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BEFORE THE  
DEPARTMENT OF TRANSPORTATION  
WASHINGTON, D.C.

DEPT. OF TRANSPORTATION  
DOCKET SECTION

96 FEB -5 PM 4:29

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 U.S.C. §§ 41308 and 41309 for approval of )  
and antitrust immunity for commercial alliance )  
agreement )

Docket OST-95-792 -14

**CONSOLIDATED ANSWER OF  
DELTA AIR LINES, INC.**

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February 5, 1996

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

**Joint Application of** )  
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**CONSOLIDATED ANSWER OF  
DELTA AIR LINES, INC.**

On November 3, 1995, American Airlines, Inc. ("American") and its regional air-line affiliates and Canadian Airlines International Ltd. ("Canadian") and its regional air-lines affiliates ("the Joint Applicants") filed a Joint Application ("Joint Application") for approval of and antitrust immunity for a commercial alliance agreement ("the Alliance Agreement"). By Order 96-1-6, the Department established a procedural schedule for responding to the Joint Application.

On January 25, 1996, United Air Lines, Inc. ("United") filed a Motion to defer the Joint Application.

Delta Air Lines, Inc. ("Delta") hereby files this Consolidated Answer to the Joint Application and to United's Motion. For the reasons set forth below, Delta agrees with

United that the Joint Application should not be considered by the Department until the "open skies" provisions of the U.S.-Canada bilateral agreement are fully effective. Accordingly, the Joint Application should either be deferred or dismissed. In support of this Answer, Delta states the following:

1. The Department's clear policy is to consider the grant of antitrust immunity for airline alliances only where a fully effective open skies agreement already exists. As Secretary Peña stated in testimony to Congress on the Department's International Aviation Policy:

The existence of an "open skies" environment, and the elimination of other competitive restrictions, would be key factors in any consideration of a request for immunity.

Statement of Secretary Peña before the Committee on Commerce, Science and Transportation, July 15, 1995, at 13-14.

2. There are two important reasons for an open skies precondition. First, the existence of an open skies agreement ensures competitive discipline by allowing U.S. carriers (and any homeland carriers) to serve those countries from any point in the United States (and to any point beyond those countries where route authority can be obtained):

"Because of the open skies accord, any U.S. carrier may serve the Netherlands from any point in the United States. As a result, other carriers have the opportunity and ability to enter the U.S.-Netherlands market and to increase their service if the applicants try to raise prices above competitive levels (or lower the quality of service below competitive levels)."

Northwest-KLM, Order 92-11-27:

A second important reason for requiring an open skies agreement as a precondition to consideration of an immunity application is in furtherance of U.S. international aviation policy by encouraging expansion of liberal bilateral relationships between the United States and other countries. Thus, antitrust immunity encourages the development of other similar alliances between U.S. and foreign airlines and serves as an important inducement to other countries to liberalize their aviation regimes. As the Department observed in the Northwest-KLM case:

We look to our Open Skies Accord with the Netherlands and our approval and grant of antitrust immunity to the [KLM/Northwest] Agreement to encourage other European countries to agree to liberalize their aviation services so that comparable opportunities may become available to other U.S. carriers.

Order 92-11-27 at 14. See also, Order 93-1-11, in which the Department stated: "The grant of immunity should promote competition by furthering our efforts to obtain less restrictive aviation agreements with other European countries."

3. The availability of antitrust immunity led the Governments of Switzerland, Belgium and Austria to liberalize their bilateral arrangements with the United States and enter into fully effective open skies agreements so that their carriers can make use of "comparable opportunities". After the open skies agreements with Switzerland, Belgium and Austria were fully effective, Delta, Swissair, Sabena and Austrian in Docket OST-95-618 filed an application for approval of antitrust immunity for their Alliance Agreements ("Delta Alliance"). The most significant difference between the American/Canadian application and the Delta Alliance Application is that the latter is premised on the prior existence of completely liberalized open skies bilateral agreements

between the Governments of the United States, on the one hand, and Switzerland, Belgium and Austria, on the other hand. By contrast, the U.S.-Canada agreement contains "transitional" restrictions on U.S. carrier services to Canada's three largest cities, which will limit U.S. services until February 25, 1998.

4. The Northwest-KLM immunized alliance and the filing of the Delta Alliance Application have encouraged Germany to accelerate negotiations looking toward the achievement of a liberalized open skies arrangement with the United States.

5. If the Department were to consider the grant of antitrust immunity for an alliance involving a foreign carrier whose government maintains significant limitations on U.S. carrier entry, the Department would be turning its international aviation policy on its head and sending foreign governments precisely the wrong message. Instead of encouraging foreign governments to liberalize their aviation regimes, foreign governments will clamor for antitrust immunity for alliances involving their national carriers while continuing to insist on entry and other restrictions designed to protect those national carriers from U.S.-flag competition. Such a change in policy could certainly jeopardize progress with Germany on an open skies agreement.

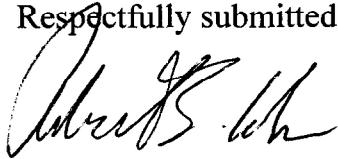
6. While the U.S. and Canada have entered into an agreement that ultimately will result in open skies, the U.S.-Canada agreement contains transitional restrictions that for several more years will continue to impose substantial limitations on services by U.S. airlines to the three largest Canadian cities of Toronto, Montreal and Vancouver. Annex V of the U.S.-Canada Agreement contains "phase-in" restrictions on U.S. carrier services to Toronto for three years from the date of the agreement and to Montreal and Vancouver for two years after the date of the agreement. While the transitional provisions permit a

modicum of additional U.S. carrier services to these three Canadian cities, for the most part, U.S. carrier operations to Toronto, Montreal and Vancouver will be controlled by governmental restrictions rather than the competitive forces of a free market. These limitations substantially restrict Delta's U.S.-Canada route opportunities. For example, Delta is limited to only two daily nonstop flights between Atlanta -- its major domestic hub -- and Toronto. And, Delta is unable to serve Cincinnati-Toronto in its own right (services are operated by Comair, a Delta Connection carrier, limited to commuter aircraft). Moreover, the bilateral restrictions not only prevent Delta from operating service to meet consumer demand, they would impair Delta's ability to marshal competitive responses to an immunized American-Canadian alliance.

7. For the foregoing reasons, there is no sound regulatory reason for the Department to consider an application for antitrust immunity in the absence of a fully effective open skies agreement with Canada. Since the open skies provisions of the U.S.-Canada bilateral will not take effect until February 25, 1998, there is no purpose for the Department to expend its limited resources on a matter that cannot and should not in any event be implemented for at least another two years.

WHEREFORE, Delta urges the Department either to defer or dismiss the Joint Application for consideration at such time as the transitional restrictions under the U.S.-Canada bilateral expire.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Consolidated Answer of Delta Air Lines, Inc. was served this 5th day of February, 1996, on all persons on the attached service list.

  
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Lesly Belloff

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