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QA

Order 96-7-25



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

SERVED JUL 18 1996

Issued by the Department of Transportation
on the **18th day of July, 1996**

Joint Application of

UNITED AIR LINES, INC.

and

SCANDINAVIAN AIRLINES SYSTEM

for approval of and Antitrust Immunity for an
Alliance Expansion Agreement under
49 U.S.C. §§ 41308 and 41309

Docket OST-96-1411 - 7

ORDER ESTABLISHING PROCEDURAL SCHEDULE

APPLICATION

On May 28, 1996, United Air Lines, Inc. ("United") and Scandinavian Airlines System ("SAS") filed a joint application for approval of and antitrust immunity for an agreement referred to by the Joint Applicants as the Alliance Expansion Agreement ("the Expansion Agreement").¹ The application was filed under 49 U.S.C. §§ 41308 and 41309.

On June 7, 1996, our preliminary examination of the application indicated that certain required information and data had not been provided by the Joint Applicants. We therefore found it appropriate to defer the otherwise applicable **21-day** deadline for the filing of comments, 14 C.F.R. Part 303. At that time, we

¹ The term "Alliance Expansion Agreement" as used herein means (1) the agreement made and entered into by the Joint Applicants on June 28, 1996; (2) the Cooperation Agreement and the Code-Share Agreement both concluded between the Joint Applicants dated as of September 1, 1995 (the "1995 Agreement"), which remain in full force and effect, and which are incorporated by reference into the Alliance Expansion Agreement (*see* Articles 2.1 and 2.4 of the **Alliance** Expansion Agreement); (3) any Implementing Agreements that the Joint Applicants conclude pursuant to the Alliance Expansion Agreement (*see* Articles 2.4 and 5.2 of **the** Alliance Expansion Agreement); and (4) any subsequent agreement(s) or transaction(s) by the Joint Applicants pursuant to the foregoing agreements.

stated that upon a determination that the application was complete, we would announce an appropriate procedural schedule for reaching a decision in this matter.

Subsequently, the Joint Applicants submitted certain additional documents and information in connection with the application and motions under 14 C.F.R. 302.39 and 49 U.S.C. § 40115 requesting confidential treatment for these additional documents.² The Joint Applicants requested that access to these materials be limited to counsel and outside experts for interested parties. The Joint Applicants represent to the Department that these documents contain materials that are proprietary and competitively or commercially sensitive. These motions are unopposed.

The Joint Applicants state that through the Expansion Agreement, they intend to broaden and deepen their cooperation in order to improve the efficiency of their coordinated services, expand the benefits available to the traveling and shipping public, and enhance their ability to compete in the global marketplace. They also state that although they will continue to be independent companies, the objective of the Expansion Agreement is to enable the Joint Applicants to plan and coordinate service over their respective route networks as if there had been an operational merger between the two firms. They ask that we grant the requested approval and immunization for a period of not less than five years.

DECISION

As an initial matter, we find that the application in this case is now complete. Therefore, we direct interested parties to file answers to the 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. Finally, we will defer action on the Joint Applicants' motions for confidential treatment of certain additional data and documents, 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 the Joint Applicants' requests for confidential treatment for certain information and data filed on July 1, 1996, we will restrict access to these materials to counsel and outside experts who represent the interested parties in this case.³ We will require that all persons seeking access to these materials submit

² On July 1, 1996, the Joint Applicants filed their additional material and motions for confidential treatment. They **also** filed a copy of the Alliance Expansion Agreement, as a supplement to their application.

³ We will rule on the United and SAS motions in a later order.

properly executed affidavits (see ordering paragraph 4 below). We find these actions to be fully consistent with our determinations in Order 96-7-16, issued July 12, 1996.

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 separately by the Joint Applicants on July 1, 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 paragraph 2, 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;⁴ and
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>

⁴ 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.