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DEPT. OF TRANSPORTATION
DOCKET SECTION

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BEFORE THE
DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.

Joint Application of)
)
 UNITED AIR LINES, INC.)
)
 and)
)
 DEUTSCHE LUFTHANSA, A.G.)
 (LUFTHANSA GERMAN AIRLINES))
)
 under 49 U.S.C. 41308 and 41309 for)
 approval of and antitrust immunity for)
 an expanded alliance agreement)

Docket OST 96-1116 - 21

COMMENTS OF JOINT APPLICANTS ON ORDER TO SHOW CAUSE

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DATED: May 16, 1996

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COMMENTS OF JOINT APPLICANTS ON ORDER TO SHOW CAUSE

United Air Lines, Inc. ("United"), Deutsche Lufthansa, A.G. ("Lufthansa"), and their respective affiliates (collectively, "the Joint Applicants") hereby submit these comments on the Department's Order to Show Cause (Order 96-5-12). The Joint Applicants support the tentative findings and conclusions set forth in the Order and urge the Department to issue promptly a Final Order approving the Alliance Expansion Agreement and according it antitrust immunity.

Prompt issuance of a Final Order in this docket will, as the Department found in the Order to Show Cause, confer important public benefits. It will permit the United/Lufthansa Alliance to operate more efficiently, compete more effectively with other

global alliances, and provide enhanced services to the travelling and shipping publics. Final approval of the expanded United/Lufthansa Alliance will also encourage further liberalization of the transatlantic and global marketplace.

As a matter of clarification, the Joint Applicants request that the Department make explicit in its Final Order that the antitrust immunity granted to United and Lufthansa to carry out the Alliance Expansion Agreement includes United's and Lufthansa's respective corporate affiliates. The Alliance Expansion Agreement expressly extends its substantive provisions to air transportation services that United and Lufthansa provide through affiliates." For example, as the Order to Show Cause recognizes, the Alliance Expansion Agreement contemplates cooperation by the two carriers on cargo services (see Article 4.9 of the January 9, 1996 agreement); Lufthansa currently provides cargo services entirely through its wholly-owned and specially- controlled subsidiary, Lufthansa Cargo, A.G. (see Notice of Action Taken dated March 29, 1996, Docket OST-96-1156).^{2/}

^{1/} In the January 9, 1996 agreement, like the October 4, 1993 agreement which it incorporated, the Parties to the Agreement, "LH" and "UA", are expressly defined to include any air carrier affiliates that Lufthansa and United may have. See Exhibit JA-1, January 9, 1996 agreement, at 1 (designation of the parties); id., Schedule 1, at 1, 3 and 4 (definitions of "Affiliate", "Air Carrier", "LH", "Party", and "UA"); id., attachment to Exhibit JA-1 at 1 (October 4, 1993 agreement).

^{2/} Extending antitrust immunity to affiliates would ensure that antitrust immunity for cargo cooperation, as contemplated by Order 96-5-12, extends to Lufthansa Cargo, A.G., the corporate entity through which Lufthansa provides cargo service. At the

Because the authorizing statute (49 U.S.C. 41308(b)^{2/}) provides that the Department may exempt a "person" from the antitrust laws in order to allow that person to proceed with an approved transaction, we believe it would be preferable for the Department expressly to extend its grant of immunity for the Alliance Expansion Agreement to United Air Lines, Inc., Deutsche Lufthansa A.G., "and their respective affiliates." By including all the corporate "persons" that will be performing services under the Alliance Expansion Agreement, this additional language would make the granted immunity unmistakably coextensive with the approved agreement itself.

WHEREFORE, the Joint Applicants urge the Department promptly to make final its Order to Show Cause and to approve the Alliance Expansion Agreement under 49 U.S.C. 41309 and exempt

present time, United does not have any air carrier subsidiaries. However, the Alliance Expansion Agreement provides the carriers with the flexibility in the future to create and provide services through other such affiliates.

^{2/} Section 41308(b) provides:

"When the Secretary of Transportation decides it is required by the public interest, the Secretary, as part of an order under section 41309 or 42111 of this title, may exempt a person affected by the order from the antitrust laws to the extent necessary to allow the person to proceed with the transaction specifically approved by the order and with any transaction necessarily contemplated by the order."

United and Lufthansa and their respective affiliates from the antitrust laws pursuant to 49 U.S.C. 41308.



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DATED: May 16, 1996

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CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Comments Of Joint Applicants On Order To Show Cause on all persons named on the attached service list by causing a copy to be sent via facsimile or hand delivery


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DATED: May 16, 1996

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