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BEFORE THE
DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.

Joint Application of UNITED AIR LINES, INC. and AIR CANADA for Approval of and Antitrust Immunity for an Alliance Expansion Agreement under 49 U.S.C. §§41308 and 41309	Docket OST-96-1434 – 14

RESPONSE OF UNITED AIR LINES, INC.

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DATED: August 13, 1996

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RESPONSE OF UNITED AIR LINES, INC.

United Air Lines, Inc. ("United") submits the following response to the "Comments" of American Airlines, Inc. ("American") dated August 2, 1996, in the captioned proceeding:[1/]

1. In its "Comments" American specifically states that it "does not oppose the United/Air Canada application." (Comments at 1; see also Comments at 5) Indeed, American could hardly oppose the relief requested by United and Air Canada after having been granted the same relief itself less than a month ago. American, however, has chosen to use the Department's procedures as an occasion to submit an irrelevant diatribe containing misstatements relating to positions taken by United in

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[1/] United is also joining in a Consolidated Joint Reply relating to the answers of other carriers which objected to the Joint Application herein.

proceedings having no connection to this one. It is, no doubt, American's goal to use this type of submission to delay the Department's decision in this proceeding. Such delaying tactics are motivated by American's desire to protect for as long as possible its own transborder alliance from the competition of a combined United/Air Canada alliance.

United urges the Department not to condone American's harassing tactics but to reject its Comments as irrelevant to the Department's consideration of the issues in this proceeding. To that end, United submits the following response to American's arguments.

2. American first argues that United has adopted a double standard by having initially opposed immunization of the American/CAI alliance and then turned around and sought the same relief for its own alliance. American ignores the fact that the American/CAI application was also opposed by Continental, Delta, Northwest and TWA. United opposed the American/CAI application only to the extent that the application was premature. In previous cases, absent an open skies agreement, which in the case of Canada does not become effective until February 1998, the Department had consistently held that antitrust immunity was inappropriate. Continental, Northwest and Delta opposed the American/CAI application on similar grounds, and have objected to the United/Air Canada application for similar reasons.

The Department, however, rejected this position. In the American/CAI proceeding, the Department adopted a new position on antitrust immunity for alliances where a bilateral agreement contained terms phasing in "open skies" provisions. Notwithstanding its consistent previous requirement of a full "open skies" agreement as a prerequisite for antitrust immunity, the Department adopted a new and different standard for the U.S.-Canada market based on unique factors not applicable to other international markets.

United throughout the American/CAI proceeding made clear that it was relying upon the Department's pre-existing requirement for and definition of an "open skies" agreement while noting its own interest in obtaining approval and immunization of its alliance with Air Canada at the time full "open skies" was achieved with Canada. Once the Department declared that the terms of the U.S.-Canada agreement already qualified such an alliance for approval, United and Air Canada moved immediately to seek the Department's approval of their own alliance. They now seek approval of their alliance on the same basis as that applied to American/CAI, not some double standard, as American would suggest.

3. American also claims that United's objections to several past and pending American code-sharing relationships are somehow inconsistent with United's instant request for antitrust immunity. American cites, in this regard, United's position on

several cases arising under factual circumstances far removed from those in this proceeding. In the pending case of the American/TACA code share, United, as well as other U.S. carriers, objected on the basis of the foreclosure of U.S. carrier competition in the entire Central American region that would result from that code-share arrangement. In that case, the two dominant carriers are seeking to combine services and control 70% of the market. United's 9.2% of the U.S.-Canada market pales in comparison to American's 33% of the U.S.-Central America market. In fact, no significant code-share alliance involves the combination of such significant market shares; that is, no alliance until American and British Airways file their application to combine for a 60 percent share of the U.S.-U.K. market.[2/]

Indeed, American seems to have a penchant for seeking out code-share partners only in those countries where other U.S. carriers will lack the ability to compete. Having opposed code

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[2/] In the other cases cited (American's code shares with SAA, LOT, El Al and Transaero) United, as well as other U.S. carriers, objected to approval in circumstances where the foreign homelands of American's partners had refused to allow other U.S. carriers to code share with partners of their choice, both U.S. and foreign flag. It should be noted that the objections raised by United and others to American's anticompetitive code shares have borne fruit in the cases of South Africa and Poland where the governments have entered into bilateral agreements with the U.S. which allow other U.S. carrier code shares to operate in order to gain approvals for their own carriers to code share with American.

sharing for so long as an "unfair practice that deceives, misleads and confuses consumers," American now seeks to force its prediction to come true.[3] By definition, alliances are only good for the consumer where the benefits of the alliance (such as the expansion of a route network) outweigh the potential competitive risks from increased market concentration. American seems to have honed its ability to maximize the latter while ignoring the former. Now that a competing carrier would object to its tactics, it is crying "foul."

4. Finally, American claims that United is hypocritically opposing approval of American's alliance with British Airways, citing United's own alliance with Lufthansa as evidence. What that has to do with this proceeding is something of a puzzle. In any event, United has consistently stated that the American/British Airways alliance should be approved if it can meet the same competitive standards that the Department applied to the United/Lufthansa alliance. This will require a full "open skies" agreement, which the British government has thus far shown little interest in signing. Moreover, because of the 20 year legacy of protection for British Airways' position at Heathrow under the Bermuda II agreement, there must be immediate and meaningful access to slots and facilities for other carriers at Heathrow, as

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[3] Answer of American, dated January 10, 1994, in Docket 49223 at 4.

well as other congested airports, that will be needed in order to compete with the American/British Airways alliance.

The U.S./Germany market did not suffer from such a legacy. All U.S. carriers have been able to serve Frankfurt from their U.S. hubs since at least 1978. As the Department found in approving the United/Lufthansa alliance:

> ... the record of this case does not indicate that the commenters have been denied slot access for new or expanded operations at Frankfurt airport. The ability of other U.S. airlines to increase service on U.S.-Frankfurt routes suggests that the slot restrictions at Frankfurt should not prevent entry.

Order 96-5-12 at 23.

The same conditions do not exist at Heathrow:

	LHR	FRA
Slots Available	No	Yes
Facilities Available	No	Yes
Open 5th Freedom Rights	No	Yes
Competing Hub	None	Delta
Open Pricing	No	Yes
One-Stop Competition	No	Yes
U.S. carriers	2	8

American further claims (p. 4) that United is inconsistent in urging Heathrow slot conditions on the American/British Airways alliance when none were applied to the United/Lufthansa approval. Once again, American has a short memory when it comes

to double standards. Less than 3 years ago American itself was the loudest critic of slot allocation procedures at Heathrow. Thus, American claimed that it was unable to institute services between Philadelphia and London because of "the failure of the Government of the United Kingdom to ensure the availability of Heathrow slots." Reply of American, in Docket 48940, dated August 24, 1993, at 3. When British Airways urged American to comply with normal Heathrow slot exchange procedures by attendance at Heathrow slot coordination meetings, American described these procedures as "futile." These are, of course, the same procedures which American now holds out as the epitome of fairness. American claimed that it would not get slots "unless another carrier -- such as British Airways which commands 40 percent of all slots at Heathrow -- provides them." Id. at 4. Subsequently, American, in opposing expansion of the British Airways/USAir code share, stated categorically: "Until the Heathrow slot issue is settled, BA should have no new rights in the United States." Consolidated Answer of American in Docket 49086, dated August 26, 1993 at 3. (Emphasis in original.)

American's objection to Heathrow slot procedures in connection with its Philadelphia service was not the first occasion on which it criticized those procedures. American had previously requested suspension of British Airways' Miami-London authority because American failed to obtain Heathrow slots at the desired times for a second Miami-Heathrow frequency. Petition of

American dated November 13, 1992. Again, BA in that proceeding urged American to rely on slot swaps pursuant to normal slot coordination procedures. American, as it did in the Philadelphia situation, rejected this procedure as a "fruitless exercise." Response of American, dated December 9, 1992, in Docket 48969 at 8, n.4. American went on to urge the

> United States to tell the United Kingdom that it will not tolerate the kind of restrictiveness and pro-BA bias that underlie American's inability to compete with British Airways in the Miami Heathrow market ... BA's brazen position that American should be content to 'hope' for swaps is completely without merit.

Id. at 3-4.

American seeks to use this proceeding as a subterfuge to shift its position on Heathrow slots quite radically. For American, in these circumstances, to complain that United has adopted a double standard is (to put it as its British partner might) a "bit thick." The Heathrow slot situation is simply not comparable to other airports, such as Frankfurt. Indeed, at Heathrow the slot shortage has only become worse since American was complaining three years ago. Heathrow slots cannot be increased during peak hours even if runway capacity is available due to a shortage of gates and parking spaces in those periods. Frankfurt, by comparison, has just recently increased in its terminal space to deal with this issue.

5. In conclusion, the Department should treat American's "Comments" in this proceeding as what they are -- another in a

long line of harassing tactics by which American hopes to gain an advantage. These "Comments" are irrelevant to this proceeding, misrepresent United's position and are of no substantive merit. As such, American's "Comments" should be summarily rejected and not given any further consideration in this proceeding.

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DATED: August 13, 1996
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CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Response of United Air Lines, Inc. on all persons named on the attached Service List by causing a copy to be sent via first-class mail, postage prepaid.

Brenda Gardner

Brenda Gardner

DATED: August 13, 1996

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