BEFORE THE
DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.

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

ANSWER OF DELTA AIR LINES TO MOTION OF UNITED/BMI

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June 17, 2003

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Delta Air Lines, Inc. ("Delta") hereby answers in opposition to the Joint Motion of United Airlines, Inc and British Midland Airways Limited (bmi), *et al.* United and bmi seek unprecedented approval to implement their antitrust-immunized alliance under the highly restrictive Bermuda II agreement -- without regard to the failure of the United Kingdom to enter into an open skies agreement -- an express term of their conditional approval. In the alternative, United and bmi seek extension of this temporary, conditional immunity for a further *seven year* period, until December 31, 2010.

Neither of these requests is in the public interest, and the Department should deny the United/bmi motion.

The proposal of United/bmi to implement an immunized Heathrow alliance under restrictive Bermuda II agreement should be a non-starter. The Department has made clear that the existence of an open skies agreement is an absolute and

"fundamental predicate" to antitrust immunity, and, that the unique access restrictions affecting London Heathrow alliances will require *more, not less*, in the way of meaningful competitive assurances. *See, e.g.* Order 99-7-22.

There is no longer any legitimate basis for yet another extension of the automatic expiration condition, last modified by Order 2002-12-22. The entire point of extending conditional antitrust immunity to United/bmi was to foster entry into a new liberalized agreement "while negotiation efforts with the United Kingdom continue." Order 2002-10-6.

Those negotiation efforts ended in disappointment. The further extension of time granted by Order 2002-12-22 failed to motivate the United Kingdom to engage in meaningful open skies discussions, and the Department should not continue to entertain additional concessionary extensions in the hope that the U.K. might, one day, change its mind. United/bmi's proposal for a *seven year* extension of their conditional authority is counter-productive to the Department's original intent of providing a negotiating catalyst.

Furthermore, since the United Kingdom elected to pass on the United States' last bilateral overtures, negotiations over open skies will inevitably be a long process now that the United Kingdom must share negotiating authority with the EU.

It is time for the Department to enforce the expiration condition in order to preserve credibility for future negotiations. If and when the United Kingdom does

enter into a true open skies agreement, the Department can readily process any new antitrust immunity application that might be presented by the parties. The Department cannot make a responsible decision to pre-approve implementation of the United/bmi alliance up to seven years from now, when it has no idea of what U.S.-Heathrow marketplace circumstances will exist at that time. Nor should the Department and interested parties be burdened with repeated consideration of short-term renewals of this authority, which no longer serves any public interest purpose.

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 2002-12-22.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Reply has been served this 17th day of June 2003, upon each of the following persons in accordance with the Department's rules.

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