



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

Issued by the Department of Transportation
on the 27th day of June, 2002

Joint Application of

**DELTA AIR LINES, INC.
KOREAN AIR LINES CO., LTD.
SOCIÉTÉ AIR FRANCE
ALITALIA-LINEE AEREE ITALIANE-S.p.A.
CZECH AIRLINES**

**under 49 U.S.C. §§ 41308 and 41309 for approval
of and antitrust immunity for alliances
agreements**

Docket OST-2002-11842

**ORDER GRANTING APPROVAL AND ANTITRUST IMMUNITY
FOR ALLIANCE AGREEMENTS**

By this order, we grant approval of and antitrust immunity for the Alliance Agreements¹ (1) between Delta Air Lines, Inc. (Delta) and Korean Air Lines Co., Ltd. (KAL); and (2) among Delta, KAL, Société Air France (Air France), Alitalia-Linee Aeree Italiane-S.p.A. (Alitalia), and Czech Airlines (CSA), including their respective affiliates² under 49 U.S.C. §§ 41308 and 41309, subject to the conditions described below.

On April 23, 1998, the Governments of the United States and the Republic of Korea reached an open-skies aviation agreement that promised substantial benefits to consumers and communities in both countries.³ The predicate for our approval and grant of antitrust immunity for the Alliance Agreements is the open-skies agreement. The accord allows U.S. airlines to serve any point in the Republic of Korea (and open intermediate and beyond rights) from any point in the United States and allows airlines of the Republic of Korea to do the same. Our evaluation indicates that open-skies initiatives encourage more competitive service, since market forces, not restrictive government regulation, determine the price and quality of airline service.

¹ For purposes of this application, the term "Alliance Agreements" shall include the arrangements identified in this application as Exhibit JA-1 (the Cooperation Agreement); Exhibit JA-2 (the Coordination Agreement); any implementing agreements in furtherance of the foregoing agreements; and any transaction undertaken pursuant to the foregoing agreements.

² For purposes of the application, the term "respective affiliates" shall mean wholly-owned subsidiaries of either Delta, KAL, Air France, Alitalia, or CSA.

³ The Agreement was formerly brought into force on June 9, 1998.

I. The Alliance Agreements

The essential elements of this arrangement include coordination of pricing, revenue sharing and management, seat inventory, network management and scheduling, marketing, sales and advertising, code sharing, integration of their frequent flyer programs, procurement, ground handling, airport facilities and support services, cargo and mail services, ticketing, information technologies, and distribution programs.⁴ In summary, while the partners state that each airline will retain its separate identity, brand, ownership, and control,⁵ the underlying objective of the arrangement will enable the companies to plan and coordinate services over their respective route networks as if there had been an operational merger among them.

II. The Joint Application

On March 13, 2002, the Joint Applicants filed for approval of and antitrust immunity for (1) a bilateral alliance cooperation agreement between Delta and KAL (Exhibit JA-1); (2) a multilateral alliance coordination agreement among the Joint Applicants (Exhibit JA-2); and (3) existing and future agreements between and among the Joint Applicants concerning the activities contemplated by or in furtherance of the cooperation and coordination agreements, for at least five-years.⁶ They state the proposed arrangement will bring enhanced competition and efficiency to the U.S.-Asia marketplace. They argue that while Delta is a strong competitor in the U.S.-transatlantic and Latin America markets, Delta has a limited presence in Asia.⁷ They note that their request is fully consistent with the U.S.-Republic of Korea open-skies agreement and with U.S. international aviation policy.⁸

They maintain that the proposed alliance will enable them to develop mechanisms to enhance efficiencies, reduce costs and provide better service to the traveling and shipping public. They state that the proposed integration of operations, planning, and marketing will enable them to increase transpacific service and online connections.⁹ The Joint Applicants state that the arrangement will allow them to offer more competitive fares and innovative service options. They also maintain that the expanded alliance will better position them to compete more effectively with the larger U.S.-Asia networks of United, Northwest, and American and their respective partners.

⁴ Application at 7.

⁵ Application at 8.

⁶ By Order 2002-1-6, issued January 18, 2002, the Department granted final approval and antitrust immunity to the Alliance Agreements among Delta, Air France, Alitalia, and CSA.

⁷ Delta provides nonstop service in the Atlanta-Tokyo market. Application at 21.

⁸ The Joint Applicants note the expectation by the Korean Government that Korean-designated airlines would receive sympathetic consideration in forming immunized alliances with U.S. airlines. See April 23, 1998, Memorandum of Consultations between the United States and the Republic of Korea.

⁹ Delta and KAL maintain that they would have the potential to offer online service in nearly 10,000 city-pair markets worldwide. Application at 13.

They state that the Alliance Agreements will allow them to achieve additional operating efficiencies that will translate directly into greater value for the traveling and shipping public, and generate broad economic benefits for communities throughout the partners' regional route networks. They maintain that the various benefits obtainable through the proposed alliance cannot be fully achieved without antitrust immunity.¹⁰

They contend that approval of their application will promote U.S. international aviation policy objectives by further encouraging the development of integrated global alliances, which the Joint Applicants argue are the primary means for airlines to fully realize the potential benefits available under open-skies agreements. They also argue that because of legal, operational, and financial obstacles that effectively preclude the formation of integrated international route networks by merger or by the unilateral expansion of a single airline's system, antitrust immunity is an essential tool in facilitating inter-airline arrangements that increase airlines' efficiency and competitiveness in the developing global marketplace.

In the U.S.-Asia market, the Joint Applicants maintain that the proposed alliance will not substantially reduce competition. They note that there is no competitive U.S.-Asia nonstop overlap between Delta and KAL.¹¹ They assert that the Delta-KAL combination will serve to improve competition in the market by enhancing the competitive presence of two airlines that compete with other airlines that have a larger share of the transpacific marketplace. Finally, they argue that the proposed arrangement would be smaller than either of the previously approved U.S.-Pacific immunized alliances, *i.e.*, Northwest-Malaysia and United-Air New Zealand.

In the country-pair market, they state that Delta does not operate service between the United States and the Republic of Korea, and that there will be no reduction in competition resulting from the proposed arrangement. They maintain that the proposed alliance is a pro-competitive and pro-consumer end-to-end combination. Moreover, they argue that alternative competitive services are plentiful.¹² The Joint Applicants argue that the U.S.-Republic of Korea open-skies regime, which permits open entry for nonstop services by any U.S. or Korean airline, ensures that competition in this market will remain vigorous.

In the city-pair markets, the Joint Applicants maintain that there will not be a reduction in competition in air services. They state that there are no city-pair markets where Delta and KAL compete on a nonstop basis. They thus assert that there will be no reductions of nonstop competition on any city-pair route. They argue that the U.S.-Republic of Korea open-skies regime will assure competitive discipline by providing for open entry and pricing and service freedom.

¹⁰ Application at 12.

¹¹ See Exhibit JA-5.

¹² See Exhibit JA-7 and JA-8.

Finally, the Joint Applicants maintain that this arrangement will enhance alliance competition by providing additional travel options to consumers and encouraging more effective competition with the other global alliances that are already in place. They also maintain that approval of the request will accelerate liberalization of the U.S.-Asia marketplace, and thus help to achieve the objectives of the Department's Asian Open-Skies Initiative.

No answers have been filed.

III. Decision Summary

Delta and KAL have applied for approval of and antitrust immunity for Alliance Agreements under 49 U.S.C. §§ 41308 and 41309, whereby they will plan and coordinate service over their respective route networks as if there had been an operational merger between the partners. We find that the arrangement should be approved and granted antitrust immunity, to the extent provided below. Our examination of their proposal leads us to find that the proposed alliance will enhance competition overall and allow the airlines to provide better service and enable them to operate more efficiently. We also find that it is unlikely that the arrangement — subject to the conditions included here — will substantially reduce competition in any relevant market. Finally, our actions here will allow the Joint Applicants to maximize fully the various pro-competitive and pro-consumer benefits associated with integrated alliances that we foresaw resulting from the fundamental liberalization of air services under the U.S.-Republic of Korea open-skies accord.

We will require the Joint Applicants (1) to withdraw from all International Air Transport Association (IATA) tariff conference activities relating to through prices between the United States and the Republic of Korea, as well as between the United States and the homelands of foreign airlines participating with U.S. airlines in other immunized alliances; (2) to file all subsidiary and or subsequent agreements with the Department for prior approval; and (3) to resubmit for review the pertinent Alliance Agreements before January 18, 2007.¹³ We also find it in the public interest to direct KAL to report full-itinerary O&D Survey data for all passengers to and from the United States (similar to the O&D Survey data reported by U.S. airlines and its partner Delta).

Finally, we have determined that it is appropriate and consistent with the public interest to issue a final decision in this case now. Interested parties have had full opportunity to comment on these matters. No answers were filed. We also have determined that the proposed alliance presents no significant competitive issues requiring further consideration. We therefore will dispense with the issuance of an Order to Show Cause and issue a final order approving this unopposed application.

¹³ See Order 2002-1-6 at 7, Docket OST-2001-10429 (Delta-Air France-Alitalia-CSA antitrust immunity case). At that time, we directed the partners to resubmit their Alliance Agreements before January 18, 2007.

IV. Decisional Standards under 49 U.S.C. Sections 41308 and 41309

The Joint Applicants applied for approval of and antitrust immunity for Alliance Agreements under 49 U.S.C. §§ 41308 and 41309, whereby they will plan and coordinate service over their respective route networks as if there had been an operational merger between the partners.

Under 49 U.S.C. §41308, the Department has the discretion to exempt a person affected by an agreement under §41309 from the operations of the antitrust laws “to the extent necessary to allow the person to proceed with the transaction,” provided that the Department determines that the exemption is required by the public interest. It is not our policy to confer antitrust immunity simply on the grounds that an agreement does not violate the antitrust laws. We are willing to make exceptions, however, and thus grant immunity, if the parties to such an agreement would not otherwise go forward without it, and we find that the public interest requires that we grant antitrust immunity.

Under 49 U.S.C. §41309, the Department must determine, among other things, that an inter-carrier agreement is not adverse to the public interest and not in violation of the statute before granting approval.¹⁴ The Department may not approve an inter-carrier agreement that substantially reduces or eliminates competition unless the agreement is necessary to meet a serious transportation need or to achieve important public benefits that cannot be met, and those benefits cannot be achieved by reasonably available alternatives that are materially less anticompetitive.¹⁵ The public benefits include international comity and foreign policy considerations.¹⁶

The party opposing the agreement or request has the burden of proving that it substantially reduces or eliminates competition and that less anticompetitive alternatives are available.¹⁷ If the record shows that the agreement will substantially reduce, or eliminate competition, the party defending the agreement or request has the burden of proving the transportation need or public benefits.¹⁸

V. Approval of the Agreement

The United States and the Republic of Korea finalized an open-skies agreement in April 1998. In doing so, the two countries formally recognized that restrictive bilateral aviation relationships adversely affect important cultural and economic ties, and restrict the growth of trade between countries. The U.S.-Republic of Korea market is now governed by an open-skies agreement that has eliminated barriers to new entry, expansion and competition that were earlier created by restrictive government regulation. Such an agreement maximizes competitive opportunities, including the flexibility for all U.S. and affected foreign airlines to operate their own direct

¹⁴ Section 41309(b).

¹⁵ Section 41309(b)(1)(A) and (B).

¹⁶ Section 41309(b)(1)(A).

¹⁷ Section 41309(c)(2).

¹⁸ *Id.*

services, or joint services with another airline. By so doing, an open-skies agreement also recognizes the value of airline networks and provides the opportunity for airlines to offer the services covered by the liberalized regime either individually or as partners in an alliance.

The Department has found substantial consumer and competitive benefits ensuing from open-skies agreements and from the structural changes that have occurred in the global airline system, such as alliances.¹⁹ Such alliances allow the partners to achieve greater operational efficiencies and to expand their route networks on an integrated and coordinated basis.

As explained below, Delta does not now operate nonstop service in the U.S.-Republic of Korea market, and KAL and Delta do not compete on any other nonstop transpacific route. As a result, there would be no reduction in nonstop competition resulting from the integration of KAL into the existing Delta-Air France-Alitalia-CSA immunized alliance. It is against this background that we have decided to approve and grant antitrust immunity to the Delta-KAL Alliance Agreements, subject to the conditions noted.

Public Benefit Summary

We find that the proposed alliance would provide important public benefits. The proposed arrangement should benefit consumers by offering the traveling public new integrated services and additional competition for existing alliances and single-carrier services. We have previously determined that an important pro-competitive effect of global alliances is particularly evident in the case of the behind- and beyond-markets where integrated alliances with coordinated connections, marketing, and services can offer competition well beyond mere interlining.²⁰ Integrated alliances can offer a multitude of new on-line services, on a global basis. In this case, we note that Delta's global network provides consumers with service to 230 U.S. cities in 48 states, and 182 foreign cities in 71 countries, and that KAL's global network serves 77 cities in 29 countries. Thus, the proposed arrangement will benefit consumers by increasing international service options and enhancing competition between airlines, particularly for traffic to or from cities beyond and behind major gateways. Our recent evaluation of international alliances shows that they stimulate traffic in these connecting markets and thereby increase competition and service options in the overall international market and increase overall opportunities for the traveling public and the aviation industry.²¹ The proposed alliance would also allow the partners to improve the efficiency of their operations and to otherwise work together to improve service not only in the U.S.-Republic of Korea market, but also in the U.S.-Far East market.

Competitive Summary

¹⁹ See *International Aviation Developments: Global Deregulation Takes Off* (First Report), U.S. Department of Transportation, Office of the Secretary, December 1999; and *International Aviation Developments: Transatlantic Deregulation, The Alliance Network Effect* (Second Report), U.S. Department of Transportation, Office of the Secretary, October 2000.

²⁰ See Order 96-5-12 at 17-18.

²¹ See note 19, above.

We also find that it is unlikely that the Alliance Agreements as conditioned would substantially reduce or eliminate competition in any relevant market. The Joint Applicants do not compete head-to-head in any city-pair market, and several other U.S. and foreign airlines provide competitive service in the transpacific markets and between the United States and the Republic of Korea.

We find that the arrangement will benefit overall competition in the affected markets. The alliance will enable the partners to operate more efficiently and to provide the public with enhanced service options. The integration of the partners' services will provide pro-competitive advantages that outweigh any possible negative affects on competition in the relevant markets.

A. Antitrust Issues

The Joint Applicants state that the Alliance Agreements will allow them to develop mechanisms to improve efficiency, expand various benefits available to the traveling and shipping public, and enhance their ability to compete in the global marketplace. They state that, while retaining their separate corporate and national identities, they fully intend to cooperate to the extent necessary to create a seamless air transport system. Accordingly, the proposed arrangement's intended commercial and business effects are equivalent to those resulting from a merger. In determining whether the proposed transaction would violate the antitrust laws, we apply the Clayton Act test used in examining whether mergers will substantially reduce competition in any relevant market.²²

The Clayton Act test requires the Department to consider whether the Alliance Agreements will substantially reduce competition by eliminating actual or potential competition between Delta and KAL so that they would be able to effect supra-competitive pricing or reduce service below competitive levels.²³ To determine whether a transaction is likely to violate the Clayton Act, the Department considers whether the transaction is likely to create or enhance market power, market power being defined as the ability profitably to maintain prices above competitive levels or reduce product and service quality below competitive levels for a significant period of time. To determine whether a proposed transaction is likely to create or enhance market power, we primarily consider whether the transaction would significantly increase concentration in the relevant markets, whether the transaction raises concern about potential competitive effects in light of concentration in the market and other factors, and whether entry into the market would be timely, likely, and sufficient either to deter or to counteract a proposed transaction's potential for harm.

The relevant markets requiring a competitive analysis are: first, the U.S.-Far East market; second, the U.S.-Republic of Korea market; and third, the individual city-pair markets.

1. The U.S.-Far East Market²⁴

²² Order 92-11-27, at 13.

²³ *Id.*

²⁴ Source: T-100 and T-100(f) nonstop segment and market data, for the 12 months ended June 2001.

We find that the Alliance Agreements should not diminish competition in the U.S.-Far East market.²⁵ During the 12 months ended June 2001, Delta's nonstop passenger market share was about 2.4 percent. The proposed Delta-KAL partnership had a nonstop passenger market share of about 8.2 percent. In contrast, the Star Alliance partners (United Air Lines-All Nippon Airways-Singapore Airlines-Thai Airways) nonstop passenger market share was about 24 percent; the Northwest Airlines-Malaysian Airline immunized alliance had a nonstop passenger market share of about 17 percent; Japan Airlines had about a 15 percent nonstop passenger market share; the oneworld alliance partners (American Airlines-Cathay Pacific) had about a 5.7 percent nonstop passenger market share; and Continental Airlines/Continental Micronesia had about a 6.9 percent nonstop passenger market share.

As we have previously determined, the U.S.-Far East market is thus highly competitive in terms of service.²⁶ American Airlines, Continental Airlines, Delta, Northwest Airlines, and United Air Lines provide scheduled passenger service in this market from their hubs, either individually or in conjunction with an existing alliance. The market is also served by more than fifteen foreign airlines, principally from hubs in their homelands.

2. The U.S.-Republic of Korea Market

We find that the Alliance Agreements should not substantially reduce competition in the U.S.-Republic of Korea market. Delta does not operate any flights to the Republic of Korea. Other U.S. airlines currently compete with KAL and Asiana, another Korean airline, in the U.S.-Republic of Korea market. United Air Lines provides one-stop service in the Chicago/San Francisco-Seoul markets, via Tokyo's Narita Airport. Northwest Airlines provides one-stop service in the Seattle-Seoul market, via Tokyo's Narita Airport. For these reasons, we find that the proposed transaction would not result in any substantial loss of competition in the U.S.-Republic of Korea market.

As noted, Delta and KAL conduct joint code-share operations in the U.S.-Republic of Korea aviation market. However, the code-share agreement does not provide for guaranteed block-space reservations. Accordingly, neither Delta nor KAL purchases or guarantees the seats allocated to it by the other. Seats are allocated only for purposes of inventory management. The operating airline maintains control over inventory on the code-share flights.²⁷ In these circumstances, as we have found in recent similar cases, the partners do not now price compete in this market.²⁸

²⁵ The term "Far East" is identified here as those countries listed in U.S. Department of Transportation, Bureau of Transportation Statistics Office of Airline Information, *World Area Code*.

²⁶ See Order 2000-10-12 at 8, Docket OST-2000-6791 (Northwest-Malaysia request for antitrust immunity).

²⁷ Application at 25, note 11. Also, see Codesharing Agreement between Delta and KAL, Exhibit A, identified as DLKE ATI302 0000170.

²⁸ See Order 2001-1-19 at 10, Docket OST-2000-7828 (the United-Austrian-Lauda-Lufthansa-SAS request for antitrust immunity).

As we noted above, this market is governed by an open-skies agreement that eliminates all bilateral agreement barriers to entry and provides the opportunity for other airlines to freely enter and meet the needs of consumers in this market. We see no reason why U.S. airlines could not begin new service to the Republic of Korea if the Joint Applicants charge supra-competitive fares or lower service below competitive levels.

3. The City-Pair Markets

We have reached the same conclusion with respect to the city-pair markets at issue in this proceeding. The record shows that the two airlines do not compete on a nonstop basis in any city-pair market. Delta offers nonstop service in the Atlanta-Tokyo (Narita Airport) market. KAL offers nonstop service in the Anchorage/Chicago/Dallas-Ft. Worth/Honolulu/New York (JFK Airport)/Los Angeles/San Francisco/Washington, D.C. (Dulles Airport)-Seoul Incheon International Airport markets; and the Los Angeles-Tokyo (Narita Airport) market. *See* Exhibit JA-5. Since Delta does not operate flights to the Republic of Korea, it does not offer connecting services in KAL's nonstop U.S.-Korea markets. In addition, other U.S. and foreign airlines provide competitive services in those markets and in the other transpacific markets served by either Delta or KAL. We find that the alliance therefore will not eliminate or substantially reduce competition in any city-pair market.

B. Public Interest Issues

Under §41309, we must determine whether the Alliance Agreements would be adverse to the public interest. Section 41308 requires a similar public interest examination. Except as noted, we find that approval of the Alliance Agreements will promote the public interest.

For the reasons explained above, we have found that approving the Alliance Agreements will benefit the traveling public, taking into account the conditions imposed by the Department, because they will enable Delta and KAL to offer new services and to operate more efficiently. The proposed arrangement is unlikely to reduce competition substantially in any relevant markets, and is otherwise in the public interest

VI. Grant of Antitrust Immunity

We have the discretion to grant antitrust immunity to agreements approved by us under §41309 if we find that immunity is required by the public interest. It is not our policy to confer antitrust immunity simply on the grounds that an agreement does not violate the antitrust laws. However, we are willing to grant immunity if the parties to such an agreement would not otherwise go forward, and if we find that the public interest requires the grant of antitrust immunity.

The record shows that Delta and KAL will not proceed with the Alliance Agreements without antitrust immunity.²⁹ The Joint Applicants claim that they cannot accomplish the public benefits that they seek to achieve through the formation of this alliance absent antitrust immunity. They indicate that they plan to coordinate all of their U.S.-Far East business activities, including pricing, scheduling, route planning, marketing, sales, and inventory control. They state that their proposed integration of services will surely expose them to antitrust risk.

Since the antitrust laws allow competitors to engage in joint ventures that are pro-competitive, we think it unlikely that the integration of the Joint Applicants' services would be found to violate the antitrust laws, subject to the conditions being imposed here by us. Nevertheless, the record suggests that the Joint Applicants could be subject to extensive and burdensome antitrust litigation if we did not grant their request. The record also persuades us that they will not proceed without it.

While concluding that we should approve and give immunity to the alliance,³⁰ we find, as discussed next, that certain conditions are necessary to allow us to find that our actions in these matters are in the public interest.

VII. IATA Tariff Coordination Issue

As we have found in earlier decisions, it is contrary to the public interest to permit immunized alliances to participate in certain price-related coordination that is now immunized within IATA tariff coordination. We therefore have decided to condition our approval and grant of antitrust immunity to the Alliance Agreements by requiring the Joint Applicants to withdraw from participation in any IATA tariff conference activities that affect or discuss any proposed through fares, rates or charges applicable between the United States and the Republic of Korea, or between the United States and any other countries designating an airline that has been or is subsequently granted antitrust immunity by the Department for participation in similar immunized alliances.³¹

²⁹ Application at 6.

³⁰ The immunity that we propose to grant here would apply solely with respect to transactions between the Joint Applicants and their wholly-owned affiliates. The immunity would not extend to code-share operations or other coordinated activities involved in such transactions to the extent applying to airlines other than the Joint Applicants and their wholly-owned affiliates.

³¹ This condition currently applies to prices between the United States and the Netherlands; between the United States and Germany (*see* Order 96-5-27 at 17); between the United States and Denmark, Norway,

Under this condition, the Joint Applicants may not participate in IATA tariff coordination activities affecting fares, rates and charges between the United States and the Republic of Korea, and between the United States and the homelands of their similarly immunized alliance competitors. Through prices between the U.S. and other countries, as well as all local fares in intermediate and beyond markets, are not covered by the condition.³²

We find that this condition is in the public interest for a number of reasons. The immunity that is requested in this proceeding includes broad coverage of price coordination activities between the Joint Applicants. With respect to internal Alliance needs, tariff coordination through the IATA conference mechanism is duplicative and unnecessary. At the same time, one of the reasons that we find supports immunity for the proposed activities is the potential for increased price competition between the partners and other carriers, particularly other international alliances. We have found that such potential competition will, on balance, outweigh any potential anticompetitive effects of price coordination within the Alliance itself and encourage the passing on of economic efficiencies realized by the Alliance to consumers in the form of lower prices. We have previously found in similar cases that competition is undermined if the Joint Applicants are permitted to continue tariff coordination within IATA.

and Sweden (*see* Order 96-11-1 at 23); between the United States and Austria (*see* Order 2001-1-19 at 16); between the United States and Chile (*see* Order 99-9-9 at 21); between the United States and Belgium (*see* Order 2000-5-13 at 3-4); between the United States and Malaysia (*see* Order 2000-10-12 at 14); between the United States and Iceland (*see* Order 2000-10-13 at 16); between the United States and Panama (*see* Order 2001-2-5 at 14); between the United States and New Zealand (*see* Order 2001-4-2 at 3); and between the United States and the Czech Republic, France, and Italy (*see* Order 2002-1-6 at 7). Also, by letter dated May 8, 1996, Northwest and KLM indicated their willingness to limit voluntarily their participation in IATA (*see* Dockets OST-96-1116 and OST-95-618).

³² In addition to the foreign applicants' homelands, under this condition, the partners could not participate in IATA discussions of the total ("through") price (*see* 14 C.F.R. § 221.4) between a U.S. point of origin or destination and an origin or destination in Austria, Belgium, Chile, the Czech Republic, Denmark, France, Germany, Iceland, Italy, Malaysia, the Netherlands, New Zealand, Norway, Panama, and Sweden, or a homeland of a subsequently immunized alliance, whether such prices are offered for direct, on-line or interline service. They could, however, discuss local segment prices, arbitraries or generic fare construction rules that have independent applicability outside such markets. IATA activities covered by our condition would include all those discussing prices proposed for agreement, including both meetings and exchanges of documents such as those preceding meetings and those used in mail votes.

VIII. O&D Survey Data Reporting Requirement

We have access to market data where U.S. carriers operate, including markets that they serve jointly with foreign airlines, for example, the Department's Origin-Destination Survey of Airline Passenger Traffic (O&D Survey). We have also collected special O&D Survey code-share reports for certain large alliances and have directed all other U.S. airlines to file reports for their transatlantic code-share operations beginning with the second quarter of 1996.

However, we receive no market information for passengers traveling to or from the U.S. when their entire trip is on foreign airlines, except for T-100 data for nonstop and single-plane markets. Such passengers account for a substantial portion of all O&D traffic between the U.S. and foreign cities, and the absence of such information severely handicaps our ability to evaluate the economic and competitive consequences of the decisions we must make on international air service.

We must also ensure that our grant of antitrust immunity does not lead to anticompetitive consequences. As in previous cases,³³ we have decided to require KAL (Delta already reports O&D Survey data) to report full-itinerary Origin-Destination Survey of Airline Passenger Traffic for all passenger itineraries that contain a United States point (similar to the O&D Survey data already reported by Delta).³⁴

To prevent this reporting requirement from having any anticompetitive consequences, we have decided to grant confidentiality to the KAL Origin-Destination reports and special report on code-share passengers. Currently, we grant confidential treatment to international Origin-Destination data. We provide these data confidential treatment because of the potentially damaging competitive impact on U.S. airlines and the potential adverse effect upon the public interest that would result from unilateral disclosure of these data (data covering the operations of foreign airlines that are similar to the information collected in the Passenger O&D Survey are generally not available to the Department, to U.S. airlines, or to other U.S. interests).

Our regulation, 14 C.F.R. Part 241 section 19-7(d)(1), provides for disclosure of international O&D Survey data to air carriers directly participating in and contributing to the O&D Survey. While we have found it appropriate to direct KAL to provide certain limited Origin-Destination data to the O&D Survey, KAL is not an air carrier within the meaning of Part 241. The regulation (14 C.F.R. Part 241, Section 03) defines an air carrier as "[a]ny citizen of the United States who undertakes, whether directly or indirectly or by a lease or any other arrangement, to engage in air transportation." KAL accordingly will have no access to the data filed by U.S. air carriers.

³³ See, e.g., Order 2002-1-6 at 7, Docket OST-2001-10429 (Delta-Air France-Alitalia-CSA request for antitrust immunity).

³⁴ Consistent with our determinations in Orders 96-7-21, 96-11-1, and 99-9-9 we intend to request other foreign airline partners of immunized international alliances to submit O&D Survey data and condition any further grants of antitrust immunity on provision of such data. We will treat the foreign carriers' O&D data as confidential, will not allow U.S. airlines any access to the data, and will not allow foreign airlines any access to U.S. carrier O&D Survey data. We will use these data only for internal analytical purposes.

Moreover, we will be making KAL's submissions confidential while maintaining the current restriction on access to U.S. air carrier Origin-Destination data by foreign air carriers.

IX. Computer Reservations System (CRS) Issues

Another competitive issue concerns ownership interests that the Joint Applicants have in competing CRSs. We note that the Joint Applicants recognize that immunity will not extend to their management of any interest they may have in individual CRSs.³⁵

X. Operation under a Common Name/Consumer Issues

Since operation of the Alliance Agreements could raise important consumer issues and "holding out" questions, if the Joint Applicants choose to operate under a common name or use common brands, they will have to seek separate approval from the Department prior to such operations. For example, it is Department policy to consider the use of a single air carrier designator code by two or more airlines to be unfair and deceptive and in violation of the Act unless the airlines give reasonable and timely notice to passengers of the actual operator of the aircraft.³⁶

XI. Summary

We grant approval and antitrust immunity to the Alliance Agreements, as described in this order. We also direct the Joint Applicants to resubmit the Alliance Agreements for review before January 18, 2007. However, the Department is not authorizing the Joint Applicants to operate under a common name. If they decide to operate under a common name, they will have to comply with our relevant procedures before implementing the change.

We also direct the Joint Applicants to withdraw from all IATA tariff conference activities relating to through fares, rates or charges between the United States and the Republic of Korea, and/or between the United States and any other countries whose designated airlines participate in similar agreements with U.S. airlines that have been or are subsequently granted antitrust immunity by the Department; and file all subsidiary and/or subsequent agreements with the Department for prior approval. We also direct KAL to report full-itinerary O&D Survey data for all passenger itineraries that contain a United States point (similar to the O&D Survey data already reported by Delta Air Lines).

³⁵ Application at 29.

³⁶ See 14 C.F.R. Part 257.

Accordingly:

1. We approve and grant antitrust immunity to the Alliance Agreements between and among Delta Air Lines, Inc., Korean Air Lines Co., Ltd., Société Air France, Alitalia-Linee Aeree Italiane-S.p.A., and Czech Airlines, and their wholly-owned affiliates, in so far as the Alliance Agreements relate to foreign air transportation,³⁷ and subject to the provisions that the antitrust immunity will not cover any activities of the Joint Applicants as owners or marketers of Amadeus, Galileo, and Worldspan computer reservation systems businesses, and subject to the terms, limits and conditions set forth in Order 2002-1-6 (Docket OST-2001-10429);

2. We direct Delta Air Lines, Inc., Korean Air Lines Co., Ltd., Société Air France, Alitalia-Linee Aeree Italiane-S.p.A., and Czech Airlines, and their wholly-owned affiliates, to resubmit their Alliance Agreements before January 18, 2007;

3. We condition our grant of approval and immunity to require Delta Air Lines, Inc., Korean Air Lines Co., Ltd., Société Air France, Alitalia-Linee Aeree Italiane-S.p.A., and Czech Airlines, and their wholly-owned affiliates, to withdraw from participation in any International Air Transport Association tariff conference activities that discuss any proposed through fares, rates or charges applicable between the United States and the Republic of Korea, and/or between the United States and any other countries whose designated airlines participate in similar transactions with U.S. airlines or are subsequently granted antitrust immunity by the Department;

4. We direct Korean Air Lines Co., Ltd. to report full-itinerary Origin-Destination Survey of Airline Passenger Traffic for all passenger itineraries that include a United States point (similar to the O&D Survey data already reported by its alliance partner Delta Air Lines, Inc.). The full itinerary record is defined as the passenger's complete itinerary from origin to destination as opposed to the abbreviated gateway record reported under T100(f);

5. We direct Delta Air Lines, Inc., Korean Air Lines Co., Ltd., Société Air France, Alitalia-Linee Aeree Italiane-S.p.A., and Czech Airlines, and their wholly-owned affiliates, to submit any subsequent subsidiary agreements implementing the Alliance Agreements for prior approval;³⁸

6. We direct Delta Air Lines, Inc., Korean Air Lines Co., Ltd., Société Air France, Alitalia-Linee Aeree Italiane-S.p.A., and Czech Airlines, and their wholly-owned affiliates, to obtain prior

³⁷ The immunity that we grant here would apply solely with respect to transactions between and among the Joint Applicants and their wholly-owned affiliates. The immunity would not extend to code-share operations or other coordinated activities involved in such transactions to the extent applying to airlines other than the Joint Applicants and their wholly-owned affiliates.

³⁸ Regarding this requirement, we do not expect the Joint Applicants to provide the Department with minor technical understandings that are necessary to implement fully their day-to-day operations but that have no additional substantive significance. We do, however, expect and direct them to provide the Department with all contractual instruments that may materially alter, modify, or amend the Alliance Agreements. Any appropriate documents shall be submitted to the Director, Office of Aviation Analysis, Room 6401.

approval from the Department if they choose to operate or hold out service under a common name or use common brands;

7. We delegate to the Director, Office of International Aviation, the authority to determine the applicability of the directive set forth in ordering paragraph 3 to specific prices, markets, and tariff coordination activities, consistent with the scope and purpose of the condition, as previously described;

8. This order is effective immediately;

9. We may amend, modify, or revoke this authority at any time without hearing; and

10. We shall serve this order on all persons on the service list in this docket.

By:

READ C. VAN DE WATER
Assistant Secretary for Aviation
and International Affairs

(SEAL)

*An electronic version of this document is available on the World Wide Web at:
<http://dms.dot.gov/search>*