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Order 2001-4-2
Served: April 3, 2001



**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.**

Issued by the Department of Transportation
on the 3rd day of April, 2001

Joint Application of

UNITED AIR LINES, INC.

and

AIR NEW ZEALAND LIMITED

under 49 U.S.C. §§ 41308 and 41309 for approval of
and antitrust immunity for alliance agreements

Docket OST-1999-6680 - 8

FINAL ORDER

By this Order, we make final our tentative findings in Order 2001-3-4, dated March 2, 2001, and grant final approval and antitrust immunity for an Alliance Agreement¹ between United Air Lines, Inc. ("United") and Air New Zealand Limited ("Air New Zealand"), under 49 U.S.C. §§ 41308 and 41309. Our action here is subject to the various terms, conditions, provisions and limitations proposed in Order 2001-3-4.

I. Background

A. The Application

On December 17, 1999, the Joint Applicants filed an application seeking approval of and antitrust immunity for their Alliance Agreement, for at least a five-year term. They stated that the purpose

¹ For purposes of this application, the term "Alliance Agreement" shall include the following agreements executed or anticipated by the Joint Applicants: (1) the Alliance Expansion Agreement entered into on December 1, 1999, *see* Exhibit JA-1; (2) the Air New Zealand-United Airlines Alliance Agreement effective December 2, 1996, *see* Exhibit JA-2; (3) the Code Share and Regulatory Cooperation Agreement effective December 2, 1996, *see* Exhibit JA-3; (4) the International Passenger Special Prorate Agreement effective May 15, 1997, *see* Exhibit JA-4; (5) the International Bilateral Cargo Prorate Agreement effective July 1, 1998, *see* Exhibit UA-1 filed under Rule 39 confidentiality procedures; (6) the United Mileage Plus* and Air New Zealand Air Points** International Carrier Participation Agreements effective April 15, 1997, *see* Exhibit UA-2 filed under Rule 39 confidentiality procedures; and (7) any implementing agreements in furtherance of the above agreements.

of the proposed arrangement is to establish a legal framework enabling them to expand their existing code-share relationship, while retaining their independent corporate and national identity. Even though the arrangement does not involve any exchange of equity or other forms of cross-ownership, they state that the objective of the proposed arrangement is to enable the partners to plan and coordinate service over their respective route networks as if they were a single entity. They also state that they will not implement the proposed alliance without antitrust immunity.²

B. Order to Show Cause

On March 2, 2001, the Department issued an Order to Show Cause (Order 2001-3-4). We tentatively determined, subject to certain conditions and limitations, to grant approval of and antitrust immunity for the Alliance Agreement. We tentatively directed the Joint Applicants to resubmit to the Department for review their Alliance Agreement five years from the date of issuance of this Order. We also tentatively determined that if the partners decide to operate under a common name or brand, they would have to seek prior approval before implementing the change.

Moreover, we tentatively directed United and Air New Zealand to withdraw from participation in International Air Transport Association ("IATA") tariff conference activities, as described below; and file all subsidiary and/or subsequent agreements with the Department for prior approval. We also tentatively directed Air New Zealand to report full-itinerary Origin-Destination Survey of Airline Passenger Traffic ("O&D Survey") data for all passenger itineraries that contain a United States point (similar to the O&D Survey data already reported by United).

We provided United and Air New Zealand and any interested party an opportunity to comment on our tentative findings and conclusions.

II. Decision

We have received no responses to our tentative decision.

In these circumstances, we make final our tentative findings in Order 2001-3-4, and we grant approval and antitrust immunity to the proposed Alliance Agreement. We also direct the Joint Applicants to resubmit their Alliance Agreement for review five years from the date of issuance of this Order. However, the Department is not authorizing Joint Applicants to operate under a common name. If the partners wish to operate under a common name, they will have to seek prior approval before implementing the change.

We direct United and Air New Zealand to withdraw from participation in any IATA tariff conference activities that discuss any proposed through fares, rates or charges applicable between the United States and New Zealand, or between the United States and any other countries

² Application at 57-58. Also, see Article 7 of the Alliance Expansion Agreement.

designating an airline that has been or is subsequently granted antitrust immunity by the Department for participation in similar alliances with a U.S. airline.³ United and Air New Zealand shall file all subsidiary and/or subsequent agreements with the Department for prior approval.⁴ We also direct Air New Zealand to report full-itinerary O&D Survey data for all passenger itineraries that contain a United States point (similar to the O&D Survey data already reported by United), as described in Order 2001-3-4.⁵

ACCORDINGLY:

1. We grant approval and antitrust immunity to the Alliance Agreement between United Air Lines, Inc. and Air New Zealand Limited, subject to the provisions that the antitrust immunity will not cover any activities of the Joint Applicants as owners of Sabre and Galileo computer reservations system businesses, and subject to the proposed limits and conditions imposed in Order 2001-3-4 and specified in Appendix A;
2. We direct United Air Lines, Inc. and Air New Zealand Limited to resubmit their Alliance Agreement for review five years from the date of issuance of this Order;
3. We direct United Air Lines, Inc. and Air New Zealand Limited to withdraw from participation in any International Air Transport Association tariff conference activities that discuss any proposed through fares, rates or charges applicable between the United States and New Zealand, and/or between the United States and any other countries whose designated airlines participate in similar transactions with U.S. airlines or are subsequently granted antitrust immunity by the Department;
4. We direct Air New Zealand Limited to report full-itinerary Origin-Destination Survey of Airline Passenger Traffic for all passenger itineraries that include a United States point (similar to the O&D Survey data already reported by United Air Lines, Inc.). The full itinerary record is

³ This condition currently applies to prices between the United States and the Netherlands, by letter dated May 8, 1996, Northwest and KLM indicated their willingness to limit voluntarily their participation in IATA (Dockets OST-96-1116 and OST-95-618); between the United States and Italy (see Order 99-12-5 at 3; between the United States and Germany, Denmark, Norway, Sweden, and Austria (see Order 96-5-27 at 17, Order 96-11-1 at 23, and Order 2001-1-19 at 16); between the United States and Chile (see Order 99-9-9 at 21); between the United States and Belgium and Switzerland (see Order 2000-5-13 at 3-4); between the United States and Malaysia (see Order 2000-10-12 at 14); and between the United States and Iceland (see Order 2000-10-13 at 16).

⁴ Regarding this requirement, we do not expect the alliance partners to provide the Department with minor technical understandings that are necessary to blend fully their day-to-day operations but that have no additional substantive significance. We do, however, expect and direct United and Air New Zealand to provide the Department with all contractual instruments that may materially alter, modify, or amend their Alliance Agreement.

⁵ We will provide confidentiality protection for these data, as we do for international O&D data submitted by U.S. airlines, and we will not disclose this information to any other airlines.

defined as the passenger's complete itinerary from origin to destination as opposed to the abbreviated gateway record reported under T100(f);

5. We direct United Air Lines, Inc. and Air New Zealand Limited to submit any subsequent subsidiary agreements implementing the Alliance Agreement for prior approval;⁶
6. We direct United Air Lines, Inc. and Air New Zealand Limited to obtain prior approval from the Department if they choose to operate or hold out service under a common name or use "common brands";
7. This Order is effective immediately;
8. We may amend, modify, or revoke this authority at any time without hearing; and
9. We shall serve this Order on all persons on the service list in this docket.

By:

SUSAN McDERMOTT
Deputy Assistant Secretary for Aviation
and International Affairs

(SEAL)

An electronic version of this document is available on the World Wide Web at:
<http://dms.dot.gov/search>

⁶ See fn. 4, p.3, *supra*.

**CONDITIONS GOVERNING THE ANTITRUST IMMUNITY FOR
THE ALLIANCE EXPANSION AGREEMENT BETWEEN
UNITED AIR LINES, INC. AND AIR NEW ZEALAND LIMITED**

Grant of Immunity

The Department grants immunity from the antitrust laws to United Air Lines, Inc. and Air New Zealand Limited for the Alliance Expansion Agreement dated December 1, 1999, between United Air Lines, Inc. and Air New Zealand Limited and for any agreement incorporated in or pursuant to the Alliance Expansion Agreement.

Limitations on Immunity

The foregoing grant of antitrust immunity shall not extend to the following activities by the parties: pricing, inventory or yield management coordination, or pooling of revenues, with respect to unrestricted coach-class fares or any business or first-class fares for local U.S.-point-of-sale passengers flying nonstop between Los Angeles and Auckland and Los Angeles and Sydney; or the provision by one party to the other of more information concerning current or prospective fares or seat availability for such passengers than it makes available to airlines and travel agents generally.

Exceptions to Limitations on Immunity

Despite the foregoing limitations, antitrust immunity shall extend to the joint development, promotion or sale by the parties of the following discounted fare products with respect to local U.S.-point-of-sale passengers flying nonstop between Los Angeles and Auckland and Los Angeles and Sydney: corporate fare products; consolidator/wholesaler fare products; promotional fare products; group fare products; and fares and bids for government travel or other traffic that either party is prohibited by law from carrying on service offered under its own code. For immunity to apply, however: (1) in the case of corporate fare products and group fare products, local U.S. point-of-sale non-stop traffic shall constitute no more than 25 percent of a corporation's or group's anticipated travel (measured in flight segments) under its contract with the parties; and (2) in the case of consolidator/wholesaler fare products and promotional fare products, the fare products must include similar types of fares for travel in at least 25 city-pair markets in addition to Los Angeles-Auckland and Los Angeles-Sydney.

Definitions for Purposes of this Order

"Corporate fare products" means the offer of non-published fares at discounts from the otherwise applicable tariff prices to corporations or other entities for authorized travel, these discounts may be stated as percentage discounts from specified published fares, net prices, volume discounts, or other forms of discount.

"Consolidator/wholesaler fare products" means the offer of non-published fares at discounts from the otherwise applicable tariff prices to (1) consolidators for sale by such consolidators to members of the general public either directly, or through travel agents or other intermediaries, at prices to be decided by the consolidator, or (2) wholesalers for sale by such wholesalers as part of tour packages in which air travel is bundled with other travel products, these discounts, in either case, may be stated either as net prices due the parties on sales by such consolidator or wholesaler, or as percentage commissions due the consolidator or wholesaler on such sales.

"Promotional fare products" means published fares that offer directly to the general public for a limited time discounts from previously published fares having similar travel restrictions.

"Group fare products" means the offer of non-published fares at discounts from the otherwise applicable tariff prices for the members of an organization or group to travel from multiple origination points to a single destination to attend an identified special event, these discounts may be stated either as percentage discounts from specified published fares or net prices.

Clarification of Scope of Limitation on Immunity

Under no circumstances shall the limitations on antitrust immunity set forth above be construed to limit the parties' antitrust immunity for activities jointly undertaken pursuant to the Alliance Expansion Agreement other than as specifically set forth in this Order. Immunized activities include, without limitation: decisions by the parties regarding the total number frequencies and types of aircraft to operate on the Los Angeles-Auckland and Los Angeles-Sydney routes, and the configuration of such aircraft; coordination of pricing, inventory and yield management and pooling of revenues, with respect to non-local passengers traveling on nonstop flights on the Los Angeles-Auckland and Los Angeles-Sydney routes; and the provision by one party to the other of access to its internal reservations system to the extent necessary for use exclusively in checking-in passengers or making sales to or reservations for the general public at ticketing or reservations facilities.

Review of Limitations on Immunity

Within eighteen months from the date that this Order becomes final, or at any time upon application of the parties, the Department will review the limitations on antitrust immunity set forth above to determine whether they should be discontinued or modified in light of: current competitive conditions in the Los Angeles-Auckland and Los Angeles-Sydney markets; the efficiencies to be achieved by the parties from further integration that would be made possible by discontinuation of the limitations on immunity, when balanced against any potential for harm to competition from such a discontinuation; regulatory conditions applicable to competing alliances; or other factors that the Department may deem appropriate.