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BEFORE THE  
DEPARTMENT OF TRANSPORTATION  
WASHINGTON, D.C.

DEPT. OF TRANSPORTATION  
**ORIGINAL**  
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Joint Application of

AMERICAN AIRLINES, INC.

And

LINEA AEREA NACIONAL CHILE,  
S.A. (LAN CHILE)

Under 49 U.S.C. §§ 41308 and 41309 for  
approval of and antitrust immunity  
for alliance agreement

Docket OST-97-3285 - 53

**REPLY OF AEROVIAS DE MEXICO, S.A. de C.V.  
TO THE ORDER TO SHOW CAUSE  
CONCERNING JOINT APPLICATION OF AMERICAN AIRLINES, INC.  
AND LINEA AEREA NACIONAL CHILE, S.A. (LAN CHILE)**

Communications with respect to this document should be sent to:

Lic. Alfonso Pasquel B.  
Lic. Jose Rafael Robles D.  
Mr. **Jared** Harckham  
Lic. Juan **Nicolas Rhoads** F.  
Aerovias de Mexico, S.A. de C.V.  
Paseo de la **Reforma**  
No. 445, 5<sup>th</sup> Floor  
C.P. 06500  
Mexico, D.F., Mexico  
01 1-525-133-4000

Irwin P. Altschuler, Esq.  
Donald S. Stein, Esq.  
Stephanie E. Silverman, Senior Advisor  
MANATT, PHELPS & PHILLIPS, LLP  
1501 M Street, N.W., Suite 700  
Washington, D.C. 20005-1702  
(202) 463-4300

May 20, 1999

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**Introduction and Overview**

This submission, on behalf of Aerovias de Mexico, S.A. de C.V. (“Aeromexico”), responds to the Department of Transportation’s (“the Department”) invitation to interested parties to comment on its Order to Show Cause (“the Order”) in Docket OST 97-3285-47, dated April 22, 1998. By this submission, Aeromexico wishes to express and illustrate its serious concern that granting antitrust immunity to American Airlines and **Linea Aerea Nacional Chile (“LanChile”)** in the manner suggested by the Order is likely to result in greatly diminished competition in the critical U.S.-Latin America and intra-Latin America markets. While no doubt creating valuable business opportunities for American, LanChile and their other alliance partners, the resulting sharp reduction in competition will foster a dangerous opportunity for these carriers to control traffic, pricing and other critical variables in these increasingly important markets.

This submission briefly provides additional information that underscores this very real prospect, and encourages the Department to reconsider approval of the **American/LanChile** application. However, should the Department decide to approve the application, Aeromexico strongly urges the Department to impose more meaningful restrictions to prevent the creation of a dangerously anticompetitive environment and to foster real and essential opportunities for other carriers to provide more and better options in this market for U.S. passengers.

Aeromexico's recent efforts not only to enhance its presence and strategic offerings in the Latin America market, but also to take a leading role in securing a greatly enhanced bilateral agreement between the United States and Mexico, are strong testimony to the carrier's desire to participate fully in this critical market. While these actions also underscore Aeromexico's strong support for productive, consumer-oriented international alliances that can expand and enhance existing service, Aeromexico believes that not all international alliances lend themselves to competitive benefits for the carriers or for the U.S. and international passengers that rely on them. The **American/Lan** Chile is one such alliance that, particularly if immunized, appears antithetical to the Department's stated objectives for true global access and opportunity for U.S. aviation passengers. It is on this basis that we submit this response for consideration.

#### **1. A Broader Analysis of Critical Markets Shows Competitive Threats Are Likely**

In its Order, the Department indicates it does not believe that the proposed alliance, when immunized, would control the U.S.-Latin America aviation marketplace, principally because American and LanChile have a combined share of only 38 percent of the U.S.-South America market as a whole. Aeromexico wishes to note, in response, that the immunized alliance **would in fact control a far greater portion of this market**, directly and in combination with the other carriers with which American and/or LanChile have already established or are establishing

alliances'. In order to obtain a **full** and fair understanding of the impact of this proposed alliance, Aeromexico believes that the Department must look at all of American's and **LanChile's** alliances, since they represent the true reach of American Airlines in the region. Even if the Department elects to narrow its review to include only carriers in which the petitioners have an ownership stake (an analysis which we respectfully submit would not take into account the full scope of the problem), the addition of the market domination of Aerolineas Argentinas in certain key U.S.-Latin American markets boosts the **American/LanChile** alliance to a much greater level relative to the 22.8 percent combined share of **United/Varig**, and the 5.4 percent share of Continental. Moreover, the outright market share of these three carriers (American, LanChile and Aerolineas Argentina<sup>1</sup> in tandem with the strength of their exclusive local network system, clearly provides a strong basis for the carriers to distort and thwart competition once they are outside the reach of the rules of fair competition.

That said, Aeromexico believes that an analysis of U.S. consumer interests must evaluate the **full** competitive marketplace – meaning that it must see beyond only traffic between the United States and South America, or between the United States and Central America. This is not only because of the increasing traffic between the United States and virtually all points in Latin America, but also, critically, because U.S. passengers increasingly travel to one destination in Latin America, then to a second or a third, before returning back to the United States. As a result, **U.S. passengers have a growing stake in intra-Latin America travel, and the proposed alliance, particularly once immunized, poses a serious threat to competition here.** Within Latin America alone, American, LanChile and their various alliance partners together claim between 70 and 100 percent of the following major routes: Buenos Aires-Santiago (82%); Rio de Janeiro-San Jose (100%); Santiago-San Salvador (99%); Santiago-San Jose (99%); and Buenos Aires-San Jose (**71%**), to name just a few. As these data clearly indicate, the competitive impact

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<sup>1</sup> Carriers included in this group are: **AeroCalifornia**; Aerolineas Argentinas; Aero Postal; Avianca; British Airways; Canadian Airlines; Iberia; LACSA; LanChile; and TACA Group.

of an immunized **American/Lan** Chile alliance on these intra-Latin America routes -- which are important not only for regional carriers, but also for U.S. carriers, and certainly for U.S. passengers – could be extremely dangerous.

## **2. Inherent Market Constraints Limit the Ability of Open Skies to Enhance Real Competition**

The Order indicates the Department’s view that an “Open Skies” agreement between the United States and Chile will help to open new market opportunities for other carriers, possibly as an offset to the disproportionate market control that **American/LanChile** will gain from the immunity that may be granted. But it is important to keep in mind that, with or without an “Open Skies” policy, every market has inherent capacity restrictions. Therefore, no matter how much positive competition an Open Skies policy will support in theory, there are always real physical limits on how many carriers can service these markets, and how many new routes and frequencies can be added. This, of course, is true not only for U.S.-South America markets, but also for **intra-South America** and intra-Latin America markets.

Because of these somewhat finite capacity considerations, who controls the marketplace at the outset is a critical consideration; shifts in control, or even opportunities for control, are unlikely to occur without substantial and direct government intervention or other major capacity expansion. Even when such government intervention occurs – as is projected to be the case with the anticipated U.S.-Chile Open Skies Agreement – it is early control that sets the terms of competition for some time to come where markets such as Latin America (which does not foster the same type of broad-based competition as other regions, like Europe and Asia ) are concerned. Thus, while Aeromexico and others continually seek to add new service to important U.S.-Latin America markets, this cannot offset a fundamental imbalance in competition that is building through the American web of alliances, and that could become permanent with the grant of antitrust immunity that American and **LanChile** seek.

### 3. Minimum Restrictions In Miami Are Critical To Ensuring Basic Competition

With this as a guideline, Aeromexico submits that, at a minimum, the Department should consider extending its proposed carve-out for antitrust immunity to include all New York-Santiago flights, and any flights between any city in Chile and Miami International Airport. Clearly Miami has become the single most important U.S. gateway to Latin America – claiming about 70 percent of all passenger traffic and 80 percent of all freight from the U.S. to Latin America.<sup>2</sup> Consequently, Miami is also a crucial first link for U.S. passengers who will travel within the Latin America region. Today, as the Order itself alludes, Miami also represents the hub with the greatest potential for control by the immunized alliance.

Certainly both American and LanChile are already strongly positioned to compete at these critical gateways, as both have significant presences there already. Granting the protection of antitrust immunity in this instance benefits only American and LanChile. Consumers and competition would not derive any benefits from a grant of antitrust immunity to these two corridors. American and LanChile are unlikely to expand their offerings or otherwise enhance their services if antitrust immunity is granted. They are much more likely, given the current redundancy of service, to eliminate some of their combined frequencies in this market to enhance their combined efficiencies. A grant of antitrust immunity in the New York-Santiago and the Chile-Miami markets would simply have no redeeming competitive value to consumers.

The value to be gained by excluding Miami is not merely to provide opportunities for other carriers to participate in the Miami market, but also to help foster the development of other cities as alternatives to compete for **traffic** between these key U.S. and Latin America gateways. Clearly the development of cost-efficient and geographically efficient alternatives is in the best

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<sup>2</sup> Douglas W. Nelms, *Staking Southern Wealth: As The Latin American Market Continues to Grow, More U.S. Airports Are Trying to Gain Some Parts of the Action*, Air Transport World, Mar 1997.

competitive interests of the United States aviation industry and its passengers to and from Latin America.

## **Conclusion**

Aeromexico remains deeply concerned that American Airlines, allied with **LanChile**, and through an existing series of affiliations and alliances with other important carriers in the region, will block out competition from other carriers – particularly smaller competitors -- once it is fully immunized against the threat of U.S. antitrust laws. American has demonstrated, in the view of Aeromexico, a proclivity to do this in its home market. Aeromexico is therefore concerned that freedom from U.S. antitrust rules, coupled with a network that dominates and controls the most important aspects of the regional marketplace, will allow and encourage anticompetitive behavior in the U.S.-Latin America marketplace as well.

Because this marketplace is so important to the 1.7 million U.S. passengers who fly between the U.S. and South America, as well as the 4.7 million passengers who fly within Latin America each year, Aeromexico urges the Department to take steps to protect against this potentiality, either by rejecting the original application, or by granting immunity with more targeted and meaningful limitations. Aeromexico believes that excluding flights between New York-Santiago and between Chile-Miami from antitrust immunity helps to protect against the prospect of anticompetitive practices in that market while responding fully to the request of the petitioners for an opportunity to coordinate so that they can create **new** market opportunities. This restriction is also likely to support, if not foster, the creation of other, more geographically and economically efficient U.S. gateways to and from Latin America. In turn, this outcome would not only likely benefit Aeromexico and other carriers which have expressed an interest in this market, but it would undoubtedly yield benefits to the large and growing pool of U.S. consumers who will be impacted.

Aeromexico appreciates this opportunity to share its concerns, comments and recommendations with the Department in this matter of great concern to all the carriers that currently serve, and all those that may wish to serve, this critical marketplace.

Respectfully submitted,

A handwritten signature in black ink that reads "Irwin P. Altschuler". The signature is written in a cursive style with a horizontal line underneath it.

Irwin P. Altschuler, Esq.  
Donald S. Stein, Esq.  
Stephanie E. Silverman, Senior Advisor  
Manatt, Phelps & Phillips  
1501 M Street, Suite 700  
Washington, D.C. 20005-1702  
202-463-4300

## CERTIFICATE OF SERVICE

I hereby certify that on the 20th day of May, 1999, a copy of the foregoing Reply to the Order to Show Cause of Aerovias De Mexico, S.A. was served by first class mail, postage prepaid, on the parties named below.

David Marchick  
Deputy Assistant Secretary  
for Transportation  
U. S. Department of State  
2201 C Street, N.W.  
Room 5830  
Washington, D.C. 20520

R. Bruce Keiner, Jr.  
Lorraine Hallaway  
Crowell & Moring, L.L.P.  
1001 Pennsylvania Ave., N.W.  
Suite 1000  
Washington, D.C. 20004-2595  
(Continental Airlines)  
(Emery Worldwide)

Robert E. Cohn  
Shaw, Pittman, Potts & Trowbridge  
2300 N Street, N.W.  
Washington, DC. 20037  
(Delta Air Lines, Inc.)

Lawrence M. Nagin  
Executive Vice President,  
Corporat Affairs, and General Counsel  
US Airways, Inc.  
Crystal Park Four  
2345 Crystal Drive  
Arlington, VA 22227

D. Scott Yohe  
Senior Vice President  
Government Affairs  
Delta Air Lines, Inc.  
1275 K Street, N. W.  
Suite 1200  
Washington, D.C. 20005

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

Michael F. Goldman  
Bagileo, Silverberg & Goldman  
1101 30th Street, N.W.  
Suite 120  
Washington, D.C. 20007  
(Dallas Forth Worth)

Carl Nelson, Jr.  
Associate, General Counsel  
American Airlines, Inc.  
1107 17th Street, N.W.  
Suite 600  
Washington, D.C. 20036

Hershel Kamen  
Staff V.P., International  
& Regulatory Affairs  
Continental Airlines, Inc.  
P.O. Box 4607  
HQSGV  
Houston, TX 77210-45607

Marshall S. Sinick  
Squire, Sandlers & Dempsey, L.L.P.  
120 1 Pennsylvania Avenue, N. W.  
Suite 500  
Washington, D.C. 20004  
(Florida West Int'l Airways)

Bradley Rubenstein  
Manager, Air Service Development  
and External Affairs  
Port Authority of New York  
and New Jersey  
One World Trade Center  
Suite 65-N  
New York, NY 10048

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

Glenn Albus  
Legal Department  
Evergreen International  
Aviation, Inc.  
3850 Three Mile Lane  
McMinnville, OR 97 128

Roger W. Fones  
Antitrust Division  
U. S. Department of Justice  
325 7th Street, N.W.  
Suite 500  
Washington, D.C. 20530

R. Tenney Johnson  
DHL Airways  
2121 K Street, N.W.  
Suite 800  
Washington, D.C. 20037

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

James W. Tello  
Filler, Weller & Tello, P. C.  
117 N. Henry Street  
Alexandria, VA 223 14-0784  
(Miami Air International)

Aaron Goerlich  
Boros & Garofalo, P.C.  
120 1 Connecticut Ave., N. W.  
Washington, D.C. 20036  
(Carnival Airlines)

William H. Callaway, Jr.  
Zuchert, Scutt & Rasenberger, L.L.P.  
888 17th Street, N.W.  
Suite 600  
Washington, D.C. 20006  
(Challenge Air Cargo)

Peter Reaveley  
Dade County Aviation Department  
Miami International Airport  
P.O. Box 592075  
Miami, FL 33 159

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

Tom Lydon  
Director, Government Affairs  
Evergreen, International  
1629 K Street, N. W.  
Suite 30 1  
Washington, D.C. 20006

Alfred J. Eichenlaub  
Senior Vice President & General Counsel  
Polar Air Cargo  
100 Oceangate  
15th Floor  
Long Beach, CA 90802

Richard J. Fahy, Jr.  
Consulting Attorney  
Trans World Airlines, Inc.  
900 19th Street, N.W.  
Suite 350  
Washington, D.C. 20006

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

Jeffrey A. Manley  
Kirkland & Ellis  
655 15th Street, N.W.  
Washington, D.C. 20005  
(Polar Air Cargo)  
(United Airlines)

Samuel Crane  
President  
Regional Business Partnership  
(Newark)  
One Neward Center  
Newark, NJ 07102

William C. Evans  
John R. Meyers, Jr.  
Verner, Liipfert, Bernhard, McPhearson  
& Hand  
901 15th Street, N. W.  
Suite 700  
Washington, D.C. 20005  
(Aerovias de Mexico)

Donald T. Bliss  
O'Melveny & Myers, L.L.P.  
555 13th Street, N.W.  
Suite 500 West  
Washington, D.C. 20004  
(US Airways)

Megan Rae Poldy  
Associate General Counsel  
Northwest Airlines  
901 15th Street, N.W.  
Suite 3 10  
Washington, D.C. 20005

A handwritten signature in black ink, appearing to read "Stephanie Silverman". The signature is written in a cursive, flowing style.

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Stephanie  Silverman  
Senior Advisor