review of the July 2005 OAG shows that Lufthansa served cities like Antalya and Dalaman, Turkey (AYT/DLM). Since these cities are already served by existing members of Star's immunized alliance, they cannot be claimed as new (Exhibit JA-8). Thus, Star should produce data and documents explaining why cities are listed in Exhibit JA-8 as new when in fact they are already being served by the existing immunized Star alliance.

Finally, four of the cities on the list - Fortaleza, Natal, Recife and Salvador - are all located in Brazil (Exhibit JA-8). These long-haul routes, operated by TAP from Lisbon, would not appear to create any new U.S. city-pairs in Star's immunized network. Indeed, flying between Lisbon and the United States via interior points in Brazil (like Fortaleza) would be extremely circuitous, and would in any event require connections on a Brazilian carrier like Varig (which is not part of Star's immunized network). Thus, the Joint Applicants should explain how Portugal-Brazil flights create new online service to the United States.

B. Star's List Of 4,864 New City-Pairs

Star's list of "4,864 New City Pairs Involving A U.S. Point" (Exhibit JA-8, pp. 2-29) does not explain how the city-pairs would be affected by the proposed alliance. For example, the largest city-pair on the list is Dakar, Senegal to New York City (DKRNYC) (Exhibit JA-8, p. 2). DKR would be added to the immunized network because TAP has seven weekly frequencies between DKR and Lisbon. Yet TAP does not need an immunized partner to carry this traffic through to NYC - it provides its own service to Newark. In other words, DKRNYC is already served online by TAP, and adding TAP to Star's immunized alliance does not appear to create any new online service for this city-pair at all. Star should produce data and documents sufficient to show its current online (excluding codeshare) service between the listed city-pairs, as well as why the proposed alliance is necessary to create truly new online service (Order 2005-12-12, pp. 35-36).

Existing service levels to certain other cities - like Lamezia, Italy (SUF) - raise similar questions. Star points to NYCSUF as accounting for 7,845 passengers per year (Exhibit JA-8, p. 2). Star claims that SUF is added to the immunized network by LOT (Exhibit JA-8, p. 1). In July 2005, LOT had one weekly flight between SUF and Warsaw. However, this flight appears to have been cancelled, as it is not found in the February 2006 OAG. Since SUF no longer appears to be a city that the proposed alliance would add to Star's immunized network, Star cannot claim that the proposed alliance would bring new

online service to NYCSUF. Star should produce data and documents to explain how schedule changes since July 2005 impact the "new city-pairs" claimed for the proposed alliance.

II. STAR SHOULD BE REQUIRED TO PROVIDE DATA REGARDING INFORMATION ON TRANSPACIFIC AND LATIN AMERICA OVERLAP

Star seeks antitrust immunity between an unprecedented number of carriers which compete not just between the U.S. and Europe, but around the world. However, Star - like SkyTeam before it - has largely limited its analysis to transatlantic competition. Such an analysis is incomplete, because the multilateral immunity Star now seeks for United and Air Canada would impact more than just transatlantic competition. For example, United and Air Canada are seeking to eliminate competition for transpacific traffic through their hubs in San Francisco and Vancouver, respectively (See 12/23/05 Joint Motion of United and Air Canada, OST-1996-1434, p. 4).

Moreover, Air Canada has recently announced new service between Los Angeles and Sydney - service that will compete directly with United.² Absent the additional immunity sought by United and Air Canada in their motion, the two carriers would compete for this traffic. However, if the motion is granted, this competition will never materialize, as the liberalization that open skies should be creating would be offset by Star's consolidation of market power among

² See <http://micro.newswire.ca/release.cgi?rkey=1401250761&view=13213-0&Start=0>.

its members. Likewise, Air Canada could launch Fifth Freedom service into Mexico and Latin America - new competition that the proposed immunity would also eliminate in its incipiency.

United has immunized alliances with other transpacific partners, like Air New Zealand and Asiana.³ These alliances are not a part of the current application, as they can apparently exist without being integrated into Star's transatlantic immunity. Since Star is now seeking to integrate the United/Air Canada alliance, the Department should require a showing that a broader immunized Star alliance would create additional public benefits (beyond any such benefits the stand-alone United/Air Canada alliance creates) without harming competition. Accordingly, the Department should require Star to provide a complete analysis of the impact such an integration would have on global - not just transatlantic - competition.

III. THE REGULATORY STATE OF FLUX JUSTIFIES A CLOSER LOOK AT STAR'S JOINT APPLICATION

As the Department found in tentatively denying the recent SkyTeam application:

"This case is different not merely because it would merge two immunized alliances with substantial network overlap and because it includes two large U.S. carriers. It is also unique in its timing. The regulatory framework governing transatlantic markets is in flux [T]he competitive structure of the global airline industry is changing in unprecedented ways The impact of these changes on global networks, and the structure of the industry as a whole, is unknown" (Order 2005-12-12, p. 32).

³ See Order 2001-4-2 (UA/NZ), Order 2003-5-18 (UA/OZ)

This state of flux is no less relevant to Star's application than it was to SkyTeam's - the Department should take a very close and detailed look at the consolidation of alliance market power in Europe. Indeed, Star is seeking an unprecedented nine carrier immunized alliance with two North American and seven European partners. Accordingly, Star should be ordered to produce documents (not limited to those prepared for officers or directors) and to answer questions similar to those required from SkyTeam (Order 2004-11-15).

CONCLUSION

As the Department has stated, antitrust immunity will not be granted "on a minimal showing of public benefits, regardless of the particular facts and circumstances of the case" (Order 2005-12-12, p. 33). Star is seeking an unprecedented nine carrier immunized alliance that would cement its position as the dominant alliance in Europe. Accordingly, the Department should order Star to produce at least the same level of information that was required from SkyTeam in Order 2004-11-15, and to answer the questions raised in this Motion. For the Department's convenience, American has submitted a proposed evidence request as Exhibit A.

Respectfully submitted,

Jeffrey A. Ogden

CARL B. NELSON, JR.
Associate General Counsel
R. BRUCE WARK
Associate General Counsel
JEFFREY A. OGAR
Attorney
American Airlines, Inc.

February 8, 2006

EXHIBIT A

PROPOSED EVIDENCE REQUEST

Unless otherwise stated, all requests seek information from October 1, 2003 to the present:

- Data and documents updating Exhibit JA-8 to reflect current schedules, actual weekly frequencies and explanations for any schedule changes since July 2005;
- Data and documents showing how schedule changes since July 2005 impact the new city-pairs listed in Exhibit JA-8;
- Data and documents showing service operated by currently immunized members of Star to the cities listed in Exhibit JA-8;
- Data and documents showing how TAP's Portugal-Brazil flights would create new online service to or from the United States;
- Data and documents showing the Joint Applicants' current online (excluding codeshare) service between the city-pairs listed in Exhibit JA-8;
- Data and documents showing the proposed alliance's global impact on competition (i.e., updating all transatlantic analyses to include all city pairs with a point in the United States);
- All agreements or arrangements, including marketing and any other cooperative agreements/arrangements, involving the proposed alliance's creation or implementation, including (but not limited to) procedures manuals governing its implementation;
- All special prorated agreements currently in effect between any two or more members of the Star Alliance (and/or their affiliates);
- All documents discussing one or more of the Joint Applicants' strategic objectives in seeking immunization for the proposed alliance;

- All documents discussing the effects or benefits of the proposed immunity on (i) the Joint Applicants, (ii) the existing Star immunized alliances (either multilateral or bilateral), (iii) other airline partners, (iv) airline competitors (including both actual and potential new entrant competitors), (v) consumers, (vi) market shares, (vii) fares, (viii) traffic/revenue mix, share gap and share shift changes, (ix) marketing leverage, (x) corporate contracting, or (xi) traffic growth or expansion into geographic markets;
- All documents discussing the competitive, revenue, or marketing effects of marketing alliances between U.S. and foreign carriers (including codeshare, frequent flyer, airport lounge, and prorate agreements);
- All documents reflecting the Joint Applicants' consideration of additional immunized international alliances (other than that among the Joint Applicants) contemporaneous or subsequent to the proposed alliance;
- All documents discussing (i) the Joint Applicants' ability to provide service between international city-pairs without antitrust immunity and (ii) new or expanded service that would only be created if the proposed alliance is immunized;
- All documents discussing the consumer benefits that the proposed alliance would create only if it were immunized;
- All documents discussing the rationalization of hubs and/or capacity that would take place if the proposed alliance were immunized;
- All documents discussing information that could not be shared and/or activities that could not be coordinated between the Joint Applicants in the absence of antitrust immunity;
- All documents discussing how costs, revenues and/or profits would be shared in the proposed alliance;

- An explanation of (i) whether and why approval of the proposed alliance is necessary for the development of a comprehensive revenue/profit sharing arrangement between or among the Joint Applicants, (ii) whether and why approval is necessary for the implementation of such an arrangement, and (iii) whether any or all of the Joint Applicants have plans to implement such an arrangement, and, if so, what form such an arrangement would take and when it would be implemented;
- A discussion of the extent to which the following are contingent on the establishment of a comprehensive revenue/profit sharing arrangement between or among the Joint Applicants: (i) consumer benefits of this transaction, (ii) additional codesharing beyond that contemplated in the codeshare agreements previously submitted to the Department, and (iii) introduction of any additional capacity planned in the Winter 2006/Summer 2007 schedules;
- A separate discussion by each Joint Applicant of (i) every manner in which its operations would be integrated with the operations of other Joint Applicants beyond the level of integration which currently exists and (ii) why antitrust immunity is necessary for each form of integration contemplated;
- A discussion of how, absent a revenue/profit sharing arrangement, the Joint Applicants would manage conflicting interests with respect to capacity allocation, scheduling, pricing, revenue and inventory management (distinguishing between local nonstop and flow traffic), and sales and marketing strategies;
- A description of (i) what criteria would be used to determine the markets in which the Joint Applicants would codeshare, (ii) whether the four digit flight number limitation and number of potential codesharing partners involved would limit the Joint Applicants' potential codesharing and, if so, how the Joint Applicants would allocate flight numbers;

- The traffic and revenue effects on each of the Joint Applicants and on other airlines/alliances of expanded cooperation between the Joint Applicants, for the first year after the Department's final order, under each of the following scenarios:
 - o (i) DOT did not approve the application for antitrust immunity;
 - o (ii) DOT approved antitrust immunity, but a comprehensive revenue/profit sharing arrangement was not in place; and
 - o (iii) DOT approved antitrust immunity and a comprehensive revenue/profit sharing arrangement was in place;

Under each scenario, the Joint Applicants should identify the extent to which their traffic and revenue would be stimulated versus diverted from other carriers/alliances. Under each scenario, the Joint Applicants should describe the methodology and disclose all assumptions (including assumptions about competitive responses) and data sources used to produce estimates. Under scenarios (i) and (ii), the Joint Applicants should identify all routes selected for codesharing and modeled by the Joint Applicants. Under scenario (iii), the Joint Applicants should address the impact, if any, that flight number scarcity played in the selection of markets for the codesharing modeled;

- Any changes the Joint Applicants would make to their U.S.-International schedules (relative to the Joint Applicants' summer 2005 and winter 2005-06 schedules, in both existing markets and new markets) within the first two years after DOT approval if (a) they did not receive antitrust immunity or (b) they did receive antitrust immunity. In answering both (a) and (b), the Joint Applicants should provide detail at the city-pair market level and identify the relevant carriers, seats per departure, and frequencies;
- A specific explanation of which consumer benefits would result from the proposed alliance that cannot be achieved without antitrust immunity. For each type of consumer benefit noted, the Joint Applicants should describe how they are currently cooperating in that area, how cooperation would change if they were granted antitrust immunity and why cooperation would be impossible in the absence of immunity;

- A description of the sources and an estimate of the value of any cost savings that the Joint Applicants would be able to achieve only if they were granted antitrust immunity (i.e., that could not be achieved without antitrust immunity);
- A description of (i) which markets the Joint Applicants believe are relevant for the competitive analysis of their application for antitrust immunity and (ii) the extent to which restrictions in the existing bilateral air services agreements between and among the United States and EU Member States:
 - o (a) would limit the benefits that would be derived from the proposed alliance; and
 - o (b) would affect competition, including potential for new entry, in markets in which the proposed alliance would compete;
- A detailed description of the Joint Applicants' mutually agreed inventory management procedures for codeshare flights, including, but not limited to, procedures and criteria for establishing inventory allocations in the automated environment. This should include maps of CRS fare classes between AC, OS, BD, LH, LO, SK, LX, TP and UA as well as the maps between the revenue management buckets of AC, OS, BD, LH, LO, SK, LX, TP and UA. These maps should include the revenue dollar amount and all restrictions associated with each fare class and revenue management bucket (even if still preliminary and in draft form);
- A discussion of (i) whether the Joint Applicants' interline traffic with airlines that are not part of the Star Alliance has declined since 1996 (the year UA/LH received antitrust immunity), and, if so, the extent to which such declines are attributable to less favorable prorate terms for airlines that are not part of Star, (ii) how the terms of the Joint Applicants' interline agreements with airlines that are not members of the Star Alliance have changed since 1996 when compared with their interline agreements within Star, (iii) whether the Joint Applicants plan to reduce the number of airlines that are not part of the Star Alliance with which they maintain interline agreements or otherwise reduce (either contractually or through inventory availability) the numbers of passengers they carry on an interline basis with airlines that are not part of the proposed alliance, and (iv) whether any changes to the Joint Applicants' interline practices and policies vis-à-vis carriers that are not part of Star are contemplated;

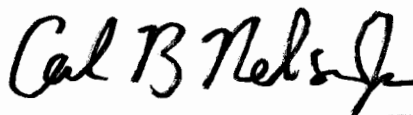
- MIDT data providing directional itineraries for all U.S.-International (worldwide) origin and destination airport pair markets for all airlines by quarter, for the period beginning January 1, 2005 and December 31, 2005. This should include the following data elements:
 - o Quarter
 - o Airport-Path and Marketing Carrier Designator String by Leg (example: an Omaha-Chicago-Frankfurt-Warsaw directional itinerary with segments marketed by United, Lufthansa and LOT, respectively would be reported as "OMA UA ORD LH FRA LO WAW"). Use a "/" to represent the marketing carrier in ARNK (Arrival Not Known) segments
 - o Volume of Net Bookings

The Joint Applicants should include an explanation of the trip break methodology used to create directional itineraries from segment data.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document by email on the following persons:

bruce.rabinovitz@wilmerhale.com
david.hefferman@wilmerhale.com
jonathan.moss@wilmerhale.com
esahr@condonlaw.com
erin.sweeney@swiss.com
bkeiner@crowell.com
reohn@hhlaw.com
sascha.vanderbellen@hhlaw.com
megan.rosia@nwa.com
jeffrey.manley@wilmerhale.com
msinick@ssd.com
cdonley@ssd.com
anbird@fedex.com
dvaughan@kelleydrye.com
jrichardson@johnlrichardson.com
lhalloway@crowell.com
bill.evans@piperrudnick.com
efaberman@wrf.com
mroller@rollerbauer.com
howard_kass@usairways.com
youngj@gtlaw.com
kirsteind@gtlaw.com
jhill@dlalaw.com
mgoldman@sbgdc.com
rsilverberg@sbgdc.com
dhainbach@ggh-airlaw.com
mcmillin@woa.com
mchopra@jamhoff.com
donna.kooperstein@usdoj.gov
patrick.nickens@hq.transcom.mil
jim.ballough@faa.gov



CARL B. NELSON, JR.

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