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

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Joint Applications of )  
)  
)  
AMERICAN AIRLINES, INC. )  
and )  
BRITISH AIRWAYS PLC )  
)  
under 49 U.S.C. §41308-09 for approval and )  
antitrust immunity for agreement, under 14 CFR )  
Part 212 for statements of authorization and under )  
49 U.S.C. §40109 for related exemption authority )  
)

Dockets OST-01-10387 -137  
and  
01-10388 -105

Joint Application of )  
)  
)  
UNITED AIR LINES, INC., )  
BRITISH MIDLAND AIRWAYS LIMITED, )  
AUSTRIAN AIRLINES, )  
LAUDA AIR LUFTFAHRT AG, )  
DEUTSCHE LUFTHANSA AG, )  
and )  
SCANDINAVIAN AIRLINES SYSTEM )  
)  
under 49 U.S.C. §41308-09 for approval of and antitrust )  
immunity for an Alliance Expansion Agreement and an )  
Amended Coordination Agreement )  
)

Docket OST-01-10575 -14

Joint Application of )  
)  
)  
UNITED AIR LINES, INC. )  
and )  
BRITISH MIDLAND AIRWAYS LIMITED )  
)  
under 14 CFR Part 212 for statements of )  
authorization (blanket code sharing) and under 49 )  
U.S.C. §40109 for related exemption authority )  
)

Docket OST-01-10576 -7

JOINT ANSWER TO MOTION OF NORTHWEST  
AIRLINES, INC. TO CONSOLIDATE PROCEEDINGS

DATED: November 9, 2001

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**JOINT ANSWER TO MOTION OF NORTHWEST  
AIRLINES, INC. TO CONSOLIDATE PROCEEDINGS**

United Air Lines, Inc. (“United”), British Midland Airways Limited (“bmi”), Austrian Airlines, Österreichische Luftverkehrs AG, Lauda Air Luftfahrt AG (“Austrian Group”), Deutsche Lufthansa AG (“Lufthansa”) and Scandinavian Airlines System (“SAS”) (hereafter collectively referred to as “Joint Applicants”) jointly submit the following answer in opposition to the motion of Northwest Airlines, Inc. (“Northwest”) to Consolidate Proceedings, dated October 31, 2001. Northwest’s motion fails to articulate any basis for the relief it requests; it appears merely to be the latest in an extended series of delaying tactics aimed at preventing the conclusion of an open skies agreement between the U.S. and the U.K. Northwest’s tactics are no doubt motivated by its own preference for the *status quo* in U.S./U.K. aviation relations as opposed to the additional inter-alliance competition at Heathrow that would result from open skies and approvals of the United/bmi alliance. Northwest would prefer to protect its own alliance with KLM from this additional competition even at the cost of the proven benefits an open skies agreement with the U.K. would bring. The Joint Applicants urge the Department to deny Northwest’s motion for the reasons set forth below:

1. The Joint Applicants have requested approval of and antitrust immunity for agreements which would add bmi to their transatlantic alliance. On October 22, 2001, that application became complete with the submission of various documents requested by DOT (Docket OST-01-10575). On September 5, 2001, United and bmi filed a related application to expand their code-share service in U.S.-U.K. markets (OST-01-10576).

Northwest urges that the Joint Applicants’ request for antitrust immunity for their expanded cooperation and the United/bmi code-share application be

consolidated with the applications of American Airlines, Inc. (“American”) and British Airways PLC (“BA”) in Dockets OST-01-10387/8 for antitrust immunity and code-share authority under completely different agreements and completely different factual circumstances. Such relief would be entirely unprecedented. Northwest offers only vague references to “common issues” arising in both proceedings as the basis for consolidation into a single proceeding which it would have the Department decide in “one decision.”

As United and bmi have already pointed out in their answers dated November 2, 2001, in Docket OST-01-10387, the American/BA alliance raises far more controversial competition issues than does the unrelated United/bmi application. *See* United Answer at 3-5 and bmi Answer at 2-3. Indeed, aside from a U.S./U.K. open skies agreement forming a necessary precondition for approval of both applications, they have virtually no issues in common.

In its motion, Northwest cites several competition issues arising in the *American/BA* case and asserts without analysis that the Department’s consideration of the United/bmi/Austrian Group/Lufthansa/SAS application will “necessarily involve” many of the same issues. Northwest’s unsupported claim ignores the fact that in the case of United’s expanded alliance, the new partner is a carrier that today does not even offer service between London and the U.S., unlike American’s partner, BA, which is by far the largest carrier in that market. The litany of competition issues in the *American/BA* case intoned by Northwest will not have to be considered at all or to anything like the same extent in the *United/bmi/Austrian Group/Lufthansa/SAS* case.

2. Consolidation is not the appropriate remedy and would merely provide another pretext for Northwest to seek delay in the consideration of these applications, thereby delaying the effectiveness of a U.S./U.K. open skies agreement, which forms a necessary predicate for approvals of both the American/BA and United/bmi applications. The Department will consolidate cases only where that action “will be conducive to the proper dispatch of [the Department’s] business and to the ends of justice and will not unduly delay the proceedings.” Order 91-1-4 at 6, *quoting* 14 CFR §302.12 (1990). Where, as here, two cases present a “unique set of circumstances that requires a particular analysis,” consolidation is not appropriate. *Id.* at 6.<sup>1</sup> Where, as here, non-hearing procedures are to be used, consolidation would serve to delay consideration of two disparate cases and is inappropriate for that reason as well. *Id.* This is not a case involving mutual exclusivity where the Department may grant only one of two or more competing applications and consolidates all such competing applications to assure that a fair and equal consideration is accorded to all.

Delay or total obstruction of a U.S./U.K. open skies agreement is, of course, the primary goal of Northwest. Northwest’s motives are best illustrated by that carrier’s statement that, “Thus, as is the case with the proposed American-BA alliance, the Department should not act on the proposed United-bmi alliance until an open skies agreement with the United Kingdom is signed.” Northwest Motion at 5. Northwest is

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<sup>1</sup> In Order 91-1-4, the Department refused to consolidate a United/Pan Am route transfer with a route transfer of American/TWA even though both involved U.S.-London Heathrow routes.

well aware that the U.K. government will sign an open skies agreement only if antitrust immunity for its carriers is assured. This was also the case with Germany, Italy and, most recently, France. These countries were willing to sign open skies agreements with the U.S. only after the Department granted immunity to alliances between their flag carriers and U.S. partners.

Northwest and its close ally Continental have previously sought unsuccessfully to delay consideration of the American/BA applications, and with it the conclusion of an open skies agreement between the U.S. and the U.K. *See, e.g.*, Orders 01-10-13, 01-9-15, and 01-9-12. Now, Northwest has extended its efforts to include delay of the United/bmi applications as well. The Department should deny this latest delaying tactic just as it has those previous efforts so that it may proceed with the negotiations for an open skies agreement under which both competing alliances can be granted antitrust immunity and additional U.S. carriers can be granted access to Heathrow airport.

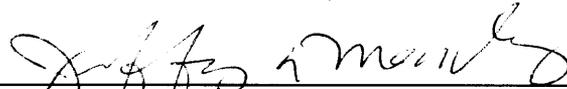
3. Even though consolidation is clearly uncalled for here, the Joint Applicants urge the Department to proceed to a consideration of both alliance applications on an expedited basis. The two alliance applications should each be decided on an expedited procedural schedule timed to coincide with the schedule for conclusion of an open skies agreement. The procedural schedule should permit the Department, however, to make the antitrust immunity for the United/bmi/Austrian/Lufthansa/SAS enhanced alliance effective immediately upon the effectiveness of the open skies agreement regardless of the effective date of the American/BA immunity.

4. Northwest also requests that the Department permit the use of confidential documents produced in the *United/bmi/Austrian/Lufthansa/SAS* proceeding in the *American/BA* proceeding, and *vice versa*. Northwest's proposal would violate one of the fundamental principles of the Department's policies regarding production of such documents. See Notice in Docket OST-01-10575, dated November 6, 2001, and Order 98-1-18. Even in the exceptional cases where the use of confidential documents has been permitted in separate proceedings, consolidation has not been required. *E.g.*, Notice dated January 27, 1998 in Dockets OST-96-1700 and OST-97-3285 and Order 98-2-21 at 3 (*American/TACA* and *American/LAN Chile*).

Northwest's proposal for cross-utilization of confidential documents is merely another thinly disguised attempt to accomplish the delay of a U.S./U.K. open skies agreement which its earlier efforts have failed to achieve. Thus, at the very end of its motion, Northwest reveals its true intention in seeking exceptional usage of confidential documents. It wants to use documents submitted in the *United/bmi/Austrian/Lufthansa/SAS* proceeding in order to justify the filing in the *American/BA* proceeding of "supplemental Answers based on any relevant evidence in the documents submitted by United-bmi and their . . . partners . . ." (Northwest Motion at 6) The Department should not countenance such an abuse of its process and should deny Northwest's motion without delay.

WHEREFORE, on the basis of the foregoing, Joint Applicants respectfully request that the Motion of Northwest Airlines to Consolidate Proceedings be denied.

Respectfully submitted,



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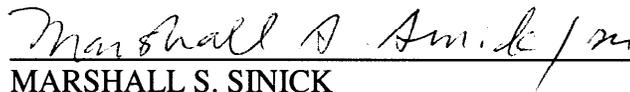
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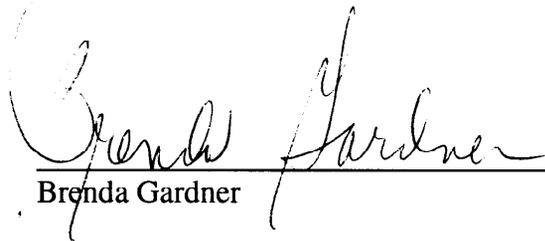
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**DATED: November 9, 2001**

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**CERTIFICATE OF SERVICE**

I hereby certify that I have this date served a copy of the foregoing Joint Answer of Northwest Airlines, Inc. To Consolidate Proceedings on all persons named on the attached Service List by causing a copy to be sent via first-class mail, postage prepaid.

  
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**DATED: November 9, 2001**

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