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December 28, 1999

OST-99-6528-5

Secretary Rodney E. Slater  
U.S. Department of Transportation  
400 Seventh Street, SW, Room 10200  
Washington, DC 20590

REPT. OF TRANSPORTATION  
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Dear Mr. Secretary

I am writing you asking that the Department take no action on the Joint Application of American Airlines, Inc., Swissair Transport Company, Ltd., and N.V. Sabena S.A. for approval of antitrust immunity for agreements (Docket No. OST-99-6528). Considering the actions of American to keep competitors out of its market, granting it the authority to engage in conduct that would otherwise be illegal would provide it and its surrogates with additional resources to engage in anti-competitive behavior.

Since it established its hub in Dallas-Fort Worth, American has engaged in anti-competitive actions to maintain its control over that market and to block new entrants from entering the market. As the Department of Justice stated when it filed suit against American:

The Department's Antitrust Division charged that American repeatedly sought to drive small, start-up airlines out of DFW by saturating their routes with additional flights and cutting fares. After it drove out a new entrant, American re-established high fares and reduced service. American dominates DFW, the third largest airport in the United States, flying more than 70 percent of all nonstop passengers.

*Justice Department Sues American Airlines for Monopoly at Dallas Airport Hub, DOJ Press Release, 5/13/99*

American's campaign against federal law and the Department of Transportation and its management has created a new level of anti-competitive conduct that cannot be rewarded with anti-trust immunity. In its latest assault, American and its partners, the City of Fort Worth, DFW [where it controls 70% of the traffic and budget], and the Love Field Citizens Action Committee<sup>2</sup> have engaged in a multi-million dollar campaign to void the

<sup>1</sup>Fort Worth is represented by Dee Kelly. Kelly has long represented American Airlines and is a member of AMR's Board of Directors.

<sup>2</sup>The Love Field Citizens Action Committee is supported by and under the direction of American. Many of the arguments made in all of its filings at DOT and FAA have also been made in radio, newspaper and bus ads paid for by American and under the supposed name of the Committee. Moreover, many of the Committee's statements mirror statements made by American. The following articles describe the American/Action Committee relationship:

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Wright and Shelby Amendments and Department orders **affirming** the authority of Legend and others to operate at Love Field.<sup>3</sup> This is exactly the type of campaign that they

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Russ **Jewert**, co-chairman of the Love Field Citizens Action Committee, confirmed that “a substantial” portion of the week-long radio ad campaign was covered by a contribution from American.

*[Star Telegram, October 15, 1997]*

Even when it comes to the noise issue, there is reason to believe that American Airlines is helping ferment neighborhood concern. Love Field Citizens Action Committee is running ads on six radio stations at Love Field asking for listeners to call their city council members to voice opposition to changes at Love Field. And who paid for those costly ads? According to City Hall documents, American Airlines picked up the \$2,500 tab for the ads the committee is running on city-owned WRR-FM.

*[Dallas Observer, October 16-22, 1997]*

In radio commercials airing across town this week, a group opposed to lifting restrictions at Love Field states that “hundreds of additional flights a day” (oh, please) from Love will increase “pollution over our homes and schools.”

Strangely, the group gets financial support from American Airlines which, in its unthinking zeal to protect its turf, perhaps has become the first airline in history to pillory jet aircraft as dangerous health hazards to school children.

*[Huntley Paton, Dallas Business Journal, October 17-23, 1997]*

American also has donated an undisclosed amount of money to the Love Field Citizens Action Committee, a neighborhood group that opposes new flights at the local airport. The committee recently used an agency recommended by American when it purchased radio ads promoting its views.

*[Dallas Morning News, November 8, 1997]*

<sup>3</sup> Over the past two years, these parties have submitted over 44 filings before the Department on Love Field issues. These filings have attacked DOT for bias and lack of expertise. Among the statements made by these parties were the following:

- The DOT lacks “special competence” in Love Field issues. (Fort Worth Comments, p. 2)
- The DOT does not possess “the authority, expertise, or past practice to construe” these issues. (American Comments, p. 7)
- The DOT has already “predetermined the issues in favor of Dallas, Continental and Legend.” (Fort Worth Comments, p. 3)
- The DOT’s objective ability in decision-making may be “tainted.” (Fort Worth Reply, p. 4)

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launched against Southwest Airlines in the 1960s and 1970s to destroy what is now the nation's premier low cost carrier. Imagine if they had been successful. Although they are determined to destroy Continental Express,<sup>4</sup> Ozark Air Lines, and Legend Airlines, they have decided not to challenge Southwest's operations under the Shelby Amendment and have therefore "approved" those operations?

As part of their campaign, American and its allies have made baseless claims as to the impacts that some level of competition would have on their empire. As part of this effort, they have **claimed** that DFW will be destroyed by any level of competition at Love Field. These statements have been made in news articles, court filings and even Departmental proceedings. Some of the statements made include:

Siphoning local traffic from DFW to Love has slowed DFW's growth; expanding Love will slow it still further. I just don't understand why anyone in Dallas wants to see DFW become a second tier hub.

Opening Love Field will cause the DFW h-b to shrink and reduce the travel options of everyone in the Metroplex.

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In addition, they have argued in state court that a June 30, 1998 letter from the Department's General Counsel to Continental Express, Inc. was either fabricated by Continental or was the product of impermissible agency bias.

<sup>4</sup> Soon after Continental Express announced that it would initiate Love Field-Cleveland service, American added LaGuardia-Cleveland service in retaliation.

<sup>5</sup> In its brief before the Fifth Circuit Court of Appeals in *American Airlines et. al. v. Department of Transportation*, 99-60008, Southwest Airlines stated:

... recognizing the Shelby Amendment to be the new law of the land, on November 11, 1997, Southwest began offering for sale connecting service between Love Field and both Jackson, Mississippi and Birmingham, Alabama. In addition, the Shelby Amendment has allowed Southwest, for the first time, to offer for sale service between Lubbock, Texas and Birmingham; between Amarillo, Texas and both Jackson and Birmingham; and between Midland-Odessa, Texas and Birmingham. This service was not previously available because the flights serving Lubbock, Amarillo, and Midland-Odessa all stopped at Love Field, because through and connecting service could not be offered beyond Texas and the four states contiguous to Texas.

Soon after the Shelby Amendment was passed, American Airlines decided not to battle Southwest on "through ticketing". *The Dallas Morning News*, "Crandall drops through-ticketing opposition at Love" (December 3, 1997).

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Dallas simply won't be able to compete with cities like Atlanta and Denver, which are supporting their major airports.

(Remarks by Robert Crandall, Chairman, American Airlines, Love Field Press Conference, December 2, 1997.)

Long-haul flights at Love Field would "de-stabilize" the DFW hub thereby "fragmenting" it and placing it in "jeopardy." Once an airport loses local passengers, the airport lacks sufficient demand to sustain its hub operation and must inevitably downgrade service. The hub starts to "unravel itself;" the damage would be immediate and irreparable.

(DFW Brief, *American Airlines v. Department of Transportation*, No. 99-60008 (Fifth Circuit Court of Appeals) July 19, 1999)

. . .the evidence submitted by DFW Airport and others shows that allowing unfettered operations at Love Field under the Shelby Amendment would contribute to the degradation of DFW's roles as the Dallas-Fort Worth area's dominant airport and threaten to fragment the hub operation at DFW.

. . .experts testified concerning the nature and extent of the irreparable injury to DFW Airport if Continental Airlines — and other airlines making a competitive response — began interstate flights from Love Field beyond the current restrictions of the Wright Amendment and without the constraints of the Bond Ordinance and the Use Agreement. The ramifications for DFW of such an increase, the evidence shows, is that DFW's growth would be sharply reduced and the DFW hub would be dramatically reduced in size and scope.

(Department Docket, OST-98-4363, *Love Field Interpretation Proceeding*, DFW Petition for Reconsideration, January 12, 1999)

Contrary to the claims of the American parties, the evidence clearly shows that American and DFW are not falling apart, but are growing, particularly in the international arena. When seeking new international routes from DFW and codesharing alliances, American and DFW abandon their "sky is falling" claims and assure the Department that DFW is thriving. Just recently, in an effort to get the cities of Fort Worth and Dallas to issue \$2.5 billion worth of bonds for DFW expansion, DFW stated the Love Field Interpretation Proceeding will not significantly impact DFW. These misleading actions make a mockery of the Department's authority and damage the integrity of its proceedings. The

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Department should not reward this behavior with approval of any additional international authority.

Mr. Secretary, Don Carty and his legions have decided that it is they who can decide what federal authorities will apply and what carriers can operate under which authorities! They have shown that they are prepared to spend millions of dollars as a cost of preventing competition. In light of this multi-year pattern of behavior, it is inconsistent with the public interest to approve any antitrust immunity for American or any of its **officers**. By approving new authority or alliances for American, you will be handing them additional resources to continue their assault against all competitors.

Although the Department has issued multiple orders and opinions refuting every claim raised by the American parties, if they continue to engage in these actions, they will prevail. It took Southwest 15 years to overcome the assaults against it. Southwest was able to survive that campaign because it was operating at the time. In today's marketplace, no new entrant can survive years of attacks. While all of us in business understand that we are in an extremely competitive environment and may **find** ourselves in litigation, these American-coordinated efforts cross all lines of reasonableness. The Department cannot ignore this multi-year anti-competitive campaign when reviewing additional requests from these same parties for new international authorities.

It is important to take a stand for the American **travelling** public. American Airlines and its allies should be told that its latest request to increase its empire and resources with additional international **authority**<sup>7</sup> will be put on hold until they can demonstrate that their domestic and international behavior is consistent with the principles of deregulation and federal law. Certainly, the Department would not approve additional authority for a foreign carrier if it was engaging in anti-competitive behavior in its home country.

Sincerely,



T. Allan McArtor

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<sup>6</sup> As American and its allies continue to block regional jet service from Love Field to nearby and distant states, American announced on December 20 that it will provide regional jet service from DFW to Cedar Rapids, Iowa (864 miles) and Milwaukee, WI (1,067 miles).

<sup>7</sup> Particularly at its DFW hub, which it claims will be destroyed by new competition.

**CERTIFICATE OF SERVICE**

I hereby certify that I served a copy of the foregoing letter on December 29, 1999 by postage-paid first-class mail to each of the persons named on the attached service list.

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