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BEFORE THE
DEPARTMENT OF TRANSPORTATION
WASHINGTON, D. C.

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Joint Application of :
AMERICAN AIRLINES, INC. :
and :
THE TACA GROUP :
under 49 USC 41308 and 41309 for approval :
of and antitrust immunity for agreement :

OST-00- 7088-2

JOINT MOTION OF AMERICAN AIRLINES, INC.
AND THE TACA GROUP FOR CONFIDENTIAL TREATMENT
OF DOCUMENTS UNDER 14 CFR 302.12

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March 17, 2000

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DEPARTMENT OF TRANSPORTATION
WASHINGTON, D. C.

Joint Application of

AMERICAN AIRLINES, INC.
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OST-00-

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JOINT MOTION OF AMERICAN AIRLINES, INC.
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OF DOCUMENTS UNDER 14 CFR 302.12

American Airlines, Inc. and its regional affiliates (American Eagle Airlines, Inc., Executive Airlines, Inc. d/b/a American Eagle, and Business Express Airlines, Inc.) and the TACA Group (Aviateca S.A., Lineas Aereas Costarricenses S.A., Nicaraguense de Aviacion S.A., TACA International Airlines S.A., and TACA de Honduras S.A.), under 14 CFR 302.12,¹ hereby jointly move that the Department withhold certain proprietary and commercially sensitive confidential information from public disclosure.

¹This was formerly 14 CFR 302.39. See Rules of Practice in Proceedings, 65 Fed. Reg. 6445, February 9, 2000.

Confidential information is being submitted separately by the joint applicants in connection with their joint application for approval of and antitrust immunity for an agreement. For these documents, we request that access be limited to counsel and outside experts for interested parties.

In support of this motion, the joint applicants respectfully state 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 & Conser-

vation 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). The confidential information being submitted by the joint applicants 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 an anti-trust immunity for the American/TACA Group 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 and the TACA Group submit that public disclosure of the type of confidential information at issue here would cause substantial harm to their respective competitive positions, 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 and the TACA Group are 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 12 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 by American and the TACA Group. The information contained in these documents has not been publicly released. If released, competitors would gain valuable insights into each carrier's internal strategies and objectives with respect to the most competitively sensitive matters

relating to their individual business plans and strategies and to their proposed relationship.

In order to minimize the risk of harmful disclosure of this competitively sensitive information, access should be strictly limited, as requested. American and the TACA Group are separately filing, concurrently with this joint motion, five copies of this information, in sealed envelopes labeled "Confidential Treatment Requested Under 14 CFR 302.12; Access Is Limited To Counsel Or Outside Experts Who Have Filed Proper Confidentiality 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 appropriate 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

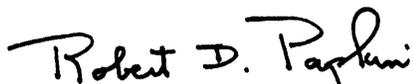
and persons authorized to review the materials" (id.). See also, e.g., Joint Application of American and Canadian International, Order 96-1-6, January 11, 1996, p. 3.

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

CONCLUSION

The Department should grant the joint applicants' motion to withhold certain proprietary and commercial sensitive confidential information from public disclosure, as requested herein.

Respectfully submitted,



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March 17, 2000

AMERICAN AIRLINES, INC.
INDEX OF CONFIDENTIAL DOCUMENTS
PURSUANT TO 14 CFR 302.12
MARCH 17, 2000

- 001-002 TACA Cities. This is a chart listing cities served by the TACA carriers
- 003-009 American-Grupo TACA QSI Valuation, International Planning, March 23, 1999. This is an internal valuation of codesharing by American and the TACA Group in various markets.
- 010-024 Latin America Alliance Strategy, Corporate Development, International Planning, February 2, 1999 (DRAFT). This provides background information on American's alliance strategy in Latin America.
- 025-034 TACA Group Update, International Planning, December 20, 1999. This discusses implementation issues of the American/TACA Group codeshare under the Department's authorization order.
- 035-038 Email from Kate Nava to Linda Lipscomb, August 10, 1998. This discusses American/TACA Group marketing issues.
- 039 Email from Linda Lipscomb to Kate Nava, July 31, 1998. This discusses American/TACA Group marketing issues.
- 040-041 Value to American Airlines of a Continental Codeshare with TACA, March 25, 1999. This is a projected valuation by city-pair.
- 042-043 Value to American Airlines of a Delta Codeshare with TACA, March 25, 1999. This is a projected valuation by city-pair.
- 044-045 Value to Various Airlines of a Codeshare Alliance with TACA, March 24, 1999. This is a projected valuation by airline.
- 046-049 Value to American Airlines of a Merger with TACA, March 24, 1999. This is a projected valuation by city-pair.
- 050-052 DL/CO Competitive Latin Markets, December 6, 1999. This is a competitive analysis of certain U.S.-Latin America routes.

- 053-054 Top 10 Destinations from North America POO to Central America (excluding Mexico), undated. This is a competitive analysis of certain U.S.-Latin America routes.
- 055-059 Significant Latin America Schedule Changes Since 1997, undated. This is a competitive analysis of certain U.S.-Latin America routes.
- 060 CO vs AA Latin American Service as of Dec. 98, undated. This is a competitive analysis of certain U.S.-Latin America routes.
- 061-062 Latin American Capacity Comparison 3Q96 to 3Q98, undated. This is a competitive analysis of certain U.S.-Latin America routes.
- 063-078 Latin America Share Performance, August 28, 1998. This is a competitive analysis of certain U.S.-Latin America routes.
- 079-092 Latin America Flow Availability Adjustments - Follow-Up, International Revenue Management, August 12, 1999. This is an analysis of American's market share trends and inventory availability.
- 093-097 GUA-Northeast Flow Market Traffic, July 29, 1999. This is a competitive analysis of certain U.S.-Guatemala City markets.
- 098-102 IAH and DFW Latin America Market Size, October 9, 1998. This is a competitive analysis of IAH and DFW to Latin America markets.

**INDEX OF GRUPO TACA CONFIDENTIAL DOCUMENTS
PURSUANT TO 14 CFR 302.12**

- GT001 – GT030 “TACA Group Holdings: Five Year Financial Projections and Assumptions” (Jan. 1999)
- GT031 – GT042 Draft American Airlines, Inc./Grupo TACA contract regarding ground handling at JFK International Airport (never executed) (Oct. 1998)
- GT043 “AA Connect Revenue” spreadsheet calculating interline revenue potential from American (circa Jan. 1999)
- GT044 “Common Stations – Grupo TACA Existing Plus Projected Operations as of End of January 1999” (circa Jan. 1999)
- GT045 – GT077 Computer print-out estimating potential code share revenue with American Airlines (Jan. 20, 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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March 17, 2000

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