**BEFORE THE**
**DEPARTMENT OF TRANSPORTATION**
**WASHINGTON, D.C.**

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| **U.S. - U.K. ALLIANCE CASE** | ) | **Docket OST-2001-11029** |

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| **Joint Application of**<br><br>**AMERICAN AIRLINES, INC.**<br>**and**<br>**BRITISH AIRWAYS PLC**<br><br>under 14 C.F.R. Part 212 and 49 U.S.C. 4019 for statements of authorization and related exemption authority (reciprocal codesharing) | ) | **Docket OST-2002-13861** |

**ANSWER OF DELTA AIR LINES**
**TO MOTION OF UNITED/BMI**

**December 19, 2002**

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**ANSWER OF DELTA AIR LINES**
**TO MOTION OF UNITED/BMI**

Delta Air Lines, Inc. ("Delta") hereby answers in opposition to the December 10, 2002 Joint Motion of United Airlines, Inc and British Midland Airways Limited (bmi), seeking yet another extension of the expiration date of their conditional grant of antitrust immunity.[1]

By Order 2002-10-6, the Department extended the conditional grant of antitrust

[1] To the extent necessary, Delta requests leave to include these comments in the related American/British Airways U.S.-U.K. codeshare docket.

immunity to United/bmi "until December 31, 2002, while negotiation efforts with the United Kingdom continue." Unfortunately, as aptly put by United/bmi, "in the two months since Order 02-10-6 was issued, nothing has happened . . ." United/bmi at 2.

The United States and the United Kingdom are no closer to a liberalized agreement today than they were two months ago -- or, for that matter, in April 2002, when the Department issued its Final Order in the *U.S.-U.K. Alliance Case*. That Order granted conditional antitrust immunity to United/bmi, contingent upon U.S.-U.K. open skies, and with an express six month expiration condition if open skies was not achieved.

A further extension of time has failed to motivate the United Kingdom to engage in meaningful open skies discussions, and the Department should not continue to entertain an additional concessionary extension in the hope that the U.K. might, one day, change its mind. If and when the United Kingdom does enter into a true open skies agreement, the Department can readily process a new antitrust immunity application that might be presented by the parties.

Recognizing the absence of reciprocity and the lack of willingness to agree to acceptable conditions at the late stages of the *U.S.-U.K. Alliance Case*, American and British Airways withdrew their alliance proposal in its entirety, while United/bmi were granted a sort-term reprieve for their alliance, based on the Department's desire to encourage the U.K. to enter into negotiations. Now, nearly a year later, United/bmi

continue to seek perpetual renewals for their immunized alliance and American and British Airways have resurrected their codeshare proposal. If the Department believes that either of these applications deserves further consideration, it should, as it did before, institute a consolidated proceeding to determine whether the overall state of reciprocity with the UK is now sufficient to support these requests.

Delta submits that there have been no recent developments with respect to the U.S.-U.K. aviation relationship that would warrant approval of these renewed requests. The U.K. government continues to rebuff U.S. efforts to liberalize the restrictive Bermuda II agreement in a manner that would provide Delta and other U.S. carriers with critical access to the restricted London Heathrow Airport, the most important gateway in Europe. So long as Delta and other U.S. carriers are barred from serving London Heathrow and from effectively competing for the crucial U.S.-U.K. component of U.S.-Europe traffic, the Department should not extend antitrust immunity for United/bmi or allow American and British Airways to codeshare.

WHEREFORE, Delta opposes the United/bmi motion, and urges the Department to allow the conditional grant of antitrust immunity to expire according to the automatic expiration terms established by Order 2002-10-6.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Reply has been served this 19th day of December 2002, upon each of the following persons in accordance with the Department's rules.

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