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UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.

Issued by the Department of Transportation
on the 13th day of September, 1999

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-1997-3285 - 59

FINAL ORDER

By this Order, we grant final approval and antitrust immunity for an Alliance Agreement,¹ between American Airlines, Inc. ("American") and Linea Aerea Nacional Chile, S.A. ("LAN Chile") under 49 U.S.C. §§ 41308 and 41309, subject to the limits and conditions as described below and in Appendix A.

I. Background

A. The Application

On December 23, 1997, American and LAN Chile filed a request seeking approval of and antitrust immunity for an Alliance Agreement, for a five-year term. Through their Alliance Agreement, the applicants stated that they intend to offer the traveling and shipping public a greater choice of destinations, providing air transportation to approximately 4,000 city-pair markets by their alliance network. While the applicants stated that the alliance does not involve any "exchange of equity or other forms of cross-ownership," they stated that the objective of the Alliance Agreement is to

¹ The term "Alliance Agreement," as used herein, means (1) the agreement entered into on September 5, 1997 (see Exhibit JA-1); (2) any implementing agreements that the joint applicants conclude pursuant to the September 5, 1997, agreement to develop and carry out the American and LAN Chile alliance (including, but not limited to, the Code-Share Agreement dated September 5, 1997); and (3) any subsequent agreement(s) or transaction(s) by the joint applicants pursuant to the foregoing agreements.

enable the two companies to plan and coordinate service over their respective route networks as if there had been an operational merger between the two companies.²

B. Order to Show Cause

On April 22, 1999, the Department issued an Order to Show Cause, Order 99-4-17. We tentatively determined, subject to certain conditions and limitations, to grant approval of and antitrust immunity for the Alliance Agreement between American and LAN Chile. We tentatively decided to direct American and LAN Chile to resubmit for review their Alliance Agreement three years from the date of issuance of the final order in this case. The Department noted that it was not proposing to authorize American and LAN Chile to operate under a common name. The Department determined that, if American and LAN Chile choose to operate under a common name, the carriers would have to obtain prior separate approval from the Department before implementing the arrangement.

We tentatively decided not to extend antitrust immunity to certain activities relating to fares and capacity for particular categories of U.S.-point-of-sale local passengers on the Miami-Santiago route. We tentatively determined to direct American and LAN Chile to withdraw from all International Air Transport Association (“IATA”) tariff coordination activities affecting through prices between the United States and Chile and for other markets described below.

We tentatively decided to direct LAN Chile to report full-itinerary Origin-Destination Survey of Airline Passenger Traffic (“O&D Survey”) data for all passengers to and from the United States (similar to the O&D Survey data reported its alliance partner American). Further, we tentatively determined to direct American and LAN Chile to file all subsidiary and or subsequent agreement(s) with the Department for prior approval.

We provided the Joint Applicants and any interested party an opportunity to comment on our tentative findings and conclusions.

II. Responsive Pleadings to Order to Show Cause

A. Motion for an Extension of Time

On May 3, 1999, Continental Airlines, Inc. (“Continental”) filed a motion urging the Department to extend the time provided for objections to Order 99-4-17 until 60 days after a new U.S.-Argentina agreement is reached. Continental maintained that the Department should provide itself and the parties to this case the opportunity to evaluate the proposed American-LAN Chile arrangement in the “context of the U.S.-Argentina bilateral negotiations.”

² By Order 98-2-2 1, issued February 20, 1998, we found that the record of this case was substantially complete, and established procedural deadlines. We also provided to counsel and outside experts for interested parties interim access to the confidential information filed in the American-TACA Group case (Docket OST-96-1700), subject to certain affidavit procedures and requirements.

On May 12, 1999, the Joint Applicants separately filed answers urging the Department to deny Continental's motion. They maintain that the request is self-serving and contrary to the public interest.

B. Objections

On May 20, 1999, Continental, Delta Air Lines, Inc. ("Delta"), United Air Lines, Inc. ("United"), and Aerovias de Mexico, S.A. de C.V. ("Aeromexico") filed objections to the proposed alliance.

Continental

Continental maintains that an immunized American-LAN Chile alliance will perpetuate a closed U.S.-Chile market. Continental states that the Department's reliance on experiences with alliances in Europe and Central America to predict favorable results from immunizing the American-LAN Chile arrangement is mistaken. Continental asserts that antitrust immunity is not required to achieve the enhanced service options noted by the Joint Applicants. Continental maintains that the Department's tentative decision places fewer restrictions and limitations on the proposed alliance than on other alliances approved by the Department. Specifically, like the American-TACA Group alliance, Continental urges the Department to prohibit the Joint Applicants **from** having a joint alliance committee or sharing more information between each other than they make available to airlines and travel agents generally and to limit the proposed immunity to two years.³ Continental asserts that the Department has proposed no review of the immunization after eighteen months, unlike conditions imposed by the Department on the Delta-Austrian/Sabena/Swissair alliance.⁴ Moreover, Continental states that the Department's exceptions to its U.S. point-of-sale passenger conditions are more liberal than those allowed for other alliances.⁵

Delta

Delta states that the proposed alliance will stifle new entry in the U.S.-Chile marketplace. Delta says that the American-LAN Chile arrangements are distinguishable from previously approved alliances. First, the U.S.-South America and U.S.-Chile markets do not have numerous competing network systems that could discipline the proposed alliance. Second, the proposed arrangement would essentially eliminate all horizontal competition between the two dominant U.S.-Chile carriers. Third, there are few alternate hubs through which other network carriers could offer competing service options to passengers. Fourth, it is Delta's view that there is no reasonable expectation that an open-skies agreement tied to the grant of antitrust immunity for the proposed arrangement would lead to comparable opportunities becoming available to other U.S. carriers. Fifth, U.S.-South America service is heavily concentrated at the Miami gateway, and American is

³ See Order 98-5-26 at 25-26.

⁴ See Order 96-6-33, Appendix A at 2.

⁵ See Order 96-6-33, Appendix A at 1.

the only carrier with a hub at Miami. Finally, Delta disagrees with the Department's tentative decision to eliminate any exclusivity provision in the proposed arrangement.

United

United maintains that the Department's analysis of the Miami-Santiago market was erroneous. United says that the proposed alliance creates substantial risks to competition that cannot be offset simply by bringing into force the U.S.-Chile open-skies agreement. In this regard, United maintains that experience in the Miami-Central America city-pair markets shows that the American-TACA Group alliance has diminished competition in those markets, even with open skies. It asserts that between July 1998 and July 1999, Miami-Central America schedules have declined by 10 percent, American's share of nonstop service has increased, and fares have risen substantially. United asserts that an open-skies agreement will not ensure that other airlines will be able to extend their networks into Chile to compete with the proposed alliance. United's view remains that extending immunity to this arrangement will serve only to entrench American-LAN Chile as the dominant competitors in the U.S.-Chile market, and prevent entry into the market of a second viable network competitor, even with open skies.

United argues that American does not need an alliance with LAN Chile to extend its network into Latin America. It maintains that this application confirms its view that American's objective in seeking alliances throughout Latin America is merely to foreclose other U.S. carriers from doing so. United says that it has been seeking to develop a network of services at Miami that could serve as a competitive counter-weight to American's Miami-Latin **America** operations. However, United says that if American is able to enter into alliance agreements with most of the major foreign airlines in Latin America, United's ability to operate profitably in the Miami-Latin America market will be eroded.

Finally, if the Department finalizes its tentative decision, United urges the Department to find it appropriate to allow United to participate in IATA tariff conference activities **that** discuss through U.S.-Chile rates, fares or charges. United maintains that the blanket "IATA condition" places it in a competitive disadvantage in the affected market.

Aeromexico

Aeromexico urges the Department to expand its proposed "carve-out" condition to include the New York-Santiago and Miami-Chile markets. Aeromexico maintains that this broader limitation will discourage anti-competitive behavior in the U.S.-Latin America marketplace, while fostering the growth of other U.S. gateways to and from Latin America.

C. Answer

Joint Applicants

On June 1, 1999, the Joint Applicants filed a consolidated answer urging the Department to finalize its tentative findings as soon as possible. They assert that the objections fail to raise any issues that might give the Department pause before proceeding to finalize the Order to Show Cause. They maintain that the objections simply rehash arguments previously raised by these parties.

LAN Chile states that before entering the proposed alliance, it held discussions with United, Delta, and Continental. LAN Chile says that it concluded that an alliance with American was the “best fit” to provide the maximum benefits for its customers. The Joint Applicants argue that a U.S.-Chile open-skies regime, unlike the restrictive *status quo*, promises the introduction of new entry in the affected market and a wider range of service options.

The Joint Applicants argue that the commenting carriers have well-established alliance networks in the Latin America region.⁶ They maintain that under open skies Continental, Delta, and United each will have the flexibility to offer competitive code-share service in the U.S.-Chile market, to operate their own direct services, or both. Moreover, the Joint Applicants say that a U.S.-Chile open-skies regime will allow each of the competing international alliance networks to feed traffic to and from Chile and other points in Latin America to Europe, Asia, and elsewhere.

Contrary to the commenting parties, American states that there is no linkage between the proposed American-LAN Chile arrangement and Aerolineas Argentinas. They state that the proposed alliance is bilateral, and that it does not involve Aerolineas Argentinas or any other airline. They also argue that any attempt to tie this proceeding to the progress of the U.S.-Argentina bilateral talks is unfounded.

American argues that United’s competitive position at Miami is due to its own business decisions not to invest in building a Miami hub. American maintains that its commitment at Miami makes American the best partner for LAN Chile, since LAN Chile requires a strong Miami presence to strengthen its network and maximize benefits for its Chile-U.S. passengers, as well as to compete in the U.S.-South America market with the other established networks in the region.

While the commenting parties urge the Department to broaden the limitations and conditions that it is intending to impose on the alliance, the Joint Applicants maintain that the commenters have not provided the Department with sufficient basis for such an action. Finally, the Joint Applicants disagree with United’s contention that the Department’s analysis of the Miami-Santiago local

⁶ United is allied with Varig; Delta with Aeromexico, LAPA and Transbrasil; and Continental with ACES, VASP and COPA.

market was erroneous.⁷ The Joint Applicants maintain that United misconstrued the Department's application of O&D Survey data. They state that their review of the relevant traffic data shows that Miami-Santiago local passengers comprise about 21 percent of the total U.S.-Chile market. In any event, they argue that United's criticism is moot, since the Department proposed to apply an immunity "carve-out" in the Miami-Santiago market.

D. Supplementary Comments

IATA

On May 21, 1999, the International Air Transport Association ("IATA") filed comments and a motion for leave to file late.⁸ While not asking the DOT to re-examine the merits of the "IATA condition," IATA restates its concerns about imposing the requirement on airlines seeking antitrust immunity for their alliance arrangements.

Delta

On June 9, 1999, Delta filed a motion for leave to file and a reply urging the Department to disapprove the proposed alliance.⁹ In the alternative, Delta urges the Department to defer consideration pending conclusion of U.S.-Argentina bilateral negotiations.

United

On August 13, 1999, United filed a motion for leave to file and a reply.¹⁰ United maintains that it would be contrary to the public interest for the Department to finalize its tentative decision in these matters absent a showing that its actions are consistent with advice from the Department of Justice ("DOJ"), and that "immunity is not being granted solely to achieve an Open-Skies Agreement under circumstances where DOJ recommended against approval."¹¹

⁷ The Department's review of the Miami-Santiago market indicated that "only 15 percent of the total U.S.-Chile passenger traffic were to/from American's Miami gateway." Order 99-4-17 at 18 n.29. United stated that its review of the market indicated that "Miami-Santiago local passengers represent between 40% and 50% of total U.S.-Chile demand." Objections at 4.

⁸ We will grant the motion.

⁹ We will grant the motion.

¹⁰ We will grant the motion.

¹¹ Reply at 3.

III. Decision Summary

We make final our tentative findings that the Alliance Agreement at issue should be approved and its parties given antitrust immunity, subject to (1) the provision that the antitrust immunity will not cover any activities of American, LAN Chile, and their respective subsidiaries, as owners or marketers of SABRE and Amadeus Chile computer reservations systems; (2) the Joint Applicants' withdrawal from IATA functions as described below; and (3) the provisions described in Appendix A. We will require American and LAN Chile to resubmit their Alliance Agreement to the Department for review three years from the date of the issuance of this order. If the Joint Applicants choose to operate under a single name or common brand, they will have to obtain prior approval from the Department before implementing the change. We also direct the Joint Applicants to file all subsidiary and subsequent agreements(s) with the Department for prior approval.¹² We will also reexamine the impact of the proposed alliance on the Miami-Santiago market in eighteen months.

In addition, we are finalizing our determinations (1) directing American and LAN Chile, as a condition on the grant of antitrust immunity, to withdraw from all IATA tariff coordination activities relating to through prices between the United States and Chile, and/or between the United States and any other countries whose designated airlines participate in similar agreements with U.S. airlines that have been or subsequently are granted antitrust immunity or renewal thereof by the Department; (2) directing American and LAN Chile to report full-itinerary O&D Survey data for all passenger itineraries that contain a United States point (similar to the O&D Survey data already reported by American); and (3) directing American and LAN Chile to eliminate any provision which would implement the "Exclusivity Clause" under their Alliance Agreement.

IV. Decisional Standards under 49 U.S.C. Sections 41308 and 41309

A. Section 41308

Under 49 U.S.C. Section 41308, the Department has the discretion to exempt a person affected by an agreement under Section 41309 from the operations of the antitrust laws "to the extent necessary to allow the person to proceed with the transaction," provided that the Department determines that the exemption is required by the public interest. It is not our policy to confer antitrust immunity simply on the grounds that an agreement does not violate the antitrust laws. We are willing to make exceptions, however, and thus grant immunity, if the parties to such an agreement would not otherwise go forward without it, and we find that the public interest requires that we grant antitrust immunity.

¹² Regarding this requirement, we do not expect the alliance partners to provide the Department with minor technical understandings that are necessary to blend fully their day-to-day operations but that have no additional substantive significance. We do, however, expect and direct the Joint Applicants to provide the Department with any contractual instruments that may materially alter, modify, or amend the Alliance Agreement.

B. Section 41309

Under 49 U.S.C. Section 41309, the Department must determine, among other things, that an inter-carrier agreement is not adverse to the public interest and not in violation of the statute before granting approval.¹³ The Department may not approve an inter-carrier agreement that *substantially* reduces or eliminates competition unless the agreement is necessary to meet a serious transportation need that cannot be met, or to achieve important public benefits that cannot be achieved, and those benefits cannot be achieved by reasonably available alternatives that are materially less anti-competitive.¹⁴ The public benefits include international comity and foreign policy considerations.¹⁵

The party opposing the agreement or request has the burden of proving that it substantially reduces or eliminates competition and that less anti-competitive alternatives are available.¹⁶ On the other hand, the party defending the agreement or request has the burden of proving the transportation need or public benefits.¹⁷

V. Discussion

We have decided to make final our tentative decision to approve and grant antitrust immunity to the American-LAN Chile Alliance agreement at issue in the proceeding. After having carefully reviewed all of the pleadings and information filed in response to our Show-Cause Order, together with all other matters of record, we have determined that no party has raised any issue that either demonstrates error in our decision or otherwise warrants a different result.

As an initial matter, Delta had urged the Department to defer consideration of the proposed alliance, pending conclusion of bilateral negotiations with Argentina and Continental had asked the Department to extend the time for filing objections to the Order to Show Cause until 60 days after reaching a new U.S.-Argentina agreement.¹⁸ These carriers argued that the Department should know whether U.S. airlines would have free access to Argentina routes before concluding its evaluation of the proposed alliance. At the time that these pleadings were filed, the U.S. and Argentina had suspended bilateral talks. Moreover, from Continental's view there was no prospect for restarting those talks. However, since that time, on August 12, 1999, the U.S. and Argentina initialed a new open-skies aviation agreement. Since the outcome of those talks has been favorable, we see no need to provide additional time for filing objections.

¹³ Section 41309(b).

¹⁴ Section 41309(b)(1)(A) and (B).

¹⁵ Section 41309(b)(1)(A).

¹⁶ Section 41309(c)(2).

¹⁷ *Id.*

¹⁸ On June 9, 1999, Delta filed a motion for leave to file an otherwise unauthorized reply. We will grant the motion.

Finally, in its August 13 reply, United requested assurances that we had not reached a decision without considering the recommendations of the Department of Justice. Although our authority is broader than that of the Justice Department, it is our practice to work closely with the DOJ in reviewing requests for antitrust immunity. In reaching our decision in this case, as we have in all previous antitrust immunity cases, we have fully consulted with the DOJ. The three-year duration and the limitations and conditions that we have imposed in Appendix A to this order were suggested by the DOJ.

A. Approval of the Agreement: Competitive/Public Interest Analysis

In our Show-Cause Order, we tentatively found it unlikely that the Alliance Agreement -- subject to the conditions imposed -- would substantially reduce competition in any relevant market. We also tentatively found that, as limited and conditioned, approving and granting antitrust immunity to the American-LAN Chile Alliance Agreement would provide important public benefits. Our action would permit the two airlines to operate more **efficiently** and to provide enhanced service options; encourage competition among emerging multinational networks; and facilitate our international aviation policy toward more open-skies relationships.

Based on our competitive analysis, we noted our concerns about the potential loss of competition in some aspects of the Miami-Santiago city-pair market. These concerns led us, in the tentative decision, to exclude from the scope of the requested immunity capacity, fares, and yield management decisions for particular U.S.-source local passengers in this market, which is the only market where both applicants operate their own flights. See Appendix A.

The essence of the objections to our Show-Cause Order is that the proposed alliance at issue will close the door to competition between the U.S. and Chile and other markets in South America. The objecting parties claim that we made numerous mistakes in failing to reach this conclusion and that we should disapprove the proposed alliance so that other airlines would have the opportunity to create a new alliance with LAN Chile. We find no merit in these arguments.

In our tentative decision, we found that approval of the proposed alliance would facilitate the implementation of a new open-skies agreement with Chile. The new agreement provides unprecedented opportunities for new entry, new service, and new competition in the U.S.-Chile market and other international markets that our action would affect. The new agreement also promotes the growth and development of airline networks that have proven to provide an important catalyst for enhanced competition and service around the world.

We also found that approval of the proposed alliance would permit the parties to improve the efficiency of their operations, to work together to improve service between the United States and Chile, and between the United States and other international destinations.

We affirm those findings here. In reaching this conclusion, we note that U.S.-Chile is a heavily regulated market that now receives relatively low levels of service and competition. Only three U.S. airlines are authorized to serve the market (American, United and Continental). Only three U.S. gateways receive nonstop service to Chile (Dallas, Miami and New York City). In addition,

only five daily nonstop round-trips are available from all of these gateways combined to Chile. In this setting, it is clear that government regulation, which now prevents airlines **from** significantly changing their positions in this market, heavily influences existing airline market shares.

Our new aviation agreement with Chile is designed to correct that problem. It is an open-skies agreement. It eliminates all existing regulatory barriers to new entry, expansion and competition. It provides unrestricted competitive opportunities for all U.S. and Chilean carriers, including the flexibility to operate their own direct services, or joint services with any other airline. It is a modern, market-oriented agreement that recognizes the value of airline networks and permits each international alliance network to feed traffic to and from Chile and virtually all other foreign destinations.

The record supports our tentative decision that U.S. airlines should be able to use the opportunities created by the new aviation agreement to provide improved service and effective competition in the U.S.-Chile market. It demonstrates the market can support additional service by existing and new entrant carriers taking into consideration a number of factors, including:

1. The size of the U.S.-Chile market and the fact that it is growing at a rapid rate.¹⁹
2. That U.S. airlines will have access to the preponderance of traffic to and from Chile over their own gateway cities, especially since the vast majority of passengers in that market travel beyond each of the current U.S. gateway cities.²⁰
3. That strong traffic growth between Chile and third countries should provide an additional source of traffic support for U.S.-Chile air service and should create new opportunities for new competitive network services between Chile and third countries via the United States.²¹
4. A new open-skies agreement with Chile provides the opportunity for a more competitive pricing environment that will further stimulate new traffic to support additional U.S.-Chile air service.

Furthermore, each of the U.S. airlines participating in this proceeding is among the largest and most successful airlines in the world. Each possesses the facilities and infrastructure needed to compete effectively in the U.S.-Chile market. These efficiencies include impressive traffic gathering and distribution systems, powerful domestic and international airline service networks, partnerships and/or alliances that are already serving Latin America, equipment tailored to the needs of the market, effective marketing programs, and a strong incentive for serving Chile. As

¹⁹ **Traffic** in the U.S.-Chile market has increased about 46 percent for the year ending in the 3rd quarter 1998, as compared with the year ending in the 3rd quarter 1996. Source: U.S. carrier O&D Survey data.

²⁰ Our evaluation of the U.S.-Chile market shows that about 80 percent of the total U.S.-Chile traffic flows from a point behind Miami. Source: U.S. carrier O&D Survey data for the 3rd Quarter 1998.

²¹ See Order 99-4-17 at 17-19.

we noted in our Show-Cause Order, competitive pressures now require airlines to serve as many major international destinations as practicable, and Chile is such a destination.

Delta recently made many of these points clear in announcing its new “global partnership” with Air France:

"As part of Delta's effort to increase and strengthen its route network, the company entered the Latin American market in 1997. Because Atlanta is less overcrowded than traditional Latin American gateways such as Miami – and also boasts more worldwide connections – Delta held an instant advantage over more established carriers. During the next two to three years, Delta hopes to add Bogota, Colombia, and Buenos Aires, Argentina, as well as destinations in Chile and Ecuador, to an already healthy Latin American **system**."²²

Delta's statement also reinforces several other findings we made in our tentative decision, including (1) that an open-skies agreement with Chile will provide an effective opportunity for new entry; (2) that the proposed alliance will not prevent other airlines from competing effectively in the U.S.-Chile market; and (3) that this market needs and can support additional service and competition.

We will make those tentative determinations final here because the record continues to support them and because no party has presented grounds for modifying any of them.

Several parties argue that in order for them to compete effectively in the U.S.-Chile market with the proposed alliance they must have two hubs -- one in the United States and one in Chile or elsewhere in Latin American -- and that they now lack the latter. There is no support for this contention.

Each of the U.S. airlines participating in this case now rely on their network hubs in the United States -- and these hubs alone -- to serve thousands of markets in the United States and around the world. In addition, in many instances these domestic networks are linked to other networks in other countries, providing access to hundreds more cities around the globe. This very access, in turn, provides traffic that supports the service to each city that is linked to the hub. In the instant case, this global access will provide the flow traffic that will enable other U.S. airlines to serve Chile from their domestic hubs, and in this fashion provide service alternatives to compete with American and LAN Chile.

Moreover, even assuming *arguendo* that the opposing parties need a Latin American hub to compete effectively in the U.S.-Chile market (and we do not agree that they do), each has one or more Latin American code-share partners with such hubs. For example, we note that Delta's partners (1) Aeromexico provides nonstop service in the Mexico City-Santiago market, and (2) Transbrasil offers nonstop service in the Sao Paulo-Santiago market and one-stop service in the

²² Delta News Release, pp. 1-2, dated June 22, 1999.

Rio de Janeiro-Santiago market. United's partner Varig provides daily, nonstop service in the Sao Paulo-Santiago market, and daily, one-stop service in the Rio de Janeiro market. Continental's partner COPA offers daily, nonstop service in the Panama City-Santiago market. Also, Continental and Avant Airlines have applied for appropriate authority to conduct code-share operations in the U.S.-Chile market (see Docket OST-1999-6194).

Some of the opponents of the proposed alliance believe that we erred in finding that our experience with open skies in Central America weighs in favor of our tentative decision in this case. They maintain that open-skies in Central America has been a failure because it has allowed the American-TACA Group alliance to dominate the market. We disagree with this analysis and conclusion.

In May 1997, we separately reached agreement on new open-skies aviation relationships with six countries in Central America: Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, and Panama. We relied upon the existence of those agreements to authorize American to engage in code sharing and other joint services with the TACA Group of Central America. We have carefully examined the result of our aviation initiative in Central America. Our analysis shows that U.S. airlines are taking advantage of the new opportunities made possible by the agreement. It also shows that they are providing American-TACA Group with effective and extensive competition, and that they are doing so by relying on the same efficiencies that are available to them for entry and expansion in Chile, e.g., their hubs, networks and alliances. For example, Delta has started new daily round-trip service between Atlanta and four countries in Central America, and Continental has started similar service between Newark and two countries in that region. Continental has also increased service between Houston and five countries in that region.

These and other U.S. airline initiatives have produced an enormous increase in service and competition in the U.S.-Central America markets covered by open-skies agreements. A comparison of *Official Airline Guide* data for the periods of July 1997 and July 1999 provides the following impressive results:

U.S.-Guatemala City, Guatemala	-- frequencies have increased by 46 percent
U.S.-Panama City, Panama	-- frequencies have increased by 59 percent
U.S.-Managua, Nicaragua	-- frequencies have increased by 39 percent
U.S.-San Jose, Costa Rica	-- frequencies have increased by 66 percent
U.S.-San Pedro Sula, Honduras	-- frequencies have increased by 59 percent
U.S.-San Salvador, El Salvador	-- frequencies have increased by 71 percent

In this setting, our survey also shows that no U.S. airline has reduced service between points in the United States and these countries, including Miami, except United. Moreover new gateway services from cities such as Atlanta, Houston and New York/Newark have created new sources of strong inter-gateway competition. It appears that this competition is having a positive effect on Miami. A comparison of fares for the periods of December 1996 and December 1998 (the most

current data available to the Department) shows that average fares between Miami and a number of Central American countries have decreased.²³

These considerations demonstrate that open-skies agreements between the United States and countries in Latin America do make a difference, and that U.S. airlines can compete effectively with the American-TACA Group alliance in those markets with the opportunities provided for by those agreements.

Continental argues that the success of open-skies in Central America “is no precursor of likely results in the Southern Cone” because Central America is “fundamentally different” in that it allows airlines to use their fleets for U.S. and Central America flights in the same day.²⁴ While there are differences between the two markets, there are fundamental similarities, such as those relating to the opportunity, ability, and incentive to serve a market that is growing but **under-**served. We find that those considerations help make our assessment of the impact of open skies on competition in Central America a factor that should be considered in assessing the impact of open skies on competition in the U.S.-Chile market.

However, we want to emphasize that our experience in Central America is only one of a **number** of factors that we have weighed and balanced in reaching our decision in this case. We decide each case involving the grant of antitrust immunity and/or the integration of airline services based on the particular facts and circumstances presented for our considerations in the record before us. In these circumstances, there is no substance to the argument made here that if we approve the American-LAN Chile alliance we will have to approve all other alliances between American and Latin American carriers. We rely on facts of record in each individual case to decide our competition proceedings and the facts of this case support affirming our tentative decision.

United claims that we understated the relative size of the local Miami-Santiago market, and, therefore, materially overstated the extent to which U.S. airlines will be able to compete for other traffic to Chile. United argues that Miami-Santiago local passengers represent closer to 50 percent of the total U.S.-Chile air travel market, rather than our 15 percent estimate.²⁵ Our reexamination of the U.S. carrier **O&D** Survey Data bearing on this issue shows that Miami-Santiago local passengers constitute approximately 20 percent of the total U.S.-Chile market.²⁶ This figure is substantially less than United’s estimate, only slightly greater than our original estimate, and does not warrant a change in our findings regarding U.S. airline access to **traffic** to support competitive operations in the U.S.-Chile market.

²³ For example, Miami-Guatemala City, Guatemala/Panama City, **Panama/San Jose, Costa Rica/San Salvador, El Salvador.** Source: U.S. carrier O&D Survey data for the 4th quarters 1996 and 1998.

²⁴ Continental Objections at 9.

²⁵ United Objection at 2 and 4.

²⁶ Source: U.S. carrier O&D Survey data for the 3rd Quarter 1998.

Delta and Continental argue that we should disapprove the proposed alliance because it would allow American and its partners to dominate air service between the United States and the Chile/Argentina region of the Americas. They argue that a combination of an open-skies agreement between the U.S. and Chile and a closed market between the U.S. and Argentina will help them achieve that result.

An important event has now overtaken this argument. The United States and Argentina have now concluded a new agreement that provides for an open-skies aviation regime following a three-year transition period. The new U.S.-Argentina open-skies agreement, coupled with the new U.S.-Chile open-skies agreement, clears the way for the elimination of all restrictions on airline operations between the United States and the Southern Cone of South **America**.

Delta, Continental, and United urge the Department to disapprove the proposed alliance so that each would have the opportunity to form a new alliance with LAN Chile. They argue that this would enable them to offer an effective alternative to American's dominant hub service at Miami and would therefore provide effective network-to-network competition in the U.S.-Chile and other U.S.-Latin American markets. They also recognize that this approach could have a chilling effect on open-skies agreements with Chile and other Latin American countries, but they believe that this is a reasonable price to pay for greater competition in the hemisphere.

We have major problems with the approach advocated by Delta, Continental, and United. To begin with, it is based on the assumptions that the proposed alliance is anti-competitive and that there is greater value in maintaining the existing restrictive U.S.-Chile aviation relationship than in allowing the proposed alliance to go forward. The record supports neither of these assumptions. On the contrary, the record supports a finding that the proposed alliance is not anti-competitive, taking into consideration the conditions that we tentatively decided to impose on our approval of the Alliance Agreement in our Show-Cause Order. The record also supports a finding that the proposed alliance would improve air service between the U.S. and Chile, and would contribute to a new open-skies agreement between the two countries that provides competition and other public benefits which, on balance, override any negative features of the alliance, as conditioned.

Moreover, this approach overlooks substantial evidence of record that we have less intrusive and more effective alternatives available for promoting competition and achieving other major aviation objectives in the markets and region involved. As we found in our tentative decision, those actions include imposing conditions on the Alliance Agreement to check the exercise of market power under it. One important condition noted in our Show-Cause Order would require the partners to compete -- not collaborate -- for those Miami-Santiago passengers that may lack other effective aviation alternatives. A second condition would provide other airlines with the opportunity to enter commercial arrangements with LAN Chile by denying the alliance carriers the authority to maintain an exclusive relationship. Other conditions would operate to monitor the effects of the alliance and to provide an effective review of the results of our efforts.

See Appendix A.

Continental argues that our proposed conditions are inadequate to check the impact of the proposed alliance on competition, and that we should correct this by requiring the proposed alliance to comply with restrictions that we have placed on other immunized alliances.

We have done that in all instances where we have determined that restrictions imposed on other immunized alliances are relevant and material to the issues in this proceeding, including those relating to the Miami-Santiago “carve out” conditions. We affirm our tentative conclusion that no other conditions are needed to bring the proposed alliance in balance with the public interest.

Continental urges us to prohibit the proposed alliance from having a joint alliance committee or from sharing more information between carriers on current or prospective fares or seat availability than they make available to airlines and travel agents, just as we did in the American-TACA alliance proceeding. We disagree. The parties to that proceeding neither requested nor were granted antitrust immunity, and those limitations were specifically imposed on the **American-TACA** alliance to ensure that the parties to that agreement would not engage in the level of integration that we are authorizing and immunizing here.

Continental also argues that we should require an eighteen-month review of the conditions on the proposed alliance, that the alliance agreement should be subject to renewal in two years, as in American-TACA, not three, and that the so-called Miami-Santiago carve out conditions should be consistent with other immunity cases. We have decided to conduct an eighteen-month review of the impact of the alliance on the Miami-Santiago market, as we have in other cases. Having done so, we see no need to reduce the review period for this alliance from **three** to two years. This is already two years shorter than the five year review that we have imposed on a number of other alliances we have approved and immunized. Finally, the carve-out conditions imposed here are consistent with those that we have imposed in other immunized alliance proceedings. See, e.g., Order 96-5-27, Appendix A at 2.

We shall also deny Aeromexico’s request that we extend the Miami-Santiago carve-out conditions to other markets. Aeromexico maintains that these conditions are needed in the overall **Miami-Chile** market and the New York-Santiago market “to protect against the prospect of anticompetitive practices” in these markets.²⁷ However, Aeromexico has neither defined nor explained what these “practices” may be nor provided data to show that competitive conditions in these particular markets warrant restricting the alliance’s ability to serve them.

²⁷ Reply at 6.

B. Antitrust Immunity

We finalize our decision that antitrust immunity is required in the public interest and that American and LAN Chile are unlikely to proceed with the Alliance Agreement absent immunity. Accordingly, we grant antitrust immunity to the Alliance Agreement.

We have found that the Alliance Agreement will not substantially reduce or eliminate competition, as limited and conditioned (see Appendix A). It is unlikely that the American and LAN Chile integration of services would violate the antitrust laws. However, since the alliance partners will be ending their competitive service in the Miami-Santiago market, their exposure to liability under the antitrust laws is possible if we do not grant immunity.²⁸ The Joint Applicants state that they would not proceed with the alliance in the absence of such immunity, and this is not refuted. Based on the above, we find that American and LAN Chile are unlikely to proceed with implementation of their proposed Alliance Agreement without immunity.

C. IATA Tariff Coordination

While IATA restated its concerns about our imposition of an “IATA condition” on alliance partners, no party filed objections to our imposition of this exclusion. We affirm our decision that it is contrary to the public interest to permit alliances to participate in certain price-related coordination that is now immunized within IATA tariff coordination. We therefore condition our approval and grant of antitrust immunity in this case by requiring American and LAN Chile to withdraw from participation in any IATA tariff conference activities that discuss any proposed through fares, rates or charges applicable between the United States and Chile, and/or between the United States and any other countries whose designated carriers participate in similar immunized agreements with U.S. airlines that have been or subsequently are granted antitrust immunity or renewal thereof by the Department.²⁹ The condition does not cover through prices between the U.S. and other countries, as well as all local fares in intermediate and beyond markets.³⁰

²⁸ Order 99-4-17 at 19-20.

²⁹ This condition currently applies to prices between the United States and the Netherlands; between the United States and Germany (see Order 96-5-27 at 17); between the United States and Denmark, Norway, and Sweden (see Order 96-11-1 at 23); and between the United States and Austria, Belgium, and Switzerland (see Order 96-6-33 at 23-24). See also May 8, 1996, letter in Dockets OST-96-1116 and OST-95-618 from Northwest and **KLM** indicating their willingness to limit voluntarily their participation in IATA.

³⁰ Under this condition, the Alliance carriers could not participate in IATA discussions of the total (“through”) price (see 14 C.F.R. § 22 1.4) between a U.S. point of origin or destination and an origin or destination in Austria, Belgium, Denmark, Germany, Norway, Sweden, Switzerland, and the Netherlands, or a homeland of a subsequently immunized alliance, whether such prices are offered for direct, on-line or interline service. They could, however, discuss local segment prices, arbitraries or generic fare construction rules that have independent applicability outside such markets. IATA activities covered by our condition would include all those discussing prices proposed for agreement, including both meetings and exchanges of documents such as those preceding meetings and those used in mail votes.

As a final matter, United asked the Department, should it decide to finalize its tentative decision, to refrain from imposing the "IATA condition" on United so that it could participate in IATA tariff conference activities that discuss through U.S.-Chile rates, fares or charges.

United's arguments that it should continue to be permitted to participate in U.S.-Chile IATA tariff conference activities are not persuasive. While the carrier alleges that it is more dependent upon interlining to compete in U.S.-South American markets, including the U.S.-Chile market, than it is in U.S.-Europe markets, it has not shown how its exclusion from U.S.-Chile IATA tariff coordination³¹ would adversely affect its revenues and its ability to compete effectively in these markets. Except for U.S.-Chile markets, United would still be able to participate in IATA tariff coordinating activities affecting prices in U.S.-South American markets. In U.S.-Chile markets, United currently offers on-line services from New York and Miami to Santiago, Chile, with a wide selection of service behind its two U.S. gateways to/from other U.S. points.

D. O&D Survey Data Reporting

No party opposes this reporting requirement. However, to ensure that our action here does not lead to anti-competitive consequences, we have decided to grant confidentiality to LAN Chile's Origin-Destination report and special report on code-share passengers. Currently, we grant confidential treatment to international Origin-Destination data. We provide these data confidential treatment because of the potentially damaging competitive impact on U.S. airlines and the potential adverse effect upon the public interest that would result from unilateral disclosure of these data (data covering the operations of foreign air carriers that are similar to the information collected in the Passenger O&D Survey are generally not available to the Department, to U.S. airlines, or to other U.S. interests).

14 C.F.R. Part 241 section 19-7(d)(1) provides for disclosure of international Origin-Destination data to *air carriers* directly participating in and contributing to the O&D Survey. While we have found it appropriate to direct LAN Chile to provide certain limited Origin-Destination data to the O&D Survey, LAN Chile is not an air carrier within the meaning of Part 241. 14 C.F.R. Part 241, Section 03 defines an air carrier as "[a]ny citizen of the United States who undertakes, whether directly or indirectly or by a lease or any other arrangement, to engage in air transportation." LAN Chile accordingly will have no access to the data filed by U.S. air carriers. Moreover, we are making LAN Chile's submissions confidential while maintaining the current restriction on access to U.S. air carrier Origin-Destination data by foreign air carriers.

³¹ See Order 96-5-27 at 17. Our decision in this case directed United and Lufthansa, and their subsidiaries, to withdraw from participation in any IATA tariff coordination activities that discuss any proposed through fares, rates, or charges applicable between the U.S. and Germany, the U.S. and the Netherlands, and/or the U.S. and any other countries designating an airline granted antitrust immunity, or renewal thereof, for participation in similar alliance activities with a U.S. airline.

E. Computer Reservations System (“CRS”) Issues³²

We have decided that the antitrust immunity we are conferring should cover coordinating the presentation and sale of the Joint Applicants’ airline services in SABRE and Amadeus Chile systems and other CRSs, and coordinating the operations of their internal reservation system, but not the Joint Applicants’ management of their interests in SABRE and Amadeus Chile.

Neither the Joint Applicants nor the other interested parties commented on this issue. However, it is clear that the implementation of this arrangement by the Joint Applicants will require a closer integration of their internal reservations system. Among other things, the Joint Applicants will work to create the ability to improve the entry and display of integrated services in all CRSs and each partner’s ability to carry out schedule planning and yield management for the integrated services. The Joint Applicants’ integration of all of their operations could result in the reduction of competition between SABRE and Amadeus Chile.

We will make final our conclusions that the integration of the Joint Applicants’ operations could create a risk of reduced competition in the CRS business because of American and LAN Chile’s interest in a CRS, and that the grant of antitrust immunity should not cover American’s management of its interest in SABRE nor LAN Chile’s management of their interests in Amadeus Chile. We also find that excluding the airlines’ CRS interests from the grant of immunity will not frustrate their ability to implement the proposed integration of their airline operations, but we recognize that the Joint Applicants will need the ability to cooperate on the display of their services in CRSs and to integrate such operations as yield management and schedule coordination.

F. Exclusivity Concerns

While Delta disagrees with our policy of eliminating exclusivity provisions,³³ our factual determinations in this matter are unopposed. We also note that the Joint Applicants do not oppose our directive in this matter. We affirm our directive that neither American nor LAN Chile shall give any force or effect to any exclusivity provision in their arrangement which (1) restricts LAN Chile from entering into any marketing and/or interline arrangement(s) with airline(s) domiciled in the United States, or (2) restricts American from entering into any marketing and/or interline arrangement(s) with airline(s) domiciled in South America.

G. Operation under a Common Name/Consumer Concerns

We affirm our directive that if American and LAN Chile choose to operate under a common name or use “common brands,” they must obtain prior approval from the Department before commencing such operations.

³² Our decision in this matter is consistent with our earlier findings in Order 96-6-33 at 22, Order 96-5-27 at 17, and Order 93-1-11 at 15-16.

³³ Objection at 13-14.

ACCORDINGLY:

1. We exempt **Linea Aerea Nacional Chile, S.A. (LAN Chile)** under 49 U.S.C. § 40109(c) to the extent necessary to permit it to engage in scheduled foreign air transportation of persons, property, and mail between a point or points in Chile, via open intermediate points to San Juan, **Dallas/Ft. Worth, Washington D.C./Baltimore**, Atlanta, Chicago, Houston, Boston, Denver, and Philadelphia, effective upon the implementation of the open-skies agreement between Chile and the United States, for a period of one year after such effectiveness;³⁴
2. We grant American Airlines, Inc. and **Linea Aerea Nacional Chile, S.A. (LAN Chile)** Statements of Authorization under 14 C.F.R. Part 212 of the Department's regulations to engage in code-share services as described below:^{35 36}
 - (a) LAN Chile to display American's "AA" designator code on flights operated by LAN Chile (i) between Santiago, Chile, on the one hand, and **Miami**, Los Angeles, and New York, on the other hand; and (ii) between Santiago, Chile, on the one hand, and Antofagasta, **Arica, Concepcion**, Easter Island, Iquique, Puerto Montt, **Punta Arenas**, and Temuco, Chile, on the other hand; and
 - (b) American to display LAN Chile's "LA" designator code on flights operated by American (i) between Santiago, Chile, on the one hand, and **Dallas/Ft. Worth** and Miami, on the other hand; (ii) between Miami, on the one hand, and Atlanta, Boston, Chicago (O'Hare Airport), **Dallas/Ft. Worth**, Denver, Houston, New York, Orlando, Philadelphia, San Juan, and Washington DC/Baltimore, on the other hand; (iii) between **Dallas/Ft. Worth**, on the one hand, and Atlanta, Boston, Chicago (O'Hare Airport), Denver, Houston, New York, Orlando, Philadelphia, San Juan, and **Washington D.C./Baltimore**, on the other hand; and (iv) between New York, on the one hand, and Boston, Philadelphia, and **Washington D.C./Baltimore**, on the other hand.

³⁴ We note that LAN Chile requested Orlando authority in its exemption application. The Department granted LAN Chile's Orlando authority in November 1997. On August 3, 1999, (Docket OST- 1998-4069) LAN Chile filed for renewal of this exemption authority, invoking the automatic extension provision of 5 U.S.C. §558(c). We will address this request in a separate proceeding.

³⁵ See condition in Appendix A concerning Miami-Santiago services.

³⁶ We note that the code-share agreement between the carriers includes points not encompassed in their joint application for statements of authorization. The carriers may request authority to serve these additional points by filing the appropriate application with the Department.

3. The authority granted in ordering paragraph 2 above is subject to the following conditions:
- (a) The statements of authorization will remain in effect only as long as (i) American Airlines, Inc. and **Linea Aerea Nacional Chile, S.A. (LAN Chile)** continue to hold the necessary underlying authority to operate the code-share services at issue, and (ii) the code-share and/or alliance agreement providing for the code-share operations remains in effect;
 - (b) American Airlines and/or LAN Chile must notify the Department immediately if the code-share and/or alliance agreement under which these code-share services are operated is no longer in effect, or if the carriers decide to cease operating all or a portion of the code-share services under the alliance.³⁷ (Notices should be filed in Docket OST-97-3285);
 - (c) All operations conducted under this authorization must comply with the terms, conditions, and limitations of this order and any subsequent order(s) of the Department regarding the alliance;
 - (d) The code-sharing operations conducted under this authority must comply with 14 C.F.R. Part 257 and with any amendments to the Department's regulations concerning code-share arrangements. Notwithstanding any provisions in the contract between the carriers, our approval here is expressly conditioned upon the requirements that the subject foreign air transportation be sold in the name of the carrier holding out such service in computer reservations systems and elsewhere; that the carrier selling such transportation (i. e., the carrier shown on the ticket) accept the responsibility for the entirety of the code-share journey for all obligations established in its contract of carriage with the passenger; and that the passenger liability of the operating carrier be unaffected. Further, the operating carrier shall not permit the code of its U.S. air carrier code-sharing partner to be carried on any flight that enters, departs, or transits the airspace of any area for whose airspace the Federal Aviation Administration has issued a flight prohibition; and
 - (e) The Department specifically conditions the authority granted here so that neither American Airlines nor LAN Chile shall give any force or effect to any contractual provisions between themselves that are contrary to these conditions.

³⁷ We expect this notification to be received within 10 days of such non-effectiveness or of such decision.

4. We approve and grant antitrust immunity to the Alliance Agreement between American Airlines, Inc. and **Linea Aerea Nacional Chile, S.A. (LAN Chile)** effective upon implementation of the open-skies provisions of the agreement between Chile and the United States, insofar as it relates to foreign air transportation, subject to the provisions that the antitrust immunity will not cover any activities of American and LAN Chile as owners or marketers of SABRE and Amadeus Chile computer reservations systems, and subject to the limits and conditions indicated in Appendix A;
5. The authorities approved by this order shall be subject to the condition that neither American nor LAN Chile shall give any force or effect to any exclusivity provision in their arrangement which (1) restricts LAN Chile **from** entering into any marketing and/or interline arrangement(s) with airline(s) domiciled in the United States, or (2) restricts American from entering into any marketing and/or interline arrangement(s) with airline(s) domiciled in South America;
6. We direct American Airlines, Inc. and **Linea Aerea Nacional Chile, S.A. (LAN Chile)** to resubmit their Alliance Agreement three years from the date of issuance of the final order in this case;
7. We direct American Airlines, Inc. and **Linea Aerea Nacional Chile, S.A. (LAN Chile)** and their subsidiaries, to withdraw from participation in any International Air Transport Association (IATA) tariff conference activities that discuss any proposed through fares, rates or charges applicable between the United States and Chile, and/or between the United States and any other countries whose designated carriers participate in similar immunized agreements with U.S. airlines that have been or subsequently are granted antitrust immunity or renewal thereof by the Department;
8. We direct **Linea Aerea Nacional Chile, S.A. (LAN Chile)** to report full-itinerary **Origin-Destination** Survey of Airline Passenger Traffic for all passenger itineraries that include a United States point (similar to the **O&D** Survey data already reported by its alliance partner American Airlines, Inc.). The full itinerary record is defined as the passenger's complete flight itinerary from origin to destination as opposed to the abbreviated gateway record reported under **T-100(f)**;
9. We direct American Airlines, Inc. and **Linea Aerea Nacional Chile, S.A. (LAN Chile)** and their subsidiaries, to obtain prior approval **from** the Department if they choose to operate under a common name or use "common brands";
10. We delegate to the Director, Office of International Aviation, the authority to determine the applicability of the directive set forth in ordering paragraph 7 to specific prices, markets, and tariff coordination activities, consistent with the scope and purpose of the condition as herein described;
11. We direct American Airlines, Inc. and **Linea Aerea Nacional Chile, S.A. (LAN Chile)** to submit any subsequent subsidiary agreement(s) implementing the Alliance Agreement for prior approval;

12. We deny Continental Airlines' motion for an extension of time to file answers;
13. We grant all motions to file unauthorized documents;
14. This order is effective immediately;
15. We may amend, modify, or revoke this authority at any time without hearing; and
16. We shall serve this order on all persons on the service list in this docket.

By:

A. BRADLEY MIMS
Acting Assistant Secretary for Aviation
and International Affairs

(SEAL)

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**CONDITIONS GOVERNING THE ANTITRUST IMMUNITY FOR THE
ALLIANCE AGREEMENT BETWEEN AMERICAN AIRLINES, INC.
AND LINEA AEREA NATIONAL CHILE, S.A.**

Grant of Immunity

The Department grants immunity **from** the antitrust laws to American Airlines, Inc. (American) and **Linea** Aerea National Chile, S.A. (Lan Chile), and their affiliates, for the Alliance Agreement dated September 5, 1997, between American and Lan Chile and for any agreement incorporated in or pursuant to the Alliance Agreement.

Limitations on Immunity

The foregoing grant of antitrust immunity shall not extend to the following activities by the parties: pricing, inventory or yield management coordination, or pooling of revenues, with respect to unrestricted coach class fares or any business or first class fares for local U.S.-point-of-sale passengers flying nonstop between **Miami** and Santiago, or the provision by one party to the other of more information concerning current or prospective fares or seat availability for such passengers than it makes available to airlines and travel agents generally.

Exceptions to Limitations on Immunity

Despite the foregoing limitations, antitrust immunity shall extend to the joint development, promotion or sale by the parties of the following discounted fare products with respect to local U.S.-point-of-sale passengers flying nonstop between Miami and Santiago: corporate fare products; consolidator/wholesaler fare products; promotional fare products; group fare products; and fares and bids for government travel or other traffic that either party is prohibited by law from carrying on service offered under its own code. For immunity to apply, however: (i) in the case of corporate fare products and group fare products, local U.S. point-of-sale non-stop traffic shall constitute no more than 25% of a corporation's or group's anticipated travel (measured in flight segments) under its contract with American and Lan Chile; and (ii) in the case of consolidator/wholesaler fare products and promotional fare products, the fare products must include similar types of fares for travel in at least 25 city-pairs in addition to Miami-Santiago.

Definitions for Purposes of this Order

“Corporate fare products” means the offer of non-published fares at discounts from the otherwise applicable tariff prices to corporations or other entities for authorized travel, which discounts may be stated as percentage discounts from specified published fares, net prices, volume discounts, or other forms of discount.

“Consolidator/wholesaler fare products” means the offer of non-published fares at discounts from the otherwise applicable tariff prices to (i) consolidators for sale by such consolidators to members of the general public either directly, or through travel agents or other intermediaries, at prices to be decided by the consolidator, or (ii) wholesalers for sale by such wholesalers as part of tour packages in which air travel is bundled with other travel products, which discounts, in either case, may be stated either as net prices due the parties on sales by such consolidator or wholesaler, or as percentage commissions due the consolidator or wholesaler on such sales.

“Promotional fare products” means published fares that offer directly to the general public for a limited time discounts from previously published fares having similar travel restrictions.

“Group fare products” means the offer of non-published fares at discounts from the otherwise applicable tariff prices for the members of an organization or group to travel from multiple origination points to a single destination to attend an identified special event, which discounts may be stated either as percentage discounts from specified published fares or net prices.

Clarification of Scope of Limitation on Immunity

Under no circumstances shall the limitations on antitrust immunity set forth above be construed to limit the parties’ antitrust immunity for activities jointly undertaken pursuant to the Alliance Agreement other than as specifically set forth in this Order. Immunized activities include, without limitation: decisions by the parties regarding the total number frequencies and types of aircraft to operate on the Miami-Santiago route, and the configuration of such aircraft; coordination of pricing, inventory and yield management and pooling of revenues, **with** respect to non-local passengers traveling on non-stop flights on the Miami-Santiago route; and the provision by one party to the other of access to its internal reservations system to the extent necessary for use exclusively in checking-in passengers or making sales to or reservations for the general public at ticketing or reservations facilities.

Review of Limitations on Immunity

Within eighteen months from the date that this Order becomes final, or at **any time upon** application of the parties, the Department will review the limitations on antitrust immunity set forth above to determine whether they should be discontinued or modified in **light of** current competitive conditions in the Miami-Santiago city pair; the efficiencies to be achieved by the parties from further integration that would be made possible by discontinuation of the limitations on immunity, when balanced against any potential for harm to competition from such a discontinuation; regulatory conditions applicable to competing alliances; or other factors that the Department may deem appropriate.