

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 - 23

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-972982 - 18

for an exemption under 49 U.S.C. Section 40109 :

Joint Application of :

AMERICAN AIRLINES, INC. and :
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Undocketed

for a statement of authorization under 14 C.F.R. :
Parts 207 and 212 (reciprocal code-share services) :

CONSOLIDATED REPLY OF
REGIONAL BUSINESS PARTNERSHIP
(NEWARK)

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American's Chairman and CEO lamented last week that "American has been driven out of three U.S.-European city-pairs because of the tremendous

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advantages . . . immunized alliances possess over unaffiliated carriers,” but American’s actions and the comments of Continental, Delta and United demonstrate that American is trying to do exactly the same thing to other airlines on U.S.-Latin America routes. In the *American/TACA* case, the Department of Justice recognized that, even without antitrust immunity, “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.² American’s overlapping Latin America alliances are already preempting pro-competitive alliances that would provide network expansion and competition for American without extensive overlaps and market dominance. The Regional Business Partnership (Newark) urges the Department to stop American’s preemptive, anticompetitive and anticonsumer effort to drive independent operators off of U.S.-Chile routes such as Newark-Santiago by denying immunity for and disapproving the *American/Lan Chile* alliance.

¹ Written Testimony of R.L. Crandall, Chairman and Chief Executive Officer, AMR Corporation, Before the Subcommittee on Antitrust, Business Rights and Competition, Senate Committee on the Judiciary at 2 (March 19, 1998) (“Crandall Testimony”).

² January 18, 1998 Comments of the U.S. Department of Justice in Docket OST-96-1700 at 6.

The Regional Business Partnership (Newark)³ states as follows in reply to the March 13 comments filed by Continental, Delta and United:

1. **American's Experience Competing Against Immunized U.S.-European Alliances Confirms That An Immunized American/Lan Chile Alliance Would Eliminate Canpetition On U.S.-Chile Routes**

If the Department needed any proof beyond the compelling arguments and statistics provided by Continental, Delta and United that an immunized American/Lan Chile alliance would spell disaster for U.S.-Chile and U.S.-Latin America competition, American's Chairman and CEO provided that proof when he testified before the Senate Judiciary Committee's Subcommittee on Antitrust, Business Rights and Competition last Thursday:

Since June 1996, American has been driven out of three nonstop city-pairs between the United States and continental Europe. In January 1997, American had to cancel New York-Zurich service, a route we had flown for over a decade, because of heavy and sustained losses. We simply could not match the combined strength of Delta and Swissair.

In March 1997, we had to cancel American service between Miami and Frankfurt, due to the United/Lufthansa alliance. We had suffered millions of dollars of losses and had no prospect of turning a profit. Likewise, our service from New York to Brussels became economically nonviable because of pressure from the Delta/Sabena alliance, which could use its collective might in the United States and Belgium to our disadvantage. We were forced to end that service in September 1997. A number of our remaining routes to the Continent are

³ The Regional Business Partnership (Newark) is a non-profit business organization that advocates the economic growth and development of the northeastern region of New Jersey. The Partnership sponsors conferences, seminars and training in international trade, small business, regional marketing and the development of downtown Newark.

under extreme pressure -- such as Chicago to Frankfurt, where United and Lufthansa have announced a fourth daily flight, far more capacity than the market needs.

(Crandall Testimony at 8) Mr. Crandall's testimony echoes American's recent claim before the Department that:

Since the grant of antitrust immunity to United/Lufthansa two years ago . . . , American's service between the U.S. and Germany in general, and between Chicago and Frankfurt, and between Chicago and Frankfurt in particular, has become increasingly marginal, with low load factors and low yields. Last Fall, American ceased operations altogether between Miami and Frankfurt, despite Miami's position as an American hub, because of American's inability to compete effectively for beyond-Frankfurt traffic in light of the United/Lufthansa alliance.

(Answer of American Airlines, Inc. in Docket OST-98-3552 at 6, March 11, 1998 ("American Answer"))

If American cannot compete in an open-skies environment as an independent carrier on its long-standing U.S. hub-Europe routes against immunized European alliances with combined U.S.-Europe shares below 20%,⁴ it is clear that no U.S. carrier could compete with immunized alliances between dominant American and its partners on U.S.-Latin America routes, even if current bilateral restrictions are removed. American and its Latin American partners⁵,

⁴ As Continental said in its March 13 consolidated answer to the application in this case, the United/Lufthansa U.S.-Europe passenger share was only 13% when the Department immunized that alliance, and the Delta/Austrian/Sabena/Swissair alliance had only a 15.6% passenger share at that time. Continental Consolidated Answer at 2.

⁵ Aerolineas Argentinas, Avianca, Iberia, Lan Chile and the TACA Group carriers.

have a combined 53% seat nonstop share on U.S.-Latin American routes, and American and Lan Chile have a combined 70% nonstop seat share on U.S.-Chile routes . Thus, Mr. Crandall and American provide powerful evidence confirming the view of Continental, Delta and United that the American/Lan Chile alliance should be denied immunity and disapproved.

2. American's Congressional Testimony Confirms That American's Latin American Alliances Are Aimed At Preempting Development Of Competing U.S.-Carrier Alliances And Networks

The Department has recognized that there is record evidence “that American's only purpose in forming [the American/TACA] arrangement is to prevent other U.S. airlines from obtaining an alliance with the TACA Group.” (Order 97-12-35 at 29) Continental, Delta and United argued forcefully in their March 13 comments that the true objective of American's Lan Chile and other Latin American alliances is to preempt similar code sharing by U.S. carriers. Mr. Crandall says that alliances between U.S. and foreign airlines, particularly those with antitrust immunity, are anticompetitive and harmful, and he told Congress last week that American needs an alliance with British Airways to compete “solely for the purpose of enabling us to remain a competitor between the United States and Europe in a world where all our major competitors already enjoy extremely powerful alliances.” (Crandall Testimony at 28 (emphasis added)) This rationale demonstrates that American's Latin American alliances are preemptive and

designed to perpetuate American's dominance of U.S.-Latin America routes where it faces no major competing alliances.

As the objecting airlines have shown in this case, and as the Department of Justice confirmed in the American/TACA case, American does not need a code-share or immunized alliance to compete successfully between the U.S. and Latin America, including U.S.-Chile routes. American already operates 75% of the U.S. carrier nonstop flights between the U.S. and Chile. (Continental Answer at 3) Not only is American the strongest U.S. carrier by far on U.S.-Chile and Miami-Santiago routes, but American does not have to compete with any other U.S. carrier alliance on U.S.-Chile routes? American's U.S.-Chile route structure already 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. (Continental Answer at 6-7) Indeed, American is the only U.S. carrier that has a comprehensive U.S.-Central America-South America network in place (Continental Answer at 22), and "[n]o U.S. carrier dominates any region the way American blankets Latin America." ("Yankee Aggressor: How American Airlines Is Building Dominance in the Latin Market," The Wall Street Journal, January 9, 1998 at A1)

As Continental, Delta and United have shown, the only plausible reason for American's interrelated investments in and code-shares with Latin American

⁶ United and National Airlines of Chile have authority only to code-share on within-Chile flights.

carriers is to preserve its already-dominant position on U.S.-Latin America routes and to deny its U.S. competitors the positive benefits and network efficiencies that result from such alliances. Such benefits for American's competitors and their customers are especially important on thin U.S.-South America routes.⁷ The Department should not foster this anticompetitive, anticonsumer activity.

3. **The American/Lan Chile Alliance Will Prevent Development Of Alternate U.S. Gateways**

The Department of Justice determined in the American/TACA case that open skies is not dispositive on whether a particular alliance is procompetitive, and the objecting airlines have shown that "[a]pproving 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. competition from de jure open skies between the U.S. and Chile." For the Regional Business Partnership and the entire region served by Newark

⁷ As Mr. Crandall recognizes:

These alliances also provide their partner carriers with the power to feed connecting traffic to their transatlantic flights at both their U.S. and European hubs, thus affording the alliances another major advantage -- especially in thinly traveled markets dependent on connecting feed for their viability. These partnerships also endowed their members with the ability to achieve lower unit costs and to combine the strength of their marketing and sales efforts in both the United States and Europe, and to offer corporate customers discounts on worldwide networks.

Crandall Testimony at 5. Accord, American Answer at 4.

⁸ Continental Consolidated Answer at 16. Accord, United Comments at 5-6.

International Airport, the threat of an American/Lan Chile alliance (with or without immunity) is very real. Newark and Continental have long sought Chile service, and Continental has finally been authorized to begin daily Newark-Santiago service. If Continental's Newark-Santiago service is to have a fair chance to succeed, it must not be hobbled by either approval of, or immunity for, an American/Lan Chile alliance. Approving the de facto American/Lan Chile merger could make it impossible for Continental and other U.S. airlines to develop alternate hubs for U.S.-Chile services and jeopardize Continental's nonstop Newark-Santiago service.

American is not only the dominant carrier in the entire U.S.-Latin America region but also the only U.S.-flag carrier with a well-developed U.S.-Chile route system and a fortress hub at Miami. Eighty-one percent of all U.S.-Chile passengers use the Miami gateway. (United Comments at 4) With an approved Lan Chile alliance, American would be able to swamp other U.S. carriers with frequencies on U.S.-Chile routes and block them from establishing comprehensive connections." A de facto merger would give American and Lan Chile the ability to exploit U.S.-Chile passengers and block competitive entry at new gateways, jeopardizing new gateway service like Continental's Newark-Santiago service, before it even begins.

⁹ On the same day Mr. Crandall was testifying about the evils of immunized alliances, the Department approved Canada-U.S.-Chile code sharing between American partners Canadian International and Lan Chile. Statement of Authorization Nos. 98-054 and -055.

CONCLUSION

The Regional Business Partnership urges the Department to halt American's preemptive Latin American strategy, heed the clear message of the Department of Justice that overlapping code-share alliances wreak havoc on competition without countervailing benefits and deny the American/Lan Chile requests for code-share authority and antitrust immunity to preserve viable competition by alternative U.S. gateways and additional carriers on U.S.-South America routes.

Respectfully submitted,

By: Samuel Crane
Samuel Crane

March 24, 1998

CERTIFICATE OF SERVICE

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


Samuel Crane
Samuel Crane

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