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BEFORE THE
DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.

DEPT. OF TRANSPORTATION
OST-99-5674

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Joint Application of)
)
ALITALIA-LINEE AEREE ITALIANE-)
S.p.A.)
and)
KLM ROYAL DUTCH AIRLINES)
and)
NORTHWEST AIRLINES, INC.)
)
for approval of and antitrust immunity for)
agreements pursuant to 49 U.S.C. §§ 41308)
and 41309)

Docket OST-99-5674 - 29

REPLY OF ALITALIA-LINEE AEREE ITALIANE-S.P.A.

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S.p.A.

Dated: September 1, 1999

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Alitalia-Linee Aeree Italiane-S.p.A. (“Alitalia”), pursuant to the Department’s Order 99-8-5, hereby submits its Reply to the Answer of the International Association of Machinists and Aerospace Workers, AFL-CIO (“IAM”).¹ The IAM essentially raises two arguments in opposition to the Joint Application: first, that the proposed alliance is anti-competitive; and, second, that the IAM’s ongoing labor dispute with Alitalia warrants disapproval of the joint application. This Reply addresses the second issue only; the first issue is addressed in a separate joint reply also filed today by Alitalia in conjunction with Northwest and KLM.

The IAM invites the Department to use this proceeding as an opportunity to intervene in the ongoing collective bargaining process in which the IAM and Alitalia are engaged, and warns

¹ Answer of the International Association of Machinists and Aerospace Workers, AFL-CIO to the Joint Application, August 23, 1999 (“IAM Answer”).

the Department that if it approves the proposed alliance, the IAM will extend its picket line against Alitalia to Northwest and KLM.

The Department has repeatedly rebuffed the IAM's efforts to use DOT proceedings as a forum for resolving its complaints against Alitalia. For example, the IAM objected to a prior application filed by Alitalia with the Department on the ground that the combination of the IAM/Alitalia labor dispute and an allegedly adverse effect on competition warranted disapproval of the application. In that case, the Department gave short shrift to the IAM's competition argument, noting "that no U.S. carrier has voiced an objection to Alitalia's application." Order 96-2-38, February 21, 1996, at 2 (Docket OST-95-789) (granting Alitalia's application to operate scheduled (all-cargo service to Miami). Similarly, in this proceeding, no U.S. carrier or any other person has objected to the Joint Application.

As to the IAM's argument that the Department should intervene in the labor dispute, the Department responded that:

[W]e have consistently found that labor issues such as those that the IAM raises here are beyond the scope of foreign carrier licensing proceedings. The IAM has presented nothing in this case that would cause us to alter our view that its concerns should not form a basis for withholding the bilaterally provided for authority that Alitalia seeks in this proceeding. This is not to say that we are unconcerned about the issues that the IAM has raised. However, we remain convinced that the labor statutes provide the appropriate mechanism for addressing these matters.

Id.; see also Notice of Action Taken, January 16, 1998 (Docket OST-98-333 1) (renewing Alitalia's Miami all-cargo exemption authority).

The Department consistently has refused to interfere in the collective bargaining process, recognizing that it is "not a proper tribunal to [adjudicate airline labor disputes] in view of our lack of expertise in labor issues and because we are not the agency primarily responsible for enforcing the Railway Labor Act." American-Eastern/Continental Route Transfer, Order 90-5-5,

May 3, 1990, at 18. See also Texas Air-Eastern Acquisition, Order 88-4-54, April 20, 1988, at 8, quoting ALPA v. DOT, 838 F.2d 563,566 (D.C. Cir. 1988) (“[w]hether a carrier unlawfully breaches a collective bargaining agreement is a question that is normally left for resolution by an appropriate system board of adjustment under the Railway Labor Act”).

The IAM simply has not provided the Department with any basis for subverting the statutory scheme and deviating from this well-established policy in this case.

Despite the Department’s well-established policy of non-interference in the airline-labor collective bargaining process and its repeated refusal to be drawn into this specific dispute, the IAM would have the Department pressure Alitalia to agree to the union’s compensation demands by withholding approval of the alliance. The IAM insists on injecting a specific bargaining issue into this proceeding, where it clearly does not belong, and asserts that if “Alitalia’s tactics and labor relations record are to be condemned, the Department must reject the Application.” IAM Answer, at 16. But it is not the Department’s province to take either side in a labor dispute, and certainly not to “condemn” any party that has complied with the labor statutes. Notably, the IAM makes no claim that Alitalia has broken any law.

The IAM’s description of the history of this dispute and the current negotiations invites detailed correction. But, even as described by the IAM, this private dispute clearly has no effect on the public interest in the air transportation system. In light of the IAM’s accusations of “bad faith” and “misrepresentation,” however, certain points should be made clear.

At the outset of the dispute in 1993 Alitalia did not lock out its employees represented by the IAM; rather, consistent with the mandates of the Railway Labor Act, upon exhaustion of statutory procedures, Alitalia lawfully implemented its proposals which included subcontracting of airport operations. Employees in other departments, such as passenger sales and reservations,

were free to continue work. Although the IAM voted to strike, most of those individuals opted to continue working.

The IAM does not mention the fact that extensive negotiations on this matter took place in 1997, that Alitalia offered a severance package valued at approximately \$1.3 million, and that the union rejected Alitalia's proposal without even a formal counterproposal or a vote by the employees.

As to the current negotiations, the IAM's own version reveals that Alitalia on August 5 increased its initial offer on the severance portion of the package from \$1.3 million to \$1.9 million and on August 19 to \$2.6 million for the 149 employees. This proposal, which is equivalent of roughly two weeks pay for each year of service, shows a willingness to negotiate on terms to which the IAM has agreed elsewhere in the industry. In the package offered by Alitalia, the affected employees would also receive immediately a distribution of approximately \$3.5 million of accrued benefits from termination of the pension plan.

But the IAM demands that the \$2.6 million be added to the \$1.9 million offer of August 5. There is a surplus in the Alitalia pension fund also valued at approximately \$2.6 million. The IAM asserts that Alitalia should add this amount to the package because "it is no more than a windfall to the airline." IAM Answer, at 16. Focused on this "windfall" concept rather than the value of the package, the IAM now asserts that Alitalia is acting in "bad faith". IAM Answer, at 15. This is simply incorrect. The August 19 talks ended when Alitalia advised that its severance offer was limited to \$2.6 million and the IAM threatened to block the alliance unless Alitalia agreed to its demands.

Alitalia provides this description of the talks for two reasons. One, this is obviously a solvable dispute, once the union focuses on the value of the package to the employees instead of

the source of the funding. Two, this dispute clearly has no significant impact on the “public interest” standard under which the Department should consider the application for approval of the alliance.

Alitalia believes the negotiations can continue although no date for the next talks has been scheduled. Alitalia is prepared to negotiate a resolution, as it was in 1997 before the alliance agreement and as it will be after DOT approval of the alliance if that occurs before negotiations conclude. However, a major obstacle to an agreement would arise if the IAM determines that the Department will withhold approval until the union’s wishes are fully satisfied.

Finally, Alitalia notes the IAM statement that if the alliance is approved, the union will “extend its picket line” to include KLM and Northwest. The IAM states this would result in “operational disruptions which would frustrate the public interest.” IAM Answer, at 16. This threat **appears** to be an effort to expand the importance of the dispute so as to provide it with a “public interest” dimension that it now so clearly lacks. The Department should not base its actions in proceedings such as this one on a union’s threats to engage in picketing or other similar conduct.

In any event, the best and quickest way to resolve the dispute is for the Department, as a matter of law and established policy, to take neither side, to allow the on-going bargaining process to work, and to proceed to approve the alliance on its merits.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I certify that on this 1 st day of September 1999, a copy of the foregoing Reply of Alitalia-Linee Aeree Italiane-S.p.A. was served by first class mail, postage prepaid, upon the following:

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