

BEFORE THE
DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.

DEPARTMENT OF TRANSPORTATION
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DOCKET SECTION

Joint Application of

AMERICAN AIRLINES, INC. and :
LINEA AERA NACIONAL CHILE, S.A. (LAN CHILE) : Docket OST-97-3285 -19
: :
under 49 U.S.C. Sections 41308 and 41309 for approval :
of antitrust immunity for alliance agreement :

Application of

LINEA AERA NACIONAL CHILE, S.A. (LAN CHILE) : Docket OST-97-2982 -16
: :
for an exemption under 49 U.S.C. Section 40109 :

Joint Application of

AMERICAN AIRLINES, INC. and :
LINEA AERA NACIONAL CHILE, S.A. (LAN CHILE) : Undocketed
: :
for a statement of authorization under 14 C.F.R. :
Parts 207 and 212 (reciprocal code-share services) :

CONSOLIDATED ANSWER OF
CONTINENTAL AIRLINES, INC.

Communications with respect to this document should be sent to:

Rebecca G. Cox
Vice President, Government Affairs
CONTINENTAL AIRLINES, INC.
1350 I Street, N.W.
Washington, DC 20005

R. Bruce Keiner, Jr.
Lorraine B. Halloway
CROWELL & MORING LLP
1001 Pennsylvania Avenue, N.W.
Washington, DC 20004-2595
(202) 624-2500

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Counsel for
Continental Airlines, Inc.

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CONSOLIDATED ANSWER OF
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The Department's statutory mandate to "disapprove" an agreement that
"substantially reduces or eliminates competition" and is not "necessary to meet a
serious transportation need or to achieve important public benefits" and the

¹ 49 U.S.C. 41309(b)(1)(A), (B).

March 13, 1998

public interest' compel the Department to disapprove the preemptive, anticompetitive alliance between American³ and Lan Chile by denying their requests for code-share authority and antitrust immunity. The Joint Applicants claim their agreement will "enhance competition," but the truth is it will damage competition irrevocably, allowing American to control 84% of the nonstop U.S.-Chile flights and to foreclose permanently effective global network competition for Chile passengers.

Failure to deny swiftly antitrust immunity for the alliance between American and its chief competitor on U.S.-Chile routes would confirm to the few remaining unaligned Latin American airlines that they must join the expanding American empire or be crushed by it, teach foreign countries that the U.S. will pay for nominal open skies with approval of, and antitrust immunity for, anticompetitive alliances that perpetuate the restrictive status quo and advise U.S. airlines attempting to compete with the American juggernaut in Latin America that the Department will allow American and its allies to drive them out of the market.

² The Department can grant code-share applications only if it finds they are in the public interest. See 14 C.F.R. § 207.10(g).

³ Common names of carriers are used.

Continental states as follows in support of its position:

I. AN AMERICAN/LAN CHILE ALLIANCE RAISES THE SAME THREATS TO COMPETITION RAISED BY AMERICAN'S ALLIANCE WITH THE TACA GROUP CARRIERS

The Department of Justice ("DOJ") has warned that "code-share agreements between largely horizontal networks" have a "high" risk to competition and a "low" potential to foster pro-competitive benefits and promote the public interest.⁴ The American/Lan Chile alliance is a classic example of a code-share arrangement that threatens competition and has few, if any, public benefits.

American today operates 75% of the U.S. carrier nonstop flights between the U.S. and Chile.⁵ American's chief competitor on U.S.-Chile routes is Lan Chile. Together American and Lan Chile operate 84% of the nonstop U.S.-Chile flights and more than twice as many flights than United (the third largest competitor) does on the important Miami-Santiago route. (March 1998 OAG) Since American and Lan Chile have overlapping networks, approval of the code share would allow American to put its code on almost all services between the U.S. and Chile, and Lan Chile to do so also, without any resulting network expansion for passengers and shippers.

This case raises the same dangers to competition raised by the "almost exclusively horizontal American/TACA agreement." (DOJ Comments at 10) Here,

⁴ January 18, 1998 Comments of the U.S. Department of Justice in Docket OST-96-1700 at 5 ("DOJ Comments").

⁵ March 1998 OAG.

as in the American/TACA Group case, the Joint Applicants “operate overlapping nonstop flights between Miami, the principal Latin American hub in the United States,” and Chile. (DOJ Comments at 7-8) Miami-Santiago flights account for 84% of the total U.S.-Chile flights and carry over 80% of the total U.S.-Chile traffic. At Miami, American and Lan Chile offer 72% of the Chile seats.⁶ American also carries over 59% of the domestic traffic at its Miami fortress hub.’

The U.S.-Chile aviation environment was open until American forced its closure by overscheduling Miami-Santiago flights. Since then, American has enjoyed its U.S.-Chile dominance for many years under a highly restrictive bilateral agreement that has prevented Continental and other U.S. airlines from commencing U.S.-Chile service. Now that Continental has at last gained seven U.S.-Chile frequencies and is about to commence Newark-Santiago service, American is seeking to perpetuate its U.S.-Chile stranglehold by controlling the operations of its chief rival, thereby entrenching American’s dominance and precluding other U.S. carriers from developing their own competing U.S.-Latin America networks through a combination with Lan Chile.

⁶ March 1998 OAG.

⁷ Commuters, many of which are affiliated with American, carry another 9.6%, and the next largest domestic market share in Miami is seven percent. See “U.S. Carrier Systemwide Market Share at Leading U.S. Airports,” Aviation Daily, November 7, 1997 at 237.

Combined American/Lan Chile U.S.-Chile operations would boost American's control of all nonstop U.S.-Chile flights to 84% and its control of nonstop Chile flights via the key Miami gateway to 81%.⁸ The Joint Applicants tout open skies, but Chile has said it will not implement open skies unless and until American and Lan Chile receive antitrust immunity.

If open skies is implemented, allowing already-dominant American to join forces with its chief competitor between the U.S. and Chile would give American so much control of U.S.-Chile routes that no other carrier would be able to catch up. Miami is the predominant gateway to Chile, just as it is the key U.S. gateway for the rest of Latin America. Over half of the total U.S.-Chile O&D passenger traffic moves between Miami and Santiago and 81% of the total U.S.-Chile passenger traffic flows over Miami." The combined strength of American and Lan Chile, particularly in light of their dominance of Miami-Santiago routes, coupled with the pre-emptive agreements American has struck with other carriers throughout South America, would substitute commercial barriers for the existing bilateral barriers to entry, and no U.S. or foreign carrier would be able to mount an effective competitive assault on the American/Lan Chile dominance over U.S.-

⁷ When Continental commences Newark-Santiago service, it will offer 20% of the nonstop U.S.-flag, U.S.-Chile flights, United will offer 20% of the nonstop U.S.-flag, U.S.-Chile flights and American will offer 60% of the nonstop U.S.-flag, U.S.-Chile flights.

⁹ Exhibit UA-R-10 in Docket OST-97-2586 and INS Statistics for year ended April 30, 1997.

Chile routes. Indeed, American's proposed alliance with Lan Chile and its ownership interest in Aerolineas Argentinas would lock up the Southern Cone.

Even without antitrust immunity, a code-share agreement between the dominant U.S. carrier (American) and the dominant Chilean carrier (Lan Chile) would create the same formidable barrier to competition that is today enforced through the highly restrictive U.S.-Chile bilateral agreement. With well over 80% of the U.S.-Chile flights between them, American and Lan Chile would exclude competitors by cooperating with one another at American's Miami fortress hub and elsewhere without providing new service options. This will allow American and its Latin American partners, including Lan Chile, to dominate other U.S.-South America markets.

The Joint Applicants claim they will bring "new" routings to "some 4,000 potential city-pairs (Joint Application in Docket OST-97-3285 at 4), but this is a distortion created by the size of American's existing network. As DOJ explained in the *American/TACA* case:

with largely horizontal airline route combinations, the code-share partners' combined route network is not significantly larger than either of the existing networks. Consequently, they can jointly provide new on-line services to few city-pair markets currently served only by interline services, and they add significant competitive vigor to few city-pair markets.

(DOJ Comments at 6) American already has a U.S.-Chile route structure in place which allows it to connect its global route network with Santiago, the only economically significant traffic point in Chile, through American's hubs at

Dallas/Ft. Worth and Miami. American proposes to display its codes on Lan Chile's Los Angeles-Santiago and New York-Santiago flights, but Lan Chile's flights in these markets are one-stop flights over Miami, Mexico City or Lima, and American can already offer one-stop service to Santiago for its Los Angeles and New York customers on its existing Miami or Dallas/Ft. Worth flights." While an alliance with Lan Chile would provide American access to Chilean cities beyond Santiago, few passengers travel on those beyond-Santiago segments and on-line service is available today between the U.S. and points throughout Chile. Like the American/TACA Group alliance, the American/Lan Chile arrangement simply "does not offer significant pro-competitive efficiencies." (DOJ Comments at 11)"

The real victims of an American and Lan Chile union are travellers and shippers on U.S.-Chile routes because:

- Consumers would have fewer service options since Lan Chile has elected to exercise its bilateral authority on some routes under the proposed code-share with American rather than operating its own new flights" and both carriers may eliminate service in favor of code-sharing on their partners' flights.

¹⁰ See March 1998 OAG.

¹¹ The authority cited by the Joint Applicants is clearly inapposite. For example, the broad code-sharing proposed by the Joint Applicants far exceeds the limited within-Chile code-sharing between National Airlines of Chile and United which was approved by the Department in Order 96-6-27. Since United operates only 25% of the U.S.-flag nonstop U.S.-Chile frequencies and National does not even operate between the U.S. and Chile, that alliance raised no significant competitive issues. Similarly, the Delta/Transbrasil and United/Varig code-shares cited by the Joint Applicants do not involve code-sharing between the top two carriers on U.S.-Brazil routes or act to preempt competition between networks.

¹² See Lan Chile Application in Docket OST-9'7-2982 at 4.

- Further strengthening of American, the already dominant U.S. carrier serving Chile and Latin America, would make it even harder for Continental and other U.S. carriers to compete with American in the restricted U.S.-Chile market and throughout Latin America;
- In the absence of effective competition for American and its allied foreign partners, consumers would pay higher fares and cargo rates on U.S.-Chile and other U.S.-Latin American routes;
- An American/Lan Chile alliance would enhance American's control of U.S.-Latin America traffic via Miami and expand its dominance at the important Miami gateway.

By any standard, the American/Lan Chile alliance is contrary to the public interest, even without a request for antitrust immunity or considering American's other Latin American alliances, and the Joint Applicants' requests for code-share authority should be denied

II. CONSIDERED IN COMBINATION WITH AMERICANS OTHER LATIN AMERICA ALLIANCES, THE ANTICOMPETITIVE EFFECTS OF AN AMERICAN/LAN CHILE ALLIANCE AND DE FACTO MERGER ARE DISASTROUS

The true value of the American/Lan Chile alliance to American is that it prevents American's global competitors from forming efficient networks to compete with American. Since the American/Lan Chile code-share agreement is exclusive with respect to the city-pairs covered by the agreement (see Sections 2.1 and 24 and Annex B of the Code Share Agreement), approval of the alliance would preempt any other U.S. carrier from code sharing with Lan Chile between Los

Angeles, Miami, New York (JFK) and Santiago, on behind-U.S. gateway segments and on behind-Santiago segments.

As The Wall Street Journal recently reported:

No U.S. carrier dominates any region the way American blankets Latin America. American earns 90% of all operating profits of U.S. carriers in the region, and its revenue there is three times as big as that of its nearest rival, United Airlines. In Miami, the main gateway to Latin America, American is bigger than all foreign-flag carriers combined. And it is trying to expand its dominance by wooing major Latin American carriers into alliances.

(“Yankee Aggressor: How American Airlines Is Building Dominance in the Latin Market,” The Wall Street Journal, January 9, 1998 at A1, emphasis added) (“WSJ” hereafter)

U.S.-Latin America traffic has been growing faster than traffic in any other region. No global network can effectively compete without offering significant service to key Latin American destinations. The creation of competing networks through alliances is an efficient and effective means of providing that competitive service. With a divide-and-conquer strategy, American has cleverly sought separate authority for its own pre-emption of network competition by proposing overlapping alliances with virtually every dominant national airline in Latin America. American’s network is intended to, and has, pre-empted potential alliances which could compete with American’s dominant position. The Department has recognized that American’s overlapping alliances with Latin American partners raise “serious competitive questions” even when they do not

involve antitrust immunity. (Order 97-1-15 at 6) The Department also acknowledged that evidence in the American/TACA record shows “that American’s only purpose in forming [that] alliance is to prevent other U.S. airlines from obtaining an alliance with the TACA Group.” (Order 97-12-35 at 29)

American’s plot has worked: The Department’s failure to deny American’s pending code-share requests has encouraged American to continue seeking additional Latin America partners, persuaded those potential partners they have no viable alternative¹³ and prevented American’s U.S. competitors from securing similar code-share alliances which could compete with American’s proposed Latin America alliance.” If the Department does not begin prohibiting American’s overlapping alliances, the Department will perpetuate American’s Latin American dominance and create even more distressing levels of concentration throughout Latin America. When the Department tentatively approved the American/TACA Group alliance, the Department promised to “consider the impact of the American/TACA Group alliance in our review of American’s other applications.” (Order 97-12-35 at 31) The cumulative anticompetitive effects of American’s proposed (and approved) Latin American alliances is staggering.

In Latin America, American has announced plans to align itself at Miami with 13 airlines besides Lan Chile: Aero California (Mexico), Aerolineas

¹³ See WSJ at 1.

¹⁴ While Delta has an alliance with AeroPeru, American already has everything it needs in Peru without a Peruvian partner, including Lima-Cuzco cabotage rights.

Argentinas and Austral (Argentina), Avianca (Colombia), Aviateca (Guatemala), COPA (Panama), Iberia (Spain),” LACSA (Costa Rica), NICA (Nicaragua), TACA (El Salvador), TACA de Honduras (Honduras), TAM (Brazil), and TAM Mercosur (Paraguay). Two of these alliances (TAM and TAM Mercosur) have already been approved,¹⁶ and the Department has also tentatively approved the American/TACA Group alliance with all foreign carriers operating between the U.S. and Central America despite the obvious anticompetitive and pre-emptive effects of that overlapping alliance.¹⁷ The Department has also approved U.S.-Canada-Central America code sharing by American and Canadian International, allowing American to capture all Canada-Central America traffic, since Canada’s single designation policy prevents other carriers from offering viable competitive service on Canada-U.S.-Latin America routes. Canadian and Lan Chile recently signed “a commercial agreement that further closes the circle on global alliances” among

¹⁵ Significantly, Iberia, after signing its agreement with American, announced that it will be focusing on nonstop service between Spain and Latin America rather than one-stop service via Miami, apparently leaving American and the TACA Group alone with almost 100% of most Miami-Central America markets. (See World Airline News, February 13, 1998 at 2)

¹⁶ Order 97-9-29 and 97-11-19.

¹⁷ Order 97-12-35.

strong American partners, (World Airline News at 6, January 30, 1998), and are seeking authority to code-share on Canada-U.S.-Chile routes.*

American and its Latin American partners control 63% of the nonstop seats between both the U.S. and Central and South America. American's proposed alliance and de facto merger with Lan Chile would give American control of over 72% of all Miami-Chile seats and 77% of all U.S.-Chile seats, but that is not the whole picture. American's investment in and alliance with Aerolineas Argentinas would give American control of over 72% of all Miami-Argentina seats and 70% of all U.S.-Argentina seats; American's proposed alliance with Avianca would give American control of 80% of all Miami-Colombia seats and 73% of all U.S.-Colombia seats. American, Aerolineas Argentinas and Avianca control 78% of the U.S.-Colombia nonstop seats, and American, Aerolineas Argentinas and Lan Chile control almost 46% of the U.S.-Peru nonstop seats, American is the sole U.S.-flag carrier serving Paraguay, and additional Paraguay service is offered by American's partners Lan Chile, Aerolineas Argentinas, and TAM Mercosur. Significantly, virtually all of the service offered between major points in South America (e.g., Lima, Bogota, Buenos Aires, Sao Paulo, Santiago and Rio de Janeiro) and points in Central America (e.g., San Salvador, San Jose, Panama City) is offered by American and its Latin America partners. American and its alliance partners

¹⁸ See Applications for Statements of Authorization of Canadian International and Lan Chile, filed February 3, 1998. American's partners are already combining to secure leverage in commercial transactions. Lan Chile, the TACA Group and TAM placed a joint umbrella order for aircraft with Airbus. ("Airbus Nears \$4 Billion Order from Airlines," Wall Street Journal at A4, February 13, 1998.

similarly offer almost all the service between major points within South America. Just last week, Lan Chile increased its weekly Lima-Santiago service from seven to 21 frequencies.”

The Department’s refusal to consider these cumulative effects has permitted American to replace its long-held dominance throughout Latin America based on restrictive bilateral agreements with commercial dominance gained through alliances with its major foreign competitors in the region. Approving American’s proposed code-shares will mean that only American will have an effective network within South America and Central America and globally. Those networks are important to business travelers and multi-destination leisure travelers because they provide comprehensive connections and more frequencies. Only American will also have a strong Miami link, which is also critical to business travelers and travelers visiting friends and relatives. Time is running out for the Department to preserve genuine possibilities for truly effective competition on U.S. Latin American routes and among global networks. Unless the Department denies American’s clearly anticompetitive request to lock up Lan Chile, American will continue its campaign to capture foreign competitors and prevent both new entry on U.S.-Latin America routes and network competition. The mere existence of those alliances, even without code-share authority or antitrust immunity, has pre-empted potential alliances which could compete with American’s already dominant U.S.-Latin America network. If the American/Lan Chile and other American

¹⁹ Aviation Daily at 381 (March 6, 1998)

alliances receive the code-share approvals and immunity sought from the Department, they would produce overwhelming levels of concentration throughout Latin America.

The Department has a statutory mandate to “avoid . unreasonable industry concentration, excessive market domination, monopoly powers, and other conditions that would tend to allow at least one carrier or foreign air carrier unreasonably to increase prices, reduce services or exclude competition.”

(49 U.S.C. § 40101 (a)(l)) The Department should act now to exercise its statutory mandate and deny approval for the anticompetitive American/Lan Chile alliance. Failure to do so would violate the Department’s mandate and further encourage American’s anticompetitive march toward total domination of U.S.-Latin America routes.

III. THE JOINT APPLICANTS’ REQUEST FOR ANTITRUST IMMUNITY SHOULD BE DENIED AND THE ALLIANCE DISAPPROVED

The Department has discretion to grant antitrust immunity when an exemption from the antitrust laws is required “in the public interest.” (49 U.S.C. § 41308) At the same time, the Department is prohibited from approving “an inter-carrier agreement that substantially reduces or eliminates competition unless the agreement is necessary to meet a serious transportation need or to achieve important public benefits that cannot be met or that cannot be achieved by reasonably available alternative that are materially less anticompetitive.”

(Order 96-5-26 at 17 (emphasis in original), citing 49 U.S.C. §§ 41309(b)(l)(A) and

(B)) Because the American/Lan Chile alliance is almost entirely horizontal and involves the dominant U.S. carrier on most U.S.-Latin America routes and at the key Latin America gateway (Miami), the American/Lan Chile alliance is far different than previously-immunized end-to-end alliances and it must be disapproved.

A. An American/Lan Chile Agreement Would Substantially Reduce Competition On U.S.-Chile Routes Even Under Open Skies

American and Lan Chile invoke the U.S.-Chile open skies agreement, initialed October 28, 1997, recognizing that without such an agreement their application for antitrust immunity is premature.²⁰ American and Lan Chile even threaten that “failure to approve the alliance would seriously undermine any prospect for an effective U.S.-Chile open skies agreement.” (Joint Application in Docket OST-97-3285 at 6) The Joint Applicants ask the Department to forget, however, that open skies does not negate the Department’s normal standards for approving code-share agreements and granting antitrust immunity. On the contrary, the Department has said that “an open-skies arrangement alone is in no way dispositive of an affirmative finding on the competitive issues involved in a particular case.” (Order 96-6-33 at 15 n.39) Rather, the Department must “evaluate and decide applications for antitrust immunity on their merits based on the evidentiary record, the particular markets at issue, and our assessment of the competitive consequences.” (Id.)

²⁰ See Joint Application in Docket OST-97-3285 at 2.

American is the dominant U.S.-flag carrier in the entire U.S.-Latin America region, and it is also the only U.S.-flag carrier with a well-developed U.S.-Chile route system. The Joint Applicants claim that a U.S.-Chile open skies agreement would “dramatically improve the competitive situation between the U.S. and Chile” (Joint Application in Docket OST-97-3285 at 30), but their claims about increased competition beyond Continental’s seven new Newark-Santiago frequencies are entirely speculative.

Even if Delta and United were to start the one-stop service they proposed in the U.S.-Chile case, there would be no public benefit from their circuitous one-stop services. Adding one-stop Delta and United service on top of American/Lan Chile service would divert traffic from Continental’s nonstop New York/Newark start-up service without providing any measurable service enhancement. The net result would be a single strong competitor (American/Lan Chile) and a marginally competitive Continental.²¹ Approving the American/Lan Chile de facto merger would so handicap Continental, United and new entrants that it would nullify any competitive benefit for U.S. passengers and American’s U.S. competitors from de jure open skies between the U.S. and Chile.

While American is the leading U.S. carrier on U.S.-Chile routes, its ability to increase frequencies has been constrained in recent years by the restrictive U.S.-Chile bilateral agreement. Under open skies, American will be able to offer an unlimited number of new frequencies on U.S.-Chile routes. Giving American

²¹ See Exhibit CO-R-1127 in Docket OST-97-2586.

unlimited frequencies and the ability to merge with the second largest carrier on U.S.-Chile routes would make it impossible for Continental and other new entrants to compete effectively on U.S.-Chile routes. Because the Joint Applicants propose to code-share at the key Miami gateway (among other U.S. gateways) and their agreement prohibits Lan Chile from code sharing with other U.S. carriers on covered routes, no other U.S. carrier could benefit from Lan Chile's traffic going beyond Miami. With over 80% of the seats and frequencies between them, American and Lan Chile would exclude competitors by cooperating only with one another. Even with an open skies agreement, the two carriers, with the benefit of antitrust immunity, would enter into a de facto merger and achieve a combined market share that would never be permitted within the United States. Given Lan Chile's dominance in Chile, American's dominance of the Miami hub and pre-emptive agreements American has struck with carriers throughout Latin America, no U.S. or foreign carrier would be able to mount an effective competitive assault on the American/Lan Chile duopoly. With the ability to offer business travelers far more frequencies than other carriers between the U.S. and Chile, comprehensive connections at both ends of the Miami-Santiago and Dallas/Ft. Worth-Santiago routes, connections at JFK and between points in South America, higher display priorities and multiple displays of both operated and code-share flights in CRS systems, market power over travel agents and expanded feed for each of the partners' flights, a de facto merger would give an American/Lan Chile

combination a license to exploit U.S.-Chile passengers and shippers without fear of competitive entry.

B. The Clayton Act Test Shows How Anticompetitive
The American/Lan Chile Alliance Would Be

Application of the traditional Clayton Act test proves beyond doubt that the American/Lan Chile merger will substantially reduce competition that now exists on U.S.-Chile routes and foreclose meaningful competition even under open skies.²² The Hirshman-Herfindahl Index ("HHI") used by DOJ and Federal Trade Commission ("FTC") in the analysis of mergers between horizontal competitors underscores the adverse effect that approval of the American/Lan Chile combination would have on future competition in the already concentrated U.S. Latin American market.

An HHI value of 1,800-10,000 indicates a highly concentrated market, and highly concentrated markets are more sensitive to the HHI increases that result. Thus, a post-merger HHI value of more than 1,800 with an increase in HHI of over 100 is "presumed likely to create or enhance market power of facilitate its exercise," (U.S. DOJ and FTC Horizontal Merger Guidelines § 1.5, 57 Fed. Reg. 14522 (1992)) American's current dominance of South America shows levels of concentration similar to the current levels in the hitherto limited Japanese

²² When considering requests for antitrust immunity, the Department applies the Clayton Act test used to determine whether mergers will substantially reduce competition in any relevant market. See, e.g., Order 96-5-26 at 18.

market, while Central America, with an HHI of 2,226 is even more concentrated.²³ American's potential network with Lan Chile would boost the HHI for Chile from 3,660 to a distressing 6,444 -- an increase of a staggering 2,784 -- which should be "presumed likely to create or enhance market power or facilitate its exercise." On the key Miami-Santiago route, the increase in HHI is also pronounced. American's merger with Lan Chile would push the Miami-Santiago HHI from 2,569 to 5,979, and increase of 3,410.

The Joint Applicants' claim that U.S.-Latin America routes are "highly competitive" does not withstand scrutiny. Despite new entry from Continental and others, American maintains its virtual lock on U.S.-Latin American routes and it owns the all-important Miami gateway, where it has blocked alliances which would give other U.S. carriers effective Miami access. While American tries to minimize Lan Chile's strength, Lan Chile is American's chief competitor on Miami-Santiago and U.S.-Chile routes,

American says there is only one U.S.-Chile nonstop overlap route, but that one route is the key Miami-Santiago route. At Miami, American has twice as many nonstop Chile frequencies as United, its only U.S. competitor. Lan Chile operates more Miami-Santiago frequencies than American does. The Joint Applicants also overlap on 11 of Lan Chile's 25 largest routes in terms of O&D

²³ The HHI used in this discussion was calculated based on seat share out of the U.S. because DOT-released market-share figures were unavailable.

traffic, including four other Miami-Latin America routes (Miami-Bogota, Miami-Caracas, Miami-Buenos Aires, Miami-Montevideo). (See Exhibits JA-4 and -8) Whether measured by the Department's "public interest" test (see Part I above) or Clayton Act analysis, the American/Lan Chile alliance is anticompetitive and should be disapproved.

C. The American/Lan Chile Alliance Stands In Stark Contrast To The Previously Immunized Alliances

American and Lan Chile argue that the Department's five previous immunity cases (United/Lufthansa/SAS, Delta/Swissair/Sabena/Austrian, Northwest/KLM, American/Canadian, and United/Air Canada) "require" the Department to immunize the American/Lan Chile alliance. (Joint Application in Docket OST-97-3285 at 23) This argument is preposterous.

Like the American/TACA Group alliance, the "almost exclusively horizontal" American/Lan Chile alliance

stands in stark contrast to the largely end-to-end agreements that the Department has approved in the past. Most significantly, the Delta/Swissair/Sabena/Austrian Airlines, United/Lufthansa, American/Canadian and United/Air Canada alliances involved fewer problematic overlapping city pairs, and significantly greater opportunities for the code-share partners to extend the reach of their networks beyond foreign gateways.

(DOJ Comments at 10-11) As a result, American/Lan Chile raises the same risk of harm to overlapping city-pair markets identified by the Department and DOJ in the American/TACA Group case. The overlapping American/Lan Chile alliance

bears no resemblance to the pro-competitive, end-to-end Northwest/KLM alliance or to the United/Lufthansa&AS and Delta/Swissair/Sabena/Austrian alliances upon which the Joint Applicants rely. Neither Northwest, Delta nor United dominated U.S.-Europe routes the way American dominates U.S.-Latin America routes. Nor did they monopolize a key U.S. gateway for European service the way American monopolizes Miami.²⁴

As the Department recognized when it immunized the United/Lufthansa alliance, “the U.S.-Europe marketplace is highly competitive, both as to nonstop and connecting service options.” (Order 96-5-12 at 21) At that time, United’s U.S.-Europe scheduled passenger share was 8% and Luthansa’s was 5% percent; the Northwest/KLM combined U.S.-Europe passenger share was 8.8%, the Delta/Austrian/Sabena/Swissair alliance had a 15.6%, and the largest passenger share was held by a non-immunized alliance (British Airways/USAir, at 16.8%). (Id.) American operates 61% of the scheduled U.S.-flag nonstop U.S.-South America service,²⁵ holds more authority than any of its U.S.-flag competitors in virtually every limited entry market in Latin America and is “the only U.S. airline with a hub at Miami, the dominant gateway for U.S. Central America” and South

²⁴ United/Air Canada had a combined 31.7% scheduled passenger share and American/Canadian International a combined 23.1% share on U.S.-Canada routes in 1997 when the United/Air Canada alliance received antitrust immunity. Order 97-6-30 at 22.

²⁵ INS Data year ending 12/96.

America services. (Order 97-1-15 at 9) No U.S. carrier besides American has a comprehensive U.S.-Central America-South America network, and no U.S. carrier has an existing alliance with a Latin America carrier which can compete effectively on U.S.-Latin America routes with American's mushrooming Latin American alliances.

In this case, unlike the previous antitrust immunity cases, the obvious anticompetitive nature of the American/Lan Chile agreement and the "threats to competition that [would] inevitably persist despite best efforts to eliminate them through conditions" (DOJ Comments at 11-12) foreclose even immunity with "carve-out" provisions.

D. The American/Lan Chile Alliance Is Not Necessary
To Meet A Serious Transportation Need Or To Achieve
Important Public Benefits

As shown above (see Parts I and III A & B), the American/Lan Chile alliance is contrary to the public interest and would produce few, if any, public benefits. The Joint Applicants cite enhanced on-line service and expanded behind-gateway service as primary benefits, but American today can serve all of the behind U.S.-gateway points on its route system, and the behind-Santiago points covered produce little traffic. Allowing the two dominant U.S.-Chile carriers to "develop uniform and coordinated control of seat inventory" will create more competitive harm than public benefit because it will permit the Joint Applicants to manipulate their capacity against new entrants and consumers. The Joint

Applicants state unequivocally that they will not implement their alliance agreement without antitrust immunity, but their code-share and alliance agreements do not require termination without antitrust immunity. American does not need an agreement with Lan Chile to expand globally or on U.S.-Latin America routes, and under an open skies regime Lan Chile will be free to form an alliance with Continental, United, Delta or another U.S. carrier to gain increased U.S. access. Unlike an American/Lan Chile alliance, a Lan Chile alliance with Continental (or another carrier) would expand options for passengers and shippers by providing multiple competing service options and alternatives to the existing American network.

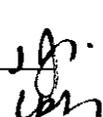
CONCLUSION

If the Department wants to preserve opportunities for competition on U.S.-Latin America routes, it must deny immediately American's anticompetitive request to code-share and merge with its chief U.S.-Chile competitor, Lan Chile. Failure to do so would defy the Department's statutory mandate, ignore DOJ's clear warning about the threats to competition raised by alliances between

competitors on overlapping routes and stampede the few unaligned Latin American carriers into the American stable.

Respectfully submitted,

CROWELL & MORING LLP

By: R. Bruce Keiner, Jr.
R. Bruce Keiner, Jr. 

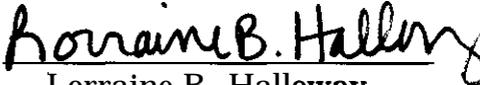
Lorraine B. Hallway
Lorraine B. Hallway 

Counsel for
Continental Airlines, Inc.

March 13, 1998

CERTIFICATE OF SERVICE

I certify that I have this dated served the foregoing Consolidated Answer on counsel for American and Lan Chile and all parties served with their applications in accordance with the Department's Rules of Practice.


Lorraine B. Hallway

March 13, 1998

1478472

SERVICE LIST

Peter Reaveley
Dade County Aviation Department
Miami International Airport
P.O. Box 592075
Miami, FL 33159

Director of Aviation
Port Authority of New York
and New Jersey
One World Trade Center
65N
New York, NY 10048

Joel S. Spiro
Deputy Assistant Secretary
Department of State
2201 C Street, N.W.
Room 5820
Washington, D.C. 20520

Roger F. Fones
Chief, Transportation, Energy &
Agriculture Section
Antitrust Division
Department of Justice
325 7th Street, N.W.
Room 500
Washington, D.C. 20530

Marshall S. Sinick
Squire, Sanders & Dempsey
1201 Pennsylvania Avenue, N.W.
Suite 400
Washington, D.C. 20004
(for Alaska)

Carl B. Nelson, Jr.
American Airlines, Inc.
1101 17th Street, N.W.
Suite 600
Washington, D.C. 20036

John L. Richardson
Seeger, Potter, Richardson, Luxton.
Joselow & Brooks
2121 K Street, N.W.
Suite 700
Washington, D.C. 20037
(for Amerijet)

Allan W. Markham
Arrow Air, Inc.
2733 36th Street, N.W.
Washington, D.C. 20007-1422

Aaron A. Goerlich
Boros & Garofalo, P.C.
1201 Connecticut Avenue, N.W.
Suite 700
Washington, D.C. 20036
(for Carnival)

William H. Callaway, Jr.
Zuckert, Scoutt & Rasenberger, LLP
888 17th Street, N.W.
Washington, D.C. 20006
(for Challenge)

Robert E. Cohn
Shaw, Pittman, Potts & Trowbridge
2300 N Street, N.W.
Washington, D.C. 20037
(for Delta)

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Page 2

D. Scott Yohe
Senior Vice President -
Government Affairs
Delta Air Lines, Inc.
1275 K Street, N.W.
Washington, D.C. 20006

R. Tenney Johnson
2300 N Street, N.W.
Suite 600
Washington, D.C. 20037
(for DHL)

Glenn Albus
Legal Department
Evergreen International
Aviation, Inc.
3850 Three Mile Lane
McMinnville, OR 97128

Richard P. Taylor
Steptoe & Johnson LLP
1330 Connecticut Avenue, N.W.
Washington, D.C. 20036
(for Evergreen)

Nathaniel P. Breed, Jr.
Shaw, Pittman, Potts & Trowbridge
2300 N Street, N.W.
Washington, D.C. 20037
(for Federal Express)

Charles J. Simpson, Jr.
Zuckert, Scoutt & Rasenberger, L.L.P.
888 Seventeenth Street, N.W.
Suite 600
Washington, D.C. 20006
(for Lan Chile)

James W. Tello
Miami Air International
Filler, Weller & Tello, P.C.
117 N. Henry Street
Alexandria, VA 22314-0784

Suzette Matthews
Bernstein & Matthews
5649 John Barton Payne Road
Marshall, VA 22115
(for Millon Air)

Elliott M. Seiden
Vice President, Law and
Government Affairs
Northwest Airlines, Inc.
901 15th Street, N.W.
Suite 301
Washington, D.C. 20005

Alfred J. Eichenlaub
Polar Air Cargo
1215 17th Street, N.W.
Suite 300
Washington, D.C. 20036

Pierre Murphy
2445 M Street, N.W.
Suite 260
Washington, D.C. 20037
(for Southern Air Transport)

Michael F. Goldman
Bagileo, Silverberg & Goldman
1101 30th Street, N.W.
Washington, D.C. 20037
(for TAM-Mercosur)

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Page 3

Joel Stephen Burton
Ginsburg, Feldman & Bress
1250 Connecticut Avenue, N.W.
Washington, D.C. 20036
(for United)

Shelley A. Longmuir
Vice President - Government
Affairs
United Air Lines, Inc.
1707 L Street, N.W.
Suite 300
Washington, D.C. 20036

David L. Vaughan
Kelley, Drye & Warren
1200 19th Street, N.W.
Suite 500
Washington, D.C. 20036
(for UPS)

Stephen L. Gelband
Hewes, Morella & Gelband
1000 Potomac Street, N.W.
Suite 300
Washington, D.C. 20007
(for Tower)

Richard J. Fahy, Jr.
Consulting Attorney
900 19th Street, N.W.
Suite 350
Washington, D.C. 20006
(for TWA)

Joel Stephen Burton
Ginsburg, Feldman & Bress
1250 Connecticut Avenue, N.W.
Washington, D.C. 20036
(for United)

Lawrence M. Nagin
Executive Vice President -
Corporate Affairs
US Airways
Crystal Park Four
2345 Crystal Drive
Arlington, VA 22227