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BEFORE THE
DEPARTMENT OF TRANSPORTATION
WASHINGTON, D. C.

DEPT. OF TRANSPORTATION
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 Joint Application of :
 :
 AMERICAN AIRLINES, INC., :
 SWISSAIR, SWISS AIR TRANSPORT :
 COMPANY, LTD. and :
 N.V. SABENA S.A. :
 :
 under 49 USC 41308 and 41308 for approval :
 of and antitrust immunity for agreements :

OST-99-6528-2

MOTION OF AMERICAN AIRLINES, INC. UNDER
14 CFR 302.39 FOR CONFIDENTIAL TREATMENT

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November 19, 1999

BEFORE THE
DEPARTMENT OF TRANSPORTATION
WASHINGTON, D. C.

Joint Application of

AMERICAN AIRLINES, INC.
SWISSAIR, SWISS AIR TRANSPORT
COMPANY, LTD., and
N.V. SABENA S.A.

OST-99-

under 49 USC 41308 and 41309 for approval
of and antitrust immunity for agreements

MOTION OF AMERICAN AIRLINES, INC. UNDER
14 CFR 302.39 FOR CONFIDENTIAL TREATMENT

American Airlines, Inc., under 14 CFR 302.39, hereby
moves that the Department withhold certain proprietary and
commercially sensitive confidential information from public
disclosure.

American is submitting confidential information in
connection with the captioned joint application of American,
Swissair, and Sabena for approval of and antitrust immunity for
agreements. For these documents, we request that access be
limited to counsel and outside experts for interested parties.

In support of this motion, American respectfully
states as follows.

I. THE CONFIDENTIAL INFORMATION IS PROTECTED FROM PUBLIC DISCLOSURE UNDER THE FREEDOM OF INFORMATION ACT

The confidential information submitted herewith is protected from public disclosure under various exemptions in the Freedom of Information Act, including 5 USC 552(b)(3) and 5 USC 552(b)(4).

Exemption (4) exempts from public disclosure "trade secrets and commercial or financial information obtained from a person and privileged or confidential." This exemption has been construed to prevent public disclosure of information that is not the type usually released to the public, and that if released would cause substantial harm to the competitive position of the person from whom the information was obtained. See, e.g., Gulf & Western Industries, Inc. v. United States, 615 F.2d 527, 530 (D.C. Cir. 1980); American Airlines, Inc. v. NMB, 588 F.2d 863, 871 (2d Cir. 1978); National Parks & Conservation Ass'n v. Kleppe, 547 F.2d 673, 684 (D.C. Cir. 1976); Joint Application of Delta and Virgin Atlantic, Order 94-5-42, May 28, 1994; Joint Application of United and Lufthansa, Order 93-12-32, December 18, 1993; Joint Application of Northwest and KLM, Order 93-1-11, January 8, 1993, p. 19; Information Directives Concerning CRS, Order 88-5-46, May 22, 1988; Carrier-Owned Computer Reservations Systems, ER-1385, Order 86-5-54, May 19, 1986; Information Directives Concerning CRS, Order 83-

12-136, December 29, 1983. The purpose of these exemptions "is to protect the confidentiality of information which citizens provide to their government, but which would customarily not be released to the public, and to facilitate citizens' ability to confide in their government." Burke Energy Corp. v. DOE, 583 F.Supp. 507, 510 (D. Kansas 1984).

For information to qualify for exemption (4), the information must be (1) commercial or financial in nature, (2) obtained from a person, and (3) privileged or confidential. See Public Citizen Health Research Group v. FDA, 704 F.2d 1280, 1290 (D.C. Cir. 1983). All of the confidential information submitted by American satisfies this three-part test.

First, the confidential information is commercial or financial in nature, in that it relates to commercially sensitive, proprietary, and privileged financial and corporate information. This type of confidential information is proprietary and commercially sensitive, and would not otherwise be made public. It is being submitted to the Department so that the Department can expeditiously evaluate the public interest benefits that will result from granting approval of and anti-trust immunity for the American/Swissair/Sabena alliance.

Second, the information has been "obtained from a person" within the meaning of exemption (4).

Third, the information is "confidential." This confidential information is not available to the public, and its public disclosure is not required to further the public interest or to promote competition. In National Parks & Conservation Ass'n v. Morton, 498 F.2d 765, 770 (D.C. Cir. 1974), the Court held that information is "confidential" for purposes of exemption (4) if it would not customarily be released to the public by the person from whom it was obtained, and if disclosure is likely to have either of the following results: "(1) to impair the Government's ability to obtain necessary information in the future; or (2) to cause substantial harm to the competitive position of the person from whom the information was obtained."

American submits that public disclosure of the type of confidential information at issue here would cause substantial harm to its competitive position, and could impair the Government's ability to obtain similar information on a voluntary basis from individuals in the future.

II. ACCESS TO THESE HIGHLY SENSITIVE DOCUMENTS SHOULD BE LIMITED TO COUNSEL AND OUTSIDE EXPERTS

American is submitting highly sensitive internal corporate documents, studies, surveys, analyses, reports, and data which should be accorded limited access. Such access should be granted only to counsel and outside experts who file Rule 39 affidavits stating that the affiant will (1) use the

information only for the purpose of participating in this proceeding, and (2) not disclose such information to anyone other than counsel or outside experts who have filed a valid affidavit.

The subject materials contain highly sensitive commercial information relating to international planning and strategic decision-making. The information contained in these documents has not been publicly released. If released, competitors would gain valuable insights into American's internal strategies and objectives with respect to the most competitively sensitive matters relating to its business plans and strategies.

In order to minimize the risk of harmful disclosure of this competitively sensitive information, access should be strictly limited, as requested. American is separately filing, concurrently with this motion, three copies of this information, in sealed cartons labeled 'Confidential Treatment Requested Under 14 CFR 302.39; Access Is Limited To Counsel Or Outside Experts Who Have Filed Valid Affidavits.'

The request to limit disclosure to counsel and outside experts is fully consistent with Department precedent and policy. Thus, in United/Lufthansa, Order 93-12-32, supra, the Department granted the applicants' request to limit access to certain confidential information to counsel and outside

experts who filed Rule 39 affidavits. In so limiting such access, the Department balanced the disclosure of the confidential information against the competitive harm to the applicants that would result if access were expanded, and concluded that "the undue competitive harm to the applicants outweighs the commenters' need for expanded access to the highly sensitive material in this case" (p. 5). The Department also noted that "interested parties to this proceeding can obtain adequate advice on the merits of the application through outside experts and persons authorized to review the materials" (Id.).e e also, e.g., Joint Application of American and Canadian International, Order 96-1-6, January 11, 1996, p. 3.

Access to American's internal documents and data should be limited in a comparable manner, in light of the undue competitive harm that would result from a broader disclosure of such highly sensitive information.

CONCLUSION

The Department should grant American's motion to withhold proprietary and commercial sensitive confidential information from public disclosure, as requested herein.

Respectfully submitted,

A handwritten signature in black ink that reads "Carl B. Nelson, Jr." The signature is written in a cursive style with a prominent loop at the end of the last name.

CARL B. NELSON, JR.
Associate General Counsel
American Airlines, Inc.

November 19, 1999

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document by first-class mail on all persons named on the attached service list.


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November 19, 1999

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