

Order 2002-11-19



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

Issued by the Department of Transportation
on the 27th day of November, 2002

Served: December 3, 2002

Complaint of

UNITED AIR LINES, INC.

against

**THE EUROPEAN COMMISSION
AND NATIONAL IMPLEMENTING
AUTHORITIES**

under 49 U.S.C. 841310

Docket OST-98-4030 - 53

ORDER DISMISSING COMPLAINT AND TERMINATING PROCEEDING

SUMMARY

By this order, we grant the motion of United Air Lines to dismiss its complaint against the European Commission (EC) and certain European national implementing authorities.

BACKGROUND

On July 8, 1998, United Air Lines, Inc., filed a complaint under 49 U.S.C. §41310 against the European Commission (the Commission) and certain European national implementing authorities (the Governments of Germany, Denmark, Norway, and Sweden) (the Commission and these governments are referred to collectively as the Respondents). United had argued that sanctions against the Respondents were necessary to redress actions proposed by the Commission against United's alliances with Deutsche Lufthansa AG (Lufthansa) and Scandinavian Airlines System (SAS) which would have precluded United and its alliance partners from exercising rights specifically provided for under the open-skies aviation agreements between the United States and the individual European countries involved. United had argued that such action was

essential to ensure the continued viability of the U.S. Government's open-skies policy in Europe.¹

By Order 98-7-16, the Department invited all interested parties to file answers to United's complaint in Docket OST-98-4030. Deutsche Lufthansa AG, Northwest Airlines, Delta Air Lines, Scandinavian Airlines System, American Airlines, the City and County of San Francisco, the City of Chicago and the Metropolitan Washington Airports Authority, and the Economic Strategy Institute filed answers. American and United filed replies. Northwest filed a rejoinder.²

By a series of actions the Department extended, to facilitate a negotiated resolution to the issues raised, the period for taking action on United's Complaint.; The latest extension runs through December 1, 2002.

UNITED'S MOTION TO DISMISS

On November 5, 2002, United filed a motion to dismiss its complaint. United states that on October 29, 2002, the EC announced its decision to close its investigation of the United/Lufthansa/SAS alliance. United further states that the EC's decision, which followed extensive negotiations between the EC and the carriers, substantially resolves the issues that gave rise to the complaint.

We received no answers to United's motion.

DECISION

We have decided to grant United's motion to dismiss its complaint. Taking into account the Department's objectives under the statute, we have determined that it is in the public interest to dismiss the complaint and terminate the captioned proceeding.

ACCORDINGLY,

1. We grant the request of United Air Lines, Inc. to dismiss its complaint in Docket OST-98-4030;
2. We terminate the proceeding in Docket OST-98-4030; and
3. We will serve this order on Air Transport International LLC; American Airlines, Inc.; Amerijet International, Inc.; Arrow Air, Inc.; Challenge Air Cargo, Inc.; Continental Airlines, Inc.; Delta Air Lines, Inc.; DHL Airways, Inc.; Economic Strategy Institute; Emery Worldwide

¹We summarized the complaint more fully in Order 98-7-16, July 27, 1998.

²Northwest's pleading was accompanied by a motion for leave to file an otherwise unauthorized document. We granted the motion by Order 98-10-7.

³See Orders 2002-5-26, 2002-2-19, 2001-11-19, 2001-8-24, 2001-5-35, 2001-3-3, 2000-12-4, 2000-9-1, 2000-7-22, 2000-4-24, 2000-1-22, and 99-10-22 and orders cited therein.

Airlines, Inc.; Evergreen International Airlines, Inc.; Federal Express Corporation; Northwest Airlines, Inc.; Polar Air Cargo, Inc.; United Air Lines, Inc.; United Parcel Service Co.; US Airways, Inc.; World Airways, Inc.; Lufthansa German Airlines; Condor Flugdienst; Scandinavian Airlines System; Scanair; Maersk Air; Blue Scandinavia AB; Premiair A/S; Nova Airlines, AB; Deutsche BA Luftfahrtgesellschaft mbH; Eurowings Luftverkehrs AB; Hapag-Lloyd Fluggesellschaft; Lufthansa Cargo, AG; Transwede Airways AB; LTU Lufttransport-Unternehmen GmbH; Britannia Airways; Sterling; Air Sweden; Finnair Oy; the Ambassadors of the Delegation of the Commission of the European Communities, the Federal Republic of Germany, Norway, Denmark, and Sweden in Washington, D.C.; the U.S. Department of State (Office of Aviation Negotiations); the Assistant U. S. Trade Representative (Office of the United States Trade Representative); the U.S. Department of Commerce (Office of Service Industries); the Air Transport Association; the National Air Carrier Association, Inc.; the City and County of San Francisco; and the City of Chicago and the Metropolitan Washington Airports Authority.

By:

READ C. VAN DE WATER
Assistant Secretary for Aviation
and International Affairs

(SEAL)

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