

the Informational Items 1, 2, and 7, set forth in Order 95-9-27. They have been produced by Lufthansa headquarters in coordination with attorneys from the undersigned law firm, and consist of:

- Lufthansa corporate documents (in English or with English translations) dated within the last two years that address competition in the U.S.-Germany market;
- Lufthansa studies, surveys, analyses and reports (in English or with English translations) dated within the last two years, which were prepared by or for any officer(s) or director(s) (or individual(s) exercising similar functions) for the purpose of evaluating or analyzing the proposed enhanced alliance with respect to market shares, competition, competitors, markets, potential for traffic growth or expansion into geographic markets, and indicate (if not contained in the document itself) the date of preparation, the name and title of each individual who prepared each such document; and
- O&D traffic for the most recent **12-month** period available for Lufthansa's top 100 markets with a U.S. gateway as origin or destination.

These materials are proprietary and highly commercially sensitive. The Department should accord them the degree of confidentiality that it has accorded similar documents filed by other recent applicants for antitrust immunity. Accordingly, Lufthansa moves that (1) these materials should be withheld from public disclosure, pursuant to 14 C.F.R. Section 302.39 ("Rule 39") and 49 U.S.C. § 40115, and (2) access to them should be limited to counsel and outside experts for interested parties who have filed confidentiality affidavits in this docket.

In support of this motion, Lufthansa states as follows:

1. Pursuant to 49 U.S.C. § 40115(a) (2) (B), the Secretary of Transportation may order that information filed with the Department be withheld from public disclosure if such disclosure would have an adverse effect on the competitive position of an air carrier in foreign air transportation. Rule 39, which implements Section 40115, requires that any motion to withhold information from public disclosure include: (i) a description of the information sought to be withheld, sufficient for identification of the same; (ii) a statement explaining how and why the information falls within the exemptions from the Freedom of Information Act (5 U.S.C. 552(b)(1-9)); and (iii) a statement explaining how and why public disclosure of the information would adversely affect the interests of the objecting persons and is not required in the public interest.

2. The information sought to be withheld from public disclosure consists of the materials submitted herewith, in six copies, as indicated in note 1, supra.

3. These materials fall within Exemptions 3 and 4 of the Freedom of Information Act, 5 U.S.C. §§ 552(b) (3), (b) (4).

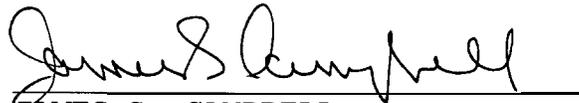
(a) Exemption 3 protects from disclosure information specifically protected by another federal statute, including 49 U.S.C. § 40115. See British Airports Authority v. CAB, 531 F. Supp. 408, 414 (D.D.C. 1982). As described above,

Section 40115 allows for withholding of information that would adversely affect an air carrier's competitive position in foreign air transportation if released. The materials at issue here clearly satisfy this standard. They contain extremely sensitive information, including evaluations of Lufthansa's competitive positions and its global strategic plans. None of these materials has been publicly released. This information could be used **by** Lufthansa's competitors to their strategic advantage, and Lufthansa's disadvantage, in making pricing, capacity, yield management, and strategic planning decisions.

(b) Exemption 4 protects from disclosure information that is "(1) commercial or financial, (2) obtained from a person outside the government, and (3) privileged or confidential." Gulf & Western Industries, Inc. v. United States, 615 F.2d 527, 529 (D.C. Cir. 1979) (citations omitted). All the materials at issue here satisfy this standard. All are commercial or financial in nature, have been obtained from a person outside the government, and are privileged and confidential. Disclosure of these materials would **"cause** substantial harm to the competitive position of" Lufthansa and "impair the Government's ability to obtain necessary information in the future." Washington Post Co. v. HHS, 690 F.2d 252, 268 (D.C. Cir. 1982) (defining the standard for determining whether a document is privileged and confidential).

4. Access to the materials should be limited to counsel and outside experts of interested parties who have submitted affidavits stating that the information will be used only for the purposes of this proceeding and will not be disclosed to anyone other than counsel or outside experts who have filed a similar affidavit. The Department has recently accorded such protection to documents and data filed in response to identical information requests by the other carriers in similar proceedings. See Order 95-11-5 (application of Delta Air Lines et al. for antitrust immunity); Order 96-1-6, at 3 (application of American Airlines and Canadian International for antitrust immunity). As in the Delta and American applications, these heightened confidentiality measures are warranted by the highly commercially sensitive nature of the materials.

Respectfully submitted,



JAMES S. CAMPBELL
KARAN K. BHATIA
WILMER, CUTLER & PICKERING
2445 M Street, N.W.
Washington, D.C. 20037-1420

Counsel for
DEUTSCHE LUFTHANSA, A.G.

DATED: March 11, 1996

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Motion of Deutsche Lufthansa, A.G. (Lufthansa German Airlines) to Withhold from Public Disclosure and to Limit Access to Counsel and Outside Experts on all persons listed on the service list below by causing a copy to be sent via first class mail, unless otherwise indicated.



Karan Bhatia

Dated: March 11, 1996

SERVICE LIST

Joel Stephen Burton
Ginsburg, Feldman and Bress,
Chartered
1250 Connecticut Avenue, N.W.
Suite 800
Washington, D.C. 20036

Roger W. Fones
Chief, Transportation, Energy
& Agriculture Section
Antitrust Division
U.S. Department of Justice
Room 9104, Judiciary Center
Building
555 Fourth Street, N.W.
Washington, D.C. 20001

Carl B. Nelson, Jr.
Associate General Counsel
American Airlines, Inc.
1101 17th Street, N.W.
Suite 600
Washington, D.C. 20036

Nathaniel P. Breed, Jr.
Shaw, Pittman, Potts &
Trowbridge
2300 N Street, N.W.
Washington, D.C. 20037

Richard D. Mathias
Frank Costello
Cathleen P. Peterson
Zuckert, Scouff & Rasenberger
888 17th Street, N.W., Suite 600
Washington, D.C. 20006

Stephen L. Gelband
Hewes, Morella, Gelband &
Lamberton, P.C.
1000 Potomac Street, N.W.
Suite 300
Washington, D.C. 20007

R. Bruce Keiner
Crowell & Moring
1001 Pennsylvania Avenue, N.W.
10th Floor North
Washington, D.C. 20004

R. D. Devlin
Richard J. Fahy, Jr.
Trans World Airlines
808 17th Street, N.W.
Suite 520
Washington, D.C. 20006

Elliott M. Seiden
Megan Rae Poldy
Northwest Airlines
901 15th Street, N.W.
Suite 500
Washington, D.C. 20005

James R. Weiss
Preston, Gates, Ellis &
Rouvelas
1735 New York Avenue, N.W.
Suite 500
Washington, D.C. 20590

Robert E. Cohn
Shaw, Pittman Potts &
Trowbridge
2300 N Street, N.W.
Washington, D.C. 20037

D. Scott Yohe
Vice President-Government
Affairs
Delta Air Lines, Inc.
1629 K Street, N.W.
Suite 501
Washington, D.C. 20006

David L. Vaughan
Kelley, Drye & Warren
1200 19th Street, N.W.
Suite 500
Washington, D.C. 20037

U.S. Transcom/TCJ5
Attention: Air Mobility
Analysis
508 Scott Drive
Scott AFB, IL 62225

Michael F. Goldman, Esq.
Bagileo, Silverbeg & Goldman
1101 30th Street, N.W.
Suite 120
Washington, D.C. 20007

Frank Cotter
Assistant General Counsel
USAir, Inc.
2345 Crystal Drive, 8th Floor
Arlington, VA 22227

Vance Fort
World Airways, Inc.
13873 Park Center Road
Suite 490
Herndon, VA 22071

Richard P. Taylor
Steptoe & Johnson
1330 Connecticut Avenue, N.W.
Washington, D.C. 20036