BEFORE THE

DEPARTMENT OF TRANSPORTATION

WASHINGTON, D.C.

Joint Application of AMERICAN AIRLINES, INC. and BRITISH AIRWAYS PLC under 49 USC 41308 and 41309 for approval of and antitrust immunity for agreement	Docket OST-01-10387
Joint Application of AMERICAN AIRLINES, INC. and BRITISH AIRWAYS PLC under CFR Part 212 for statements of authorization (blanket codesharing) and under 49 USC 40109 for related exemption authority	Docket OST-01-10388
Joint Application of UNITED AIR LINES, INC., BRITISH MIDLAND AIRWAYS LIMITED, AUSTRIAN AIRLINES, ÖSTERREICHISCHE LUFTVERKEHRS AG, LAUDA AIR LUFTFAHRT AG, DEUTSCHE LUFTHANSA, A.G., and SCANDINAVIAN AIRLINES SYSTEM under 49 U.S.C. §§ 41308 and 41309 for approval of and antitrust immunity for an Alliance Expansion Agreement and an Amended Coordination Agreement	Docket OST-01-10575

Joint Application of UNITED AIR LINES, INC. and BRITISH MIDLAND AIRWAYS LIMITED under 14 C.F.R. Part 212 for statements of authorization (blanket codesharing) and under 49 U.S.C. 40109 for related exemptionauthority	Docket OST-01-10576

ANSWER OF
CONTINENTAL AIRLINES, INC.
TO MOTION TO CONSOLIDATE

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November 9, 2001

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Continental[1] strongly agrees with Northwest that adequate evaluation of the American/British Airways and United/bmi requests for antitrust immunity requires consolidation of the proceedings, joint consideration of both applications on the same procedural schedule and use of the records developed in both proceedings to ensure the Department and interested parties have a complete record for each request.[2] The Department must not decide the fate of U.S.-London competition by considering each immunity request separately and ignoring the common strategy by the two U.S. incumbents at London Heathrow to combine with the two largest slotholders at London Heathrow and control U.S.-London Heathrow routes under a

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1 Common names are used for airlines.

2 For the reasons explained in Continental's November 8, 2001 motion in Dockets OST-01-10387 and OST-01-10388, the information in the record should be current and continuously updated until the end of the consolidated proceeding.

U.S.-U.K. open skies/closed airports agreement. The common threads of the American/British Airways and United/bmi applications are so interwoven they are inseparable and must be considered together.

Continental answers the Northwest motion to consolidate the proceedings on the American/British Airways and United/bmi requests for antitrust immunity as follows:

1. The Department must consolidate the American/British Airways and United/bmi applications into one proceeding using the same record to evaluate the requests for antitrust immunity together. Unless the Department consolidates the proceedings, considers all of the tactics in common, evaluates the combined anticompetitive harm from the proposed alliances and uses a common record to decide the applications, the Department's decision on each application would be defective since each would be based on a record ignoring the other alliance and its impact on London Heathrow, a closed airport where other U.S. airlines seek entry. Each applicant cites the other alliance as a justification for its own, claims which cannot be analyzed effectively in separate records. The American/British Airways and United/bmi requests for antitrust immunity amount to a joint request for the Department to install an immunized duopoly on U.S.-London routes and foreclose any competition by other airlines on these routes. Both applications rely on the existence of an open skies/closed airports agreement between the U.S. and the U.K. to ensure their duopoly on U.S.-London Heathrow routes. Both applications are attempts by a U.S. airline with the enormous advantages of London Heathrow

incumbency to leverage the presence of the two largest U.K. slotholders at London Heathrow and coordinate U.S.-London Heathrow service to preempt potential new entrants such as Continental from establishing even a foothold at London Heathrow. Both applications are, in short, the same idea on the same routes under consideration by the Department at the same time, and both assume the existence of the same fundamentally flawed open skies/closed airports agreement.

2. Since the proposed United/bmi alliance would exacerbate the already overwhelmingly harmful effects of the proposed alliance between American and British Airways, the Department must not ignore these effects by considering the applications separately. While American and British Airways would remain the dominant force on U.S.-London routes with an unmatched ability to operate U.S.-London Heathrow shuttle services on multiple routes and capture high-yield business passengers, the proposed United/bmi alliance with antitrust immunity would create a duopoly which would further preclude potential competition by new entrants. Potential new entrants on U.S.-London Heathrow routes such as Continental would be unable to mount any significant competition to two immunized alliances at London Heathrow, foreclosing any meaningful challenge to American/British Airways and United/bmi on U.S.-London routes. When considering applications for antitrust immunity on U.S.-U.K. routes, therefore, the Department must not ignore the magnified anticompetitive impact created by the combination of American/British Airways and United/bmi. Their combined impact can be considered effectively only in a single proceeding.

3. Since the Department and interested parties need the same evidence on the same fundamental issues raised by the American/British Airways and United/bmi applications, the Department should require them to respond to the same information requirements, keep them updated as required[3] and allow the evidentiary record on each application to be used in the consolidated proceeding. The Department and interested parties need the same evidence from both alliance partnerships on such diverse issues as London Heathrow slot and facilities access; competition between the U.S. and London Heathrow; strategic objectives; the reasons antitrust immunity is required; less anticompetitive alternatives to the proposed alliances; the effect of the proposed alliances on other airlines; and analyses of market shares, competition, competitors, fares, market potential for traffic growth or expansion, airport preferences, hub changes, capacity reductions, other potential alliances, plans for changes to codeshare and marketing relationships, international routes if the alliance is instituted and before-and-after traffic and revenue data and forecasts. The information requirements for the proposed alliances overlap, and the records the Department builds should be used in a consolidated proceeding.

4. Even if the Department decides not to consolidate the proceedings, it must nonetheless consider the American/British Airways and United/bmi applications jointly. At a minimum, parties must be permitted to address the

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[3] See § 303.04(e) of the Department's regulations, 14 C.F.R. § 303.04.

common issues and information in both proceedings. Thus, the Department must permit parties to use confidential information in each proceeding in the other proceeding and allow parties to submit comments in the American/British Airways proceeding based on their analyses of information provided in the United/bmi proceeding. Consideration of the information from only one proceeding without analyses by parties of information from the other proceeding would be arbitrary and capricious.

For the foregoing reasons, Continental urges the Department to consolidate the American/British Airways and United/bmi applications into one proceeding, consider these requests for antitrust immunity on the same procedural schedule and allow use of the records on both applications in the consolidated proceeding.

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November 9, 2001

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CERTIFICATE OF SERVICE

I certify that I have this date served the foregoing document on counsel for Northwest and all parties served with Northwest's motion to consolidate in accordance with the Department's Rules of Practice.

Thomas Newton Bolling

November 9, 2001

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