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BEFORE THE DEPT. OF TRANSPORTATION
DOCKETS
DEPARTMENT OF TRANSPORTATION,
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WASHINGTON, D.C.

Joint Application of

AMERICAN AIRLINES, INC.
and
LINEA AEREA NACIONAL CHILE, S.A.
(LAN CHILE)

Docket OST-97-3285 - 62

under 49 U.S.C. Sections 41308 and 41309 for approval
of and antitrust immunity for alliance agreement

Application of

LAN CHILE S.A.

Docket OST-99-6295 - 5

for exemption authority under 49 U.S.C. § 41301 of the
Federal Aviation Act of 1958, as amended

Application of

ALASKA AIRLINES, INC.

Docket OST-99-6296 - 2

under 14 C.F.R. 212 for a statement of authorization
permitting codeshare services

CONSOLIDATED ANSWER OF
CONTINENTAL AIRLINES, INC.

Communications with respect to this document should be sent to:

Rebecca G. Cox
Vice President, Government Affairs
CONTINENTAL AIRLINES, INC.
1350 I Street, N.W.
Washington, DC 20005

R. Bruce Keiner, Jr.
Thomas Newton Rolling
CROWELL & MORING LLP
1001 Pennsylvania Avenue, N. W.
Washington, DC 200042595
(202) 624-2500

Hershel I. Kamen
Staff Vice President, International
& Regulatory Affairs
CONTINENTAL AIRLINES, INC.
P.O. Box 4607 - HQSGV
Houston, TX 772 10-4607

Counsel for
Continental Airlines, Inc.

October 14, 1999

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Docket OST-99-6294

under 14 C.F.R. 212 for a statement of authorization
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CONSOLIDATED ANSWER OF
CONTINENTAL AIRLINES, INC.

United¹ has asked the Department to reconsider its decision granting
antitrust immunity and codeshare approval to American and Lan Chile because
American/Lan Chile will dominate the Miami-Chile route. Continental believes

¹ Common names are used for airlines.

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experience in the marketplace over the next year will demonstrate that the combination of American and Lan Chile will dominate not only the Miami-Chile route but other Chile routes as well, expand their dominance even further through Lan Chile's proposed codeshare service with Alaska and interrelationships among American, Lan Chile, Aerolineas Argentinas and Lan Peru and jeopardize the ability of other airlines to compete effectively between the U.S. and South America. While the Department is acquiescing in American's creation of a hydra-headed American/Lan Chile/Aerolineas Argentinas/Lan Peru monster which will dominate U.S.-South America routes, the competition from Continental and Avant the Department relied upon in approving the American/Lan Chile alliance is being precluded by the Department's own unwritten policy on codeshare safety reviews, which discriminates against codesharing by the very new-entrant foreign airlines which must be able to join alliances with non-dominant U.S. airlines to provide even a modicum of competition with dominant alliances such as American/Lan Chile.

Continental supports United's petition and urges the Department to reconsider its American/Lan Chile order, defer final approval of American/Lan Chile antitrust immunity and codesharing and defer approval of the Alaska and Lan Chile codeshare applications until Continental is permitted to codeshare on U.S.-Chile routes with Avant to provide at least a small measure of competition for the dominant American/Lan Chile alliance.

Continental states as follows in support of its position:

1. The Department said it approved the American/Lan Chile alliance and antitrust immunity “in large part” because the U.S.-Chile open-skies regime would eliminate governmental restrictions preventing new service on U.S.-Chile routes by carriers such as Continental and Avant, which would “effectively discipline” the American/Lan Chile alliance.² Lan Chile is not only Chile’s largest airline but also the only Chilean airline currently offering combination service between the U.S. and Chile, and American is the dominant U.S.-flag carrier providing Chile service, as the Department has recognized.³ Absent new competition, Lan Chile and American together will dominate passenger and cargo traffic between the U.S. and Chile, and adding codeshare service between Lan Chile and Alaska would exacerbate the American/Lan Chile dominance by extending their reach even further to include another U.S. airline network, Alaska’s, on major west coast routes. Unless Continental and Avant are authorized to introduce new competition on U.S.-Chile routes no later than Lan Chile’s codeshare services with American

² The Department cited codesharing between Continental and Avant as an example of new U.S.-Chile competition (see Order 99-9-9 at 17) and earlier said, “A major benefit of our approval [of the American/Lan Chile application] would be the increased opportunity for new entry and competition that will result from new service between the U.S. and Chile that will be possible with the implementation of [a] U.S.-Chile open-skies regime. Thus, we are approving the American/LAN-Chile alliance in large part because we believe that U.S. airlines will take advantage of those opportunities and, by doing so, effectively discipline the activities of this alliance.” (Order 99-4-17 at 17-18, made final by Order 99-9-9)

³ See Order 99-4-17 at 17, made final by Order 99-9-9.

and Alaska, the competition from the Continental/Avant codeshare arrangement envisioned by the Department when it approved the American/Lan Chile codeshare arrangement and antitrust immunity will not be available as an antidote to the American/Lan Chile dominance. Without the Continental/Avant counterbalance to Lan Chile's codeshare services with American and Alaska, competition will suffer since neither Continental nor Avant would be able to compete effectively with the American/Lan Chile/Alaska codeshare services. Every day that American/Lan Chile/Alaska codeshare with antitrust immunity for American and Lan Chile to coordinate pricing, fares and commissions, American/Lan Chile's dominance will be strengthened.

2. United focuses only on the impact of the American/Lan Chile alliance and antitrust immunity on the Miami-Chile route. United largely ignores the fact that other gateways are important to U.S.-Chile service and that the harm to competition resulting from the American/Lan Chile alliance and antitrust immunity would not be limited to Miami-Chile routes, or even to U.S.-Chile routes. American and Lan Chile will dominate other U.S.-Chile routes in addition to the Miami-Chile route and use antitrust immunity to expand that dominance. American has the only nonstop flights between Dallas/Ft. Worth and Santiago, Lan Chile has the only nonstop flights between Los Angeles and Santiago and Lan Chile and Aerolineas Argentinas dominate the New York/Newark-Chile route by offering 78% of the single-plane flights on the route. Since other U.S.-Chile gateways have thinner

traffic than Miami, they are particularly dependent on codesharing to maintain a foothold on U.S.-Chile routes in the face of expanding competition by the dominant codeshare alliance, American/Lan Chile. The American/Lan Chile alliance is also joining with other airlines to expand their combined control over the Southern Cone of South America. American has an ownership stake and effective control of codeshare partner Aerolineas Argentinas, the largest Argentine airline. Lan Chile is considering the purchase of over two-thirds of the outstanding stock in Aerolineas Argentinas, but not the American stake, and owns Lan Peru as well.⁴ American and Aerolineas Argentinas combined offer 67% of the single-plane New York/Newark-Buenos Aires flights, American and Lan Chile offer 75% of the New York/Newark-Lima single-plane flights, and American, Lan Chile, Lan Peru and Aerolineas Argentinas will be able to offer a vast network of nonstop, single-plane and connecting services between points throughout the U.S. and points throughout South America which no other combination of airlines can hope to match. The combination of dominance in Chile with dominance in Argentina and the combined strength of American/Lan Chile and Lan Peru make expedited competition by competing alliances even more important. Only rapid approval of the Continental/Avant codeshare arrangement can ensure the minimum essential competition for American/Lan Chile.

⁴ See "LanChile Mulling Aerolineas Majority Share Purchase," *Aviation Daily*, October 11, 1999 (Electronic Edition), at 1.

3. The Department has not only acquiesced in American's creation of a hydra-headed American/Lan Chile/Aerolineas Argentinas/Lan Peru monster but also prevented Continental/Avant, a potential Hercules, from gaining the strength to fight that monster. Thus, in this modern-day drama, a budding Hercules is far more likely to be slain than the hydra-headed monster. To introduce new competition on U.S.-Chile routes, Continental and Avant applied for authority to implement their codeshare arrangement on August 31, 1999, in Docket OST-99-6194.⁵ However, these applications have been delayed indefinitely by the Department's policy requiring an FAA safety assessment of foreign airlines not already holding U.S. operating authority from the FAA in codeshare arrangements with U.S. airlines. Since the Department has recognized that new codeshare service by Continental and Avant would be a competitive antidote to the dominance of the antitrust-immunized American/Lan Chile alliance, the Department should not delay the approval of the Continental/Avant codeshare application for the FAA to complete its assessment of Avant's safety. By requiring additional safety assessments only for airlines that do not currently have operations in the U.S., which are typically new entrants such as Avant, the Department would perpetuate

⁵ Continental and Avant intend to place Avant's code on Continental's flights between Newark and Santiago and between Newark and other points within the U.S. and to place Continental's code on Avant's flights between Santiago and other points in Chile. In addition, Continental will carry Northwest's code on Continental's flights between the U.S. and Chile and COPA will carry Continental's code on COPA's flights between Panama and Chile.

the dominance of carriers already established in the U.S., such as Lan Chile.⁶ The FAA has found that Chile's aviation authority complies with ICAO's aviation safety standards,⁷ indicating that Chile's aviation authority applies the proper aviation safety standards to Avant's operations in compliance with ICAO standards and that airlines regulated by Chile's aviation authority, such as Avant, are fundamentally safe.⁸ Aviation authorities complying with ICAO standards are substantially ensuring airline safety in their respective countries, and those departments, not

⁶ If the Department decides to wait for the FAA's safety assessment of Avant, the Department should, at a minimum, approve Continental's application to display Avant's code on flights operated by Continental immediately since no FAA safety assessment of Continental could possibly be required to approve that service.

⁷ See the FAA International Aviation Safety Assessment Program (IASA) Assessment Results, June 8, 1999. Category I means "[a] country's civil aviation authority has been assessed by FAA inspectors and has been found to license and oversee air carriers in accordance with ICAO aviation safety standards." FAA International Aviation Safety Assessment Results Definitions at 1. To find that a country is Category I, "the FAA determines whether a foreign civil aviation authority has an adequate infrastructure for international aviation safety oversight as defined by the ICAO standards. The basic elements that the FAA considers necessary include: 1) laws enabling the appropriate government office to adopt regulations necessary to meet the minimum requirements of ICAO; 2) current regulations that meet those requirements; 3) procedures to carry out the regulatory requirements; 4) air carrier certification, routine inspection, and surveillance programs; and 5) organizational and personnel resources to implement and enforce the above." ("FAA Announces Peru Complies With International Safety Standards," FAA News, July 11, 1997, at 1)

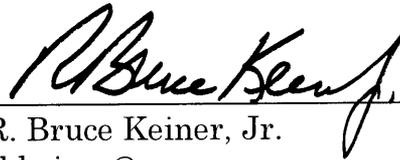
⁸ Avant's proven record of safe and accident-free operations is compelling evidence that there is no factual basis for any concern about Chile's regulation of Avant. See Exhibits 9, 1 and 6 to the Applications of Continental Airlines, Inc. and Lineas Aereas Chilenas S.A. (Avant Airlines) for Codeshare Authority, August 31, 1999, in Docket OST-99-6194.

DOT and FAA, are charged with ensuring safe operations by their flag carriers, whether they fly to the U.S. or not.⁹ Any Department policy implying that countries such as Chile are able to enforce proper aviation safety standards only for their dominant carriers is an insult to foreign governments.

For the foregoing reasons, Continental urges the Department to reconsider its order and defer final approval of American/Lan Chile antitrust immunity and codesharing and defer its approval of the Alaska and Lan Chile applications until Continental is permitted to codeshare on U.S.-Chile routes with Avant.

Respectfully submitted,

CROWELL & MORING LLP



R. Bruce Keiner, Jr.
rbkeiner@cromor.com



Thomas Newton Bolling
tbolling@cromor.com

Counsel for
Continental Airlines, Inc.

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⁹ Since consumers receive notice that the flight is actually operated by a specific foreign airline (see 14 C.F.R. § 257), they are as aware that they are relying on the foreign carrier's operating and safety reliability as they would be if they were acquiring an interline ticket, where no safety assessment is required.

CERTIFICATE OF SERVICE

I certify that I have this date served a copy of the foregoing document on all parties to the American/Lan Chile proceeding, counsel for Alaska and Lan Chile and all persons served with the Alaska and Lan Chile applications in the manner specified in the Department's Rules of Practice.



Thomas Newton Bolling

October 14, 1999

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SERVICE LIST (Dockets OST-97-3285; OST-99-6294; OST-99-6295)

Consolidated Answer of Continental to United's Petition for Reconsideration
(Joint Application of AA and Lan Chile under 49 U.S.C. Sections 41308 and 41309
for approval of antitrust immunity for alliance agreement) and the Alaska/Lan
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Roger W. Fones
Chief, Transportation, Energy
& Agriculture Section,
Antitrust Division
Department of Justice
325 Seventh Street, N.W.
Suite 500
Washington, D.C. 20530

David Dias
U.S. Department of Defense
USTRANSCOM TC-J5-AA
Air Mobility Analysis
508 Scott Drive
Scott AFB, Illinois 62225

Director of Flight Standards
U.S. Federal Aviation Administration
800 Independence Avenue, S.W.
Washington, DC 20591

Marshall S. Sinick
Squire, Sanders & Dempsey L.L.P.
1201 Pennsylvania Avenue, N.W.
Suite 500
Washington, DC 20004
(for Alaska)

Juan Carlos Mencio
General Counsel – North America
9700 S. Dixie Highway-Penthouse
Miami, FL 33156

Gary J. Dellapa
Director
Miami International Airport
P.O. Box 59-2075
Miami, FL 33159

Robert J. Kelly
Director, Aviation Department
Port Authority of New York & New
Jersey
One World Trade Center, 65N
New York, NY 10048

David M. Marchick
Deputy Assistant Secretary
for Transportation Affairs
State Department
2201 C Street, N.W.
Room 5830
Washington, DC 20520

Irwin P. Altschuler
Donald S. Stein
Keven O'Connell
Stephanie E. Silverman, Senior
Advisor
Manatt, Phelps & Phillips
1501 M Street, N.W., Suite 700
Washington, DC 20005-1702

William C. Evans
Verner, Liipfert, Bernhard,
McPherson and Hand, Chartered
901 - 15th Street, N.W.
Suite 700
Washington, DC 20005-2301

Carl B. Nelson, Jr.
Associate General Counsel
American Airlines, Inc.
1101 17th Street, N.W.
Suite 600
Washington, DC 20036

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Page 2

John L. Richardson
Crispin & Brenner, P.L.L.C.
1100 New York Avenue, N.W.
Suite 850
Washington, DC 20005

Richard P. Taylor
Steptoe & Johnson LLP
1330 Connecticut Avenue, N.W.
10th Floor
Washington, DC 20036

Allan W. Markham
Allan W. Markham, PC
2733 36th Street, N.W.
Washington, DC 20007

Nathaniel P. Breed, Jr.
Shaw Pittman
2300 N Street, N.W.
5th Floor
Washington, DC 20037

Aaron A. Goerlich
Boros & Garofalo, P.C.
1201 Connecticut Avenue, N.W.
Suite 700
Washington, DC 20036-2605

Charles Simpson
Zuckert, Scoutt & Rasenberger, L.L.P.
888 Seventeenth Street, N.W.
Suite 600
Washington, DC 20006-3939

William H. Callaway, Jr.
Zuckert, Scoutt & Rasenberger, L.L.P.
888 Seventeenth Street, N.W.
Washington, DC 20006-3939

Suzette Matthews
Bernstein and Matthews
5649 John Barton Payne Road
Marshall, VA 22115

Robert E. Cohn
Shaw Pittman
2300 N Street, N.W.
5th Floor
Washington, DC 20037

Elliott M. Seiden
Vice President, Law
and Government Affairs
Northwest Airlines, Inc.
901 Fifteenth Street, N.W.
Suite 310
Washington, DC 20005

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

Jeffrey A. Manley
Kirkland & Ellis
655 Fifteenth Street, N.W.
Suite 1200
Washington, DC 20005

R. Tenney Johnson
2121 K Street, N.W.
Suite 800
Washington, DC 20037

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Page 3

Alfred J. Eichenlaub
Sr. Vice President & General Counsel
Polar Air Cargo, Inc.
100 Oceangate
#15-flr.
Long Beach, CA 90802

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

Pierre Murphy
One Westin Center
2445 M Street, N.W.
Suite 260
Washington, DC 20037

Joel S. Burton
O'Melveny & Myers LLP
555 13th Street, N.W.
Suite 500 West
Washington, DC 20004-1109

Michael F. Goldman
Silverberg, Goldman & Bikoff, L.L.P.
1101 30th Street, N.W.
Suite 120
Washington, DC 20007

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

Shelley A. Longmuir
Senior Vice President-Governmental,
International and Regulatory Affairs
United Air Lines, Inc.
P.O. Box 66100, WHQIZ
Chicago, IL 20036

David L. Vaughan
Kelley Drye & Warren LLP
1200 19th Street, N.W.
Suite 500
Washington, DC 20036

Stephen L. Gelband
Hewes, Gelband, Lambert
& Dann, P.C.
1000 Potomac Street, N.W.
Suite 300
Washington, DC 20007

Glenn Albus
Legal Department
Evergreen International Aviation, Inc.
3850 Three Mile Lane
McMinnville, OR 97128

James W. Tello
Roller & Bauer, PLLC
1020 Nineteenth Street, N.W.
Suite 400
Washington, DC 20036