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Order 96-3-26

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

SERVED March 13, 1996

Issued by the Department of Transportation
on the 13th day of March, 1996

Joint Application of

UNITED AIR LINES, INC.

and

DEUTSCHE LUFTHANSA, A.G.
(LUFTHANSA GERMAN AIRLINES)

**for approval of and Antitrust Immunity for an
expanded alliance agreement under 49 U.S.C. §§
41308 and 41309**

Docket OST-96-1116 - 4

ORDER ESTABLISHING PROCEDURAL SCHEDULE

APPLICATION

On February 29, 1996, United Air Lines, Inc. ("United") and Deutsche Lufthansa, A.G. d/b/a Lufthansa German Airlines ("Lufthansa") filed a joint application for approval of and antitrust immunity for a series of agreements referred to by the joint applicants as the "Alliance Expansion Agreement" The application was filed under 49 U.S.C. sections 41308 and 41309.

Concurrently, United submitted certain additional documents and information in connection with the application and a motion under 14 C.F.R. 30239 and 49 U.S.C. section 40115 requesting confidential treatment for these additional documents. In regard to this submission, United requested that access to these materials be limited to counsel and outside experts for interested parties. United represented to the Department that these documents contain "certain proprietary and commercially sensitive data." United's motion is unopposed.

The applicants state that the Alliance Expansion Agreement will provide a contractual framework for "broadening and deepening" the commercial cooperation that now exists between the two airlines, permitting them to operate as a "single firm." Although the applicants state that they will continue to be independent companies, the

objective of their Alliance Expansion Agreement is to enable them to plan and coordinate service over their route networks as if there had been an “operational merger” between the two airlines. The applicants ask that we grant the requested approval and immunization for a period of not less than five years.

On March 11, 1996, in response to a request by Department staff, Lufthansa submitted certain additional documents and data in connection with the application and a separate motion under 14 C.F.R. 302.39 and 49 U.S.C. section 40115 requesting confidential treatment for these items.¹ In regard to this submission, Lufthansa requested that access to these items be limited to counsel and outside experts for interested parties. Lufthansa represented to the Department that the submission contained “proprietary and highly **commercially sensitive**” materials.*

DECISION

As an initial matter, we find that the application in this case is now complete, and we will establish a procedural schedule **for the submission of answers** and replies to the application. We will defer action on United’s **February 29 motion** and **Lufthansa’s March 11 motion for confidential treatment of certain additional data and documents, pending answers to Lufthansa’s motion, in order to rule on both motions at once, while allowing only limited access to these items and preserving their confidentiality pending the rulings on the motions, as the applicants suggest** .

MOTIONS FOR **CONFIDENTIAL** TREATMENT AND ACCESS ISSUES

Pending our decision on United’s request **for confidential treatment for certain information and data filed on February 29, we will restrict access to these materials to counsel and outside experts who represent the interested parties in this case. We will require that all persons seeking access to these materials submit properly executed affidavits (see ordering paragraph 4 below).**

Regarding Lufthansa’s March 11 motion for confidential treatment, we note that answers to the motion are due on March 20. As stated above, we will defer our decision on whether to grant the motion, pending expiration of the comment deadline.

¹ Answers to the motion for confidential treatment are due no later than March 20, 1996. **We will rule** on the United and **Lufthansa** motions in a later order.

² **Lufthansa** submitted various corporate data and documents **that** specifically provide information about (1) **competition in the U.S.-Germany** market, dated within the last two years; (2) studies, surveys and **reports that** evaluate and analyze the proposed enhanced alliance, **dated** within the last **two** years; and (3) traffic statistics for the most **recent 12-month** period (for **Lufthansa’s** top **100** markets with a U.S. gateway as **an** origin or destination).

However, to avoid unnecessary delay, we have decided to provide for limited access to these materials to counsel and outside experts of interested parties.

ACCORDINGLY:

1. We defer action on the joint applicants' motions for confidential treatment of certain data and documents;
2. With respect to the additional data and documents filed by United Air Lines on **February 29, 1996**, and Lufthansa German Airlines on March **11, 1996**, for which they request **confidential treatment, we will limit access to counsel and outside experts, and require that persons seeking to review these documents file appropriate affidavits, pending our ruling on those motions;**
3. We direct interested parties to file answers to the joint application no later than **21 days from the date of service of this order, and replies shall be filed no later than 7 business days after the last day for filing answers;**
4. Interested parties may review the confidential materials, described in ordering paragraphs 1 and 3, in the Docket Section at the U.S. Department of Transportation, Room PL 401, 400 Seventh Street, SW, Washington, D.C., *provided* that such parties submit in advance an affidavit stating that he or she will preserve the confidentiality of the information and will only use it to participate in this proceeding. Further, each affidavit must specifically indicate that the person(s) are counsel or outside expert(s) for a party or prospective party in this case;³ and
is--
5. We shall serve this order on the parties served with the application.

By:

CHARLES A. HUNNICUTT
Assistant Secretary for Aviation
and International Affairs

(SEAL)

**An electronic version of this document
will be made available on the World Wide Web at:
<http://www.dot.gov/dotinfo/general/orders/aviation.html>**

³ Any pleading or other filing that includes or discusses information contained in the **confidential** documents must be accompanied by a Rule 39 motion requesting confidential treatment.