

**BEFORE THE
DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.**

Joint Application of)
)
)
 UNITED AIR LINES, INC.,)
 AUSTRIAN AIRLINES, ÖSTERREICHISCHE)
 LUFTVERKEHRS AG,)
 LAUDA AIR LUFTFAHRT AG,)
 DEUTSCHE LUFTHANSA, A.G.,) Docket OST-00-
 and)
 SCANDINAVIAN AIRLINES SYSTEM)
)
 under 49 U.S.C. §§ 41308 and 41309 for approval and)
 antitrust immunity for an Alliance Expansion Agreement)
 and an Amended Coordination Agreement)
)

Dated: August 18, 2000

**MOTION OF DEUTSCHE LUFTHANSA, A.G.
FOR CONFIDENTIAL TREATMENT UNDER 14 C.F.R. § 302.12**

Deutsche Lufthansa, A.G. (“Lufthansa”), pursuant to Rule 12 of the Department’s Rules of Practice (14 C.F.R. § 302.12), requests that the Department withhold from public disclosure documents that Lufthansa is filing herewith under seal in the above-captioned proceeding. These documents contain confidential, proprietary and commercial sensitive information. Lufthansa is submitting these documents to facilitate the Department’s processing of the joint application of United Air Lines, Inc., Austrian Airlines, Österreichische Luftverkehrs AG (“Austrian”), Lauda Air Luftfahrt AG (“Lauda”), Lufthansa, and Scandinavian Airlines System (“SAS”), and their respective affiliates (collectively, the “Joint Applicants”), for approval of and antitrust immunity for

their alliance agreements filed herewith. In support of this request, Lufthansa submits the following:

I. LUFTHANSA'S CONFIDENTIAL DOCUMENTS ARE PROTECTED FROM PUBLIC DISCLOSURE BY THE FREEDOM OF INFORMATION ACT.

To facilitate expeditious processing of the Joint Application, Lufthansa is voluntarily submitting documents responsive to the information requests the Department has issued in recent antitrust immunity proceedings, as detailed in Exhibit JA-17 to the United/Lufthansa/SAS/Austria/Lauda joint application for antitrust immunity. (An index of Lufthansa's confidential documents is attached hereto.). These documents, produced by Lufthansa headquarters in consultation with attorneys from the undersigned law firm, are confidential and proprietary.

These documents are protected from public disclosure under various exemptions to the Freedom of Information Act ("FOIA"), including 5 U.S.C. §§ 552(b)(3) and (b)(4). Exemption 3 protects from disclosure information specifically protected by another federal statute, including 49 U.S.C. § 40115. See British Airports Authority v. CAB, 551 F. Supp. 408, 414 (D.D.C. 1982). Section 40115 allows for withholding of information that would adversely affect a carrier's competitive position in foreign air transportation. The materials at issue here clearly satisfy this standard. They contain extremely sensitive information, including Lufthansa's competitive positions and its strategic intentions. None of these materials has been made publicly available. This information could be

used by Lufthansa's competitors to their strategic advantage, and Lufthansa's disadvantage, in making competitive decisions.

Exemption 4 protects from public disclosure information that is "(1) commercial or financial, (2) obtained from a person outside the government, and (3) privileged or confidential." Gulf & Western Indus. Inc. v. United States, 615 F.2d 527, 529 (D.C. Cir. 1980) (citations omitted). All the documents at issue here clearly satisfy this standard. All are commercial or financial in nature; they were obtained from a private citizen; and are privileged or confidential. Lufthansa would suffer substantial competitive harm if the documents were publicly disclosed. Washington Post Co. v. HHS, 690 F.2d 252, 268 (D.C. Cir. 1982) (defining the standard for whether a document is privileged or confidential). Public disclosure of such information "could impair the Government's ability to obtain necessary information in the future or...cause substantial harm to the competitive position of the person from whom the information was obtained." See National Parks & Conservation Ass'n v. Kleppe, 547 F.2d 673, 677-78 (D.C. Cir. 1976) (quoting National Parks & Conservation Ass'n v. Morton, 498 F.2d 765, 770 (D.C. Cir. 1974)); Burke Energy Corp. v. DOE, 583 F. Supp. 507, 510 (D. Kansas 1984).

II. ACCESS TO LUFTHANSA'S CONFIDENTIAL AND PROPRIETARY DOCUMENTS SHOULD BE LIMITED TO COUNSEL AND OUTSIDE EXPERTS.

Due to the nature of the documents Lufthansa has filed, Rule 12 access should be limited to counsel and outside experts who file an affidavit stating that they will (1) use the information only for the purposes of participating in this proceeding; and (2) not

disclose the information to anyone other than counsel or outside experts who have filed a valid affidavit with the Department.

The documents Lufthansa has filed under Rule 12 contain highly sensitive commercial information relating to international strategy, performance and planning. In order to protect Lufthansa's ability to compete effectively in international markets, it is imperative that this information not be disseminated to Lufthansa's competitors, even under Rule 12 procedures. In recent years, the Department has routinely limited Rule 12 access to such data filed in the course of antitrust proceedings to counsel and outside experts. See, e.g., Joint Application of Alitalia-Linee Aeree Italiane-S.p.A., KLM Royal Dutch Airlines and Northwest Airlines, Inc. (Docket OST-1999-5674), *Scheduling Notice and Initial Determination on Motion for Confidential Treatment Under 14 C.F.R. 302.39* (July 19, 1999); and Joint Application of United Air Lines, Inc. and Air Canada (Docket OST-96-1434), Notice Granting Access to Documents (July 11, 1997). By limiting access in this manner, the Department can permit parties to fully participate while deterring the competitive harm that would result if the information were disseminated among Lufthansa's competitors.

WHEREFORE, for the foregoing reasons, the Department should grant Lufthansa's motion to withhold from public disclosure the confidential, proprietary and commercially sensitive information that Lufthansa has filed under seal; limit Rule 12 access to counsel and outside experts as described above; and grant such other and further relief as the Department deems necessary.

Respectfully submitted,

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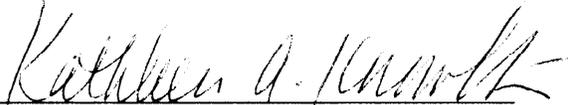
Dated: August 18, 2000

Index of Lufthansa Confidential Documents

Bates Number	Title/Description	Responsive to Document Production Number
LH 000001 - 000009	Pricing Goals for US Point of Sale and Principles of Matching Philosophy	1
LH 000010 - 000028	Alliance Area Forum North America (June 7, 1999)	1
LH 000029 - 000039	Matching Guidelines and Reactive Pricing Information Sheet	1
LH 000040 - 000050	Pricing Goals for Germany Point of Sale and Market share Development Charts	1
LH 000051 - 000143	Intercontinental Traffic, Summer 2000 to Summer 1999	1

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Motion of Deutsche Lufthansa, A.G. for Confidential Treatment on all persons named on the attached Service List by causing a copy to be sent via first-class mail, postage pre-paid.


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Kathleen A. Knowlton

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