

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

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Joint Application of)	
)	
DELTA AIR LINES, INC.)	OST-00-10429
SOCIETE AIR FRANCE)	
ALITALIA-LINEE AEREE ITALIANE-S.P.A.)	
CZECH AIRLINES)	
)	
Under 49 U.S.C. §§ 41308 and 41309)	
for approval of and antitrust immunity)	
for alliance agreements)	
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**MOTION FOR LEAVE TO LATE FILE AND ANSWER AND OPPOSITION OF THE
AIR CARRIER ASSOCIATION OF AMERICA TO THE JOINT APPLICATION OF
DELTA AIR LINES, INC., SOCIETE AIR FRANCE, ALITALIA-LINEE AEREE
ITALIANE-S.P.A. AND CZECH AIRLINES FOR APPROVAL OF AND ANITTRUST
IMMUNITY FOR ALLIANCE AGREEMENTS**

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October 2, 2001

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APPROVAL OF AND ANITTRUST IMMUNITY FOR ALLIANCE
AGREEMENTS**

I. Introduction

The Air Carrier Association of America (“ACAA”)¹ hereby files this answer and opposition to the application submitted by Delta Air Lines, Inc. (“Delta”), Societe Air France, Alitalia-Linee Aeree Italiane-S.P.A. and Czech Airlines (“Delta alliance”) to expand Delta’s control over the airports and part of the country it already dominates.²

¹ ACAA full-time members are as follows: Sun Country Airlines, Inc., Spirit Airlines, Inc., AirTran Airways, Inc., Vanguard Airlines, Inc., and Frontier Airlines, Inc. Associate members include small and medium sized communities and airports.

² Pursuant to 14 CFR § 302.6, ACAA moves the Department for leave to late file this Answer. The document is late by one day. No party will be impacted by this slight delay.

ACAA supports the Department of Transportation (“Department”) initiatives to open markets and expand opportunities for all U.S. carriers. ACAA does not oppose the formation of alliances that allow carriers to work together to best serve travelers. Decisions on these issues cannot be reached in a vacuum. Therefore, before **any** decision is made to allow an already dominant U.S. carrier to expand its control of the U.S. marketplace and to engage in discussions with other carriers about pricing, capacity and CRS displays, the Department must first ensure that domestic competition will at the same time be strengthened. By allowing Delta to enter into these arrangements without ensuring that carriers competing with Delta in domestic markets can also enter closed markets to compete against an even stronger Delta team would be contrary to the public interest. The Department must take action to eliminate barriers to entry so that carriers can compete on a level playing field. Approving Delta’s alliance application without taking necessary steps to enhance competition in the domestic market would be tantamount to a declaration that the Department’s sole interest is in expanding international opportunities even if it means that domestic competition is sacrificed.

In its comments on the American Airlines/British Airways alliance, Delta states that the “alliance quite simply is about the domination of the largest local O&D international market (U.S. –Heathrow) in the world by that market’s two principal competitors.” (OST-2001-13087, page 3). Similarly, the proposed Delta alliance is about further dominating domestic markets.

There is no question that the Delta alliance will impact domestic competition. In its August 15, 2001 filing, the proposed Delta alliance states:

The proposed alliance, as set out in the Agreements and more fully described below, will involve coordination in such areas as marketing, sales, advertising, codesharing, frequent flyer programs, route and schedule planning, pricing, seat inventory, revenue management, revenue sharing, procurement, ground handling, airport facilities and support services, cargo and mail services, ticketing, information technologies, and distribution programs.

[OST-01-10429-1, page 5]

If approved, the actions as described by the applicants would impact domestic competition. The General Accounting Office, Department, and various independent groups have issued multiple reports on how these factors impact competition.

II. The Department is Required to Promote Domestic Competition and New Entry

At a time that concentration in the domestic industry is increasing, barriers to entry are increasing, and there are fewer carriers than at any time since deregulation, it is critical that every aspect of each newly proposed alliance be thoroughly reviewed before any step is taken that would allow Delta or another dominant carrier to enter into a relationship that will increase its control over U.S. airports, domestic markets, and further close the door to new entry.

In light of the tragic events of September 11, 2001 and the impact those events have had on the airline industry, it is more important than ever that the Department focus on the survival of domestic competition and deregulation.

It is not enough for the Department to only review the international impact of such an alliance. The Department is charged with facilitating new entry and competition in the airline industry. Under 49 U.S.C. § 40101:

- (a)...the Secretary of Transportation shall consider the following matters, among others, as being in the public interest and consistent with public convenience and necessity
- (10) avoiding unreasonable industry concentration, excessive market domination, monopoly powers, and other conditions that would tend to allow at least one air carrier or foreign air carrier unreasonably to increase prices, reduce services, or exclude competition in air transportation.
 - (12) encouraging, developing, and maintaining an air transportation system relying on actual and potential competition—
 - (A) to provide efficiency, innovation, and low prices; and
 - (B) to decide on the variety and quality of, and determine prices for, air transportation services.
 - (13) encouraging entry into air transportation markets by new and existing air carriers and the continued strengthening of small air carriers to ensure a more effective and competitive airline industry.

Congress clearly expects the Department to understand the domestic impacts of all new agreements, mergers, and route transfers. (See 49 U.S.C. § 41105)

Therefore, prior to approving this request, the Department needs to:

1. **Open all domestic markets to those competing with Delta (As Delta has asked the Department to do in connection with international markets).**
2. **Review all complaints submitted by carriers competing against Delta concerning Delta behavior.**
3. **Complete CRS rulemaking.**

A. Open Domestic Markets

In Delta's September 4, 2001 filing on the proposed American Airlines – British Airways alliance, it states that the alliance should not be approved unless the Department can guarantee that other carriers can effectively compete with a combined American Airlines/British Airways by having sufficient access to London Heathrow.

Indeed, every competition authority that has ever reviewed the American-British Airways alliance, including the Department of Justice, the U.K. Office of Fair Trading, and the European Commission Directorate General IV, has concluded that they divestiture of Heathrow slots is the *only* means to ensure meaningful competitive access to Heathrow.

. . .the lack of availability of Heathrow slots still imposes an impenetrable barrier to entry at Heathrow by other U.S. carriers.

[Answer of Delta Air Lines, OST-200-10388, page 6]

The same argument Delta uses regarding international access applies to domestic access as well.

Delta notes the Department's Order in the American Airlines/British Airways proceeding stating "the Department's insistence on the achievement of *de facto* open skies providing for meaningful competition by other U.S. carriers between the United States and Heathrow has been a fundamental policy objective which has been affirmed and reaffirmed by the Department time and again." (OST-2001-10387, page 4). Just as the Department considers how to ensure competitive access to Heathrow, the Department must consider competitive access to the most important airports in the United States, including, LaGuardia and Reagan National Airports. These airports are effectively closed to new entry.

The Department should heed Delta's advice and take action to "open skies" domestically. There has to be some slot divestiture particularly at LaGuardia and Reagan National. Prior to application approval, Delta should be required to relinquish 20% of its slots to be reallocated to carriers who would compete in those markets. Delta

must also be required to provide gates and facilities at the nations most congested airports including Atlanta, Boston and Philadelphia.

B. Review Anti-Competitive Complaints

There are currently before the Department, several complaints filed against Delta for anti-competitive behavior. Some of these complaints are over two years old. Yet to date, there has been no action taken.

Carriers must be made to understand that the behavior they engage in to destroy competition domestically will have international ramifications. The Department should not approve any international alliances for Delta until it has completed review of these anti-competitive complaints and has acted on each one.

C. Complete CRS Review

The Department CRS regulations assist in anti-competitive behavior. Sec. 255.10(a) allows hub dominant carriers to monitor the ticketing activities of travel agencies and major corporations. The Department's regulation 14 C.F.R. § 255.10(a) requires that each CRS:

Shall make available to all U.S. participating carriers on nondiscriminatory terms all marketing, booking, and sales data relating to carriers that it elects to generate from its system. The data made available shall be as complete and accurate as the data provided a system owner.

For the past several years, ACAA and various other parties including American Express and ASTA have called upon the Department to eliminate this "anti-competitive weapon." By enabling a large carrier to oversee the details of travel agency and corporate business transactions and to monitor those utilizing a new entrant's service,

this rule provides the large carriers with even more data to eliminate lower fares and ultimately, competition.

As a result of the September 11, 2001 events, carriers are involved in substantial rescheduling of flights. Now Delta wants to sit at a table with its codeshare partners and examine load factors in all markets. Neither Delta nor any other carrier should be authorized to utilize Section 255.10(a) to wipe out competition in these markets.

ACAA has stated on many occasions that the Department should not wait to issue a final CRS rule before it suspends Section 255.10(a). Additionally, the Department should not even consider approving the Delta alliance and antitrust immunity that would increase Delta's strength and dominance domestically, until the Department suspends Section 255. 10(a). This is a very small step that would have a significant impact on competition.

III. Antitrust Immunity and Prorate Agreements

In their application, the Delta alliance states:

In the absence of immunity, competitors cannot discuss and agree to integrated network coordination and must develop prorate arrangements in the context of "arms length" negotiations to divide revenues between transatlantic and behind/beyond segments. Such a process often leads to the division of revenue that fails to accommodate one carrier's transatlantic passengers on the connecting airline's route network. In short, absence of a common financial objective effectively forecloses online access at competitive prices for passengers travelling behind and beyond the gateway cities.

What the Delta alliance is effectively saying is that only Delta—the dominant carrier at Atlanta—will be able to enter into reasonable "network" codeshare/ticketing arrangements. Without antitrust immunity, other carriers will be blocked from any such

agreements and will never be able to enter into reasonable prorate agreements. (Dominant hub carriers will not even engage in arms length negotiations concerning joint fares with new entrants.) Delta wants special treatment so that it can operate behind closed doors. ACAA reminds the Department that it is behind closed doors where actions are taken to eliminate competitors.

Moreover, after the events of September 11th, international traffic has substantially dropped off. Many carriers have canceled international flights. In light of this, the Department should carefully review the state of international competition and ask whether it is in the best interest of the public to strengthen this type of alliance. By approving this alliance, the Department will enable a dominant carrier to add to its control of international and domestic markets. Will these alliances block new international service? Will they lessen domestic competition? The Department must take actions to ensure that competition is not just a memory.

IV. Conclusion

In reviewing cooperative agreements, the Department “shall approve an agreement...when the Secretary finds it is not adverse to the public interest and is not in violation of this part.” 49 USC §41309(b). The Department has discretion to grant antitrust immunity to agreements approved under Section 41309 if it finds that immunity is required by the public interest. 49 USC §41308. The public interest is not limited to international travelers and foreign markets. American consumers, businesses and communities must be considered before the Department allows carriers to collaborate to further lessen the future of competition.

ACAA supports “open skies” but first it is time to create “open skies” in the United States, the birthplace of deregulation. Travelers and communities from throughout the nation need the Department to step up to the plate and protect domestic competition.

WHEREFORE, ACAA respectfully requests that the Department reject the application request submitted by Delta Air Lines, Inc., Societe Air France, Alitalia-Linee Aeree Italiane-S.P.A. and Czech Airlines for approval of and antitrust immunity for alliance agreements.

Respectfully Submitted.

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Date: October 2, 2001

CERTIFICATE OF SERVICE

I hereby certify that on October 2, 2001, a copy of the Answer and Opposition for ACAA was served upon the parties on the attached service list.

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