

ORIGINAL.

76902

BEFORE THE
DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.

DEPT. OF TRANSPORTATION
00 APR 12 PM 4: 54

Joint Application of :

AMERICAN AIRLINES, INC. :
and :
THE TACA GROUP :

Docket OST-00-7088 -10

under 49 USC 41308 and 41309 for approval :
of and antitrust immunity for agreement :

AMERICAN AIRLINES, INC., et al., :
and THE TACA GROUP RECIPROCAL CODE- :
SHARING SERVICES PROCEEDING :

Docket OST-96-1700 -154

ANSWER OF
CONTINENTAL AIRLINES, INC.
TO MOTION

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 Bolling
CROWELL & MORING LLP
1001 Pennsylvania Avenue, N.W.
Washington, DC 20004-2595
(202) 624-2500

Hershel I. Kamen
Staff Vice President, International
& Regulatory Affairs
CONTINENTAL AIRLINES, INC.
P.O. Box 4607 - HQSGV
Houston, TX 77210-4607

Counsel for
Continental Airlines, Inc.

April 12, 2000

BEFORE THE
DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.

-----	:	
Joint Application of	:	
	:	
AMERICAN AIRLINES, INC.	:	
and	:	Docket OST-00-7088
THE TACA GROUP	:	
	:	
under 49 USC 41308 and 41309 for approval	:	
of and antitrust immunity for agreement	:	
-----	:	
-----	:	
AMERICAN AIRLINES, INC., et al.,	:	
and THE TACA GROUP RECIPROCAL CODE-	:	Docket OST-96-1700
SHARING SERVICES PROCEEDING	:	
-----	:	

ANSWER OF
CONTINENTAL AIRLINES, INC.
TO MOTION

Continental¹ agrees with Delta that American and the TACA Group should be required to provide additional information to the Department on their proposal for antitrust immunity and renewal and amendment of codeshare authority and that all confidential information should be available for use in either proceeding. American and the TACA Group have failed to submit the information the Department must have to weigh the substantial anticompetitive impact of these

¹ Common names are used for airlines.

applications for antitrust immunity and for removal of the Department's blocked-space condition on the Miami-Central America codeshare service by American and the TACA Group, although some additional information should be required.

Continental states as follows in support of its position:

1. When American and the TACA Group applied for authority to codeshare, the unmistakable consensus of this Department, the Department of Justice and other airlines was that codesharing between American and the TACA Group alone is anticompetitive.² Nonetheless, American and the TACA Group, which still dominate U.S.-Central America routes, have asked the Department to eliminate the conditions on their codeshare arrangement that the Department found were necessary to combat its anticompetitive effects. Since these conditions are the sole remaining restrictions on American/TACA Group codesharing to allow a modicum of competition on U.S.-Central America routes, the Department should be steadfast in requiring these conditions. Despite the serious concerns of this Department and the Department of Justice about the anticompetitive impact of the American/TACA Group codeshare arrangement, American and the TACA Group have also asked the Department for antitrust immunity to transform their dominance of U.S.-Central America routes and virtual monopoly of most Miami-Central America routes into an alliance immune from the antitrust laws which

² See Order 98-5-26 and the Comments of the Department of Justice, January 28, 1998, Docket OST-96-1700 ("DOJ Comments").

preclude exploitation of monopoly power. Since codesharing between American and the TACA Group alone is de facto anticompetitive and granting them antitrust immunity would compound the harmful effects of their alliance and preclude even the possibility of codesharing between the TACA Group and other U.S. airlines, the Department should reject the American/TACA Group application for antitrust immunity out of hand.

2. Continental agrees with Delta that much more information is needed to enable the Department to assess the full measure of the anticompetitive impact of the American/TACA Group applications for antitrust immunity and renewal and amendment of their codeshare authority. Delta's list of additional information, however, does not include certain information essential to the Department's consideration of the American/TACA Group applications. Accordingly, Continental asks the Department to require American and the TACA Group to provide the following additional items of information:

- Explain in detail why American and the TACA Group claim the Department's Miami-Central America blocked-space condition in Order 98-5-26 is "entirely unworkable" on SABRE.³ Provide a list of all blocked-space arrangements displayed on SABRE and explain in detail the nature of all differences between each of them and the unimplemented American/TACA Group blocked-space subject to the Department's Miami-Central America blocked-space condition. Provide copies of all documents, in English or with English translations, prepared by or on behalf of American and/or the TACA Group, that discuss, consider or analyze the Department's blocked-space condition or blocked-

³ See American's Codeshare Renewal and Amendment Application at 6.

space arrangements with other airlines. Describe in detail all efforts by American and/or the TACA Group to implement the Department's blocked-space condition. Explain in detail the estimated total cost of implementing the Department's blocked-space condition on SABRE and the amount of time required to complete such implementation.

- Specify whether the implementation of an antitrust-immunized alliance between American and the TACA Group would nonetheless allow another U.S. airline to codeshare with the TACA Group, and, if so, how.
- Provide copies of all documents prepared by or on behalf of American that discuss, consider or analyze any potential change in the alliance between American and the TACA Group if the TACA Group were to codeshare with another U.S. airline.

This information is needed to assess the rationale for the American/TACA Group request for removal of the Department's blocked-space condition on Miami-Central America codeshare service and to determine if antitrust immunity would allow the TACA Group to codeshare with other U.S. airlines to expand competition on U.S.-Central America routes. In addition, the following information has been required by the Department in other antitrust immunity proceedings, and should be required here:

- Provide copies of all documents, prepared by or on behalf of American, that reflect any consideration by American to seek additional antitrust-immunized alliances on U.S.-Latin America routes contemporaneous with or subsequent to the American/TACA Group alliance.
- Provide revenue forecasts for American/TACA Group codeshare operations with and without antitrust immunity. Provide copies of all documents, in English or with English translations, prepared by or on behalf of American and/or the TACA Group, that include revenue forecasts for American/TACA Group codesharing or antitrust immunity.

- Provide copies of all documents, in English or with English translations, prepared by or on behalf of American and/or the TACA Group, that discuss, consider or analyze route development, internal expansion, service expansion or marketing plans and strategies for providing air service between the U.S. and Central America and behind and beyond the U.S. and Central America.
- Provide copies of all documents, in English or with English translations, prepared by or on behalf of American and/or the TACA Group, that discuss, consider or analyze any preference for Miami as a U.S. gateway for Central America traffic or the competitive obstacles faced by other U.S. gateways.
- Provide copies of all documents, in English or with English translations, prepared by or on behalf of American and/or the TACA Group, that discuss, consider or analyze the availability of, or anticipated changes in, airport gates, facilities and/or slots at one or more of the points served by the TACA Group in Central America. Explain in detail the extent to which gates, facilities and slots at these airports may be affected by any expansion of service by the TACA Group or future traffic growth.

Unless and until American and TACA provide this information to the Department to complete their applications, the Department should not consider them further.

For the foregoing reasons, Continental urges the Department to require American and the TACA Group to provide the information Continental agrees is necessary to complete their applications, allow interested parties to use confidential information in both proceedings and decline to consider the American/TACA Group

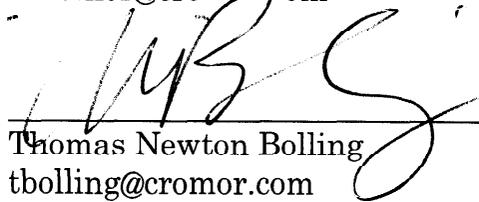
applications further until American and the TACA Group submit such information to the Department.

Respectfully submitted,

CROWELL & MORING LLP



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

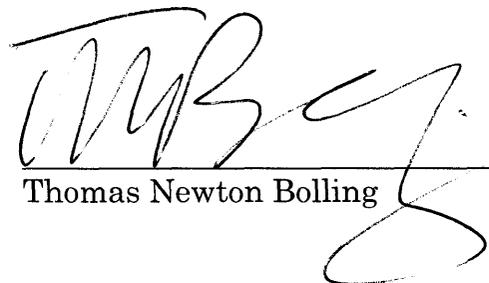


Thomas Newton Bolling
tbolling@cromor.com

Counsel for
Continental Airlines, Inc.

CERTIFICATE OF SERVICE

I certify that I have this date served the foregoing document on Delta's counsel and all persons served with Delta's motion in accordance with the Department's Rules of Practice.



Thomas Newton Bolling

April 12, 2000
1709675

SERVICE LIST (Dockets OST-00-7088/OST-96-1700)
(Joint Application of AA/TACA under 49 USC 41308 and
41309 for approval of and antitrust immunity for agreement)
(American, et al., and the TACA Group Reciprocal Code-
Sharing Services Proceeding)

Answer of Continental to Delta Motion

April 12, 2000

Page 1

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

Robert D. Papkin
James V. Dick
Squire, Sanders & Dempsey, LLP
1201 Pennsylvania Avenue, N.W.
Suite 400
Washington, DC 20004

Jeffrey A. Manley
Wilmer, Cutler & Pickering
2445 M Street, N.W.
Washington, DC 20037

Robert E. Cohn
Shaw Pittman
2300 N Street, N.W.
Washington, DC 20037
(for Delta)

Megan Rae Rosia
Managing Director, Government
Affairs, and Associate General
Counsel
Northwest Airlines, Inc.
901 Fifteenth Street, N.W.
Suite 310
Washington, DC 20005

Glenn P. Wicks
The Wicks Group, Inc.
1700 North Moore Street
Suite 1650
Arlington, VA 22209

Robert P. Silverberg
Silverberg, Goldman & Bikoff, L.L.P.
1101 30th Street, N.W.
Washington, DC 20007

John E. Gillick, Jr.
Winthrop, Stimson, Putnam &
Roberts
1133 Connecticut Avenue, N.W.
Suite 1200
Washington, DC 20036

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

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

Mark W. Atwood
Sher & Blackwell
1850 M Street, N.W.
Suite 900
Washington, DC 20036

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

SERVICE LIST (Dockets OST-00-7088/OST-96-1700)
(Joint Application of AA/TACA under 49 USC 41308 and
41309 for approval of and antitrust immunity for agreement)
(American, et al., and the TACA Group Reciprocal Code-
Sharing Services Proceeding)
Answer of Continental to Delta Motion
April 12, 2000
Page 2

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

William H. Callaway, Jr.
Zuckert, Scoutt & Rasenberger, LLP
888 17th Street, N.W.
Washington, DC 20006

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

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

Nathaniel P. Breed
Shaw Pittman
2300 N Street, N.W.
Washington, DC 20037

Jeffrey N. Shane
Wilmer, Cutler & Pickering
2445 M Street, N.W.
Washington, DC 20037

Allan I. Mendelsohn
Mendelsohn & Szymkowicz
1233 - 20th Street, N.W.
Suite 800
Washington, DC 20036-2396

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

Kevin P. Montgomery
Vice President-Government
& Industry Affairs
Polar Air Cargo Inc.
1250 Connecticut Avenue, N.W.
Eighth Floor
Washington, DC 20036

Elijah Jackson
President
Prestige Airways
9815 Godwin Drive
Manassas, VA 22110

Jeffrey Crippen
President
Ryan International Airlines. Inc.
266 North Main
Wichita, KS 67202

Pierre Murphy
Law Offices of Pierre Murphy
2445 M Street, N.W.
Suite 260
Washington, DC 20037

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

SERVICE LIST (Dockets OST-00-7088/OST-96-1700)
(Joint Application of AA/TACA under 49 USC 41308 and
41309 for approval of and antitrust immunity for agreement)
(American, et al., and the TACA Group Reciprocal Code-
Sharing Services Proceeding)

Answer of Continental to Delta Motion

April 12, 2000

Page 3

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

John R. Brimsek
Mullenholz, Brimsek & Belair
1150 Connecticut Ave., N.W.
Suite 700
Washington, D.C. 20036

Richard D. Mathias
Zuckert, Scutt & Rasenberger, L.L.P.
888 Seventeenth Street, N.W.
Suite 600
Washington, DC 20006-3939

Donald T. Bliss
O'Melveny & Myers LLP
555 13th Street, N.W.
Suite 500 West
Washington, DC 20004-1 109

Julie Sorenson Sande
Manager, Contract & Regulatory
Affairs
World Airways, Inc.
13878 Park Center Road
Suite 490
Herndon, VA 22071

Henry C. Joyner, Sr.
Vice President-Planning
American Airlines, Inc.
P.O. Box 619616, MD 5621
DFW Airport, TX 75261

U.S. Transcom/TCJ5-AA
Attn: Air Mobility Analysis
Department of Defense
508 Scott Drive
Scott AFB, IL 62225

Arnold J. Grossman
Vice President-International Affairs
American Airlines, Inc.
P.O. Box 619616, MD 5621
DFW Airport, TX 75261

1708458

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

Roger F. Fones
Chief, Transportation, Energy
& Agriculture Section
Antitrust Division
Department of Justice
325 Seventh Street, N.W.
Room 500
Washington, DC 20530