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DEPT. OF TRANSPORTATION  
DOCKET SECTION

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BEFORE THE  
DEPARTMENT OF TRANSPORTATION  
WASHINGTON, D.C.

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Joint Application of

AMERICAN AIRLINES, INC. and  
EXECUTIVE AIRLINES, INC., FLAGSHIP  
AIRLINES, INC., SIMMONDS AIRLINES, INC.,  
and WINGS WEST AIRLINES, INC.  
(d/b/a AMERICAN EAGLE)

and  
CANADIAN AIRLINES INTERNATIONAL LTD.,  
and ONTARIO EXPRESS LTD. and TIME AIR INC.  
(d/b/a CANADIAN REGIONAL) and  
INTER-CANADIAN (1991) INC.

. Docket OST-95-792 -34

under 49 USC §§ 41308 and 41309 for approval of and  
antitrust immunity for commercial alliance agreement  
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ANSWER OF  
CONTINENTAL AIRLINES, INC.

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June 7, 1996

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ANSWER OF  
CONTINENTAL AIRLINES, INC.

Although Continental's' objections in this proceeding amply demonstrated why the Department should not grant antitrust immunity to the American/Canadian alliance without a substantial and immediate opening of the U.S.-Canada market, the emergence of an application by Air Canada/United for the same authority doubles the reasons no antitrust immunity should be granted until the U.S.-Canada market is truly open. Continental answers the responses to

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<sup>1</sup> Common names of carriers are used.

the show-cause order in this proceeding submitted by Air Canada, United and TWA as follows:

1. As a result of the application submitted by Air Canada and United, the Department now has pending before it antitrust immunity applications submitted by airlines which controlled 59.4% of the transborder traffic in 1995. In the markets where entry is restricted for U.S. carriers, the concentration is far worse. For instance, the carriers seeking antitrust immunity controlled 99% of the New York/Newark-Toronto traffic and 99% of the Chicago-Toronto traffic in 1995. The Department should not even be considering antitrust immunity in markets so heavily dominated by carrier alliances between the two largest Canadian carriers and the two largest U.S. carriers without assuring effective access for other U.S. carriers and competition for U.S. consumers in major Canadian markets.

2. Although Continental disagrees with Air Canada and United that approval and immunity for an American/Canadian alliance necessarily requires approval and immunity for an Air Canada/United alliance, Air Canada and United are correct when they argue that the Department must consider both alliances before approving either. In the heavily-restricted major U.S.-Canada markets (Toronto, Montreal and Vancouver), these carriers combined wield such market power that other U.S. carriers excluded from expansion in these markets will not be able to overcome any head start given to these mighty alliances. The Department must consider the market dynamics created by the dual alliances

before it and evaluate their impact on both the entire U.S.-Canada marketplace and the restrictions on U.S.-carrier services before acting on either alliance.

3. With two alliances before it, now more than ever the Department must reach a market-opening agreement with Canada before approving any alliance. If the Department fails to do so it will have abandoned its own open skies principles, jeopardized the credibility of U.S. negotiators worldwide and risked the future of competitive airline service in U.S.-Toronto/Montreal/Vancouver markets.

Concluding a market-opening agreement with Canada before granting antitrust immunity is a far more competitive alternative than granting American and Canadian antitrust immunity. If the Department's goal is to enhance competition for Air Canada, competitive access to major U.S.-Canada markets must be secured for non-alliance carriers now.

4. TWA's answer takes no position on approval of the American/Canadian alliance itself but suggests that the Department condition American/Canadian antitrust immunity. TWA says,

If potential competitors of the alliance parties are blocked by either governmental or marketplace restrictions in the foreign country, antitrust immunity should be automatically removed from the alliance agreement until the conditions required for full and free competition are established.

(TWA Comments at 3) Upon failure of the condition, TWA says antitrust immunity would "be automatically rescinded, or at least re-examined in an expedited proceeding." (TWA Comments at 4) Since "marketplace considerations"

and the U.S.-Canada bilateral agreement already prevent "full and free competition" with the alliance carriers, the time for examination is now, not some time in the future. Moreover, awaiting further developments could require the Department to attempt to unscramble an alliance -- itself a difficult or impossible task -- after the damage has been done. Under these circumstances, the Department should resolve competitive concerns now by opening markets to U.S.-carrier access, not in the future, as TWA suggests. Only by deferring action on immunity for American and Canadian and insisting on immediate market-opening opportunities in major U.S.-Canada markets can the Department enhance competition rather than reducing it.

Respectfully submitted,

CROWELL & MORING

By:   
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Counsel for  
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June 7, 1996

CERTIFICATE OF SERVICE

I certify that I have this date served a copy of the foregoing answer upon all parties to this proceeding in the manner specified in Order 96-5-26.

  
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June 7, 1996

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