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BEFORE THE
DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.

DEPT. OF TRANSPORTATION
DC METS

Joint Application of)
)
UNITED AIR LINES, INC.,)
AUSTRIAN AIRLINES, ÖSTERREICHISCHE)
LUFTVERKEHRS AG,)
LAUDA AIR LUFTFAHRT AG,)
DEUTSCHE LUFTHANSA, A.G.,)
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)
)

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Docket OST-00-2824-2

**MOTION OF UNITED AIR LINES, INC.,
FOR CONFIDENTIAL TREATMENT UNDER 14 C.F.R. § 302.12**

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Counsel for
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DATED: August 18, 2000

**BEFORE THE
DEPARTMENT OF TRANSPORTATION
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**MOTION OF UNITED AIR LINES, INC.,
FOR CONFIDENTIAL TREATMENT UNDER 14 C.F.R. § 302.12**

United Air Lines, Inc. (“United”), 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 United is filing herewith under seal in the above-captioned proceeding. These documents contain confidential, proprietary and commercial sensitive information. United is submitting these documents to facilitate the Department’s processing of the joint application of United, Austrian Airlines, Österreichische Luftverkehrs AG (“Austrian”), Lauda Air Luftfahrt AG (“Lauda”), Deutsche Lufthansa, A.G. (“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, United submits the following:

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

To facilitate expeditious processing of the Joint Application, United 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 United's confidential documents is attached hereto.). These documents, produced by United 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 an air carrier's competitive position in foreign air transportation. The materials at issue here clearly satisfy this standard. They contain extremely sensitive information, including United's competitive positions and its strategic intentions. None of these materials has been made publicly available. This information could be used by United's competitors to their strategic advantage, and United'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. United 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 Association 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 UNITED'S CONFIDENTIAL AND PROPRIETARY DOCUMENTS SHOULD BE LIMITED TO COUNSEL AND OUTSIDE EXPERTS.

Due to the nature of the documents United 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 United has filed under Rule 12 contain highly sensitive commercial information relating to international strategy, performance and planning. In order to protect United's ability to compete effectively in international markets, it is imperative that this information not be disseminated to United'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 United's competitors.

WHEREFORE, for the foregoing reasons, the Department should grant United's motion to withhold from public disclosure the confidential, proprietary and commercially sensitive information that United 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 United Air Lines Confidential Documents

Bates Number	Title/Description	Responsive to Document Production Number
UA 000001 - 000006	Bi-weekly Reports from Claudio Balzarini and Moira Pozzoli	
UA 000007 - 00013A	Charts in Support of Codeshare with Austrian Airlines	1
UA 000014 - 000023	Austrian Airlines/United Joint Alliance Committee (June 23, 2000)	
UA 000024 - 000041	Sales Planning - Amsterdam, 1999 and 2000	1
UA 000042 - 000062	Brussels Sales Reports	
UA 000063 - 000066	Updated Results for June Upper Cabin Share Transatlantic	
UA 000067 - 000082	U.S. France Frequencies (August 6, 1999)	1
UA 000083 - 000089	U.S. Frankfurt Forecasts (September 24, 1999)	1
UA 000090 - 000097	San Francisco - Frankfurt Forecast (September 3, 1999)	1
UA 000098 - 000109	Milan - Washington Route Overview (June 15, 1999)	1
UA 000110 - 000113	IAD - TXL Scenario Analysis (June 2000)	
UA 0000114 - 000151	London Winter Schedule (June 15, 1999)	
UA 0000152 - 0000154	Washington D.C. - Rome Forecast (June 15, 1999)	1
UA 000155 - 000164	U.S. France Frequencies (April 2000)	1
UA 000165 - 000206	Atlantic Country Mangers Meeting (February 16, 1999)	1
UA 000207 - 000228	United Airlines Europe (July 20, 1999)	1
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UA 000321 - 000358	United Atlantic Market Efficiencies (November 16, 1999)	
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UA 000583 - 000617	Commission Review (March 29, 1999)	1
UA 000618 - 000629	Monthly Pan European Coordinators Report (October 1999 to July 2000)	1
UA 000630 - 000747	Frass Activity Report (January 4, 1999 to July 13, 2000)	1
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UA 000814 - 000920	Bi-weekly Reports - U.K. (August 24, 1998 to July 31, 2000)	1
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UA 000922 - 000935	East Coast Connectivity (February 2000)	1
UA 000936 - 000938	767-300 Reconfiguration and Atlantic Analysis	1

UA 000939 - 000941	Analysis of MAN-USA Routes	1
UA 000942 - 000950	Pricing (June 8 to August 11, 2000)	1

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Motion of United Air Lines, Inc. 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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