

**BEFORE THE
DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.**

March 13, 1998

Joint Application of)
)
)
 AMERICAN AIRLINES, INC.)
 and) **Docket OST-97-3285**
 LINEA AREA NACIONAL CHILE)
 S.A. (LAN CHILE))
)
 under 49 U.S.C. § 41308 and 41309 for)
 approval of and antitrust immunity for an)
 alliance agreement)

COMMENTS OF DELTA AIR LINES, INC.

On December 23, 1997, American Airlines, Inc. (“American”) and Linea Aerea Ncional Chile, S. A. (“Lan Chile”) jointly filed for approval of and antitrust immunity for their proposed alliance agreement.’ By Order 98-2-21, the Department consolidated American’s and Lan Chile’s outstanding requests for authority and established a procedural schedule directing interested parties to file comments on the joint application.

¹ By separate application dated October 7, 1997, American and Lan Chile jointly filed an application for Statements of Authorization and exemption authority to implement a reciprocal code-share agreement. Delta filed an answer in opposition to the code-share and exemption request on October 22, 1997.

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Delta Air Lines, Inc. (“Delta”) opposes the joint application and urges that it be denied. The proposed antitrust immunized alliance would effectively extinguish competition between the two principal competitors providing service between the United States and Chile. This is another attempt by American to intensify its overwhelming dominance of Latin America through code-sharing with its principal competitors on overlapping routes. All of the concerns identified by Delta, the Department of Justice, and other airlines in the American/TACA proceeding apply with even greater force in this case. In the American/TACA proceeding, the Department proposed tentatively to approve only a limited code-share arrangement, with numerous restrictions intended to preserve competition between the carriers. See Order 97-12-35. Here, American and Lan Chile seek to establish a fully antitrust-immunized alliance that would eliminate all competition between the two dominant carriers serving the U.S.-Chile market.

The evidence of record overwhelmingly establishes that the proposed alliance is anticompetitive and anti-consumer, lacks countervailing public interest benefits, and should be denied. Grant of the application would further entrench American’s position as the dominant carrier to Chile, in particular, and Latin American, in general, and would foreclose significant competitive challenge to

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American through a code-sharing arrangement between Lan Chile and another U.S. carrier.

Delta has been a staunch proponent of most airline alliances as an efficient means to offer the traveling and shipping public expanded online service options and enhanced network competition. However, the American/Lan Chile proposal contains none of the beneficial characteristics recognized by the Department in decisions approving antitrust immunized alliances. In fact, the proposed alliance is a prime example of the type of cooperative arrangement that would be harmful to competition because of the excessive “competitive muscle” that the participants would wield, contrary to the Department’s International Aviation Policy Statement. Policy Statement at 5.

American’s regional dominance of Latin America is unprecedented anywhere else in the world. As recently observed by the Wall Street Journal:

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, Wall Street Journal (January 9, 1998).

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American currently operates 75 % of the U.S. flag Chile nonstop frequencies and 67% of U.S. flag Chile nonstop seats. DL-1, DL-2, DL-3. American now seeks to join forces with its largest competitor between the United States and Chile. Combined, American and Lan Chile currently carry nearly 70 % of all U.S.-Chile passengers and offer 33 nonstop frequencies -- nearly five times as many frequencies as the next-closest competitor, United. DL-3, DL-4, DL-5, OAG March, 1998.

Even with an open skies agreement, the American/Lan Chile combine would create an impervious barrier to competition. American and Lan Chile would have a competitive advantage over carriers such as Delta that have been prevented from serving Chile. An open skies agreement with Chile would be a paper victory if the Department approves this transaction and allows American and Lan Chile to use their combined market strength to thwart competition.

American is the only carrier operating a large hub at the key Miami gateway, which would be linked together with Lan Chile's established customer base in Chile. The combination of American and Lan Chile service will enable those carriers to garner a disproportionate share of traffic between the U.S. and Chile. Since less than half of U.S.-Chile traffic is comprised of U.S. citizens,²

² INS Data, YE November, 1997.

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American's alliance with the dominant Chilean carrier would make it particularly difficult for new entrant U.S. carriers such as Delta to gain a toehold in Chile.

The proposed alliance would allow American to further exploit its unique hub strength at Miami, creating an enormous barrier to effective network competition to Latin America. This situation is distinguished from the competitive landscape that exists between the United States and other international regions. For example, across the Atlantic there are a number of competing network alliances that discipline the services and behavior of any one alliance in any city-pair. No such network alternatives currently or in the foreseeable future would provide an effective disciplining mechanism to American/Lan Chile, particularly given AA's market position at Miami, the principal gateway to Chile.

The American/Lan Chile alliance lacks any of the benefits of code-share arrangements recognized by the Department in its International Air Transportation Policy Statement. American will not gain any meaningful ability to enter new markets or to expand its system, because American itself already serves Santiago, the only commercially-significant point in Chile, nonstop from both of its hubs at Miami and Dallas. America also serves all of the other commercially significant points in the Deep South areas of South America, such

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as Buenos Aires and Montevideo, either on a nonstop or single-plane basis. See Exhibit DL-6.

Although the Joint Applicants claim that they will create new online service in hundreds of new markets via Miami and Dallas (JA-9 and JA-10), these benefits are largely illusory because they involve city-pairs generating minuscule levels of traffic, such as Easter Island and Vail, Colorado. Over 97% of U.S.-Chile O&D traffic is destined to or from Santiago. Exhibit DL-7. Thus, the *de minimus* benefits alleged by American and Lan Chile are outweighed by the substantial injurious impact on competition that the alliance would produce.

The Department of Justice's observations in the American/TACA proceeding apply with far greater force here. In that case, the Department of Justice concluded that "the potential for consumer and pro-competitive benefits [from code-sharing] occurs in those markets where the code-share partners gain the ability to offer on-line services beyond their existing individual route systems. The competitive problems occur where their routes overlap with their code-share partners." DOJ comments at 4-5. The American/Lan Chile alliance would create far greater competitive concerns than the American/TACA proposal. In the American/TACA case, the Department attempted to place

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restrictions on the arrangement designed to preserve competition. American provided its own nonstop service between Miami and each of the principal gateway cities in Central America served by TACA. The DOJ found the service expansions to be *de minimus*:

American can extend its existing network through code-sharing with TACA carriers by using TACA's regional network in Central America to extend the reach to passengers traveling between the United States and smaller Central American cities beyond the Central American gateways served by its nonstop flights. These cities, however, account for very few passengers traveling between the U.S. and Central America. . . . In both absolute and percentage terms, code-share service to the points would represent a very small expansion of American's existing network. DOJ Comments at 8-9.

Similarly, the expansion of American's existing network to the small **cities** served by Lan Chile beyond Santiago would represent a very small expansion of American's existing network.³ However, in the case of American/Lan Chile, the loss of competition would be even more serious, because the alliance partners seek to obtain full antitrust immunity, rather than a more limited code-share arrangement.

³ American, of course, is already able to provide online service to Santiago from all the points in its domestic network served via Miami and Dallas.

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The elimination of all horizontal competition between American and Lan Chile, the dominant carriers offering U.S.-Chile service, would result in significant competitive harm. An antitrust-immunized alliance combining American and Lan Chile would seriously curtail the competitive options available to consumers. As stated by the Department of Justice in the TACA proceeding:

This almost exclusively horizontal American/TACA agreement 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.

In light of the minimal network benefits created, the proposed American/Lan Chile alliance is more properly viewed as a preemptive measure designed to foreclose potential entry by competitors.

The Department should recognize that the primary effect of the proposed alliance would be the creation of a joint monopoly with antitrust immunity on third/fourth freedom routes and little network expansion. This is simply part of

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American's effort to build dominance through "wooing its major Latin American competitors into alliances." See Yankee Aggressor, supra.

The Department's statutory approval criteria for antitrust immunized alliances compels the denial of this anticompetitive alliance:

. . . the Secretary shall disapprove [an application for antitrust immunity] --

(1) . . . that substantially reduces or eliminates competition, unless the Secretary finds that

(A) the agreement request, modification or cancellation is necessary to meet a serious transportation need or to achieve important public benefits (including international comity and foreign policy considerations); and

(B) the transportation need cannot be met or those benefits cannot be achieved by reasonably available alternatives that are materially less anticompetitive;

. . .

49 U.S.C. § 41308(b). (emphasis added)

As shown above, the grant of antitrust immunity to the two dominant U.S.-Chile competitors would substantially eliminate competition. There are no serious transportation needs that are unmet. American already provides online service to Chile from all of the U.S. cities behind its Miami and Dallas/Ft.

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Worth hubs, and the incremental benefits of adding the small cities served by Lan Chile behind Santiago are *de minimus*.

Finally, there are any number of materially less anticompetitive alternatives to the American/Lan Chile alliance. If this alliance is not approved, Lan Chile may seek to form an alliance with other U.S. carriers, such as Delta, that are interested in expanding service to Chile. Any of these alternatives would be superior from the public interest and competition standpoint.

If the American-Lan Chile arrangement is disapproved, Delta would pursue an arrangement with Lan Chile that would maximize competition between the United States and South America, particularly against American. Delta provides multiple daily flights between Miami and Delta's major hubs at Atlanta and Cincinnati, as well as its major international gateway at JFK. This would allow Delta to establish convenient online services for passengers traveling between Chile and points throughout the United States, enhancing network competition against American. A Delta-Lan Chile alliance would inject a strong new entrant to the deep south region of South America and would create new competition with American and the other incumbents. A Delta-Lan Chile arrangement would intensify network competition against American between South America and all regions of the United States, especially in the Southeast --

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(at Miami and Atlanta), the Midwest (at Cincinnati), and the Northeast (at New York). Moreover, Delta's extensive multi-hub network would offer Lan Chile extensive online access to U.S. cities across the country. Unlike the American proposal, a Delta-Lan Chile arrangement would provide Delta substantial new online access to cities in South America that Delta does not currently serve. Such an alliance would further enhance Delta's developing Latin America route network.

WHEREFORE, Delta Air Lines, Inc. urges the Department to deny the Joint Application of American and Lan Chile for antitrust immunity.

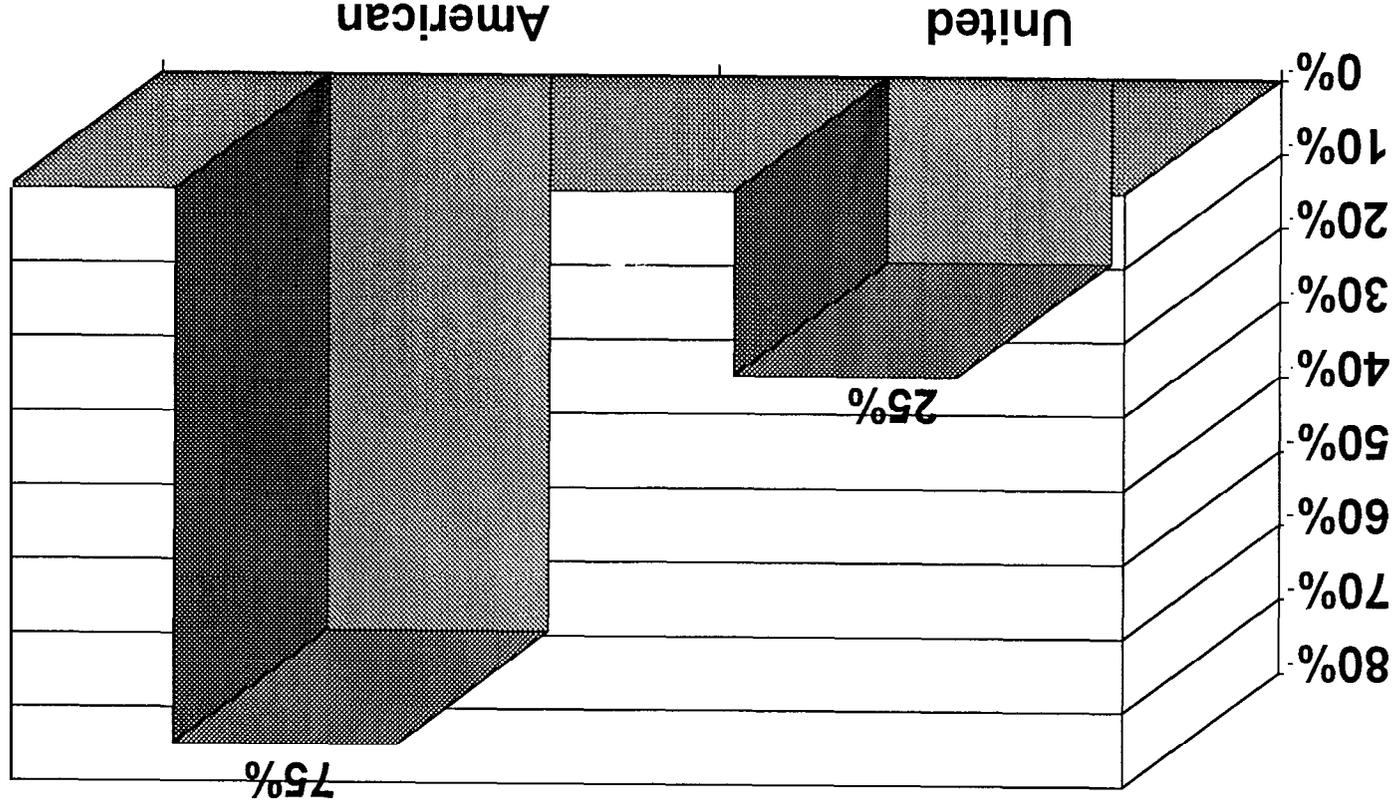
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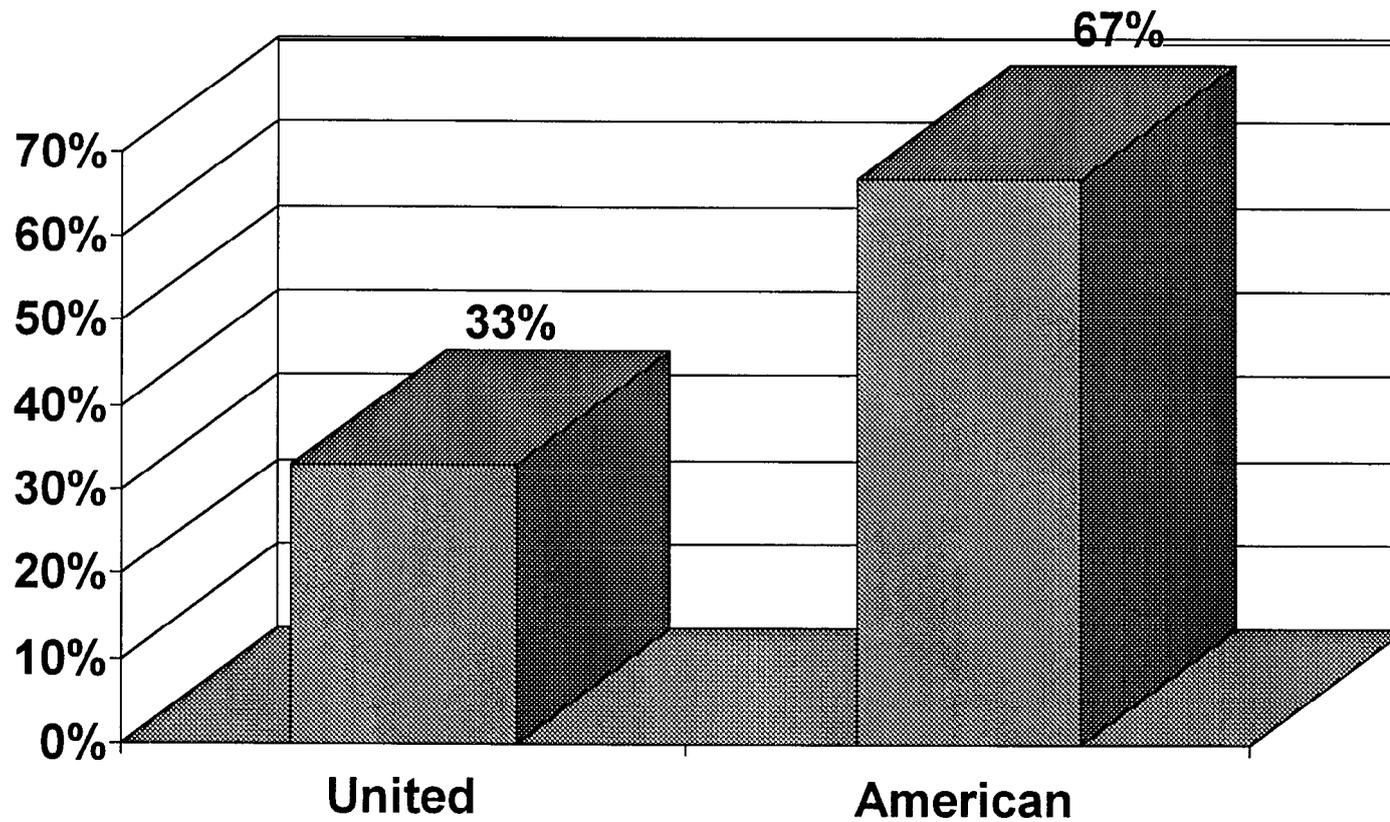
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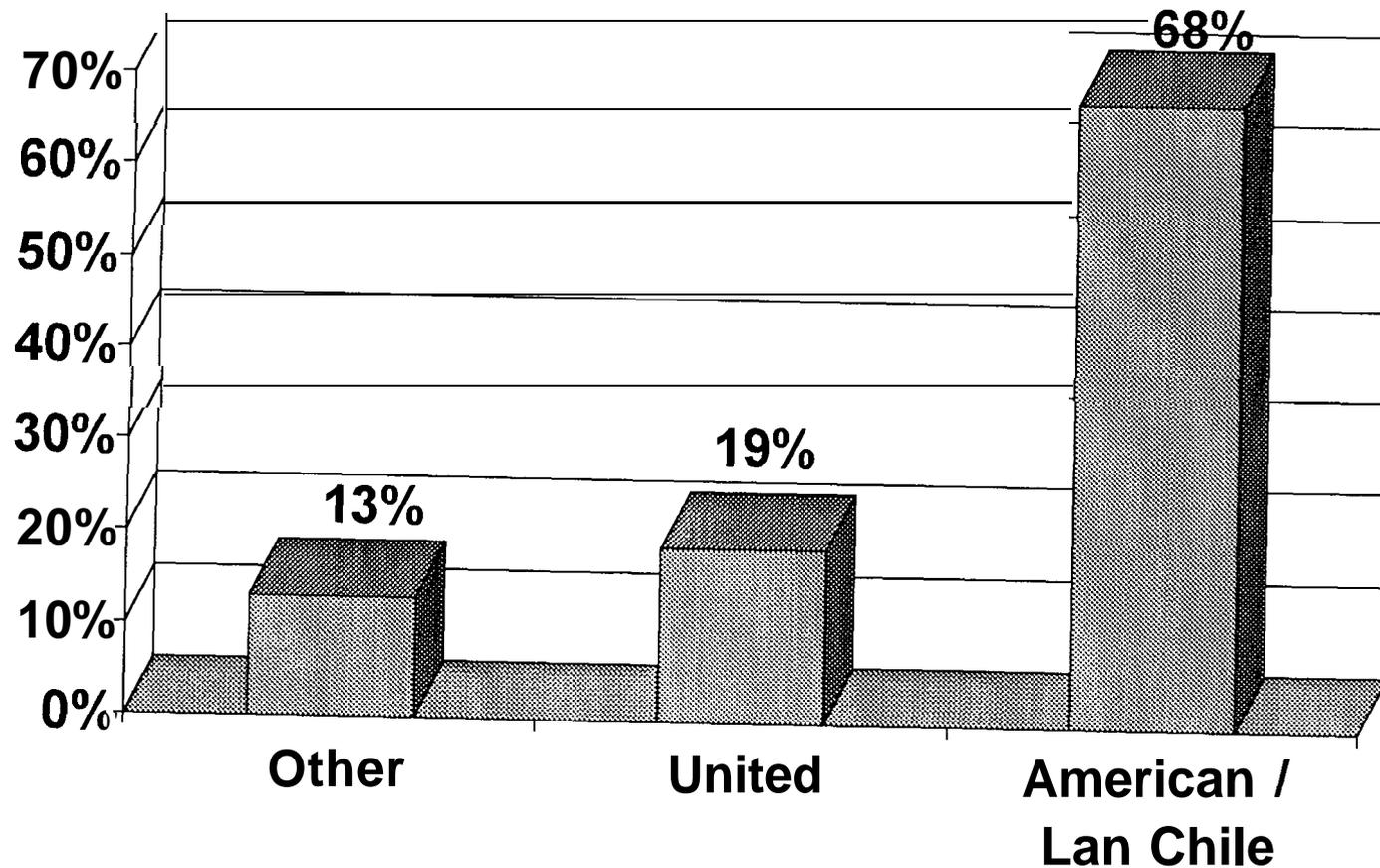
American Currently Operates 75% of the U.S. Flag Chile Nonstop Frequencies



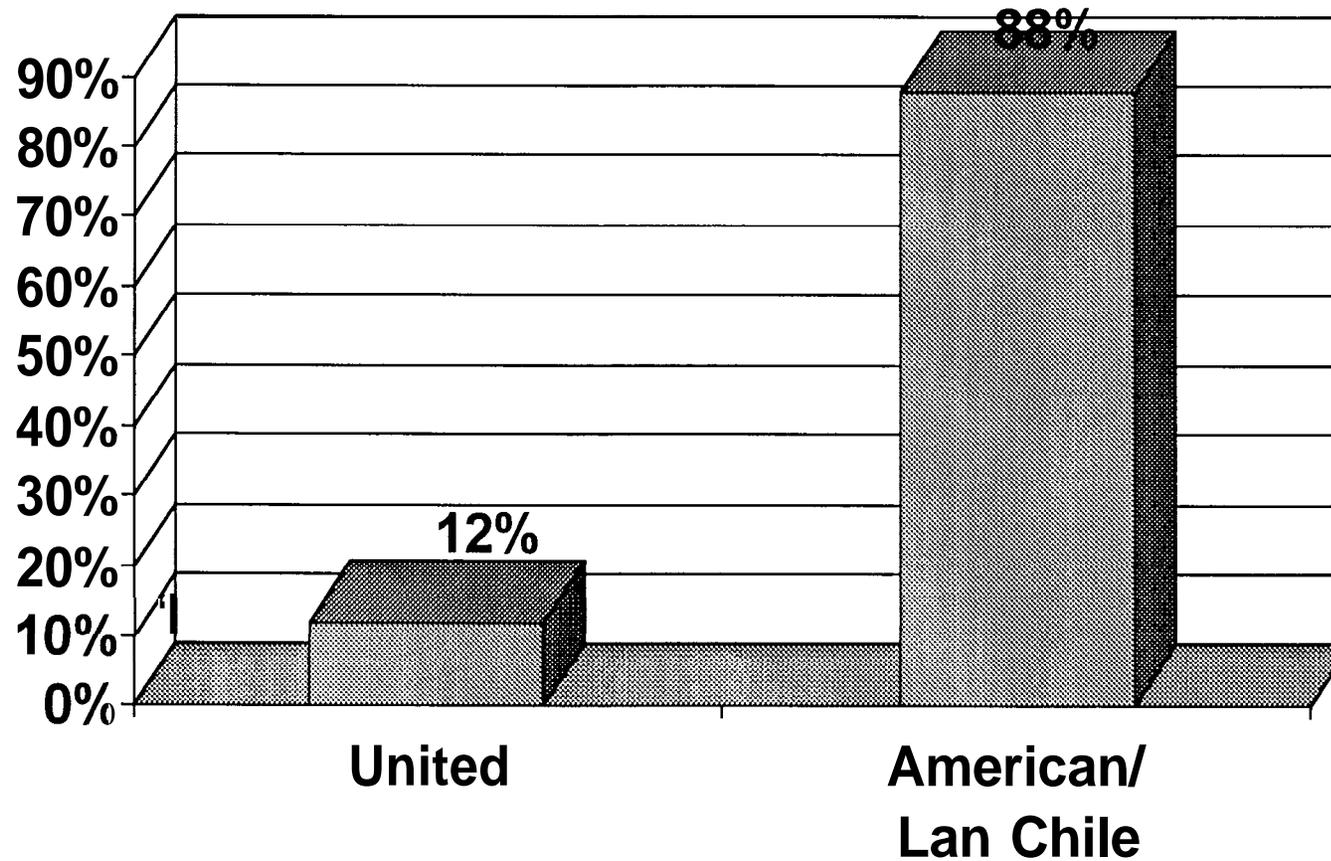
American Currently Operates 67% of the U.S. Flag Chile Nonstop Seats



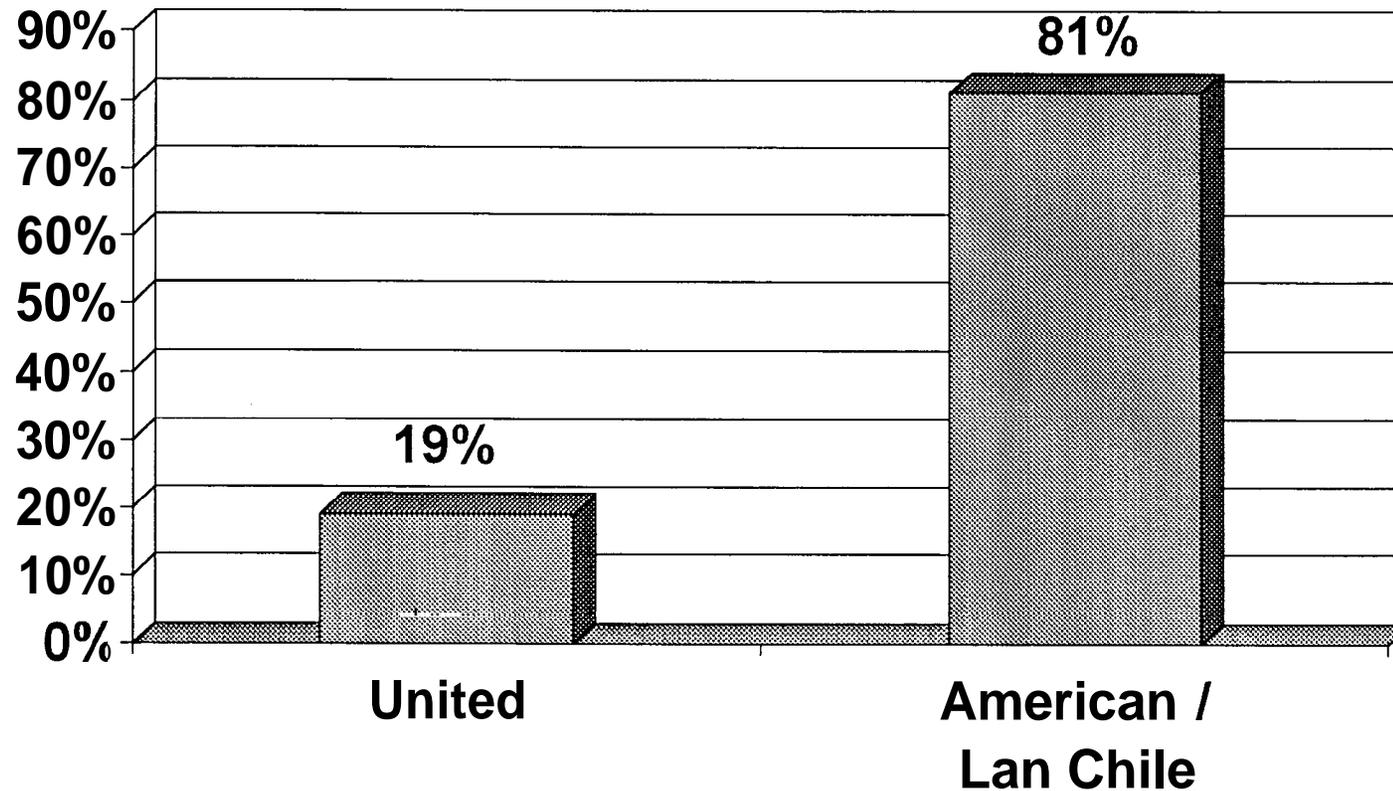
American and Lan Chile Combined Currently Carry Nearly 70% of U.S.-Santiago Passengers



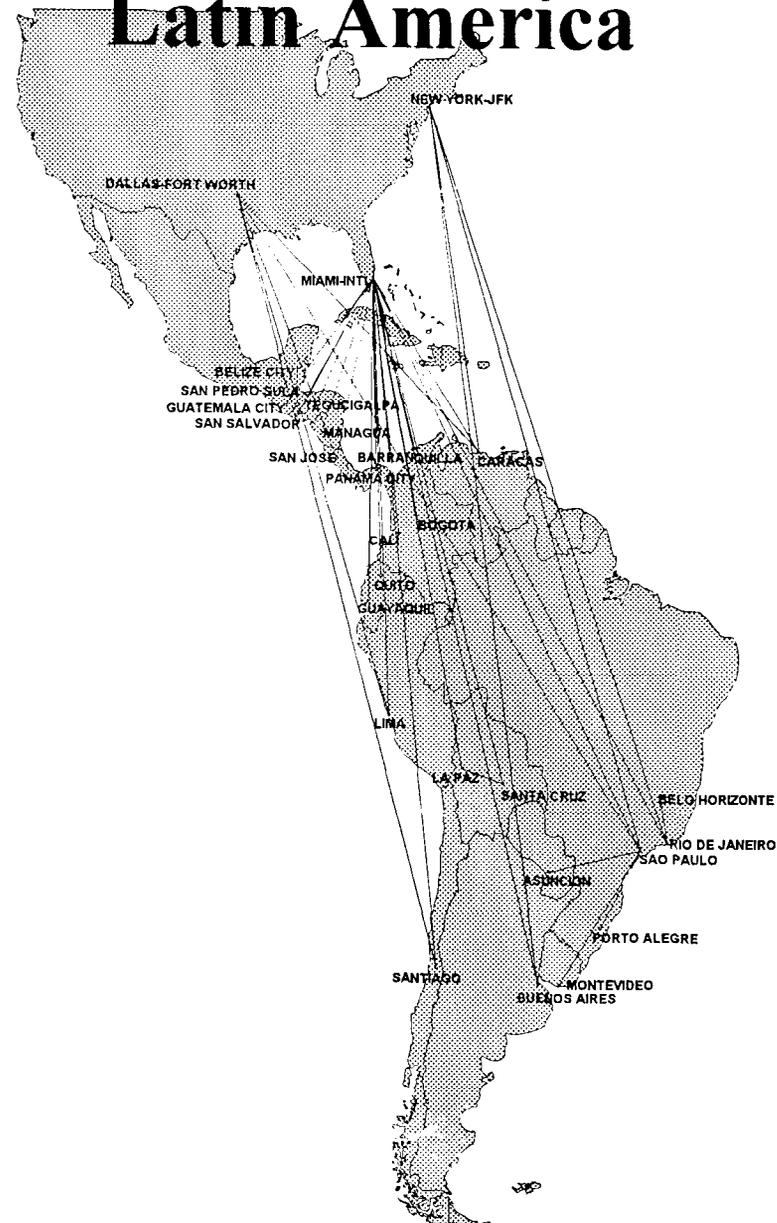
American and Lan Chile Combined Currently Operate 88% of U.S.-Chile Frequencies



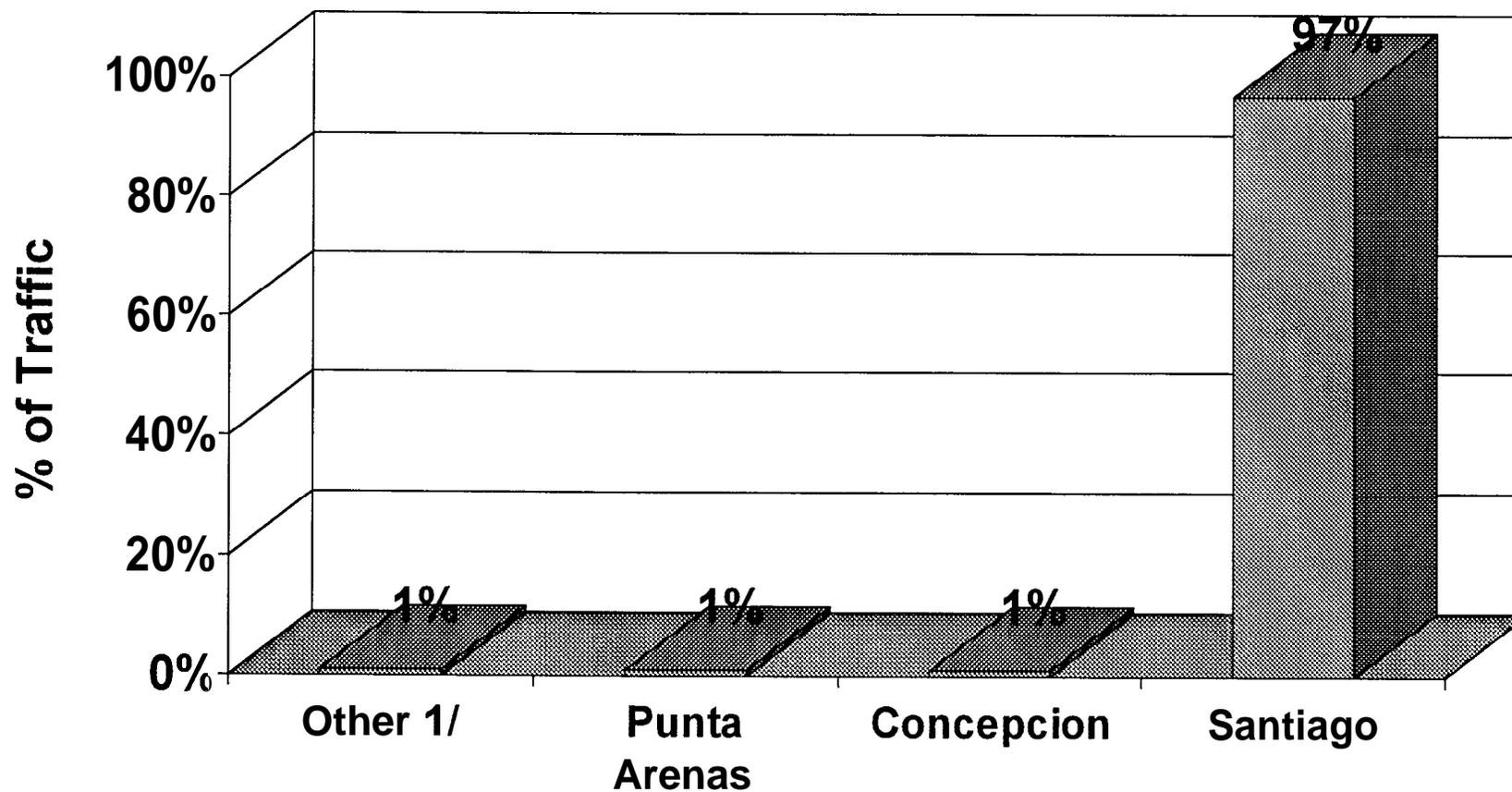
American and Lan Chile Combined Currently Operate 81% of U.S.-Chile Nonstop Seats



American Airlines Already Serves All of the Commercially Significant Points in Latin America



97% Of U.S.-Chile O&D Traffic Is To Or From Santiago



1/ Other includes 10 additional CBP points (Antofagasta, Puerto Montt, Iquique, Calama, Temuco, Balmaceda, Easter Island, Arica, La Serena and Valdivia)

Source: U.S. DOT O&D, YE 3Q 1997

CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of March 1998, I served a copy of the foregoing

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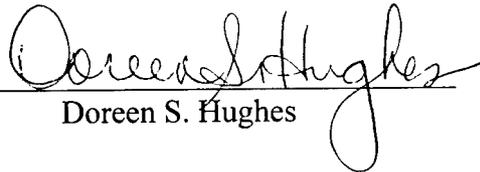
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