BEFORE THE

DEPARTMENT OF TRANSPORTATION

WASHINGTON, D.C.

U.S.-U.K. ALLIANCE CASE	:	Docket OST-01-11029

ANSWER OF CONTINENTAL AIRLINES, INC.

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December 19, 2002

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United[1] and its European Star Alliance partners bmi, Austrian, Lauda, Lufthansa and SAS (the Star Alliance carriers) have asked the Department to reverse its decision denying their request to continue the tentative approval of their alliance beyond December 31, 2002, despite vast changes in air transportation and the legal framework for negotiations with the U.K. which render the record in this proceeding stale. The Department must deny the Star Alliance carriers' motion absent the "transformative" Open Skies agreement opening up access at London Heathrow sought be the U.S.[2] and rejected repeatedly by the U.K.

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[1] Common names are used for airlines.

[2] See the September 9, 2002, letter from John R. Byerly to A. T. Baker placed in this docket.

Continental states as follows in opposition to the Star Alliance carriers' motion:

1. The Department's original decisions in this proceeding approved the alliance among the Star Alliance partners at London Heathrow Airport if, and only if, the "United States achieves, within six months from the issue date of this order, an Open Skies agreement with the United Kingdom that meets U.S. aviation policy objectives." (Order 2002-4-4 at 1, 8, 11; Order 2002-6-2 at 1, 2) As the Star Alliance carrier motion effectively concedes, it is clear the U.K. will not agree to any genuine Open Skies agreement by December 31, 2002, and the Department has already denied the Star Alliance carriers request to continue the approval through April 4, 2003. (See Order 2002-10-6) The Star Alliance carriers have presented no basis whatever to believe that the likelihood of such an agreement is any greater during the next six months. After years of failure to negotiate an Open Skies agreement with the U.K., it is clear from history over the last eight months that the prospect of an immunized alliance between United, bmi and the other Star Alliance carriers has created no meaningful incentive to achieve anything like true Open Skies meeting U.S. policy objectives at London Heathrow.

2. The Star Alliance carriers premise their request that the Department waive enforcement of the condition it imposed because "the United States is

continuing to pursue an acceptable agreement with the United Kingdom"[3] and the Star Alliance carriers would be forced to re-apply for immunity if an Open Skies agreement between the U.S. and the U.K. were achieved after the deadline established by the Department has passed. The United States has been pursuing open skies at London Heathrow for years, and Star Alliance requests for extensions will prove to be endless if extensions are granted on the basis of U.S. pursuit of Open Skies rather than U.K. acceptance of Open Skies at London Heathrow.

3. The air transportation world has been undergoing a sea change since the Department conditionally approved the United/bmi antitrust immunity request conditioned upon achievement of a U.S.-U.K. Open Skies agreement. United and Lufthansa have announced plans to engage in antitrust-immunized cooperation, including codesharing and revenue pooling, between London Heathrow and the U.S. to exploit Lufthansa's "far larger sales operations in . . . Britain,"[4] United has entered bankruptcy and will soon begin codesharing with US Airways throughout the United States, bmi is terminating transatlantic flights instituted as part of its relationship with United, both bmi and British Airways are strengthening their fortresses at London Heathrow and American and British Airways are again seeking to combine their strengths at London Heathrow through extra-bilateral

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[3] Star Alliance Motion at 1. In their previous motion, the Star Alliance partners noted that the U.S. was continuing to pursue an Open Skies agreement with the U.K., while this motion specifies an "acceptable" agreement.

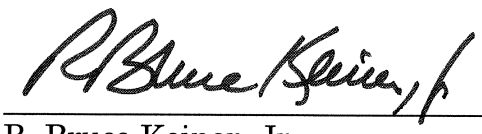
[4] "UAL Deal Could Spur Fare Reductions," Wall Street Journal, December 18, 2002 at D2.

codesharing. Serious doubts about the U.K.'s ability to enter into a new agreement with the U.S. which does not provide London Heathrow-U.S. rights for all carriers based in the European Union have been raised by a European Court of Justice decision, and sorting out the prospects for meaningful U.S.-U.K. Open Skies negotiations could take months if not years. In the rapidly changing aviation world of today, the record on which the Department's conditional approval was based is already stale. In another six months, even more dramatic changes in the aviation industry may well occur. Any further consideration of an antitrust-immunized alliance between United, bmi and their Star Alliance partners at London Heathrow must await a new application submitted when and if an Open Skies agreement meeting U.S. objectives at London Heathrow has been concluded and a new analysis of competition at London Heathrow has been completed.

For the foregoing reasons, Continental urges the Department to deny the Star Alliance carriers motion.

Respectfully submitted,

CROWELL & MORING LLP



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CERTIFICATE OF SERVICE

I certify that I have this date served the foregoing document on counsel for the Star Alliance carriers and all parties served with the Star Alliance carriers motion in this proceeding in accordance with the Department's Rules of Practice.

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