

BEFORE THE  
DEPARTMENT OF TRANSPORTATION  
WASHINGTON, D.C.

DEPT. OF TRANSPORTATION  
DOCKET SECTION  
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QA-7043

OST-95-792-13

Joint Application of )  
)  
AMERICAN AIRLINES, INC. and )  
EXECUTIVE AIRLINES, INC., FLAGSHIP )  
AIRLINES, INC., SIMMONS AIRLINES )  
INC., and WINGS WEST AIRLINES, INC. )  
(d/b/a AMERICAN EAGLE) )  
and )  
CANADIAN AIRLINES INTERNATIONAL LTD. )  
and ONTARIO EXPRESS LTD. and TIME AIR )  
INC. (d/b/a CANADIAN REGIONAL) and )  
INTER-CANADIAN (1991) INC. )  
)  
)  
under 49 USC 41308 and 41309 for approval )  
of and antitrust immunity for commercial )  
alliance agreement )  
)

OST-95-792

MOTION OF UNITED AIR LINES, INC. TO DEFER APPLICATION

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**DATED: January 25, 1996**

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DEPARTMENT OF TRANSPORTATION  
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MOTION OF UNITED AIR LINES, INC. TO DEFER APPLICATION

United Airlines hereby requests that the Department defer action on the application filed jointly by American Airlines, Canadian Airlines International, and their regional affiliates for antitrust immunity for their commercial alliance agreement (the "Joint Application").

The Joint Application has been filed prematurely. Even though the U.S. and Canada have concluded a liberalized aviation agreement, entry into the transborder market for U.S. carriers will continue to be subject to significant restrictions until April 1998. Because the expiration of these restrictions is far from imminent, the Department should not be considering at this time the grant of antitrust immunity to a marketing alliance among American, the largest U.S.-flag transborder competitor,

Canadian International, and their regional affiliates. To do so would represent a significant departure from established DOT policy. In the event the Department does not defer action on the Joint Application, due process and fundamental fairness dictate that the Department notify other carriers of its intent to proceed and set a procedural schedule for the filing of other applications for antitrust immunity for transborder alliances, which would then be considered simultaneously with the Joint Application.

In further support of this Motion, United submits the following:

I. THE AMERICAN/CANADIAN JOINT APPLICATION IS PREMATURE.

U.S. international aviation policy firmly endorses code-sharing and cooperative marketing alliances as important means for carriers to address the preference of passengers and shippers for an integrated on-line transportation product. As noted in the Department's International Policy Statement, such alliances facilitate carriers' ability to provide consumers "on-line service from beginning to end through coordinated scheduling, baggage-and cargo-handling, and other elements of single-carrier service." International Policy Statement at 5. The Department's Policy Statement also recognizes that:

Code sharing and other cooperative marketing arrangements can provide a cost-efficient way

for carriers to enter new markets, expand their systems and obtain additional flow traffic to support their other operations by using existing facilities and scheduled operations. Because these cooperative arrangements can give the airline partners new or additional access to more markets, the partners will gain traffic, some stimulated by the new service, and some diverted from incumbents. In this way, cooperative arrangements can enhance the competitive positions of both partners in such a relationship.

Id. at 4.

United is not opposed to the Department's granting antitrust immunity to carriers participating in code sharing and marketing alliances. On the contrary, in its answer to the application for antitrust immunity filed jointly by Delta Air Lines, Austrian Airlines, Swissair, and Sabena, United pointed out that such immunity can both improve carriers' ability to maximize the efficiency gains available from operating a global hub-and-spoke route network, and enhance the attractiveness to foreign governments of signing an open skies agreement with the United States. Answer of United Air Lines, Inc., docket OST 95-618, at 5-6. For that reason, United encouraged the Department to grant immunity in circumstances where the overall net effect of doing so would be to improve the alliance partners' ability to respond to consumer demand and to increase competition. Id. at 10.

Up to now, the Department's policy has been to grant antitrust immunity for alliances only in circumstances where

there is open market access. Absent such access, a decision to grant immunity to an alliance such as that between American and Canadian may not prove to be pro-consumer and pro-competitive. On the contrary, in the short term, the grant of antitrust immunity would allow American and Canadian to enhance their competitive position in the transborder market while other U.S.-flag carriers are limited in their ability to mount a competitive response because of the limitations imposed by the transitional agreement.

Because of these limitations, United, for example, is unable to operate more than two roundtrip frequencies per day between its hub at San Francisco and Vancouver and only a single daily frequency between Vancouver and its hubs at Denver and Los Angeles. United holds no authority at all to operate nonstop between Vancouver and its hub at Washington's Dulles Airport, nor between Denver and Toronto; its U.S.-Canada authority is also limited at its international gateways at Dulles and Miami International Airports. Other U.S.-flag incumbents face similar restrictions on their ability to introduce new transborder services and to expand their existing services at Montreal, Toronto, and Vancouver, the three principal traffic generating points in Canada.

The old U.S.-Canada bilateral was a highly restrictive agreement that prevented U.S. and Canadian carriers from

integrating transborder services into their domestic hub and spoke networks. This limitation has now been ameliorated to some extent by the new agreement. The reality, however, is that because of the substantial restrictions that continue to exist at Montreal, Toronto and Vancouver, transborder services continue to reflect more the pattern of historic route awards under the old, highly restrictive bilateral, than networks developed in a free market to respond to consumer demand. In this sense, the transborder market is significantly different from the transatlantic market, where the only two other alliances that have sought antitrust immunity are centered. For a number of reasons, most carriers' services between the U.S. and Europe now largely reflect the hub and spoke network structure of the U.S. domestic market rather than the old pre-deregulation pattern of route awards.

Indicative of the limitations that still exist on the provision of transborder service are the limitations on nonstop service by USAir and United, respectively, between Pittsburgh and Toronto and San Francisco and Vancouver, even though they operate hubs at the U.S. end points of these two routes. In a free market, it is unlikely that United and USAir would operate only two roundtrips per day over these routes, although each carrier is limited to that level of service under the transitional terms of the agreement.

The net result is that while antitrust immunity will directly and materially strengthen American's and Canadian's position as transborder competitors, other U.S. carriers will be unable freely to mount competitive responses that meet consumer demand and reflect the inter-play of market forces because of the limitations that still exist under the transitional agreement. Because of these limitations, it would not be consistent with the public interest for the Department to consider the grant of antitrust immunity to American and Canadian at this time.

II. A GRANT OF ANTITRUST IMMUNITY TO AMERICAN AND CANADIAN AT THIS TIME WOULD BE INCONSISTENT WITH ESTABLISHED DOT POLICY AND WOULD UNDERMINE U.S. EFFORTS TO NEGOTIATE LIBERAL AGREEMENTS

The grant of antitrust immunity at this time to American and Canadian would represent a fundamental shift in U.S. policy and would undermine U.S. efforts to negotiate liberal bilateral agreements with this country's major trading partners. Heretofore, the Department has indicated that the availability of antitrust immunity for trans-national marketing alliances is to be used as an inducement for foreign governments to enter into liberal, pro-competitive bilateral agreements with the United States. Thus, in explaining its decision to grant immunity to the alliance between KLM and Northwest, the Department emphasized that "our approval of and grant of antitrust immunity to the Agreement ... [should] encourage other European countries to

agree to liberalize their aviation ... [relations with the United States.]" Order 92-11-27 at 13-14.

This is a sound policy. The availability of antitrust immunity is a strong inducement for this country's major trading partners to open their international aviation markets to entry by U.S. carriers. In an industry in which cross-national mergers and joint-ventures are limited by foreign-ownership laws and cabotage restrictions, antitrust immunity can play a key role in facilitating carriers' ability to utilize alliances to achieve the full efficiency gains possible from hub-and-spoke operating systems.

Because alliances with immunity should be able to achieve greater cost efficiencies than alliances without immunity, foreign governments interested in securing the maximum benefits for their flag carriers from participation in code sharing alliances with U.S. airlines have a strong incentive to agree to liberalize access to their markets to whatever degree the Department requires for the grant of immunity. If open entry is the Department's condition, as it has been up to now, foreign governments have a strong incentive to agree to open entry. However, if immunity can be obtained while transitional limitations on entry remain in place, foreign governments will have a strong incentive to insist upon such limitations to protect their carriers from competition while still demanding

immunity for alliances between their national airlines and U.S. carriers. Thus, a decision to proceed with consideration of the Joint Application while the transitional limitations of the U.S.-Canada bilateral remain in place would both reverse current U.S. policy, and send a message to other foreign governments that something less than open entry may be sufficient to secure antitrust immunity for marketing alliances between their national airlines and U.S. airlines. Sending such a message can only exacerbate the difficulties the Department faces in securing more liberalized agreements with our major trading partners.

III. IF THE DEPARTMENT DOES NOT DISMISS THE JOINT APPLICATION, IT SHOULD SET A PROCEDURAL TIMETABLE FOR THE FILING OF OTHER APPLICATIONS

A decision to proceed with substantive consideration of the Joint Application at this time would represent a fundamental shift in Department policy. If, notwithstanding the obvious policy and competitive disadvantages that will result from such a shift, the Department does not formally defer action on the Joint Application, due process and fundamental fairness dictate that the Department provide other incumbents in the transborder market notice of its change in policy and an opportunity to file their own applications for antitrust immunity, which would then be considered simultaneously with the Joint Application.

WHEREFORE, for the reasons set forth, United Air Lines, Inc. hereby requests that the Department either (i) defer action

on the Joint Application filed by American Airlines, Canadian Air Lines and their regional affiliates for antitrust immunity, or (ii) issue an order establishing a procedural schedule for other interested carriers to file applications for antitrust immunity, which would be considered simultaneously.

Respectfully submitted,



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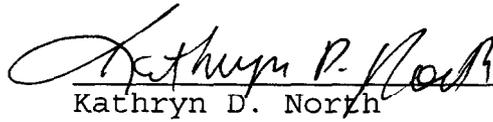
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**DATED: January 25, 1996**

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CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Motion of United Air Lines, Inc. To Defer Application to the persons on the attached Service List by causing a copy to be sent via first class mail, postage prepaid.

  
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**DATED: January 25, 1996**

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