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BEFORE THE
DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.

DEPT. OF TRANSPORTATION
DOCKETS

Joint Application of)
)
UNITED AIR LINES, INC.,)
BRITISH MIDLAND AIRWAYS LIMITED,)
AUSTRIAN AIRLINES, ÖSTERREICHISCHE)
LUFTVERKEHRS AG,)
LAUDA AIR LUFTFAHRT AG,)
DEUTSCHE LUFTHANSA AG,)
and)
SCANDINAVIAN AIRLINES SYSTEM)
)
under 49 U.S.C. §§ 41308 and 41309 for approval and)
antitrust immunity for an Alliance Expansion Agreement)
and an Amended Coordination Agreement)

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Docket OST-01-10575 -24

U.S.-U.K. ALLIANCE CASE)
)

Docket OST-01-11029 -19

**JOINT MOTION OF UNITED AIR LINES, INC.
AND BRITISH MIDLAND AIRWAYS LIMITED
FOR CONFIDENTIAL TREATMENT UNDER 14 C.F.R. § 302.12**

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DATED: December 3, 2001

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

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Joint Application of)	
)	
UNITED AIR LINES, INC.,)	
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Dated: December 3, 2001

**JOINT MOTION OF UNITED AIR LINES, INC.
AND BRITISH MIDLAND AIRWAYS LIMITED
FOR CONFIDENTIAL TREATMENT UNDER 14 C.F.R. § 302.12**

United Air Lines, Inc. (“United”) and British Midland Airways Limited, doing business as bmi British Midland (“bmi”), pursuant to Rule 12 of the Department’s Rules of Practice (14 C.F.R. § 302.12), request that the Department withhold from public disclosure the document identified in the index attached hereto that United and bmi are filing herewith under seal in the above-captioned proceeding. This document contains confidential, proprietary and commercially sensitive information. United and bmi are submitting the document to facilitate the Department’s processing of the joint application dated September 5, 2001 of United, bmi, Austrian Airlines, Österreichische Luftverkehrs AG, Lauda Air Luftfahrt AG, Deutsche Lufthansa AG, and Scandinavian Airlines System, and their respective affiliates (collectively, the “Joint Applicants”), for approval of and antitrust

immunity for an Alliance Expansion Agreement and an Amended Coordination Agreement. The document contains tentative, nonpublic transatlantic schedules of United and bmi for the summer 2002 season, which have not been loaded into CRSs or published elsewhere. United and bmi request that this document be made available subject to the same conditions set forth in the Department's November 6, 2001 notice in Dockets OST-01-10575 and OST-01-10576.¹

In support of this request, United and bmi submit the following:

1. The confidential document submitted in conjunction with this motion is protected from public disclosure under various exemptions to the Freedom of Information Act, including 5 U.S.C. §§ 552(b)(3) and (b)(4). 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). Section 40115 states that the Department "shall" withhold from public disclosure, among other things, information that would adversely affect an air carrier's competitive position in foreign air transportation. The document at issue here clearly satisfies this standard. It is

¹ In that notice, the Department provided eligible representatives of interested parties access to all confidential materials submitted by the Joint Applicants, subject to the same conditions generally imposed by the Department in such cases. See, e.g., Notice dated August 16, 2001 (Dockets OST-01-10387, 01-10388) (American Airlines/British Airways); Notice dated August 21, 2001 (Docket OST-01-10429) (Delta Air Lines/Air France/Alitalia/Czech Airlines). In this and other antitrust immunity proceedings, including those cited above, the Department has routinely limited Rule 12 access to such data to counsel and outside experts. By limiting access in this manner, the Department can permit parties to fully participate in this proceeding while limiting the risk of competitive harm that would result if the information were disseminated to competitors.

In the November 6, 2001 notice, the Department recognized that the separate Rule 12 confidentiality motions filed by each of the Joint Applicants are unopposed and stated that it would rule on those motions by subsequent order. Id. at 1 & n.4. United and bmi request that the Department grant the instant motion contemporaneously and on the same basis as those motions.

confidential, has not been made publicly available, and could be used by United and bmi's competitors to their strategic advantage, and United and bmi's disadvantage, in making competitive decisions with respect to foreign air transportation.²

2. Exemption 4 protects from public disclosure information that is "(1) commercial or financial, (2) obtained from a person outside the government, and (3) privileged or confidential." Gulf & Western Indus., Inc. v. United States, 615 F.2d 527, 529 (D.C. Cir. 1980) (citations omitted). The document at issue here satisfies this standard. It is commercial or financial in nature; it was obtained from a private citizen; and is privileged or confidential. United and bmi would suffer substantial competitive harm if the document were publicly disclosed. See Washington Post Co. v. HHS, 690 F.2d 252, 268 (D.C. Cir. 1982) (defining the standard for whether a document is privileged or confidential). Public disclosure of such information could "impair the Government's ability to obtain necessary information in the future or . . . cause substantial harm to the competitive position of the person from whom the information was obtained." National Parks & Conservation Ass'n v. Kleppe, 547 F.2d 673, 677-78 (D.C. Cir. 1976) (quoting National Parks & Conservation Ass'n v. Morton, 498 F.2d 765-70 (D.C. Cir. 1974)); Burke Energy Corp. v. DOE, 583 F. Supp. 507, 510-11 (D. Kansas 1984).

WHEREFORE, for the foregoing reasons, the Department should grant United and bmi's motion to withhold from public disclosure the confidential, proprietary and

² The Department has found that Exemption 3 also applies to information protected by 49 U.S.C. § 46311. See Order 2001-10-2, at 2-3. That statutory provision prohibits the release of information acquired by the Department "when inspecting the records of an air carrier" or information that "is withheld from disclosure under section 40115." 49 U.S.C. § 46311(a).

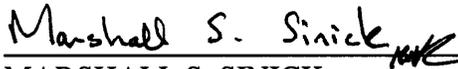
commercially sensitive information that United and bmi have filed under seal; limit Rule 12 access to counsel and outside experts; and grant such other and further relief as the Department deems necessary.

Respectfully submitted,



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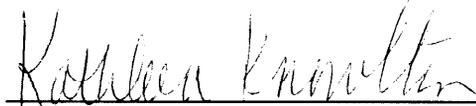
Dated: December 3, 2001

INDEX OF CONFIDENTIAL DOCUMENTS OF UNITED AND bmi

Date	Description	Responds to:	No. of Pages
11/30/2001	Tentative, nonpublic transatlantic schedules of United and bmi for Summer 2002.	Order 01-11-10	2

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Joint Motion of United Air Lines, Inc. and British Midland Airways Limited on all persons named on the attached Service List by causing a copy to be sent via first-class mail, postage prepaid.



Kathleen A. Knowlton

DATED: December 3, 2001

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