BEFORE THE
DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.

Joint Application of	)	
	)	
DELTA AIR LINES, INC.	)	
KOREAN AIR LINES CO., LTD.	)	
SOCIETÉ AIR FRANCE	)	**OST-02-**
ALITALIA-LINEE AEREE ITALIANE-S.P.A.	)	
CZECH AIRLINES	)	
	)	
Under 49 U.S.C. §§ 41308 and 41309	)	
for approval of and antitrust immunity	)	
for alliance agreements	)	

MOTION OF DELTA AIR LINES, INC. FOR CONFIDENTIAL TREATMENT UNDER 14 C.F.R. § 302.12

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March 13, 2002

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WASHINGTON, D.C.

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Under 49 U.S.C. §§ 41308 and 41309	)	
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MOTION OF DELTA AIR LINES, INC.
FOR CONFIDENTIAL TREATMENT
UNDER 14 C.F.R. § 302.12

Delta Air Lines, Inc. ("Delta"), pursuant to Rule 12 of the Department's Rules of Practice, 14 C.F.R. § 302.12, hereby requests that the Department withhold from public disclosure the confidential, proprietary and commercially sensitive information Delta is filing concurrently under seal in the above-captioned proceeding. Delta is submitting these confidential documents to facilitate the Department's processing of the Joint Application for alliance approval and antitrust immunity filed by Delta and its Joint Applicants, Korean Air Lines Co., Ltd. ("KAL"), Societé Air France ("Air France"), Alitalia-Linee Aeree Italiane-S.P.A. ("Alitalia") and Czech Airlines ("CSA").

The documents for which Delta requests confidential treatment are listed in the attached index. In support of this request, Delta submits the following:

I. DELTA'S CONFIDENTIAL DOCUMENTS SHOULD BE PROTECTED FROM PUBLIC DISCLOSURE

The confidential documents and information submitted herewith in conjunction with Delta's Joint Application with KAL, Air France, Alitalia and CSA for antitrust immunity are protected from public disclosure under various exemptions under the Freedom of Information Act ("FOIA"), including 5 U.S.C. § 552(b)(3) and 5 U.S.C. § 552(b)(4). The purpose of these exemptions "is to protect the confidentiality of information which citizens provide to their government, but which would customarily not be released to the public, and to facilitate citizens' ability to confide in their government." Burke Energy Corp. v. DOE, 583 F. Supp. 507, 510 (D. Kansas 1984).

Exemption (4) exempts from public disclosure "trade secrets and commercial or financial information obtained from a person and privileged or confidential." 5 U.S.C. § 552(b)(4). This exemption has been construed to prevent public disclosure of information that is not of the type usually released to the public, and that if released would cause substantial harm to the competitive position of the person from whom the information was obtained. See, e.g., Gulf & Western Industries, Inc. v. United States, 615 F.2d 527, 530 (D.C. Cir. 1980); American Airlines, Inc. v. NMB, 588 F.2d 863, 871 (2d Cir. 1978); National Parks & Conservation Ass'n v. Kleppe, 547 F.2d 673, 684 (D.C. Cir. 1976); Joint Application of United and Lufthansa, Order 93-12-32,

December 18, 1993; Joint Application of Northwest and KLM, Order 93-1-11, January 8, 1993, p. 19; Information Directives Concerning CRS, Order 88-5-46, May 22, 1988; Carrier-Owned Computer Reservations Systems, ER-1385, Order 86-5-54, May 19, 1986; Information Directives Concerning CRS, Order 83-12-136, December 29, 1983.

For information to qualify for exemption (4), the information must be (1) commercial or financial in nature, (2) obtained from a person, and (3) privileged or confidential. See Public Citizen Health Research Group v. FDA, 704 F.2d 1280, 1290 (D.C. Cir. 1983). All of the confidential information submitted by Delta qualifies for exemption from public disclosure under the above-detailed three-part test standard. The documents and information relate to commercially sensitive, proprietary, and privileged financial and corporate matters. The information was obtained from a private citizen and is not of the type generally released to the public. The public disclosure of the information is not required to further the public interest or to promote competition. In National Parks & Conservation Ass'n v. Morton, 498 F.2d 765, 770 (D.C. Cir. 1974), the court held that information is "confidential" for purposes of exemption (4) if it would not customarily be released to the public by the person from whom it was obtained, and if disclosure is likely to have either of the following results: "(1) to impair the Government's ability to obtain necessary information in the future;

or (2) to cause substantial harm to the competitive position of the person from whom the information was obtained."

Delta submits that public disclosure of the type of confidential information at issue here would cause substantial harm to its respective competitive position, and could impair the Government's ability to obtain similar information on a voluntary basis from individuals in the future.

In addition, withholding the subject confidential information from public disclosure is also provided for under exemption (3). 5 U.S.C. § 552(b)(3). Exemption (3) pertains to information specifically exempted from disclosure by some other statute, such as 49 U.S.C. section 40115. The release of the information which is the subject of this motion may "prejudice the formulation and presentation of positions of the United States in international negotiations" with foreign governments and "would have an adverse effect on the competitive position of an air carrier in foreign air transportation," and would therefore be inconsistent with 49 U.S.C. section 40115.

The information is being submitted to the Department so that the Department may expeditiously evaluate the public interest benefits that will result from granting approval of and antitrust immunity for the Delta, KAL, Air France, Alitalia and CSA alliance.

II. ACCESS TO THESE CONFIDENTIAL DOCUMENTS SHOULD BE RESTRICTED TO COUNSEL AND OUTSIDE EXPERTS

Delta is submitting highly sensitive internal corporate documents and information that should be accorded limited access. Such access should be granted only to counsel and outside experts who file affidavits stating that the affiant will (1) use the information only for the purpose of participating in this proceeding, and (2) not disclose such information to anyone other than counsel or outside experts who have filed a valid affidavit.

In order to minimize the risk of harmful disclosure of this competitively sensitive information, access should be strictly limited, as requested. Delta is filing, concurrently with this motion, copies of the confidential information, in sealed cartons labeled "Confidential Treatment Requested Under 14 C.F.R. Section 302.12; Access Is Limited To Counsel Or Outside Experts Who Have Filed Valid Confidentiality Affidavits."

The request to limit disclosure to counsel and outside experts is fully consistent with Department precedent and policy. Thus, in United/Lufthansa, Order 93-12-32, supra, the Department granted the applicants' request to limit access to certain confidential information to counsel and outside experts who filed appropriate affidavits. In restricting such access, the Department balanced the disclosure of confidential information against the competitive harm to the applicants that would result if access

were expanded, and concluded that "the undue competitive harm to the applicants outweighs the commenters' need for expanded access to the highly sensitive material in this case." Id. at 5. The Department also noted that "interested parties to this proceeding can obtain adequate advice on the merits of the application through outside experts and persons authorized to review the materials." Id. See also Joint Application of American and Canadian International, Order 96-1-6, January 11, 1996, at 3.

Access to Delta's internal documents and data should be limited in a comparable manner, in light of the undue competitive harm to Delta that would result from a broader disclosure of such highly sensitive information.

WHEREFORE, for the foregoing reasons, the Department should grant Delta's motion to withhold the proprietary and commercially sensitive confidential documents and information from public disclosure, as requested herein.

Respectfully submitted,

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Counsel for
DELTA AIR LINES, INC.

Bates Range DLKE ATI302	Date	Description	Production Category
000001-000047	04/23/2001	Global Airline Cargo Alliance Implementation Agreement	1
000048-000057	08/29/2001	Global Airline Cargo Alliance Adherence Agreement: Alitalia	1
000058-0000132	08/29/2001	LLC Agreement U.S. Cargo Sales Joint Venture LLC	1
0000133-0000177	02/16/2002	Codesharing Agreement Delta Air Lines/Korean Air Lines	1
0000178-0000185	02/14/2002	Exhibit B - Codesharing Agreement Between Delta and Korean Air - Reservation Procedures	1
0000186-0000198	02/14/2002	Exhibit C - Codesharing Agreement Between Delta and Korean Air - Passenger Handling Procedures	1
0000199-0000203	01/01/2002	Special Prorate Agreement: Delta and Korean	1
0000204-0000216	05/23/2001	Lounge Usage Agreement Between Delta and Korean	1
0000217-0000226	03/01/1997	FFP Agreement Between Delta and Korean	1
0000227-0000280	06/21/2000	Global Airline Alliance Agreement	1
0000281-0000295	07/28/2000	Agreement Regarding the SkyTeam Alliance	1
0000296-0000307	03/21/2001	Global Airline Alliance Adherence Agreement - Czech Airlines	1
0000308-0000309	04/01/2001	Global Airline Alliance Agreement - Annual Revision to Exhibit 5.10A	1
0000310-0000317	07/26/2001	Amendment to Global Airline Alliance Agreement	1
0000318-0000365	07/27/2001	Global Airline Alliance Adherence Agreement - Alitalia	1
0000366-0000371	02/01/2002	E-mail with Attachment - Joint Sales Management Project Communication #2 (ATI)	2, 4
0000372-0000385	02/01/2002	ATI Press Material Drafts	2, 3
0000386-0000427	12/06/2001	Delta/Korean Codeshare Reinstatement/ATI Materials	2, 3
0000428-0000462	12/06/2001	Korean Air/Delta Codeshare Reinstatement Discussions/Strategy	2, 3
0000463-0000466	03/29/2001	Delta/Korean Network Meeting Materials	3
0000467-0000476	03/30/2001	Delta/Korean Network Meeting Materials	2, 3
0000477 0000504	12/2000	Delta/Korean Forecast Discussion Materials	2, 3
0000505-0000514	03/31/2001	SkyTeam Network Planning Meeting/SkyTeam vs. Other Alliances	2

Bates Range DLKE ATI302	Date	Description	Production Category
0000515-0000539	03/2001	Korean Market Overview	2, 3
0000540-0000567	12/2000	Korean Air /Delta Forecast Discussions	2, 3
0000568-0000580	08/2000	Delta/Korean Network Cooperation Materials	2, 3
0000581-0000590	09/21/2000	Delta/Korean Network Discussions	2, 3
0000591-0000608	11/2000	Korean Air /Delta Forecast Discussions	2, 3
0000609-0000613	Undated	Network Slides	2, 3
0000614-0000634	Undated	Korean Update Materials	2, 3
0000635-0000637	12/19/2001	Cargo Joint Venture Advisory Council	2, 3
0000638-0000643	01/17/2002	U.S. Cargo Sales Joint Venture	2, 3
0000644-0000656	10/16/2001	Minutes of Governing Board of U.S. Cargo Sales Joint Venture, LLC	2, 3
0000657-0000670	10/16/2001	SkyTeam Governing Board Meeting/Coping with Crisis	2, 3
0000671-0000673	03/01/2001	Summary Global Airline Cargo Alliance Implementation Agreement	2, 3
0000674-0000718		Reserved	--
0000719-0000730	10/16/2001	Agenda U.S. Cargo Sales Joint Venture Board Meeting, Resolutions, Minutes, Immediate Action List	2, 3
0000731-0000845	10/16/2001	SkyTeam Cargo Sales Joint Venture/Initial Business Plan	2, 3
0000846-0000883	10/16/2001	Governing Board Meeting/SkyTeam Cargo JV	2, 3
0000884-0000894	10/16/2001	Governing Board Meeting/SkyTeam Cargo JV	2, 3
0000895-0000910	--	Reserved	--
0000911-0000916	05/29/2001	Executive Update: Cargo Joint Venture	2, 3
0000917	05/21/2001	Memo Re: SkyTeam Joint Venture	2, 3
0000918-0000936	09/07/2000	SkyTeam Cargo Steering Committee Report	2, 3
0000937-0000961	--	Reserved	--
0000962-0001004	08/29/2001	Implementing a True Global Cargo Alliance Agenda Cargo Executive Board Meeting	2, 3
0001005-0001016	02/26/2001	Joint Incentive Sales Strategy - European Sales Working Group	2, 3

Bates Range DLKE ATI302	Date	Description	Production Category
0001017-0001023	--	Reserved	--
0001024-0001027	Undated	Traffic Forecast on ATL/ICN	2, 3
0001028-0001030	Undated	Exit Seoul Market Strategy	2, 3
0001031-0001032	08/14/2001	E-mail Thread Joint Sales Marketing	2, 3
0001033-0001036	12/2000	Booking Data	2, 3
0001037-0001042	09/25/2001	SkyTeam Vision and Strategies	2, 3
0001043-0001078	12/05/2001	JSM Validation Meeting	2, 3
0001079-0001080	11/02/2001	E-mail Re: Off Tariff Korea, Korean/Delta Network Discussions Agenda	2, 3
0001081-0001089	09/21/2001	Korean/Delta Network Discussions	2, 3
0001090-0001100	09/22/2000	Korean/Delta Network Meeting	2, 3
0001101-0001114	02/01/2002	Delta and Korean Air Antitrust Immunity Press Release Research Documents and Drafts	2, 3
0001115-0001117	01/03/2002	Exit Seoul Market Intelligence, E-mail re: Fare Data	2, 3
0001118	12/12/2001	E-mail Re: DL/KE - ATI & Reinstatement Matters Antitrust Immunity Update Governing Board Agenda	2, 3
0001119-0001137	11/15/2002	ATI Governing Board Materials	2, 3
0001138-0001151	02/01/2001	ATI Press Materials	2, 3
0001152-0001165	02/04/2001	E-mail and ATI Press Materials	2, 3
0001166-0001176	03/01/1997	Delta/KAL FFP Agreement	1
0001177-0001183	07/03/1996	U.S. Mail Amendment to Delta/KAL Codeshare Agreement	1

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion for Confidential Treatment of Delta Air Lines, Inc., has been served this 13th day of March, 2002, upon each of the following persons in accordance with the Department's rules.

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