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BEFORE THE
DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.

Joint Application of AMERICAN AIRLINES, INC. and LINEA AEREA NACIONAL CHILE, S.A. (LAN CHILE) under 49 U.S.C. Sections 41308 and 41309 for approval of and antitrust immunity for alliance agreement	)	Docket OST-97-3285-21

COMMENTS OF UNITED AIR LINES, INC.

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DATED: March 13, 1998

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COMMENTS OF UNITED AIR LINES, INC.

I. INTRODUCTION

Pursuant to Order 98-2-21, United Air Lines, Inc., ("United") submits the following comments in response to the joint application filed by American Airlines, Inc. ("American") and Linea Aerea Nacional Chile, S.A. ("Lan Chile") for approval of, and antitrust immunity for, an alliance agreement.[1/] Even

[1/] Order 98-2-21 also consolidated into docket OST 97-3285 for decision applications filed by Lan Chile in docket OST 97-2982 for exemption authority to serve additional U.S. points, and undocketed applications filed by American and Lan Chile to code share on their respective U.S.-Chile services. United filed a consolidated Answer to these applications dated October 22, 1997, opposing the applications. For the reasons set forth herein and in that answer, the Department should certainly not grant those applications if, as the record herein demonstrates
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though United has long been a proponent of global alliances and an advocate of open skies agreements, it strongly opposes American's and Lan Chile's joint application for antitrust immunity for the reasons set forth below.

As with most air travel markets in Central and South America (referred to herein collectively as “Latin America"), entry into the U.S.-Chile market is severely restricted due to the Government of Chile's insistence upon capacity controls that both limit the number of carriers the United States may designate and the number of frequencies U.S.-designated carriers may operate. These restrictions were sought by the Government of Chile several years ago in order to protect Chilean carriers, including Lan Chile, from what some believed was a predatory attempt by American to drive the Chilean carriers out of the market.[2/] Now, the Government of Chile is offering to replace

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it must, it denies the carriers' joint application for immunity from U.S. antitrust laws for their alliance agreement.

[2/] In May 1993, American proposed to double the number of weekly frequencies it scheduled in the Miami-Santiago market. Chilean carriers then filed complaints against American's proposed schedule increase with Chile's Anti-Monopoly Commission claiming that American's schedule increases were unjustified and would force them to operate at uneconomic load factors, ultimately
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these capacity limits with an open skies agreement, but only if the Department grants immunity from U.S. antitrust laws to an alliance between American and Lan Chile, which collectively control over 80% of the U.S. -Chile market and wholly dominate the Miami-Santiago market, which alone accounts for more than 50% of local U.S.-Chile demand.

If the Department is seriously interested in promoting the public interest and in securing for the long term a more open and competitive market structure throughout Latin America, it must reject that Faustian bargain. Open skies agreements are not ends in themselves, only means to an end: The opening of international aviation markets to increased competition and the opportunity for carriers to enter or exit individual city-pair markets solely in response to supply and demand considerations, not governmental route policies. Open skies agreements in

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forcing them from the market. The Commission ordered a freeze on carrier schedules while it reviewed the complaint. American responded by filing a complaint with the Department against the Chilean carriers under the International Air Transportation Fair Competitive Practices Act of 1974. The matter was ultimately resolved by replacing the U.S. -Chile air transport agreement, which was a liberal post-deregulation agreement, with the current understanding in which designations and frequencies are subject to government-agreed limits. See, e.g., Orders 93-11-33 and 93-11-22.

themselves do not ensure that markets will perform competitively, only that governmental barriers to entry in the form of designation limitations and frequency and capacity controls are eliminated.

Nor can open skies agreements in themselves substitute for competition policy in ensuring that markets perform competitively. This has recently been confirmed by the Department of Justice, which has cautioned against the Department authorizing American to enter into a broad-scale, code-sharing alliance with the members of the TACA Group of carriers similar to the alliance American is proposing with Lan Chile, but without antitrust immunity, despite the existence of open skies agreements between the United States and each of the TACA carriers' homelands. Comments of the United States Department of Justice dated January 28, 1998 in docket OST-96-1700. In commenting on the American/TACA alliance, the Department of Justice noted that the mere existence of an open skies agreement is not dispositive in determining whether an alliance would be efficiency enhancing and, therefore, pro-competitive, or would instead pose substantial risks to competition. Id. at 2.

The alliance proposed between American and Lan Chile, no less than the alliance proposed between American and the TACA carriers, poses substantial risks to competition that cannot be offset by bringing into force an open skies agreement with Chile. Rather than promote competition, the grant of American's and Lan Chile's joint application for immunity from U.S. antitrust laws would:

- further entrench American as the dominant carrier in U.S.-Chile and U.S.-Latin America air travel markets;
- enable American to increase its dominant position at the strategic Miami gateway, which is used by more than 62% of all U.S.-Latin America air travelers;
- preclude United (and other U.S. carriers) from entering into an alliance agreement with Lan Chile that would facilitate the expansion of United's Latin America route network, and thereby enhance inter-network competition between United and American at Miami and throughout Latin America to the benefit of consumers; and
- significantly increase the pressure on the Department to approve other alliances between American and major Latin American carriers, effectively excluding other U.S. carriers from having an opportunity to develop alliance relationships with these carriers that would provide them cost-efficient means to extend their on-line networks into Central and South American markets, and thereby to initiate much broader network-to-network competition with American throughout Latin America.

To approve the American/Lan Chile application, the Department must be able to find either that such approval would be consistent with the public interest and would not substantially reduce competition, or that any reduction in competition that will result from such approval would be off-set by other serious transportation needs or important public benefits that cannot be achieved by reasonably available alternatives that are materially less anti-competitive. 49 U.S.C. § 41309(b)(l)(A),(B). No such findings can be made here. The carriers' joint application for immunity from U.S. antitrust laws must, therefore, be denied.

II. ARGUMENT

A. The Proposed American/Lan Chile Alliance Should Not Be Given Immunity From The Antitrust Laws In View Of American's Dominance Of The Overall U.S.-Latin America Air Travel Market.

American's proposal to form an alliance with Lan Chile that would be immunized from U.S. antitrust laws must be reviewed in the context of American's overall dominance of U.S.-Latin America air travel markets, and the unprecedented number of alliance agreements American is seeking to implement throughout the region.[3/] By any measure, American is the dominant carrier

[3/] As explained _infra_, American is seeking to implement these alliances in order to foreclose its U.S.-flag competitors from
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alliance agreements with its foreign-flag competitors in Latin between the U.S. and Latin America. It is the only carrier with an established online route network that links its hubs in the United States with virtually all of the countries in Central and South America.

Even without an alliance with Lan Chile, American operates more U.S.-Chile, U.S.-South America and U.S.-Central America service than all of its U.S.-flag competitors combined! <u>See</u> Exhibit UA-1. Between the U.S. and South America, American today operates 62% of the scheduled service provided by U.S.-flag carriers. It currently operates 55% of the U.S.-flag nonstop service available between the U.S. and Central America and 75% of the U.S.-flag nonstop service between the U.S. and Chile. Id. American and Lan Chile combined operate over 80% of

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developing alliances with these Latin American carriers that would enable them to extend their networks into Latin America and thereby gain efficiency benefits comparable to those American already enjoys as the result of having an established online network that links its hubs in the U.S. with most of the major population centers in Latin America. Because American's online network already extends to most of Latin America, American achieves no new efficiencies from entering into alliance agreements with its foreign-flag competitors in Latin America that would benefit consumers.

the currently available nonstop service between the U.S. and Chile. See Exhibit UA-2.

American also holds more authority than any of its U.S.-flag competitors in virtually every limited-entry market in Latin America, and has been able to use this superior authority to maintain a significant frequency advantage over these competitors in almost every market it serves in Latin America. This government-created frequency advantage insulates American from effective competition in many U.S.-Latin America markets.

Not only does American already dominate U.S.-Latin America air travel markets, but it is seeking to further entrench its competitive position in these markets through a series of unprecedented alliance agreements with its principal foreign competitors throughout the region, including the six carriers of the TACA Group, Avianca, TAM-Mercosur, and TAM, as well as Lan Chile.[4/] In addition, American has agreed to acquire a

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[4/] American also has an alliance with Aero California for U.S.-Mexico services, and displays the code of its alliance partner, Canadian International, on certain of its U.S.-Latin America flights to facilitate Canadian's ability to provide Canada-Latin America services. The additional through traffic American gains from being able to display Canadian's "CP" code on its Miami-Latin America services contributes to American's ability to out-schedule its U.S. -flag competitors in these markets.

significant interest in the holding company that controls Aerolineas Argentinas and Austral, and announced a plan to invest in and code share with Iberia on services linking Iberia's U.S. -Europe network with American's U.S.-Latin America network.

The Department has already concluded that American's planned alliance with the TACA Group carriers "presents serious competitive issues" (Order 96-11-12 at 6), and is conducting an investigation to determine whether it can approve the alliance consistent with the public interest. The Department of Justice has recently filed comments in that proceeding indicating that the Department should reconsider its tentative approval of that alliance because of the substantial risk to competition it poses.

In those comments, the Justice Department points out that:

> ... [alliance] agreements have the potential to promote the public interest by creating consumer and pro-competitive benefits that airlines cannot provide on their own. Potential public interest benefits occur when an airline extends the reach of its route network by code-sharing on flights operated by an airline that operates a route network in another geographic region -- i.e., an end-to-end network combination.

Comments at 2-3.

The Justice Department then goes on to demonstrate, however, that:

> . ..[while] American can extend its existing network through code sharing with TACA carriers by using TACA's regional network in Central America to extend its reach to passengers traveling between the United States and smaller Central American cities beyond... [the TACA carriers' Central American gateways,] [t]hese cities...account for very few passengers....

Id. at 9. The Justice Department concludes from this that the "agreement does not offer significant pro-competitive efficiencies...[,]" but does pose a substantial risk to competition. Id. at 11.

In this case, the benefits consumers would gain from American's code sharing on Lan Chile are no more substantial than those they would achieve in the TACA case. For example, in Exhibits JA-9 and JA-10 to the joint application, the parties identify 15 smaller cities in Chile that would gain new online connections to points in the United States from their alliance, but identify no points in third countries served by Lan Chile beyond Santiago that would gain new online service?' Of the 15 minor Chilean points identified, only six are listed as being among Lan Chile's 25 largest city-pair routes with a U.S. end point. Exhibit JA-8. And, according to that exhibit, these six city pairs accounted in the aggregate for a total of only 1160 passengers in 1996, a total of approximately 3 passengers per day.

Thus, by code sharing on Lan Chile, American does not extend the scope of its network in Latin America, and there are no efficiency benefits to be passed through to consumers from such code sharing. The net result is that the joint applicants have utterly failed to demonstrate that the risk to competition posed by their request for antitrust immunity would be offset by serious transportation needs or other important public benefits that cannot be achieved by reasonably available alternatives that are materially less anti-competitive. Therefore, they have failed to demonstrate that a decision by the Department to grant

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[5/] The cities in Chile are Antofagasta, Arica, Balmaceda, Calama, Concepcion, Copiapo, Easter Island, El Salvador, Iquique, La Serena, Osomo, Puerto Montt, Punta Arenas, Temuco, and Valdivia.

their request for antitrust immunity would be consistent with the statutory requirements set forth in 49 U.S.C. § 41309(b).

B. The American/Lan Chile Alliance Raises Competition Issues Different From Those Raised By Other Immunized Alliances.

Obviously aware that their proposed alliance offers few, if any, public benefits, American and Lan Chile seek to defend their request for antitrust immunity by trying to equate their alliance with the alliance agreements between Northwest and KLM, Delta, Austrian, Sabena and Swissair, and United, Lufthansa and SAS, which the Department has already approved and immunized from the antitrust laws. They also claim that by granting antitrust immunity to their alliance, and thereby bringing into force the open skies agreement with Chile, the Department will create a catalyst to open other restricted markets in South America to new entry and competition by U.S. carriers, just as the Department's approval of the Northwest/KLM alliance served as the catalyst to secure open skies agreements elsewhere in Europe. See, e.g. Joint Application at 16-22, 24-25, and 41-42.

American's and Lan Chile's self-serving claim that their alliance is no different from others the Department has already reviewed in detail and approved, and their suggestion that granting their alliance antitrust immunity could serve as a negotiating tool to induce other governments in Latin America to open their markets to U.S. airlines, will not withstand scrutiny. These arguments are utterly specious, and ignore entirely the substantial differences that exist in market structure in U.S.-Europe air travel markets as compared with U.S.-Latin America markets.

For example, at the time the Department initially approved the Northwest/KLM alliance, no carrier had an online U.S.-Europe route network equivalent to the online network American already has in place in Latin America, and no carrier held a share of the U.S.-Europe air travel market even remotely close to the share of the U.S.-Latin America market that American already holds. Nor did KLM and Northwest combined, or Delta, Austrian, Sabena and Swissair combined, or United, Lufthansa and SAS combined hold market shares anywhere near the share American already enjoys in Latin America.

As a result, when the Department reviewed each of these alliances, it was able to find that the carriers' networks were largely end-to-end, and that by approving the parties' alliance agreements, it would facilitate the carriers' ability to extend their networks into city pairs neither could serve on its own. For example, in tentatively approving the United/Lufthansa alliance, the Department found that:

> ...the alliance... will have a substantial pro-competitive impact, bringing on-line service to over 52,000 city-pair markets with an estimated traffic of about 29 million passengers. In particular, the alliance will significantly increase competition and service opportunities to over 12 million passengers in beyond-European gateways markets. This analysis further supports the view that these alliances will benefit consumers by increasing international service options and enhancing competition between airlines, particularly for traffic to and from cities behind major gateways.

Order 96-5-12 at 18 (footnote omitted).

No similar findings can be made here. On the contrary, in commenting on the American/TACA application, the Justice Department noted that the American/TACA agreement was an “almost exclusively horizontal...agreement[,]... in stark contrast to the largely end-to-end agreements that the Department [of Transportation] has approved in the past." Comments at 10. The Department of Justice went on to explain that:

> Most significantly, the Delta/Swissair/Sabena/Austrian Airlines, United/Lufthansa, American/Canadian, and United/Canada alliances involved . . . significantly greater opportunities for the code-share

> partners to extend the reach of their networks beyond foreign gateways.

Id. at 10-11.

Here, no less than in the case of American/TACA, the parties' agreement is "almost exclusively horizontal," in "stark contrast to the largely end-to-end agreements...the Department has approved in the past." Id. at 10. The Department's prior alliance decisions provide no support, therefore, for granting the American/Lan Chile alliance immunity from the antitrust laws, and the joint applicants' reliance on those decisions is entirely misplaced.

C. Approval of An American/Lan Chile Alliance Will Not Have The Effect Of Promoting Procompetitive Alliances in Latin America, But Will, In Fact, Have The Opposite Effect.

Equally misplaced is the joint applicants' effort to equate a decision by the Department granting the American/Lan Chile alliance antitrust immunity with the Department's historic decision to grant antitrust immunity to the Northwest/KLM alliance. As the joint applicants point out, one of the principal factors influencing the Department's decision in Northwest/KLM was its belief that:

> our Open Skies accord with the Netherlands and our approval and grant of antitrust immunity to the [Northwest/KLM] Agreement... [will] encourage other European countries to liberalize their aviation services <u>so that comparable opportunities may become available to other U.S. carriers</u>.

Order 92-11-27 at 13-14, emphasis added.

Here, by contrast, there is no reason to believe that an open skies agreement with Chile, if tied to the granting of antitrust immunity to the American/Lan Chile alliance, will lead to "comparable opportunities . . . [becoming] available to other U.S. carriers." Id. at 14. On the contrary, because of the unique structure of U.S.-Latin America air travel markets -- primarily the dominant role played by Miami as both the gateway of choice for the majority of U.S.-Latin America air travelers, and the principal destination in the U.S. for most visitors from Latin America, and the fact that only American has a hub at Miami -- if the Department grants antitrust immunity to the American/Lan Chile alliance, it will face the same demand by other governments throughout Latin America: If the U.S. wants an open skies agreement, it will have to extend antitrust immunity to an alliance between American and their national carrier.

Rather than creating opportunities for increased entry and competition throughout Latin America for other U.S. carriers, open skies under these terms will reduce competition, particularly at Miami. It would also foreclose the opportunity for other U.S. carriers to utilize code sharing and alliance agreements to extend their networks into Latin America, thereby substantially increasing network-to-network competition with American, the dominant competitor throughout the region.

In Europe, the U.S. was able to use successfully the extension of antitrust immunity to the Northwest/KLM alliance to gain open skies agreements with a majority of the member states of the European Union and to provide opportunities for other U.S. carriers to enter into global alliances with a number of KLM's European competitors. As the Department expected, this has created a market structure in which "these global alliances.. .[are] play[ing] a critically important role in ensuring that consumers...have multiple competing options to travel where they wish as inexpensively and conveniently as possible." Order 96-5-26 at 27.

A similar strategy will not work in Latin America, however. If the Department extends antitrust immunity to American's alliance with Lan Chile, it will set a precedent that will have profoundly anti-competitive consequences, and reduce the opportunity for other U.S. carriers to develop regional alliances that could challenge American's market dominance, especially at Miami. If the Department approves American's alliance with Lan Chile, then Lan Chile's major foreign competitors in other countries in Latin America will demand no less before their governments agree to open skies.

If the Department intends to achieve a more pro-competitive outcome in Latin America, and to lay the ground work for broad network-to-network competition throughout the region, as it has successfully done in Europe, it must deny American's and Lan Chile's joint application for antitrust immunity. By so doing, it will encourage the major foreign carriers in the region to form alliances with other U.S. carriers such as United, Continental and Delta, which are extending their online networks into Latin America. These alliances would be entirely pro-competitive and would provide the basis for the public obtaining the benefits of network-to-network competition in U.S.-Latin

America markets comparable to what is happening in Europe and in the transborder market to Canada.[6/]

D. American's Obvious Objective In Seeking Alliances Throughout Latin America Is To Foreclose Other U.S. Carriers From Doing So, Insulating Its Latin America Network From Additional Competition

American already has an extensive online network that extends to virtually all of the key population centers throughout Latin America, including Santiago, Chile. American is not dependent, therefore, upon securing alliance agreements with Latin American carriers to extend its route system into the region. Rather, American is continuing to pile up these alliances in order to ensure that its foreign partners do not form alliances with its U.S.-flag competitors that are struggling to extend their networks into Latin America to offer a meaningful competitive alternative to American.

[6/] With American's recent announcement of alliances with Japan Air Lines and China Eastern, to be added to its existing alliances with Qantas, China Airlines, and Singapore Airlines (see joint application at 52-53), the U.S.-Asia market is moving in the same direction as the U.S.-Europe market with passengers able to choose between the price and service offerings of multiple competing alliances. Only in Latin America is there a serious
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So long as carriers such as TACA, Aviateca, Lacsa, Copa, TACA de Honduras, Nica, Avianca, Lan Chile, Aerolineas Argentinas, Austral, TAM and TAM Mercosur are tied up in alliance agreements with American, they cannot form alliances with American's competitors that could challenge American's dominance in Latin America. If American is successful in foreclosing entry by United (or another U.S. carrier competitor) into Chile and other markets in Latin America through a code-sharing arrangement with Lan Chile, or any of American's other putative regional partners, American will have insulated its U.S.-Latin America route network from competition and increased the barriers to entry into these markets.

American is the only carrier with an established online route network that links its hubs in the United States with virtually all of the countries in Latin America. However, code sharing can provide United and other U.S. carriers a cost-efficient means to extend their route networks into Central and South American markets, and thereby to initiate much broader network-to-network competition with American than would

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risk that passengers will not have the benefit of network-to-network competition from multiple competing alliances.

otherwise be possible. It is to forestall that competition, and to retain its dominant position in the market, that American is seeking to establish alliances throughout Latin America.

If it approves American's alliance with Lan Chile, not only will the Department have facilitated American's effort to protect its U.S. -Chile route network from competition, but it will have sent a strong signal to other Latin American carriers that it would be competitively safer and more profitable to follow Lan Chile's course and seek an alliance with American that would be immunized from U.S. antitrust laws, rather than to continue as independent competitors, and possibly as alliance partners of other U.S. carriers looking to compete with American.

Furthermore, if the American/Lan Chile alliance is approved despite its obvious anticompetitive consequences, the Department will be under substantial pressure to approve similar alliances between American and other regional carriers, including Aerolineas Argentinas, Avianca, and the TACA Group carriers, despite the Department of Justice's concern that the latter alliance poses a substantial risk to competition. If the Department approves the American/Lan Chile alliance, it will be hard put to turn down other American alliance applications. With each subsequent alliance, American's regional dominance will increase yet more, the cost of entry will rise, and the opportunity for United and other U.S. carriers to use code sharing as a means to provide a competitive counter-weight to American will diminish.

Just as open skies agreements are not ends in themselves, strategic alliances between international carriers are not ends in themselves, but only a means by which carriers can provide consumers better service at lower prices. As the Department noted in tentatively approving the alliance agreement among Delta, Austrian, Sabena and Swissair:

> [A]irlines around the world are forming alliances and linking their systems to become partners in transnational networks to capture the operating efficiencies of larger networks, and to permit improved services to a wider array of city-pair markets.... We believe that competition between and among these global alliances is likely to play a critically important role in ensuring that consumers ... have multiple competing options to travel where they wish as inexpensively and conveniently as possible.

Order 96-5-26 at 27.

Alliances deserve the Department's regulatory approval, including the granting of antitrust immunity, only where the applicants can show that their alliance will enhance consumer welfare without leading to any significant impairment of competition in any relevant market. In this case, American and Lan Chile simply cannot demonstrate that their proposed alliance satisfies this essential standard. Their application should, therefore, be denied.

E. Approval Of The American/Lan Chile Alliance Will Increase American's Domination Of The Strategic Miami Gateway.

American's control of U.S.-Latin America air travel markets depends on its dominant position at its Miami hub where American alone operates 77% of the total U.S. carrier nonstop seats between Miami and South America and 100% of U.S. carrier nonstop seats between Miami and Central America. Exhibit UA-3. Miami is the predominant U.S. gateway to Chile, just as it is to the rest of Latin America, with 81 percent of total U.S.-Chile passenger traffic using the Miami gateway. Exhibit UA-4. And, local Miami-Santiago passengers constitute more than half of total U.S.-Chile demand. Exhibit UA-5.

A decision by the Department to grant American and Lan Chile immunity from U.S. antitrust laws so that they can effectively implement an operational merger of their competing U.S.-Chile services would lead directly to a substantial reduction in competition at the key Miami gateway, and would secure no public benefits that might support the grant of such immunity under applicable statutory standards.

Miami's leading role as a U.S. gateway to Latin America is due both to the high level of local demand in Miami-Latin America city-pair markets, and the city's unique geographic location as the most direct gateway to most of Latin America from the Eastern United States. Because of Miami's unique position as a gateway and destination for such a large portion of U.S.-Latin America traffic, maintaining competition in Miami-Latin America city pairs is far more important than at other U.S. points where there is less local demand.

Unlike other U.S. international markets, there is no real alternative to Miami as a gateway to Latin America. In other international markets, there is substantial inter-gateway competition for behind gateway passengers, and local O&D demand is not concentrated at a single gateway. For example, nonstop services to Europe from the U.S. operate through a range of gateways, all of which are hubs for one or more carriers, including Newark (Continental), JFK (American/Delta), Philadelphia (US Airways), Washington Dulles (United), Atlanta (Delta), Chicago (United/American), Cincinnati (Delta) and Dallas/Ft. Worth (American). All of these hubs compete with each other for passengers traveling between the U.S. and points throughout Europe.

In Latin America, however, that is not the case. Because of Miami's unique geographic location, as well as the large and affluent Spanish speaking population living in South Florida, Miami controls both the flow and the source of traffic to virtually all of Latin America. Moreover, Miami has become the primary business center for this region, with banking and other regional businesses located there. Because of this, local demand in U.S.-Latin America air travel markets is concentrated at a single U.S. destination, Miami, to a degree not matched by any other inter-continental market. And the mere signing of an open skies agreement with Chile (or any other country in Latin America) will not change the structural nature of demand in this market.[7/]

'This is amply demonstrated by experience in U.S.-Central American markets where local demand is also heavily concentrated
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Because of Miami's unique status as both the principal destination and leading gateway for Latin American travel, any reduction in competition on Miami-Latin America city-pair routes has a proportionally greater effect on the traveling public than would, for example, a similar reduction in any individual U.S.-Europe city-pair market. Maintaining competition at Miami is complicated, however, by the fact that American alone maintains a hub at Miami and dominates overall traffic at that strategic gateway. This domination extends not only to the international routes from Miami South into Latin America, but also the routes from Miami North to other points in the U.S., as well as to points in Canada and Europe.

American operates more capacity at Miami than all other U.S. carriers combined. Exhibit UA-6. In Miami-South markets, American controls nearly 80 percent of U.S. carrier departures and 86 percent of the seats. Exhibit UA-6. In many of these markets, particularly to South America, American's attainment of its dominant status has been aided by the fact that entry by U.S. carriers is limited by various restrictive bilateral

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at Miami despite the absence of any governmental barriers to entry into these markets.

agreements. In the Miami-North markets, American accounts for over half of the total service measured by either departures or seats. Exhibit UA-6.

With this degree of market concentration, Miami truly is a fortress hub at which American is uniquely situated to fend off competition. With that goal in mind, American has entered into alliances not only with Lan Chile, but with the six carriers in the TACA Group, TAM, TAM Mercosur, and Avianca, and is moving forward with plans for alliances with Aerolineas Argentinas, Austral and Iberia.

All of these alliances are pre-emptive in nature and intended principally to assure that no other U.S. carrier can use cooperation with these carriers to enhance its competitive presence at Miami in general or in Latin America in particular. Because American already has achieved a dominant position in U.S.-Latin America air travel markets, it should not be allowed in effect to merge with its less efficient foreign-flag competitors in these markets. By in effect acquiring its foreign-flag competition, American forecloses the ability of its U.S. -flag competitors to establish alliances with these foreign carriers that would enable them to achieve economies of scope and scale comparable to those which American already enjoys on its services to Latin America from its Miami hub -- ecomomies that would allow American's competitors to compete on a more level playing field with American in these markets.

F. American's Motive In Entering Into An Alliance With Lan Chile Is To Foreclose Other U.S. Carriers From Using Such An Alliance To Challenge American's Dominant Position In Latin America.

As noted above, American gains no access to valuable new markets in South America beyond Santiago through an alliance with Lan Chile. Similarly, as also noted above, the record in the TACA proceeding shows conclusively that American gains no meaningful access to beyond points in Latin America through its proposed alliance with the TACA Group carriers. See also Answer of United, dated June 2, 1997, in docket OST-96-1766 at 15-17.[8/] American, therefore, is not using cooperation with Lan Chile or the TACA Group to extend its own online network into significant

[8/] Similarly, American does not need the support of TACA code-share traffic to improve the efficiency of its Miami-Central America operations because American already achieves a passenger share in those markets that exceeds its seat share. Exhibit UA-7.

markets in Latin America the carrier does not already serve on its own.

Why then is American willing to provide Lan Chile and the TACA Group carriers access to its substantial feed network north of Miami? The record in the TACA case shows that American is willing to grant the TACA carriers such access in order to preclude other U.S. carriers from entering into alliances with the TACA Group.[9/] Such alliances would make both the carriers in the TACA Group and their U.S. partners more competitive with American at Miami, a result American desperately wants to avoid.

American's motives in this case are no different. By agreeing to an alliance with Lan Chile that would be exempt from U.S. antitrust laws, American trades off the access it grants Lan Chile to its network North of Miami against the benefits it gains from foreclosing other U.S. carriers' ability to secure an alliance with Lan Chile that might threaten American's dominance at Miami.

In Lan Chile's case, accepting an alliance with American, in addition to expanding its network, allows it to avoid having

[9/] See Order 97-12-35 at 29 and n. 62.

to continue competing with American, the dominant carrier in the market, for U.S.-Chile traffic. From Lan Chile's standpoint, if it can secure an alliance with American, it will have no need (or desire) to enter into an alliance with another U.S. carrier, effectively sealing for American the benefit of its bargain, regardless of whether American imposes on Lan Chile a contractual exclusivity clause.

United is the only carrier that has been seeking to develop a network of services at Miami that could serve as a competitive counter-weight to the network American already has in place in all major (and many minor) Miami-Latin America markets. However, if the Department allows American to enter into alliance agreements with most of the major foreign carriers in Latin America, United's ability to operate profitably a network of Miami-Latin America services for local passengers will be seriously eroded.

In each nonstop city pair where American and its alliance partners will operate, they will have hubs at both ends of the route, enabling them to operate more frequencies at higher load factors than United, threatening United's ability to serve the routes profitably?' United is not in the business of ensuring that there is competition to American in Miami-Latin America markets, that is the Department's responsibility. United is in the business of trying to operate profitably so that it can maintain good paying jobs for its employees, reinvest in its business, and provide a fair return to its shareholders.

In effect, because American has a hub at Miami, it is the only carrier operating Miami-Latin America service at minimum efficient scale. United and Lan Chile, on the other hand, which do not have hubs at Miami (and in United's case, no hub at Santiago either),[11] operate on this route below minimum efficient

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[10] One of the competitive benefits American gains from being able to operate at minimum efficient scale when its competitors cannot is the ability to achieve higher load factors and earn higher revenues per passenger in each Latin American market it serves than its U.S.-flag competitors. The benefits American gains were confirmed by the Department in a recent proceeding where it had occasion to review inter-carrier competition in the U.S. -Peru market. There, the Department found that American, with 2.5 times more frequencies than its nearest U.S.-flag competitor, United, carried 4.2 times more passengers. Order 96-5-53 at 7. In the overall U.S.-Latin America market (including Mexico), American carried 4.7 times more passengers than its nearest U.S rival, Continental. Id.

[11] While Lan Chile maintains something of a hub at Santiago, the record here suggests that, due to Santiago's geographic location, Lan Chile gains only limited behind gateway traffic support from the services it operates beyond Santiago.

scale. However, by entering into an alliance, United and Lan Chile could improve the efficiency of their Miami-Chile services, and thereby be better positioned to compete with American. To forestall that outcome, American is willing, in effect, to acquire Lan Chile.

From American's standpoint, acquiring Lan Chile is economically rational even though American gains no new market access from such acquisition because it forecloses United's ability to achieve minimum efficient scale on the Miami-Santiago route through an alliance with Lan Chile. So long as United is forced to operate this route below minimum efficient scale, it is at risk of being driven from the route by American.

From Lan Chile's standpoint, effectively selling out to American makes more economic sense than would entering into an alliance with United. The reason is that by selling out to American, it will be able to share in the monopoly rents American will be able to earn if American is successful in forcing United to exit the route. On the other hand, if Lan Chile enters into an alliance with United, it would merely be a participant in a two carrier competitive market, an outcome that would certainly be less profitable than joining with American to achieve a monopoly. Because American has a uniquely dominant hub at Miami, the calculus will always be the same for every carrier in Latin America: Merge with American and share in the monopoly rents American hopes to gain on its Miami-Latin America services, or enter into an alliance with another U.S.-flag competitor to achieve a second efficient network of services that will compete with American between Miami and Latin America.

A decision by the Department to grant the American/Lan Chile alliance antitrust immunity will facilitate the maintenance of a Miami-Latin America market structure in which it is impossible for United to gain alliance partners that would enable it to achieve minimum efficient scale on its Miami-Latin America services so that it can challenge profitably American's domination of these markets. In such event, United may have no choice but to exit these markets and assign its aircraft resources to other global markets with greater profit potential?

12/ If United were forced to exit the market solely because of American's superior competitive performance, United's exit would be of no governmental concern. However, if United is forced to exit because of a decision by the Department that forecloses its ability to establish a second efficient competing network through alliances with Lan Chile and other Latin American
(Cont'd on next page)

The issue the Department must resolve in this proceeding is how to preserve meaningful competition in Miami-Latin America city-pair markets where American is moving to implement alliance agreements with the foreign-flag carriers that are its principal nonstop competitors. This is an issue that cannot be resolved simply by incanting that the bringing into force of an open skies agreement with Chile (or with any other government in Latin America) removes all governmental barriers to entry by United or another U.S. carrier in any Miami city-pair market where American and its partners operate overlapping nonstop service.

Nor, in the unique circumstances of Miami, can this issue be resolved by simply carving out from any immunity granted American and its Latin American partners cooperation on any nonstop Miami city-pair routes where American and its foreign partners compete. So long as these foreign carriers are free to enter into alliances with American, it would be economically irrational for them to cooperate with any of American's U.S.-

(Cont'd from previous page)
carriers, the Department will have failed to carry out its responsibility under the statute to exercise its administrative discretion to promote competition and serve the public interest.

flag competitors. As such, by approving American's multiple overlapping alliance agreements in Latin America, the Department will effectively be denying American's U.S.-flag competitors the ability to utilize code sharing and alliance agreements with these foreign carriers to create a U.S.-Latin America market structure in which there is broad-scale network-to-network competition between competing alliances.

III. CONCLUSION

Already a dominant carrier throughout Latin America, American is seeking further to entrench its position in these markets through alliances with virtually every foreign carrier in the region. Traffic between the U.S. and Latin America is growing rapidly, prompted by the liberalization of economic policies by most Latin American governments. As traffic grows, the need to ensure an open and competitive market for air transportation services increases, as do the adverse economic consequences of failing to open U.S.-Latin America air travel markets to effective network-to-network competition.

To avoid any threat to its dominant position in the region, especially on key routes to Miami which account for the lion's share of U.S.-Latin America local demand, American is following a strategy of signing overlapping alliance agreements with virtually every major foreign carrier in the region. Although a Department spokesperson has noted that these alliances "raise[...] very complex questions of competition[,]" the Department has failed to act to prevent American from continuing with its strategy. Wall Street Journal, January 9, 1998 at A12.

If the Department is to carry out its statutory responsibility to protect the public interest, it cannot review each of American's overlapping alliances in isolation from the others. When reviewed collectively in the context of the overall U.S.-Latin America market structure, it is clear that American's plan to align itself with no fewer than 13 airlines in the region -- the six carriers of the TACA Group plus Aerolineas Argentinas and Austral, Avianca, Iberia, Lan Chile, TAM and TAM Mercosur -- poses a substantial risk to competition. American's sole objective in proposing these alliances is to foreclose the possibility of a second efficient online network being created in Latin America through alliance agreements between American's U.S.- and foreign-flag competitors -- a network that could challenge American's dominant position in the rapidly growing U.S. -Latin America air travel market.

The time has come for the Department to call a halt to American's gamesmanship. To protect the public interest, it must act promptly to deny American's and Lan Chile's joint application for antitrust immunity for their alliance, thereby sending a clear signal to airlines and governments throughout Latin America that it will not allow American further to dominate U.S. -Latin America air travel markets through a series of profoundly anti-competitive alliance agreements.

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DATED: **March 13, 1998**

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AMERICAN OPERATES MORE SERVICE TO LATIN AMERICA THAN ALL OF ITS U.S. COMPETITORS COMBINED

March 1998

	Frequencies	AA Share	Seats	AA Share
U.S.-Chile				
American Airlines	42	**75%**	8,260	**67%**
Other U.S. Carrier	14		4,088	
Total	56		12,348	
U.S.-South America				
American Airlines	440	**62%**	91,398	**61%**
Other U.S. Carriers	270		57,694	
Total	710		149,092	
U.S.-Central America				
American Airlines	238	**55%**	38,388	**57%**
Other U. S. Carriers	196		29,230	
Total	434		67,618	

Source: OAG Schedule Tapes, March 1998

AMERICAN AND LAN CHILE WILL DOMINATE THE U.S.-CHILE MARKET

March 1998

U.S.-Chile Frequencies

	Frequencies	**Share**
American Airlines	42	
Lan Chile	22	
United	14	
Total	78	
AA/LA Combined	64	82%

U.S.-Chile Seats

	Seats	**Share**
American Airlines	8,260	
Lan Chile	4,620	
United	4,088	
Total	16,968	
AA/LA Combined	12,880	76%

Source: OAG Schedule Tapes, March 1998

AMERICAN CONTROLS THE DOMINANT U.S.-GATEWAY TO LATIN AMERICA

Miami-Latin America Frequencies and Seats

March 1998

	Frequencies	AA Share	Seats	AA Share
Miami-South America				
American Airlines	328	**77%**	69,390	**75%**
Other U. S. Carrier	98		22,764	
Total	426		92,154	
Miami-Central America				
American Airlines	224	**100%**	3 5,756	**100%**
Other U.S. Carriers	0		0	
Total	224		3 5,756	
Miami-Latin America				
American Airlines	552	**85%**	105,146	**82%**
Other U.S. Carriers	98		22,764	
Total	650		127,910	

Source: OAG Schedule Tapes, March 1998

MIAMI IS THE DOMINANT U.S. GATEWAY FOR U.S.-CHILE PASSENGERS

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U.S.-Chile INS Passenger Arrivals and Departures

Total U.S.-Chile Passengers	500,926
Passengers Using The Miami Gateway	405,974

Percent of U.S.-Chile Passengers Using the Miami Gateway
81%

Source: Immigration and Naturalization Service (INS) I-92 Data,
12 Months Ended April 30, 1997

MIAMI ACCOUNTS FOR MORE THAN ONE-HALF OF U.S.-SANTIAGO PASSENGER TRAFFIC
(Calendar 1996)

TOTAL U.S.-SANTIAGO FROM O&D SURVEYS	198,470
FOREIGN-FLAG ADJUSTMENT	168.93 1
TOTAL U.S.-SANTIAGO PASSENGER MARKET	367,401
TOTAL MIAMI-SANTIAGO FROM O&D SURVEYS	62,330
FOREIGN-FLAG ADJUSTMENT	125,022
TOTAL MIAMI-SANTIAGO PASSENGER MARKET	187,352
MIAMI AS PERCENT OF *TOTAL* U.S.	51%

Source: Exhibit UA-R- 10 in Docket OST-97-2586

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American Airlines Is The Dominant U.S. Carrier at Miami By Any Measure

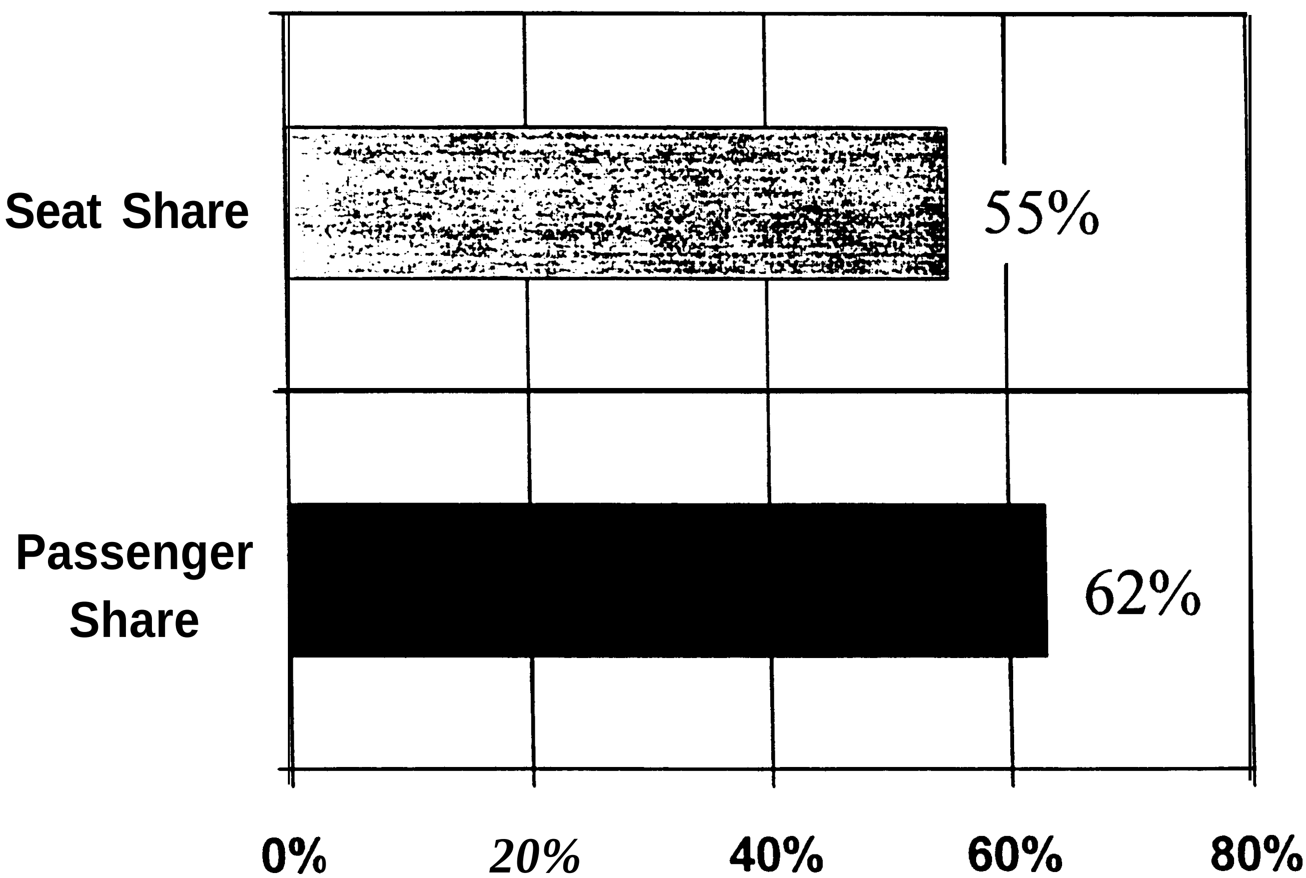
Overall

	Seats		Departures	
	Actual	% of total	Actual	% of total
AA	523,280	66	3,902	61
All Other Carriers	264,259	34	2,499	39
Northbound				
AA	281,046	55	2,350	53
All Other Carriers	226,446	45	2,096	47
Southbound				
AA	242,234	86	1,552	79
All Other Carriers	37,813	34	403	21

Source: OAG Schedule Tapes, January 1998

American Airlines Does Not Need The Code Share Support Of Six Other Central America Carriers To Gain Miami-Central America Market Efficiency

American Airlines Miami-Central America Seat Share and Passenger Share



Seat Share	55%
Passenger Share	62%
Passenger Share Greater Than Seat Share	**+7** percentage points

American Airlines Does Not Need The Code Share Support Of Six Other Central America Carriers To Gain Miami-Central America Market Efficiency

Between Miami and:	Annual Seats		Annual Passengers	
	Total	AA	Total	AA
BZE	184,163	93,450	100,254.	63,852
GUA	469,462	294,858	276,374	180,620
MGA	469,734	143,706	212,021	8 1,746
PTY	623,952	437,122	358,334	266,882
SAL	444,052	2 19,526	172,467	110,402
SAP	249,818	138,940	131,310	74,763
SJO	857,693	409,440	486,678	276,492
TGU	136,112	136,112	71,719	71,719
TOTAL	**3,434,986**	**1,873,154**	**1,809,157**	**1,126,476**

Source: BTS T-100 Market Data Base, Annual 1996

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Comments of United Air Lines, Inc. on all persons named on the attached Service List by causing a copy to be sent via first class mail, postage prepaid.

Kathryn D. North

Kathryn D. North

DATED: **March 13, 1998**

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