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Order 99-12-5



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

SERVED DEC 3 1999

Issued by the Department of Transportation
on the 3rd day of December, 1999

Joint Application of

ALITALIA-LINEE AEREE ITALIAN-S.p.A.

KLM ROYAL DUTCH AIRLINES

NORTHWEST AIRLINES, INC.

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

Docket OST-1999-5674 - 35

FINAL ORDER

By this Order, we make final our tentative findings in Order 99-11-20, dated November 30, 1999, and grant final approval and antitrust **immunity** for (1) a Commercial Cooperation & Integration Agreement ¹between Northwest Airlines, Inc. ("Northwest") and Alitalia Linee Aeree Italiane-S.p.A. ("Alitalia"); and (2) an Alliance Coordination Agreement,² among Northwest, Alitalia, and KLM Royal Dutch Airlines ("KLM"), and their respective subsidiaries, collectively referred to herein as the "Alliance Agreements" under 49 U.S.C. §§ 41308 and 41309. Our action here is subject to the various terms, conditions, provisions and limitations imposed in Order 93-1-11, dated January 11, 1993, and proposed in Order 99- 1 1-20.

I. Background

A. The Application

On May 11, 1999, the Joint Applicants filed a request seeking approval of and antitrust immunity for an Alliance Agreement, for a five-year term. They asserted that the purpose of the proposed arrangement is to enable the expansion of the existing Northwest-KLM alliance to include Alitalia, while permitting each of the three partners to retain its independent identity. While the arrangement does not involve any exchange of equity or other forms of cross-ownership the Joint Applicants state that the objective of the Alliance Agreement is to enable the partners to plan and

¹ Exhibit JA-1 of the application.

² Exhibit JA-2 of the application.

coordinate service over their respective route networks as if they were a single entity. They also advise that they will not go forward with their plans absent antitrust **immunity**.³

B. Order to Show Cause

On November 30, 1999, the Department issued an Order to Show Cause, Order 99-11-20. We tentatively determined, subject to certain conditions and limitations, to grant approval of and antitrust immunity for the Alliance Agreements. We also tentatively directed the Joint Applicants to resubmit their Alliance Agreements no later than January 11, 2003. We also tentatively determined that if the Joint Applicants choose to operate under a common name or brand, they will have to comply with our relevant procedures before implementing the change.

We also tentatively directed the Joint Applicants to withdraw from all International Air Transport Association (“**IATA**”) tariff conference activities relating to through fares, rates or charges between the United States and Italy, as well as between the United States and the homeland of any other foreign carrier granted antitrust immunity or renewal thereof, by the Department for participation in similar alliance activities with a U.S. carrier; and **file** all subsidiary and/or subsequent agreement(s) with the Department for prior approval. We also tentatively directed **Alitalia** to report full-itinerary Origin-Destination Survey of Airline Passenger Traffic for all passenger itineraries that contain a United States point (similar to the O&D Survey data already reported by Northwest).

We provided the Joint Applicants and any interested party an opportunity to comment on our tentative findings and conclusions.

II. Decision

We have received no responses to our tentative decision.

We also see no reason to amend or modify our tentative decision.

In these circumstances, we make final our tentative findings in Order 99-11-20, and we grant approval and antitrust immunity to the Alliance Agreements. We also direct the Joint Applicants to resubmit the Alliance Agreements by January 11, 2003. However, the Department is not authorizing the joint applicants to operate under a common name. If the joint applicants wish to operate under a common name, they will have to comply with our relevant procedures before implementing the change.

We also direct the Joint Applicants to withdraw from all International Air Transport Association (**IATA**) tariff conference activities relating to through fares, rates or charges between the United States and Italy, as well as between the United States and the homeland of any other foreign carrier granted antitrust immunity or renewal thereof, by the Department for participation in similar

³ Application at 2. Also, see Article 4.2 of the Alliance Coordination Agreement.

alliance activities with a U.S. carrier; and file all subsidiary and/or subsequent agreement(s) with the Department for prior approval.⁴ We also direct Alitalia to report full-itinerary Origin-Destination Survey of Airline Passenger Traffic for all passenger itineraries that contain a United States point (similar to the O&D Survey data already reported by Northwest) as described in Order 99-11-20.⁵

ACCORDINGLY:

1. We grant approval and antitrust immunity as limited and discussed by this order to a Commercial Cooperation and Integration Agreement and an Alliance Coordination Agreement among Northwest Airlines, Inc., KLM Royal Dutch Airlines, and Alitalia-Linee Aeree Italiane S.p.A effective upon implementation of the open-skies provisions of the agreement between Italy and the United States;
2. We direct Northwest Airlines, Inc., KLM Royal Dutch Airlines, and Alitalia-Linee Aeree Italiane S.p.A. to resubmit their Commercial Cooperation and Integration Agreement and their Alliance Coordination Agreement for review no later than January 11, 2003;
3. We direct Northwest, Alitalia, KLM and Continental, or any other airline involved in such arrangements, to file for prior approval a copy of any agreement which may affect the Northwest/KLM/Alitalia alliance services;
4. We condition our grant of approval and immunity to require Northwest Airlines, Inc., KLM Royal Dutch Airlines, and Alitalia-Linee Aeree Italiane S.p.A. to withdraw from participation in any International Air Transport Association (IATA) tariff conference activities that discuss any proposed through fares, rates or charges applicable between the United States and Italy, and/or between the United States and any other countries whose designated carriers participate in similar immunized agreements with U.S. airlines that have been or subsequently are granted antitrust immunity or renewal thereof by the Department;
5. We direct Alitalia-Linee Aeree Italiane S.p.A. to report full-itinerary Origin-Destination Survey of Airline Passenger Traffic for all passenger itineraries that include a United States point (similar to the O&D Survey data already reported by its alliance partner Northwest Airlines, Inc.). The full itinerary record is defined as the passenger's complete flight itinerary from origin to destination as opposed to the abbreviated gateway record reported under T-100(f);
6. We direct Northwest, Alitalia and KLM and their subsidiaries to obtain prior approval from the Department if they choose to operate under a common name or use "common brands";

⁴ Regarding this requirement, we do not expect the alliance partners to provide the Department with minor technical understandings that are necessary to blend fully their day-to-day operations but that have no additional substantive significance. We do, however, expect and direct the Joint Applicants to provide the Department with an contractual instruments that may materially alter, modify, or amend the Alliance Agreement.

⁵ As indicated in Order 99-11-20, we will provide confidentiality protection for these data, as we do for international O&D data submitted by U.S. airlines, and we will not disclose this information to any other airlines.

7. Our decision will be subject to the terms, conditions, provisions and limitations previously imposed on Northwest Airlines, Inc. and KLM Royal Dutch Airlines in Order 93- 1 -11, to the extent that they deal with alliance activities;
8. This order is effective immediately;
9. We grant all motions for leave to file otherwise unauthorized documents;
10. We may amend, modify, or revoke this authority at any time without hearing; and
11. We shall serve this order on all persons on the service list in this docket.

By:

A. BRADLEY MIMS
Deputy Assistant Secretary for Aviation
and International Affairs

(SEAL)

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