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BEFORE THE DEPT. OF TRANSPORTATION DOCKETS
DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.

DEPT. OF TRANSPORTATION
DOCKETS

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Joint Application of :
 :
 AMERICAN AIRLINES, INC. :
 and : Docket OST-00-7088 -22
 THE TACA GROUP :
 :
 under 49 USC 41308 and 41309 for approval :
 of and antitrust immunity for agreement :

AMERICAN AIRLINES, INC., et al., :
 and THE TACA GROUP RECIPROCAL CODE- : Docket OST-96-1700 -168
 SHARING SERVICES PROCEEDING :

ANSWER OF
CONTINENTAL AIRLINES, INC.

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May 18, 2001

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At long last, American¹ and the TACA Group have provided the documents required by the Department, and those documents show why granting antitrust immunity to American and the TACA Group and removing the Miami-Central America blocked-space condition on their codeshare authority would harm competition and consumers. The Department should deny the American/TACA Group request for authority to eliminate competition between them through antitrust immunity and to remove the blocked-space condition on Miami-Central

¹ Common names are used for airlines.

America routes the Department said was essential to “assure continued competition” on these routes.² Finally, the Department should deny the requested renewal of the existing American/TACA Group codeshare authority between the dominant U.S.-Central America airlines.³

Continental states as follows in support of its position:

1. American’s application for antitrust immunity with the TACA Group is part and parcel of American’s strategy to use its dominant position on U.S.-Latin America routes, including the critical Miami gateway, and its alliances with the largest airlines of numerous Latin American countries to eliminate competition and reduce consumer choice on U.S.-Latin America routes. The American/TACA Group request to remove the blocked-space condition on their Miami-Central America codeshare authority reveals contempt for the Department’s efforts to address the serious concerns of the Department of Justice, Continental and other airlines about the American/TACA Group codeshare arrangement and to prevent a virtual monopoly by American and the TACA Group on Miami-Central America routes.⁴

² See Order 98-5-26 at 21.

³ In addition to this answer, Continental incorporates here by reference its April 12 and July 12, 2000 answers to the American/TACA Group application.

⁴ Even on certain Miami-Central America routes where there is a modicum of competition other than between American and the TACA Group, the Department of Justice has said it is provided by Iberia, which is a member of American’s oneworld alliance and authorized to codeshare with American between Miami and Central America. (See DOJ Comments at 11, fn 10, and Order 98-12-6, Appendix B)

[CONFIDENTIAL] Given these facts, American's strategy for antitrust immunity with the TACA Group and unrestricted codeshare authority is highly anticompetitive, would harm the travelling and shipping public and should be denied without delay.⁵

2. Codesharing by American and the TACA Group, the largest U.S. and Central American airlines on U.S.-Central America routes, remains fundamentally anticompetitive. The Department of Justice, Continental and other U.S. airlines vigorously opposed the American/TACA Group application for codeshare authority for that reason.⁶ The Department attempted to resolve these concerns by imposing a blocked-space condition on all codesharing between American's Latin America hub at Miami and Central America, where the TACA Group provides American's only meaningful competition. This condition was intended to reduce the anticompetitive effects of codesharing by American and the TACA Group and prevent the creation of a virtual monopoly on nonstop service on these routes. Despite unsuccessfully challenging the condition more than two years ago, American and the TACA Group persist in their efforts to control U.S.-Central America routes through a combination of antitrust immunity to eliminate all competition between them and removal of the only substantial condition on their codeshare authority standing in

⁵ [CONFIDENTIAL]

⁶ See Order 98-5-26 and the Comments of the Department of Justice, January 28, 1998, Docket OST-96-1700 ("DOJ Comments").

the way of an effective monopoly on Central America flights at Miami, American's Latin America hub and the largest U.S. gateway for Central American traffic.⁷ The competitive harm from American/TACA Group codesharing has been limited because of the Category 2 status of most of the TACA Group countries and American's unwillingness to implement Miami-Central America codesharing subject to the blocked-space condition. Although the full impact of American/TACA Group codesharing has not yet been felt, any expansion of the current codesharing would harm competition, and that harm would be made substantially worse with antitrust immunity and removal of the Miami-Central America blocked-space condition. As the Department of Justice said of the American/TACA Group request for codeshare authority,

This almost exclusively horizontal American/TACA agreement stands in stark contrast to the largely end-to-end agreements that the Department has approved in the past . . . If this agreement held out the potential for conferring pro-competitive benefits on large numbers of passengers, it might be appropriate to approve it subject to conditions created to minimize the accompanying competitive problems. But, the Department should recognize that it cannot eliminate the risks to competition with any conditions that it might impose, and this agreement does not offer significant pro-competitive efficiencies. Under these circumstances, the threats to competition that inevitably persist despite the best efforts to remove them through conditions should be a matter of concern."⁸

⁷ [CONFIDENTIAL]

⁸ See DOJ Comments at 11-12.

Nothing has happened since this assessment by the Department of Justice that codesharing by American and the TACA Group is anything but fundamentally harmful to competition. Antitrust immunity and removal of the Miami-Central America blocked-space condition would seriously exacerbate this harm.

3. American's predicate for urging the Department to remove the Miami-Central America blocked-space condition in Order 98-5-26 is the "unworkability" of the condition, which American claims is the reason American and the TACA Group have not codeshared on these routes.⁹ It is clear, however, that American and the TACA Group have chosen not to codeshare on these routes as a predicate for asking the Department to remove the condition.¹⁰ [CONFIDENTIAL] Because of the unacceptable consequences of eliminating competition between American and the TACA Group on Miami-Central America routes and American's ability to implement the blocked-space arrangement, the Department should deny the American request for removal of the blocked-space condition on Miami-Central America codesharing.

⁹ See American's Codeshare Renewal and Amendment Application at 6.

¹⁰ [CONFIDENTIAL]

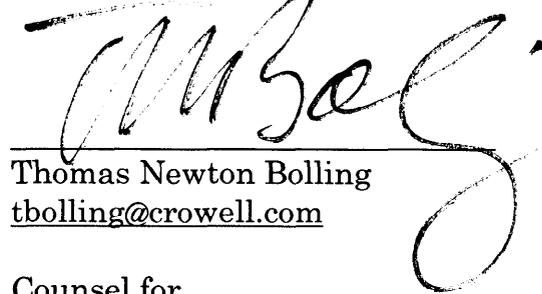
For the foregoing reasons, Continental urges the Department to deny the request of American and the TACA Group for antitrust immunity and renewal and amendment of their codeshare authority.

Respectfully submitted,

CROWELL & MORING LLP



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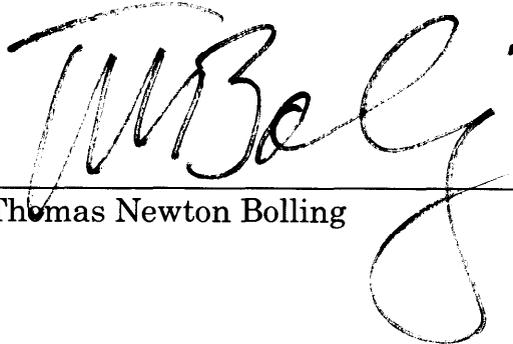
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May 18, 2001

CERTIFICATE OF SERVICE

I certify that I have this date served the foregoing document on counsel for American and the TACA Group and all persons served with the American/TACA Group application in accordance with the Department's Rules of Practice.


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May 18, 2001
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