BEFORE THE

DEPARTMENT OF TRANSPORTATION

WASHINGTON, D. C.

Joint Application of AMERICAN AIRLINES, INC. and SWISS INTERNATIONAL AIR LINES LTD. d/b/a SWISS under 49 USC 41308 and 41309 for approval of and antitrust immunity for agreement	OST-2002-

JOINT MOTION OF AMERICAN AIRLINES, INC. AND
SWISS INTERNATIONAL AIR LINES LTD. d/b/a SWISS
FOR CONFIDENTIAL TREATMENT UNDER 14 CFR 302.12

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June 28, 2002

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WASHINGTON, D. C.

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American Airlines, Inc. and Swiss International Air Lines Ltd. d/b/a Swiss, under 14 CFR 302.12, hereby jointly move that the Department withhold certain proprietary and commercially sensitive confidential information from public disclosure.

American and Swiss are separately submitting confidential information in connection with their captioned joint application for approval of and antitrust immunity for an alliance agreement. The confidential documents are identified and described in the attached indexes. We request that access to these documents be limited to counsel and outside experts for interested parties.

In support of this motion, the joint applicants respectfully state as follows.

I. THE CONFIDENTIAL INFORMATION IS PROTECTED FROM PUBLIC DISCLOSURE UNDER THE FREEDOM OF INFORMATION ACT

The confidential information being submitted by American and Swiss is protected from public disclosure under various exemptions in the Freedom of Information Act, including 5 USC 552(b)(3) and 5 USC 552(b)(4).

Exemption (4) exempts from public disclosure "trade secrets and commercial or financial information obtained from a person and privileged or confidential." This exemption has been construed to prevent public disclosure of information that is not 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 Delta and Virgin Atlantic, Order 94-5-42, May 28, 1994; 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. 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).

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 being submitted by American and Swiss satisfies this three-part test.

First, the confidential information is commercial or financial in nature, in that it relates to commercially sensitive, proprietary, and privileged financial and corporate information. This type of confidential information is proprietary and commercially sensitive, and would not otherwise be made public. It is being submitted to the Department so that the Department can expeditiously evaluate the public interest benefits that will result from granting approval of and antitrust immunity for the American/Swiss alliance.

Second, the information has been "obtained from a person" within the meaning of exemption (4).

Third, the information is "confidential." This confidential information is not available to the public, and its public disclosure 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."

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

II. ACCESS TO THESE HIGHLY SENSITIVE DOCUMENTS SHOULD BE LIMITED TO COUNSEL AND OUTSIDE EXPERTS

American and Swiss are submitting highly sensitive internal corporate documents, studies, surveys, analyses, reports, and data which should be accorded limited access.

Such access should be granted only to counsel and outside experts who file Rule 12 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.

The subject materials contain highly sensitive commercial information relating to the joint applicants' international planning and strategic decisionmaking. The information contained in these documents has not been publicly released. If released, competitors would gain valuable insights into the joint applicants' internal strategies and objectives with respect to the most competitively sensitive matters.

In order to minimize the risk of harmful disclosure of this competitively sensitive information, access should be strictly limited, as requested. American and Swiss are separately filing, concurrently with this motion, five copies of this information, in sealed cartons labeled "Confidential Treatment Requested Under 14 CFR 302.12; Access Is Limited To Counsel Or Outside Experts Who Have Filed Valid 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,

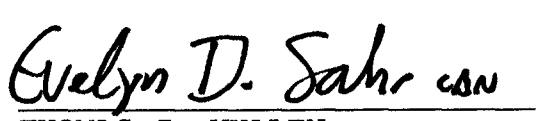
the Department granted the applicants' request to limit access to certain confidential information to counsel and outside experts who filed Rule 39 (now Rule 12) affidavits. In so limiting such access, the Department balanced the disclosure of the confidential information against the competitive harm 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" (p. 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, e.g., Joint Application of American and Canadian International, Order 96-1-6, January 11, 1996, p. 3.

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

CONCLUSION

The Department should grant this joint motion to withhold proprietary and commercial sensitive confidential information from public disclosure, as American and Swiss have requested herein.

Respectfully submitted,



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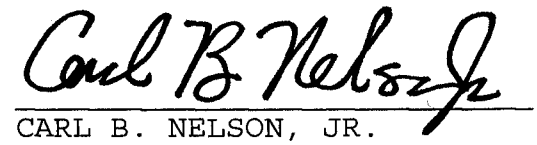

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June 28, 2002

AMERICAN/SWISS IMMUNITY APPLICATION
INDEX OF AMERICAN'S CONFIDENTIAL DOCUMENTS

0001-0002	6/10/02	AA-Swiss Codeshare Summary
0003-0004	5/31/02	Email from Eric Briggle to Steven Coker re Swiss Beyond Priceouts
0008-0015	5/17/02	ZRH, prepared by Capacity Planning
0016-0018	5/1/02	CONCRS Premium Mkt Share JFK-ZRH, prepared by John Boettcher
0019-0024	2/15/02	Forecasted Revenue Value of SR/LX, prepared by Reid Appleby
0025-0026	3/8/02	SR in oneworld - Impact on BA, prepared by Barbara McClatchy
0027-0035	2/18/02	Swiss & Zurich, prepared by International Planning
0036-0044	2/01/02	Swiss, prepared by International Planning
0045-0067	1/23/02	American Airlines/Crossair, Meeting in Zurich
0068-0070	12/19/01	Letter from C. David Cush to Matthias Hanke, Crossair
0071-0076	12/18/01	Email from Steffen Horlacher to Kyle O'Neal re ZHR/Germany Fly Zone
0077-0078	11/12/01	ORD-ZHR Retime Impact on Connections
0079-0085	11/8/01	American Airlines/Crossair, prepared by International Planning
0087-0106	11/8/01	American Airlines/Crossair/Swissair, Meeting in Basle
0107	11/8/01	Letter from C. David Cush to Swissair re Termination of Codeshare Agreement
0108-0118	11/6/01	Email from Steve Painter to Don Casey re LX Package

0119-0138	10/26/01	American Airlines, New York-Zurich Service, prepared by International Planning
0139-0140	10/15/01	Swissair Widebody Aircraft Routings, prepared by Reid Appleby
0141-0147	10/10/01	JFK/ORD-ZRH/LHR/CDG Dedicated ARC Data, prepared by Tracy Krajack
0148-0149	10/10/01	Letter from C. David Cush to Arjen G. Pen, Crossair, re alliance relationship
0150-0160	10/9/01	ZRH, prepared by Capacity Planning
0161-0175	9/6/01	Swissair/Sabena-American Relationship Value, prepared by International Planning
0176-0178	9/01/01	Swissair Announcements and Issues, prepared by Graham Bell, Regional Sales
0179-0198	8/23/01	Crossair Route Network
0199-0212	4/23/01	Legal Aspects Overflying German Territory Approaching Zurich Airport, presentation by IATA, Geneva
0213-0235	4/12/01	IATA Memorandum re Restriction on Use of Airspace in Southern Germany
0236-0264	2/27/01	Swissair/Sabena-American, Background Briefing, prepared by International Planning
0265-0268	2/6/01	Email from Tom Jiede to Robert Olson re Europe Traffic Data
0269-0274	1/16/01	ORD-ZRH #2, prepared by Capacity Planning
0275-0285	1/02/01	European Alliance Hub Performance, prepared by Capacity Planning
0286	11/8/00	Email from Joe Lepochat to Jim Watt re Swiss-German Accord

0287-0288	11/3/00	Email from Bob Hill to John Boettcher re ZRH & BRU Feedback
0289-0296	10/30/00	AA* & SR* Bookings Post Joint Selling, Focus on Switzerland, prepared by Regional Sales Europe
0297-0311	10/16/00	Swissair/Sabena, USA - New Apex Fare Structure
0312-0327	10/5/00	Network Planning, SR/SN/AA
0328-0329	10/2/00	Email from Bob Hill to Walter Aue re Summer 2001 Service Recommendations - SR/SN/AA
0330-0334	9/28/00	Email from Bob Hill to Patrick von Dach, Swissair, re Forecast Information on ZRH-ORD and ZRH-DFW
0335-0342	9/26/00	Pricing Code of Conduct, SN/SR/AA
0343-0356	9/6/00	Email from Bob Hill to Walter Aue re ZRH BRU LHR LGW Hub Traffic Study
0357-0359	9/8/00	Email from Bob Hill to Patrick von Dach, Swissair, re AA/SR/SN North Atlantic Program for Summer 2001
0360-0363	9/1/00	Alliance Market Summary, prepared by Mark Haneke
0364-0371	8/31/00	ZRH/BRU/LHR/LGW, Transatlantic Traffic Analysis
0372-0385	8/28/00	Package re Codeshare Relationship with Swissair and Sabena, prepared by Damian Brooke
0386-0388	8/24/00	Email from Bob Hill to Mike Lenz re Zurich and Brussels Project Plan
0389-0404	8/16/00	AA-AMP European Sales Task Force Meeting, Zurich

0405-0424	7/18/00	Europe Strategy, Profit and Recommendations, prepared by Capacity Planning
0425-0439	7/11/00	Sales Task Force Meeting BRU Jul 03
0440-0456	Undated	Europe Priceouts, DFW-ZHR, JFK-ZHR, ORD-BRU, ORD-BHX
0457-0460	Undated	ZRH Assessment
0461-0468	Undated	Route: DFW-ZRH, Market Schedule/Capacity/ POS Summary & Fare Comparison
0469	Undated	Characteristics of NYC-ZRH Market
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0486-0499	6/20/02	Forecasted Annualized Operating Statistics, DFW-ZRH
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0530-0540	3/25/02	Special Prorate Agreement Between American Airlines, Inc. and Crossair Ltd.
0541	12/01/85	LX/AA MITA Concurrence
0542-0610	3/25/02	AAdvantage Participating Carrier Agreement between Crossair AG and American Airlines, Inc.
0611-0675	11/23/99	Qualiflyer Participating Carrier Agreement Between American Airlines, Inc. and Qualiflyer Loyalty Limited
0676-0697	6/28/02	Alliance Agreement between Swiss International Airlines Ltd. and American Airlines, Inc. (Unredacted)

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014-017	Undated	LX / AA FFP, Sales, Marketing & Distribution Cooperation
018-023	1/14/02	Crossair Alliance Sales & Marketing - Business Profile & Alliance Opportunities (Basle)
024-026	3/31/02	Minutes of Alliance Steering Group
027-029	3/26/02	Communication Swiss & Alliance Partner
030-031	4/10/02	SWISS Alliance Coordination Meeting
032-034	4/11/02	Alliance Development - Update of the Board of Directors
035-036	4/23/02	SWISS Alliance Steering Group Meeting
037-039	5/14/02	Minutes of the Alliance Steering Group Meeting
040	6/18/02	Minutes of the Alliance Steering Group Meeting
041-068	Undated	Crossair Presentation BP Phoenix

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document by email on all persons named below.

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June 28, 2002