



**BEFORE THE  
DEPARTMENT OF TRANSPORTATION  
WASHINGTON, D.C.**

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

**DATED:      October 4, 1999**

**PETITION OF UNITED AIR LINES, INC., FOR  
RECONSIDERATION OF ORDER 99-9-9**

Pursuant to 14 C.F.R. §302.37, United Air Lines, Inc. ("United"), requests reconsideration of the Department's Order 99-9-9 for the reasons set forth below:

1.        United demonstrated in its pleadings in this case that antitrust immunity for the American/LAN Chile alliance must be disapproved because of the foreclosure of competition this alliance would cause at the Miami gateway. As a result of the elimination of competition between the dominant competitors in the Miami-Chile market, United also demonstrated that approval of this alliance would contribute to a proliferation of such alliances formed by American and aimed at preserving its dominant position in Latin America through its fortress Miami hub. Other foreign carriers in Latin America will inevitably choose to cooperate with their principal competitor and enjoy monopoly profits at Miami rather than join with other U.S. carriers to challenge American's Latin American dominance at Miami.

Miami is the primary U.S. gateway to Latin America based on both its geographic location and the demographics of its large Latin American population and business communities. American and its foreign carrier partners have long ago grasped the fact that, if they can eliminate competition in Miami-Latin America markets, they will be able to control the entire air transport market between the U.S. and that region.

The Department of Transportation, on the other hand, has adopted the position that the conclusion of open skies agreements with Latin American countries will allow others to counter American's control of the market, notwithstanding the ever growing number of alliances that add to its dominance of the Miami gateway. Open skies agreements will not, however, enable competing carriers to challenge American at Miami if they are gained at the expense of allowing American and its primary foreign-flag competitors to join forces through alliances immunized from the U.S. antitrust laws.

In this case, as in the case of the American/TACA Group code share, Docket **OST-96-1700**, the Department appears to have allowed its desire to reward countries for entering into open skies agreements to take precedence over its responsibility to undertake a dispassionate analysis of the competitive impact of American's alliances, particularly at Miami. United urges that the Department take this opportunity to reconsider its decision to approve the American/LAN Chile alliance and on reconsideration to undertake the reasoned analysis of the competitive impact of that alliance on competition at Miami that is so manifestly missing from its orders in this proceeding.

2. Miami-Santiago is the largest local U.S.-Chile market by far, and United showed that preservation of competition at Miami was essential if the U.S.-Chile market was to enjoy the benefits of competition under an open skies agreement. The Department, however, avoided reaching the difficult issue of competition at Miami by relying on incomplete **traffic** data to conclude that Miami's share of the U.S.-Chile market was not sufficiently large to cause concern.

United's evidence showed that local Miami-Santiago traffic constituted 50 percent of the total U.S.-Santiago traffic. This market share was based on data made available in Docket OST-97-2586.' The Department countered with claims that the Miami-Santiago local traffic made up a much smaller share of the total. First, the Department claimed Miami-Santiago **traffic** was only 15 percent of the total and then it adjusted that number to 20 percent. In both cases, the Department relied upon its O&D Survey data for its calculation of the Miami-Santiago share of the total U.S.-Chile **market**.<sup>2</sup>

As the Department is well aware, however, the O&D Survey data vastly understates foreign carrier traffic because the only foreign carrier data reported are those relating to interline services between a U.S. and a foreign carrier. The local foreign carrier traffic between Miami and Santiago would not be reported in the O&D Survey except in the relatively unlikely event that a Miami-Santiago connecting passenger used a U.S. carrier for part of a journey involving connecting flights between these cities. With the large volume of nonstop services

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<sup>1</sup> **See** Exhibit UA-5 attached to United's Comments dated March 13, 1998, in this proceeding.

<sup>2</sup> Orders 99-9-9 at 10, n.20 and 13 and 99-4-17 at 18, n.29.

available between Miami and Santiago, such connecting traffic would represent a relatively small portion of the total.

United's calculation of Miami-Santiago traffic included an adjustment to account for this foreign carrier traffic. As adjusted, it is demonstrable that the Miami-Santiago local market is by far the largest U.S.-Chile market and accounts for roughly half the total traffic. United has also computed the market share of Miami-Santiago as a percent of the total U.S.-Santiago market using CRS booking data, which includes foreign carrier bookings. This data indicates that Miami-Santiago represents over 40 percent of the total U.S.-Santiago market or twice as much as the Department claimed based on O&D Survey data.<sup>3</sup>

The Department's reliance on its O&D Survey Data severely understates the relative size of the Miami market as a percent of the total. Based on that understatement the Department has erroneously concluded that competition at Miami is relatively less important than is actually the case.

3. United also offered evidence that the approval of alliances between the dominant U.S. and foreign-flag carriers at Miami had actually already resulted in a loss of competition. This evidence involved services between Miami and Central America where American had been permitted to cooperate with all of the major foreign carriers serving that region over the objections of competing U.S. carriers, as well as the recommendation of the U.S. Department of Justice.

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<sup>3</sup> According to CRS booking data for calendar 1998, the total U.S.-Santiago traffic was 758,681 passengers of which Miami-Santiago traffic accounted for 310,357. Santiago, in turn, accounts for over 96 percent of the U. S.-Chile market.

Experience in Miami-Central America city pairs, since the Department approved American's code-share alliance with the TACA Group of carriers in 1998, confirms that this alliance has led to a reduction in competition in those markets, just as United, the **Department of Justice**, and other carriers had predicted in opposing it. For example, in April 1998, there were a total of 207 weekly nonstop frequencies scheduled between Miami and the nine principal destinations in Central America. Based on schedules currently being held out in CRS systems, by April of next year, the total number of weekly scheduled nonstop flights in these Miami-Central America city pairs will have decreased by nearly 13%. While the total number of weekly frequencies and seats available in Miami-Central America nonstop city pairs is declining, American's share of the service available is increasing; as of next April, American will hold a nearly 60% share of the service available in these city pairs, compared to 54% in April 1998.

The Department's decision to approve the **American/TACA** alliance prevented the development of a second viable network in Miami-Central America city pairs that could compete with American for local traffic. Not surprisingly, the result has been a substantial increase in fares in these city pairs for local **passengers**.<sup>4</sup> And, these Miami-Central America city pairs continue to be the largest U. S.-Central America city pairs by a considerable margin.

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<sup>4</sup> For example, a review of the lowest available roundtrip fares published in the Miami-San Jose, Guatemala City, Panama City, and San Salvador markets shows that between June 1998 and June 1999, fares rose by 158%, 138%, 118%, and 213%, respectively. Fares in other **Miami-Central America** city pairs also rose, although by a lesser amount. For example, the lowest published roundtrip fare between Miami and Belize rose by 22%; between Miami and Managua, the increase was 3 9%.

In its final order, the Department sought to counter this evidence of actual marketplace competitive harm flowing from its policy of trading open skies for American's alliances by citing new U.S. carrier competition in U. S.-Central America markets other than Miami. Order 99-9-9 at **12**. This involved primarily new services by Continental and Delta at Newark and Atlanta. The location of those gateways, however, assures that they will not be competitive with **American/TACA** for Miami-Central America traffic. The Miami-Central America markets involve relatively short distances and a **backhaul** to Atlanta or Newark would not succeed in attracting Miami passengers.

The Department also argued that increased competition at other U.S. gateways had effectively lowered fares at Miami. Id. at 12-13. To support this conclusion, the Department relies upon nonpublic information regarding "average" fares between Miami and Central America. United is not, of course, in a position to challenge the Department's fare analysis because that analysis is not in the public record. United, however, based its analysis on higher fares that were actually being charged to passengers in the Miami-Central marketplace. Miami passengers cannot purchase the "average" fares which the Department has computed from historic data but must rely on the fares that American and its TACA Group alliance partners actually offer for sale today.

**4.** The Department also relied upon the purported success of inter-alliance competition to counter the competition in the U.S.-Chile market that would be lost through the antitrust immunization of the two major competitors. That same factor had, indeed, succeeded in an increase in competition in markets such as those between the U.S. and Continental Europe where U.S. international agreements assured that alliances could compete with each other. In

Latin America, the Department cites the **United/Varig** and **Delta/Transbrasil** alliances as the source of such interalliance competition for an immunized American/LAN Chile alliance. Orders 99-4-17 at 6, n.,12 and 99-9-9 at 11-12.

As with its reliance on incomplete traffic data to arrive at an erroneous computation of the Miami-Santiago marketshare, the Department's findings and conclusions with respect to interalliance competition in Latin America are also based on erroneous assumptions. Under the U.S./Brazil agreement, neither the **United/Varig** nor the **Delta/Transbrasil** alliances are able to engage in code sharing between Brazil and third countries such as Chile. Thus, neither of these U.S. carrier alliances would be able to offer any code sharing between the U.S. and Chile via Brazil that would provide online competition with the American/LAN Chile alliance for services between the U.S. and Chile.

5. The Department cited the services it expected would be provided by new U.S. carrier entrants as an important source of competition for U.S.-Chile traffic to replace the competition lost as a result of the immunization of the American/LAN Chile alliance. Order 99-4-17 at 7, 17-19; Order 99-9-9 at 9-10. This expectation, however, ignores the marketplace reality. Continental is the new entrant to which the Department refers as the source for such U.S.-Chile competition. That carrier has in fact reduced its recently introduced Newark-Santiago services from daily to 5 frequencies per week? Moreover, United also recently reduced its service to Santiago when it suspended its **onestop** service between Miami and Santiago via Lima. The

Department's conclusions regarding new entrant competition are, thus, largely vitiated by the marketplace actions of U.S. carriers which the Department has apparently overlooked.

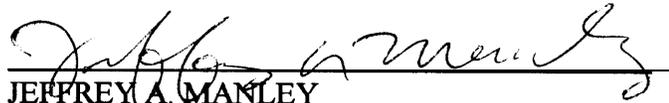
6. It appears that the Department, in approving the American/LAN Chile and other alliances between American and its principal Latin American foreign-flag competitors, has allowed its desire to conclude open skies agreements to affect its judgment on the key U.S.-Latin America competition issues. The public only benefits from such intergovernmental agreements and such intercarrier alliances where they promote competition.

United and other objecting carriers have demonstrated on the record in this case that the consequences of this alliance and other alliances (including **American/TACA**) were predominantly anticompetitive. The Department, as noted above, has relied upon erroneous findings and conclusions to reject these arguments. In these circumstances, an open skies agreement with Chile will have been purchased at a price which will deprive the public of the competitive benefits that it was intended to produce.

United urges the Department to take this opportunity to reconsider its decision in this proceeding. On reconsideration, the Department should, in particular, review the erroneous findings and conclusions noted above and, based on that review, deny approval of antitrust immunity for the American/LAN Chile alliance. Moreover, because of the relative importance of Miami as a gateway to Chile, the Department should also disallow any code sharing by American and LAN Chile, at the very least, on each other's flights for local traffic between Miami and Santiago.

WHEREFORE, on the basis of the foregoing, United urges the Department to reconsider its decision to immunize the American/LAN Chile from the antitrust laws alliance and, on reconsideration, deny the request for antitrust immunity for that alliance.

Respectfully submitted,



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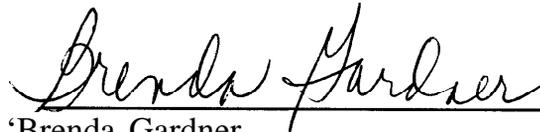
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**DATED: October 4, 1999**

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**CERTIFICATE OF SERVICE**

I hereby **certify** that I have this date served a copy of the Reply of United Air Lines, Inc. and Motion For Leave To File on all persons named on the attached Service List by causing a copy to be sent via first class mail, postage prepaid.

  
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