

BEFORE THE  
DEPARTMENT OF TRANSPORTATION  
WASHINGTON, D.C.

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U.S.-U.K. Alliance Case

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Docket OST-2001-11029

REPLY OF  
THE NEW JERSEY PARTIES

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December 21, 2001

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Introduction

The New Jersey Parties<sup>1</sup> have opposed the American/British Airways alliance because it would drastically reduce, if not eliminate, airline competition between New Jersey and the United Kingdom, causing severe harm to New Jersey's economy, which is still struggling to recover from the downturn following the September 11 terrorist attacks.<sup>2</sup> Comments submitted earlier this week by the Department of Justice, Continental, Delta, Northwest, Virgin Atlantic and the Houston Parties confirm the overwhelming anticompetitive effects of such an alliance, show that open skies without open access to competitively-viable slots and facilities at London Heathrow cannot cure

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<sup>1</sup> The New Jersey Parties include the City of Newark, the New Jersey State Chamber of Commerce, the New Jersey Alliance for Action, the New Jersey Business and Industry Association, and the Regional Business Partnership.

<sup>2</sup> See Reply of the New Jersey Parties in Dockets OST-2001 and 10388, filed November 9, 2001 ("NJP Reply").

those anticompetitive effects and prove that sufficient slots and facilities are simply unavailable. The proposed merger of United and bmi, both major slotholders at London Heathrow airport, would compound these anticompetitive effects. The Connecticut/New Jersey/New York region served by Newark International Airport is the largest travel market in the U.S. for domestic and international travel, and the current restrictions on slots and facilities at London's Heathrow and Gatwick airports make it impossible for other airlines serving Newark International Airport to compete effectively with an immunized American/British Airways alliance. The proposed alliances should be rejected because they will decrease service options and increase prices for U.S.-U.K. air transportation for New Jersey travelers and businesses unless Newark International Airport's hub carrier, Continental, is able to secure sufficient competitive slots and facilities at London Heathrow to offer meaningful competition for the combined American/British Airways and United/bmi operations.

In support of its position, the New Jersey Parties state as follows:

1. As Continental recognizes, "[I]t is perverse to suggest that the public interest could benefit from allowing the four U.S. and U.K. carriers with the most coveted London slots and facilities to combine, jointly set fares and fix capacity, eliminate actual or potential competition with their partners and build fortresses at London Heathrow through de facto mergers." (Continental Answer and Supplemental Comments, filed December 17, 2001, at 3.) Concentrating scarce London Heathrow slots in two immunized alliances is bad for competition, travelers and shippers. The New Jersey Parties have already shown that the proposed American/British Airways combination, by itself, is anti-consumer and anticompetitive. (NJP Reply at 3-4.) The Department of Justice agrees that "[a]pproval of the AA/BA transaction threatens a

substantial loss of competition and higher prices for a large number of consumers” and “approval of the AA/BA alliance would significantly increase concentration in the New York –LHR market.” (DOJ Comments at 3.) DOJ considers Newark and New York (JFK) a single market, which demonstrates that Newark flights compete effectively with flights at JFK. Less competition and higher prices would have dire economic consequences for the traveling public and business community in the Connecticut/New Jersey/New York region served by Newark International Airport. Businesses that depend on Newark International Airport must have competitive access to air transportation services to and from the U.K. at reasonable rates if those businesses are to flourish, and the only way to secure such service options and achieve such rates is through free and open competition among carriers. The American/British Airways alliance is designed to, and would, eliminate competition from other airlines. Without such competition, passengers and shippers would be forced to pay more to travel and ship between Connecticut/New Jersey/New York and the U.K.

2. The New York (EWR and JFK)-London Heathrow market is one of the overlap markets in which DOJ concludes that an American/British Airways combination “would produce substantial increases in concentration for business passengers” and where “significant price increases can be expected” without realistic prospects for entry. (DOJ Comments at 31 and 32) Continental, Delta, Northwest and Virgin have all shown that there are no realistic prospects for entry at London Heathrow because there are no available slots or facilities there. DOJ figures show that American/British Airways would have a combined frequency share of 64% and a combined premium passenger share of 63% in the Newark/New York – London Heathrow market. (DOJ Comments at 31.) In addition to dominating the market, an immunized American/British Airways alliance

would have the strongest sales and distribution networks in the U.S. and Europe, which would lead to further dominance. Consumers and businesses in New Jersey depend on effective competition on air transportation routes between Newark/New York (JFK) and London, and they would be adversely affected by the American/British Airways dominance in the area served by Newark International Airport. New Jersey's overall economy is closely linked to the U.K. and London is also the primary gateway to the rest of Europe. Access to effective air transportation at reasonable rates is essential to keeping New Jersey competitive in trade and commercial activities. Approval and immunization of the American/British Airways alliance would create an anticompetitive environment in which service would deteriorate and cargo rates and ticket prices would escalate. Indeed, since both American and British Airways serve Newark-London Heathrow, Newark would lose one competitor immediately if the Department immunizes the proposed alliance.

3. The DOJ Comments also confirm the New Jersey Parties' previous view that London Heathrow is a separate market and that London Gatwick is a poor substitute for London Heathrow. (NJP Reply at 6; DOJ Comments at 23.) Heathrow access is important to New Jersey businesses because Heathrow is close to the center of London, provides convenient and comprehensive connections to the rest of Europe and beyond, and is surrounded by commercial areas. DOJ agrees there is already a premium for Heathrow service. If government authorities permit American and British Airways to join together to set prices at Heathrow, the result will be even higher fares and air cargo rates for New Jersey travelers and shippers because other airlines there will be unable to approach American/British Airways' frequencies, operating flexibility and ground facilities. As previously shown, the proposed American/British Airways

combine would have a virtual shuttle service, in the Newark/New York-London Heathrow market with the ability to expand even further. The only way to compete with such a shuttle service would be with a substantial number of well-timed slots operated by the hub carrier at Newark International Airport.

4. Because the anticompetitive effects of a combined American/British Airways alliance will lead to fewer options at higher fares and cargo rates, the New Jersey Parties continue to advocate disapproval of the alliance. If the Department nonetheless decides to permit this anticompetitive alliance to proceed, competitors of the alliance must be able to operate all the flights they deem necessary and to add flights as the market or competitive conditions demand. DOJ says “at least seven daily round trips” must be made available to replace competition from American in the Newark/New York-London Heathrow market if the alliance is approved and immunized. (DOJ at 50, emphasis added.) Continental, which is the only airline with a true Newark/New York hub, must have at least six daily nonstop roundtrips between its Newark International Airport hub and Heathrow. DOJ recognizes that “Continental’s hub at Newark would give it a strong set of ‘products’ to bundle with its London service in bids to corporate customers.” (DOJ Comments at 45.) With Continental leading the way, Newark International Airport is rapidly becoming the preferred gateway in the New Jersey/Newark/New York area for international traffic. Newark’s hub carrier, Continental, must have adequate frequencies, slots and ground facilities to compete with the American/British Airways stronghold at JFK, if Newark International Airport is to continue to provide essential competition for JFK between the U.S. and London Heathrow. Continental operates the only true hub at Newark/New York, with 279 daily flights serving 110 cities, including 17 daily flights serving 16 transatlantic destinations.

(Continental Answer at 28) Continental already has the largest share of New York traffic (22%), above American which has a 19% share. Recent improvements, including the only New York area airport train connection to Midtown Manhattan, make Newark International Airport the most convenient airport in the New York/New Jersey area, and an exceptionally attractive alternative to New York (JFK). Unless Continental has a minimum of 12 London Heathrow slots and related facilities for six well-timed roundtrip Newark/New York-London flights, however, Continental and Newark will not be able to compete with the dominance and virtual shuttle service offered by American/British Airways at New York (JFK).

5. The London Heathrow slots provided for new Continental service must not only be well-timed, but also must be accompanied by competitively viable ground facilities, as proposed by Continental and others. Slots are not useful without enough gates and piers at convenient locations to accommodate the flights and other facilities comparable to those of American and British Airways, such as ticket counters and airport lounges in prime locations to enable new entrants such as Continental to provide competitive customer service. Since “[c]ombining the U.S.-London service of American and British Airways through an immunized alliance will result in immediate competitive harm” (DOJ Comments at 54, emphasis added), new entrants must have their competitive London Heathrow slots and facilities before American/British Airways and

United/bmi are allowed to merge.<sup>3</sup>

6. The New Jersey Parties believe the DOJ Comments underestimated the anticompetitive effects of the American/British Airways merger to the extent that DOJ “assume[d] that the competitive situation will not be fundamentally altered by September 11 attacks and their aftermath.” (DOJ Comments at 7.) As DOJ recognizes, however, the Department “should be more cautious about approving” the American/British Airways agreement if the Department disagrees with DOJ’s assumptions about the expected pace of post-September 11 recovery. (Id.) As Continental has shown, dramatic downsizing and other changes in the aviation industry since September 11 warrant careful review before approving the unprecedented American/British Airways alliance. (See Continental Answer at 21-22.) Given the uncertainty about the future effects of the September 11 events, the New Jersey Parties urge the Department not to approve the proposed alliances hastily.

### Conclusion

With or without the proposed United/bmi alliance, the proposed American/British Airways alliance must be disapproved so New Jersey’s air travelers and cargo shippers between the U.S. and London will not have to pay monopoly prices to an alliance that has foreclosed meaningful competition. If the alliance is approved, however, the

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<sup>3</sup> As previously recommended by the New Jersey Parties, American and British Airways must be required to divest enough competitively-viable slots and ground facilities, permanently, without compensation, for service by Continental and other new entrants between their U.S. hubs and London Heathrow.

Department must first assure that Continental -- Newark International Airport's hub carrier and the only carrier with a true Newark/New York hub -- has the competitively-viable, well-timed slots and facilities it needs at London Heathrow to begin to provide critical competition American/British Airways for the thousands of passengers and shippers who depend on Newark International Airport.

Respectfully submitted,

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December 21, 2001

CERTIFICATE OF SERVICE

I certify that I have this date served a copy of the foregoing document on all parties on the attached service list in accordance with the Department's Rules of Practice.

/s/ Linda S. Eastman  
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