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BEFORE THE  
DEPARTMENT OF TRANSPORTATION  
WASHINGTON, D. C.

DEPT. OF TRANSPORTATION  
DOCKET SECTION  
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Joint Application of :  
 :  
 UNITED AIR LINES, INC. :  
 and :  
 SCANDINAVIAN AIRLINES SYSTEM (SAS) :  
 :  
 under 49 USC 41308 and 41309 for :  
 approval of and antitrust immunity :  
 for an expanded alliance agreement :  
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OST-96-1411 - 9

COMMENTS OF AMERICAN AIRLINES, INC.

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August 8, 1996

9/1/96

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DEPARTMENT OF TRANSPORTATION  
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COMMENTS OF AMERICAN AIRLINES, INC.

American Airlines, Inc., pursuant to Order 96-7-25, July 18, 1996, hereby comments on the joint application of United Air Lines, Inc. and Scandinavian Airlines System (SAS) for antitrust immunity under 49 USC 41308 and 41309.

While American does not oppose the United/SAS application, American wishes to bring to the Department's attention the fact that United seems to have two sets of rules for carrier alliances in international markets -- one for itself and its allies, and another for everyone else.

● Just a few days ago, on August 5, 1996, United petitioned for reconsideration of Order 96-7-21, July 15, 1996, by which the Department approved and immunized the American/Canadian Airlines International alliance. In its petition,

United asserted that the Department erred by not "contemporaneously" considering the American/Canadian application, filed on November 3, 1995 (OST-95-792), with the United/Air Canada immunity application, filed seven months later on June 4, 1996 (OST-96-1434). Applying United's theory here, the Department should defer any processing of the United/SAS application until it can contemporaneously consider the American/British Airways application, even though such an application has not yet been submitted.

- Prior to its most recent petition for reconsideration, United doggedly opposed the American/Canadian immunity application in three other pleadings: a motion to defer on January 25, 1996; comments on February 6, 1996; and comments on June 4, 1996 (OST-95-792). United declared that "this is not the time for the Department to be considering the grant of antitrust immunity to a marketing alliance among American, the largest U.S.-flag transborder competitor, Canadian International, and their regional affiliates" (comments, February 6, 1996, p. 2). Yet OST-96-1434, United is now seeking antitrust immunity with Air Canada, which is almost six times larger than Canadian in transborder frequencies. Moreover, the combined United/Air Canada frequency share is more than double the share of American and Canadian.

- On July 23, 1996, United filed in opposition to the proposed American/TACA Group arrangement (Dockets OST-96-1511, et al.), in which the applicants are not seeking anti-trust immunity but merely authority for code-sharing, presenting contrived HHI shares that the Department has not found reliable even in immunity proceedings, and that United itself sharply criticized as an inappropriate analytical tool in the United/Lufthansa proceeding (OST-96-1116, joint reply, April 12, 1996, pp. 11-12). Yet as illustrated by Attachment 1, if the HHI exercise that United seeks to apply to the American/TACA Group proposal were used in Docket OST-96-1434, immunity for the United/Air Canada alliance should be disapproved under United's own theory.

- United has also opposed several other code-sharing arrangements that American has entered into with foreign carriers, including ones involving South African Airways, LOT Polish Airlines, El Al, and Transaero, notwithstanding the Department's well-established policy favoring code-sharing in international markets as pro-competitive and pro-consumer.

- In one of the most recent manifestations of United's chronic double standard, United has made public statements in opposition to the proposed alliance between American and British Airways. United's statements are particularly disingenuous since United already has in place a world-

wide alliance with Lufthansa, as to which the Department granted antitrust immunity in an extraordinarily expedited proceeding earlier this year. See Order 96-5-27, May 20, 1996. While the ostensible basis for United's opposition to the American/British Airways alliance is Heathrow slots, the fact is that United and Lufthansa combined have a far higher percentage of slots (52.6 percent) at Frankfurt, one of Europe's most congested airports, than American and British Airways have at Heathrow (41 percent), as shown in Attachment 2. When the SAS Heathrow slots are included, the United/Lufthansa/SAS total rises to 54 percent. Moreover, United was permitted, over American's objection, to place Heathrow slots with Lufthansa under a slot exchange agreement. See Order 94-4-43, April 28, 1994. Having turned Heathrow slots over to Lufthansa, United has no standing to raise Heathrow access as an issue against American and BA.

- In the United/Lufthansa immunity proceeding, OST-96-1116, both Northwest and TWA argued that the lack of available slots at Frankfurt would impede U.S. airlines' ability to compete. United and Lufthansa responded that slot allocation at German airports is administered under a European Union regulation, and Lufthansa has no legal role in determining slot availability. The Department did not impose any slot conditions in granting immunity to the United/Lufthansa alliance.

See Order 96-5-12, May 9, 1996, p. 23 (show-cause); Order 96-5-27, May 20, 1996 (final). Even though the same EU regulation applies at Heathrow, United is advocating that slot conditions that it said were inappropriate for itself and Lufthansa should be imposed on American and BA.

In short, after achieving antitrust immunity for its worldwide alliance with Lufthansa, United is now seeking immunity for similar arrangements with both SAS and with Air Canada. As the leading U.S. carrier proponent of antitrust immunity for alliances with monopoly or near-monopoly foreign homeland carriers in Europe (Lufthansa and SAS), and with the dominant homeland carrier in Canada (Air Canada), United's continuous opposition to the alliances of its competitors is hypocritical and unprincipled.

American repeats that it does not object to approval of the United/SAS application. What American does object to is United's blatant double standard, which would have the Department apply one set of rules to United and its allies, and another set of rules to its competitors.

Respectfully submitted,



CARL B. NELSON, JR.  
Associate General Counsel  
American Airlines, Inc.

August 8, 1996

ATTACHMENT 1

<u>Carrier</u>	<u>Nonstop Frequency Share</u>	<u>Pre-Alliance HHI</u>	<u>Post-Alliance HHI</u>
<u>CHICAGO-TORONTO</u>			
Air Canada	30.7	942	3,102
United	25.0	625	-
American	30.0	1,962	1,962
Canadian	<u>14.3</u>	<u>-</u>	<u>-</u>
Total	100.0	3,529	5,064
<u>SAN FRANCISCO-TORONTO</u>			
Air Canada	75.0	5,625	10,000
United	<u>25.0</u>	<u>625</u>	<u>-</u>
Total	100.0	6,250	10,000

SOURCE: Published airline schedules, Reed Travel Group, effective August 16, 1996; extracted August 1, 1996

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Consolidated answer of United Air Lines to American/TACA Group, Dockets OST-96-1511, et al., July 23, 1996, p. 21:

"[A] merger of American and the TACA Combine carriers would substantially reduce competition.... [T]he pre-agreement Herfindahl-Hirshman Index ('HHI') already exceeds 1800..., and an alliance among the parties would increase the HHI by well over 100 points, resulting in extremely concentrated post-alliance markets."

## Frequency Share at European Hubs

Frankfurt		
Carrier	RT Freqs	Share 1/
Lufthansa	1,946	49.8%
Delta	119	3.1%
Condor	95	2.4%
British Airways	81	2.1%
Tyrolean	76	1.9%
Aero-Lloyd 2/	75	1.9%
Air France	61	1.6%
Eurowings	58	1.5%
Alitalia	55	1.4%
Scandinavian	46	1.2%
Other	1,292	33.1%
<b>Total</b>	<b>3,905</b>	<b>100.0%</b>

U/LH/SK 3/                      2,101                      54%

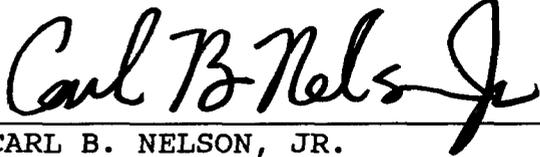
- 1/ Determined by slot holdings.  
 2/ Non-scheduled carrier.  
 3/ Includes Condor.

London Heathrow		
Carrier	RT Freqs	Share
British Airways	1,623	38.8%
British Midland	537	12.8%
Lufthansa	203	4.9%
Aer Lingus	156	3.7%
Scandinavian	140	3.4%
Iberia	97	2.3%
KLM	96	2.3%
American	91	2.2%
United	91	2.2%
Alitalia	84	2.0%
Other	1,062	25.4%
<b>Total</b>	<b>4,179</b>	<b>100.0%</b>

AA/BA                                      1,714                                      41%

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing Comments by fax on United and SAS, and by first-class mail on all persons named on the service list attached to their joint application.

  
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CARL B. NELSON, JR.

August 8, 1996