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BEFORE THE
DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.

DEPT. OF TRANSPORTATION
DOCKET SECTION

96 MAY 28 AM 11:25

Joint Application of)
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)
 DELTA AIR LINES, INC.)
)
 SWISSAIR, SWISS AIR TRANSPORT)
)
 COMPANY; LTD.)
)
 SABENA S.A., SABENA BELGIAN WORLD)
)
 AIRLINES, and)
)
 AUSTRIAN AIRLINES, ÖSTERREICHISCHE)
)
 LUFTVERKEHRS AG)
)
)
 for approval of and Antitrust Immunity)
)
 for Alliance Agreements pursuant to 49)
)
 U.S.C. §§41308 and 41309)
)

Docket OST-95-618 - 42

MOTION OF UNITED AIR LINES, INC. FOR LEAVE TO FILE

Communications with respect to this document should be sent to:

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DATED: May 28, 1996

14 pgs.

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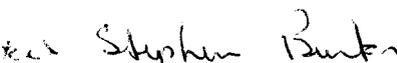
United Airlines hereby requests leave to file its attached comments out of time. Pursuant to Order 96-5-26, Comments on the Order were to be filed by 10:00 a.m. on Tuesday, May 28, 1996. Although United sought to file its comments on time, the messenger United's counsel normally uses was injured in an automobile accident Tuesday morning, and a substitute messenger was unable to reach DOT on time due to heavy traffic caused by the inclement weather; the messenger did arrive at DOT a few minutes after 10:00 a.m.

Under these circumstances, United requests leave to file its Comments out of time. As the Comments were received at the Department within approximately five minutes of the specified time, and are being served today as required, such late filing should not cause any inconvenience to the Department or any party

to the proceeding. On the other hand, failure to accept the pleading would wholly deny United an opportunity to comment on the Department's tentative conclusions in Order 96-5-26, through no fault of its own. Clearly, the balance of equities here strongly weighs in favor of accepting United's filing.

WHEREFORE, for the reasons stated, United Airlines requests the Department to accept the attached Comments out of time.

Respectfully submitted,



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DATED: May 28, 1996

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CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Motion of United Air Lines, Inc. For Leave To File on all persons listed on the attached Service List by causing a copy to be sent via facsimile to those persons noted with an asterisk on the attached Service List and by first class mail, postage prepaid to all other persons listed.



Kathryn D. North

DATED: May 28, 1996

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COMMENTS OF UNITED AIR LINES, INC.

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COMMENTS OF UNITED AIR LINES, INC.

United Air Lines, Inc., submits the following comments relating to the Department's tentative findings and decision in Order 96-5-26 in the above-captioned proceeding:

1. By Order 96-5-26, the Department tentatively approved and granted antitrust immunity to expanded alliance agreements between Delta Air Lines, Inc. ("Delta"), on the one hand, and Swissair, SABENA, and Austrian Airlines ("Austrian"), on the other, as well as an agreement among all four carriers to coordinate their cooperation arrangements. United takes no position with respect to the Department's tentative order except to note that United supports the approval of such alliances between U.S. and foreign carriers where there are pro-competitive Open Skies regimes assuring freedom of entry.

Consistent with that position, United will today be filing jointly with Scandinavian Airlines System ("SAS") an application for approval of, and antitrust immunity for, an

expansion of their own cooperation arrangement. The authority sought by United and SAS is, thus, similar to that recently approved by the Department for the United/Lufthansa alliance and sought by Delta and its partners in the instant proceeding. However, the competitive issues raised by the United/SAS enhanced cooperation arrangement are insignificant compared to the issues raised by the Delta/Swissair/SABENA/Austrian arrangements.

2. If the Department proceeds to finalize its tentative decision approving and granting antitrust immunity for the Delta/Swissair/SABENA/Austrian enhanced cooperation arrangements, it must equally be prepared to take similar action on the United/SAS request. The Scandinavian country homelands of SAS (Denmark, Norway and Sweden) have each entered into Open Skies agreements comparable to those signed by Switzerland, Belgium and Austria. United and SAS are entitled to expect equivalent action on their own enhanced alliance as that given to the alliance among Delta, Swissair, SABENA and Austrian on the basis of the Open Skies agreements with the homelands of Delta's European partners.

Furthermore, the United/SAS combination does not raise the competitive concerns that arise from the Delta/Swissair/SABENA/Austrian combination as discussed in Order 96-5-26. United and SAS do not compete with each other on any nonstop U.S.-Europe city pairs, while Delta and its partners are competitors on ten nonstop city-pair routes as the result of

blocked space arrangements on each of those routes. Id. at 4-5, and 24-26.

In tentatively deciding to grant antitrust immunity to Delta and its three partners, the Department concluded that sufficient competition remained on seven of these ten overlap routes to warrant such action on its part without conditions." The Department reached this tentative conclusion despite the fact that the Department of Justice considered four of the routes to be hub-to-hub markets, and DOJ had expressed concern that granting the applicants antitrust immunity might substantially lessen competition on those routes.

In the case of United and SAS, there are no U.S.-Scandinavia city pairs where both carriers operate service with their own aircraft. Nor are there any city pairs in which either carrier blocks space on the other. Thus, there are no nonstop city-pair, overlap routes involved in the United/SAS alliance comparable to the overlap routes at issue in the Delta alliance. United's only service to Scandinavia is offered under vertical code-share arrangements under which United offers SAS's seats for sale under United's own designator code.^{2/}

3. Even with the grant of antitrust immunity to Delta and its partners, the transatlantic market will remain intensely

^{1/} On the other three routes, immunity is granted subject to certain conditions agreed to between the applicants and the Department of Justice.

^{2/} United also holds out code-shared service to Copenhagen, Oslo and Stockholm in conjunction with Lufthansa via connections in Frankfurt. See Exhibit JA-3, docket OST **96-1116**.

competitive. As the Department points out in its Show Cause Order, Delta and its three partners have the largest U.S.-Europe passenger share, 16.7%; the second largest share is held by British Airways/USAir, with United/Lufthansa having the third largest share and KLM/Northwest the fifth.^{3/} Id. at 22. Based on this record evidence, the Department concluded that grant of antitrust immunity to Delta and its partners would not diminish U.S.-Europe competition. Id.

Granting antitrust immunity to a United/SAS alliance will not change this conclusion. Measured by departures, SAS's share of the transatlantic market is just 2.2 percent; its seat share is just 1.9 percent. Even if these shares are added to the shares held by United and Lufthansa, Delta and its partners would have a larger market share (as would British Airways/USAir), and the Department's conclusion that the transatlantic market is "highly competitive in terms of service" would remain valid. Order 96-5-26 at 22.

In the event, however, that the Department were to conclude that its grant of antitrust immunity to an enhanced Delta/Swissair/SABENA/Austrian alliance could in any way cause it to take a less favorable position on the United/SAS request, then the final order on the Delta/Swissair/SABENA/Austrian agreement should be deferred until the Department has completed its review of the United/SAS enhanced alliance agreement, which is being

^{3/} According to the Order, American Airlines has the fourth largest share.

filed today. Although, as noted, the record in this proceeding fully supports a finding that the grant of antitrust immunity to both of these alliances is consistent with the public interest and would not substantially lessen competition, if the Department has any question about that conclusion, it must give contemporaneous consideration to the United/SAS application.

In tentatively deciding to grant Delta and its partners antitrust immunity, the Department places great emphasis on the pro-competitive effects of the growth and development of global airline alliance networks. As the Department finds:

these alliances... benefit consumers by increasing international service options and enhancing competition between airlines, particularly for traffic to or from cities behind major gateways. By stimulating traffic, the increased competition and service options will expand the overall international market and increase overall opportunities for the traveling public and the aviation industry. U.S. consumers and airlines should be major beneficiaries of this expansion and of the associated increase in service opportunities.

Order 96-5-26.

A United/SAS alliance will promote global competition no less than will the alliance among Delta and its partners. Delta, which is already the largest U.S.-flag transatlantic competitor, should not be the only U.S. carrier granted antitrust immunity for alliances with multiple European carriers. The Department's desire to promote such inter-alliance competition can best be secured by granting immunity to both the Delta alliances and the United/SAS alliance.

Respectfully submitted,



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DATED: May 28, 1996

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I hereby certify that I have this date served a copy of the foregoing Comments of United Air Lines, Inc. on all persons listed on the attached Service List by causing a copy to be sent via facsimile to those persons noted with an asterisk on the attached Service List and by first class mail, postage prepaid to all other persons listed.



Kathryn D. forth

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