



UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.

Joint Application of American Airlines, Inc., Iberia Lineas Aereas de Espana, S.A., Finnair Oyj, Malev Hungarian Airlines, and Royal Jordanian Airlines under 49 U.S.C. §§ 41308 and 41309 for approval of and antitrust immunity for agreements

(Docket OST-2007-28845)

NOTICE

In this proceeding, American, Iberia, Finnair, Malev, and Royal Jordanian (together, the “Joint Applicants”) are seeking a grant of antitrust immunity to operate a global immunized alliance under the umbrella of the oneworld alliance. Before we can act on this request, we must determine whether the record is substantially complete and establish a procedural schedule.¹ As explained below, we have determined that the record is not yet substantially complete, and direct the Joint Applicants to provide further evidence.

On November 16, 2007, by Order 2007-11-12, we issued an evidence request that required the Joint Applicants to produce additional documents, data, and written answers to clarification questions. At that time, we stated that “more information is required concerning the Joint Applicants’ worldwide plans to cooperate and why they are seeking extraordinary relief from the antitrust laws to do so.”² On February 21, 2008, the Joint Applicants responded to the evidence request.³ We have reviewed the response and accompanying documents carefully, and find that, in order to satisfy the Department’s evidence request, further clarification of the record is needed. In its current state, the record does not contain sufficient information for the Department to assess the competitive effects and public benefits of the proposed alliance.

To ensure a substantially complete record, the Joint Applicants should supplement their February 21st response as follows:

Clarify the answer to Question 8. In the answer to Question 8, the Joint Applicants provide no specific details about their proposed cooperation in terms of routes, timing, benefit sharing, degree of involvement of each participating carrier in the alliance, or other common terms of a functioning immunized alliance. Additionally, the Joint Applicants state that a grant of antitrust immunity would give American and Iberia greater economic incentives to code share, without explaining what additional code

¹ 14 C.F.R. §§ 303.04 and 303.40. *See also* Order 2007-11-12, at 3.

² Order 2007-11-12, at 3.

³ Response of Joint Applicants to Order 2007-11-12.

sharing is envisioned, why greater economic incentives are necessary given the Department's approval of blanket code sharing in Docket OST-2008-0044, or why antitrust immunity would result in public benefits that are not otherwise possible to achieve. The Joint Applicants should clarify these points, elaborating as necessary, and provide any other salient information, such as specific implementing agreements to be immunized.⁴

Clarify the answer to Question 10. In the answer to Question 10, the Joint Applicants describe the possibility of launching new services or joint ventures from Helsinki, Budapest, Amman, and points in Spain. However, the Joint Applicants provide few details and no joint venture agreements. The Joint Applicants do not supply examples of concrete public benefits that would directly result from a grant of immunity, provide a timeline in which the public benefits could be realized, or include sufficient information, other than plans to potentially reschedule two flights, that would allow the Department to assess the costs and benefits of immunizing cooperation on the overlapping Miami-Madrid route. The Joint Applicants should further expand on these points and provide any other salient information and documentation.⁵

Clarify the answer to Question 11 and submit a joint venture agreement(s). In the answer to Question 11, the Joint Applicants state that multilateral antitrust immunity will "preserve and enhance" the existing benefits of the bilateral American/Finnair alliance. However, the Joint Applicants do not support this statement or provide examples of activities that can only be pursued with a new grant of antitrust immunity. Additionally, the Joint Applicants argue that "[m]ost of the public benefits [of the proposed alliance] will require the implementation of a joint venture agreement...." However, the Joint Applicants do not provide such an agreement for the Department to evaluate. The Joint Applicants should further support their arguments, submit a joint venture agreement(s), and provide any other salient information.

Correct the submission of MIDT data. In response to Question 15, the Joint Applicants submitted traffic data under seal for the year ending September 30, 2007. The Joint Applicants provided only US-originating passenger bookings for U.S.-International (worldwide) origin and destination airport pair markets instead of all bookings for U.S.-International (worldwide) origin and destination airport pair markets, as requested. The Joint Applicants should submit MIDT data to reflect net passenger bookings for origin and destination points in both directions, including, for purposes of clarity, fields to identify the originating airport for each full itinerary and the booked POS country. Additionally, we encourage the Joint Applicants to update the record with the most recent MIDT available. To facilitate the production of MIDT data, the Department provides the following additional guidance:

⁴ Cf. Delta, Northwest, Air France, KLM, Alitalia, Czech Case (SkyTeam I), Order 2005-12-12, at 30, 34 (Docket OST-2004-19214) (explaining the need for detailed information and implementing agreements); United, Lufthansa, SAS, Austrian, LOT, Swiss, TAP, Air Canada (Star), Order 2006-12-17, at 18 (Docket OST-2005-22922) (describing Star's commercial arrangements and the public benefits attributable to immunity).

⁵ Cf. Delta, Northwest, Air France, KLM, Alitalia, Czech Case (SkyTeam II), Order 2008-4-17, at 10, 16 (Docket OST-2007-28644) (discussing commercial plans and competitive effects on overlapping routes).

Using MIDT data, provide directional net passenger bookings (in both directions) for all U.S.-International (worldwide) origin and destination airport pair markets for all airlines for the one-year period ending December 31, 2007. Include the following data elements:

Field 1: Airport Path and Marketing Carrier Designator String by Leg.

Example: a Guatemala City-Miami-Madrid-Amman directional trip with segments marketed by American, Iberia, and Royal Jordanian respectively would be reported as "GUA AA MIA IB MAD RJ AMM". Use a "/" to represent the marketing carrier on ARNK (Arrival Not Known) segments.

Field 2: Volume of Net Bookings

Field 3: Provide the originating airport for each full itinerary

Example: if the passenger's full itinerary was a round-trip purchase from GUA to AMM and back, then the originating apt field should be populated with GUA for all directional market records of the full itinerary. Conversely, if the passenger's true itinerary was a round-trip purchase from AMM to GUA and back, then the originating apt field should be populated with AMM for all directional market records of the itinerary. If the itinerary was a one-way purchase from GUA to AMM, then GUA would be listed as the originating apt.

Field 4: MIDT data field "Booked POS Country"

Without the foregoing information, we cannot make a reasoned decision that is appropriate to the particular circumstances of this case and consistent with past and ongoing cases.⁶ Upon satisfactory clarification of the issues discussed above, we would determine the record to be substantially complete and establish a procedural schedule.

We shall serve this notice on all persons on the service list for this docket.

⁶ See Delta, Northwest, Air France, KLM, Alitalia, Czech Case (SkyTeam II), Order 2007-9-20, at 3 and Order 2008-4-17, at 3, 14-16 (Docket OST-2007-28644); United, Lufthansa, SAS, Austrian, LOT, Swiss, TAP, Air Canada (Star), Order 2006-4-25 at 6 and Order 2006-12-17, at 4, 18 (Docket OST-2005-22922); Delta, Northwest, Air France, KLM, Alitalia, Czech Case (SkyTeam I), Order 2004-11-15 and Order 2005-12-12 at 30, 34 (Docket OST-2004-19214).

By:

MICHAEL W. REYNOLDS
Acting Assistant Secretary
for Aviation and International Affairs

(SEAL)

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<http://www.regulations.gov>

APPENDIX

Excerpts from the Evidence Request in Order 2007-11-12

8. Please explain why the Joint Applicants are seeking multilateral immunity and provide the details of any plans for multilateral cooperation following a grant of ATI.
10. Please describe the specific public benefits – such as changes in capacity and schedules, enhanced code-sharing, cost savings, and efficiencies deriving from alliance integration - that would be directly enabled by DOT approval and immunization of the Proposed New Immunized Alliance Agreements (i.e., those public benefits that could not be achieved without antitrust immunity). For each public benefit described, explain why a grant of ATI is necessary in order for the public benefit to be realized, the likelihood of achieving the public benefit following a grant of ATI, and the approximate time frame in which the public benefit is likely to be realized following a grant of ATI.
11. Please describe (i) the purpose, scope, terms, and proposed timeline for implementing any planned joint ventures, revenue or benefit sharing agreements, or other integrative arrangements under the Expanded oneworld Immunized Alliance, and (ii) the extent to which the realization of any public benefits associated with the Expanded oneworld Immunized Alliance is contingent upon the implementation of such ventures, agreements, or arrangements.
15. Using MIDT data, provide directional net passenger bookings for all U.S.-International (worldwide) origin and destination airport pair markets for all airlines for the one-year period ending September 30, 2007. Include the following data elements:

Field 1: Airport Path and Marketing Carrier Designator String by Leg.

- Example: a Guatemala City-Miami-Madrid-Amman directional trip with segments marketed by American, Iberia, and Royal Jordanian respectively would be reported as “GUA AA MIA IB MAD RJ AMM”. Use a “//” to represent the marketing carrier on ARNK (Arrival Not Known) segments.

Field 2: Volume of Net Bookings

This data should be submitted on CD in comma-separated values (CSV) format.

Include an explanation of the trip break methodology used to create directional trips from itinerary level data.