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DEPT. OF TRANSPORTATION
DOCKET SECTION

BEFORE THE
DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.

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Joint Application of)
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UNITED AIR LINES, INC.)
)
and)
)
AIR CANADA)
)
under 49 U.S.C. §§41308 and 41309 for)
approval of and antitrust immunity for)
an expanded alliance agreement)
_____)

Docket OST-96-1434 -18

JOINT MOTION OF UNITED AIR LINES, INC. AND AIR CANADA
FOR CONFIDENTIAL TREATMENT UNDER 14 CFR § 302.39

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DATED: July 8, 1997

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**JOINT MOTION OF UNITED AIR LINES, INC. AND AIR CANADA
FOR CONFIDENTIAL TREATMENT UNDER 14 CFR § 302.39**

By Order 97-6-30, the Department directed Air Canada and United Air Lines, Inc. ("United") to supply the Department with, among other things, documents which would bear on the role the Star Alliance might play in the United-Air Canada alliance. Pursuant to Ordering paragraph 5 (Order 97-6-30 at 33), United and Air Canada are submitting documents pertaining to the Star Alliance sought by the Department.

Certain of the documents responsive to DOT's information request contain proprietary information, and have not been publicly disclosed. These materials, which involve parties other than United and Air Canada, are highly commercially sensitive. The Department should accord those documents the same degree of confidentiality that it has accorded similar documents filed by other recent applicants for antitrust immunity. Accordingly, Air Canada and United move that these materials be withheld from

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public disclosure, pursuant to 14 CFR § 302.39 ("Rule 39") and 49 U.S.C. § 40115, and that access these materials be limited to counsel and outside experts for interested parties who have filed confidentiality affidavits in this docket.

In support of this Motion, Air Canada and United state as follows:

1. The documents for which confidential treatment is requested are listed below:

- (1) Memorandum of Intent Regarding Elements for a Multilateral Alliance, dated May 14, 1997.
- (2) The Star Alliance License Agreement, dated as of November 1, 1996.
- (3) Mutual Non-Disclosure and Confidentiality Agreement, dated as of October 1, 1996.
- (4) Supplement No. 1 to Alliance Agreement (June 1997 draft).
- (5) Star Alliance Customer Relations MCO Goodwill Compensation (draft).

2. Pursuant to 49 U.S.C. § 40115(a)(2)(B), the Secretary of Transportation may order that information filed with the Department be withheld from public disclosure if such disclosure would have an adverse effect on the competitive position of an air carrier in foreign air transportation. Rule 39, which implements Section 40115, requires that any motion to withhold

information from public disclosure include: (i) a description of the information sought to be withheld, sufficient for identification of the same; (ii) a statement explaining how and why the information falls within the exemptions from the Freedom of Information Act (5 U.S.C. § 552b(c)(1-9)); and (iii) a statement explaining how and why public disclosure of the information would adversely affect the interests of the objecting persons and is not required in the public interest.

3. The information sought to be withheld from public disclosure consists of the materials submitted herewith, in five copies, as indicated in paragraph 1, supra.

4. These materials fall within Exemptions 3 and 4 of the Freedom of Information Act, 5 U.S.C. §§552b(c)(3), (c)(4).

(a) Exemption 3 protects from disclosure information specifically protected by another federal statute, including 49 U.S.C. § 40115. See British Airports Authority v. CAB, 531 F. Sup. 408, 414 (D.D.C. 1982). As noted above, Section 40115 allows for withholding of information that would adversely affect an air carrier's competitive position if released. The materials at issue here clearly satisfy this standard. They contain extremely sensitive information, including the global strategic plans of the members of the Star Alliance. None of these materials have been publicly released. This information could be

used to the strategic advantage of competitors of the Star Alliance, and to the Star Alliance's disadvantage.

(b) Exemption 4 protects from disclosure information that is "(1) commercial or financial, (2) obtained from a person outside the government, and (3) privileged or confidential." Gulf & Western Industries Inc. v. United States, 615 F.2d 527, 529 (D.C. Cir. 1979) (citations omitted). All the materials at issue here satisfy this standard. All are commercial or financial in nature, have been obtained from a person outside the U.S. government, and are privileged and confidential. Disclosure of these materials would "cause substantial harm to the competitive position of" Air Canada and United and would "impair the Government's ability to obtain necessary information in the future." Washington Post Co. v. HHS, 690 F.2d 252, 268 (D.C. Cir. 1982) (defining the standard for determining whether a document is privileged and confidential). Moreover, the documents included in this submission involve other members of the Star Alliance which are not party to this proceeding. Air Canada and United are bound by the confidentiality restrictions contained in the agreements with those third parties and are prohibited from filing certain of these documents in a public fashion.

5. Access to the materials should be limited to counsel and outside experts of interested parties who have submitted

affidavits stating that the information will be used only for the purposes of this proceeding and will not be disclosed to anyone other than counsel or outside experts who have filed a similar affidavit. The Department has recently accorded such protection to documents and data filed in response to identical information requests by the other carriers in similar proceedings. See Order 95-11-5 (application of Delta Air Lines et al. for antitrust immunity); Order 96-5-27, at 2-3, (application of United and Deutsche Lufthansa for antitrust immunity); Order 96-1-6, at 3 (application of American Airlines and Canadian International for antitrust immunity). In fact, in this proceeding, the Department has already established such a procedure for previously-filed confidential documents. See, Order 96-7-16. In order to expedite access to this new confidential material, any party already having submitted confidentiality affidavits in this proceeding should be permitted to rely on those previously-filed affidavits. Moreover, to facilitate such access, the parties will make materials available for review during normal business hours at the offices of United's counsel, which is located at 1250 Connecticut Avenue, N.W., Suite 700, in Washington, D.C. As in the Delta, United, and American applications cited above, as well as in the earlier stages of this proceeding itself, these heightened confidentiality measures are warranted by the highly commercially sensitive nature of the materials.

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WHEREFORE, Air Canada and United hereby move that the Department withhold the confidential information filed concurrently herewith under seal from public disclosure as requested above, pursuant to 14 CFR § 302.39 and 49 U.S.C. § 40115.

Respectfully submitted,

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DATED: July 8, 1997

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Joint Motion of United Air Lines, Inc. and Air Canada for Confidential Treatment under 14 CFR § 302.39 on all persons named on the Service List attached to the Joint Response of United Air Lines, Inc. and Air Canada by causing a copy to be sent via first-class mail, postage prepaid.


Brenda Gardner

DATED: July 8, 1997

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