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BEFORE THE  
DEPARTMENT OF TRANSPORTATION  
WASHINGTON, D.C.

Joint Application of )  
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 DELTA AIR LINES, INC., )  
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 SWISSAIR, SWISS AIR TRANSPORT )  
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 COMPANY, LTD., )  
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 SABENA S.A., SABENA BELGIAN WORLD )  
 )  
 AIRLINES, and )  
 )  
 AUSTRIAN AIRLINES, ÖSTERREICHISCHE )  
 )  
 LUFTVERKEHRS AG )  
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 )  
 For approval of and antitrust immunity for Alliance )  
 )  
 Agreements pursuant to 49 U.S.C. §§ 41308 and )  
 )  
 41309. )

Docket OST-95-618-1

**JOINT APPLICATION OF DELTA AIR LINES, INC.,  
SWISSAIR, SWISS AIR TRANSPORT CO., LTD.,  
SABENA S.A., SABENA BELGIAN WORLD AIRLINES,  
AND AUSTRIAN AIRLINES FOR APPROVAL OF AND  
ANTITRUST IMMUNITY FOR ALLIANCE AGREEMENTS**

Notice: Any interested party may, within 21 days of the date of this Application, file comments in support of or in opposition to the Application, pursuant to 14 C.F.R. § 303.32.

104 pgs

Communications with respect to this document should be addressed to:

**William Karas**  
STEPTOE & JOHNSON  
1330 Connecticut Avenue, N.W.  
Washington, D.C. 20036  
(202) 429-6223

Attorney for  
**SWISSAIR, SWISS AIR  
TRANSPORT CO., LTD.**

**R. Tenney Johnson**  
2300 N Street, N.W.  
6th Floor  
Washington, D.C. 20037  
(202) 663-9030

Attorney for  
**SABENA S.A., SABENA BELGIAN  
WORLD AIRLINES**

**J.E. Murdock III**  
SHAW, PITTMAN, POTTS  
& TROWBRIDGE  
2300 N Street, N.W.  
Washington, D.C. 20037  
(202) 663-8342

Attorney for  
**AUSTRIAN AIRLINES,  
ÖSTERREICHISCHE  
LUFTVERKEHRS AG**

**Robert E. Cohn**  
SHAW, PITTMAN, POTTS  
& TROWBRIDGE  
2300 N Street, N.W.  
Washington, D.C. 20037  
(202) 663-8060

Attorney for  
**DELTA AIR LINES, INC.**

**John J. Varley**  
General Attorney  
DELTA AIR LINES, INC.  
Law Department #986  
1030 Delta Boulevard  
Atlanta, Georgia 30320  
(404) 715-2872

and

**D. Scott Yohe**  
Vice President - Government Affairs  
DELTA AIR LINES, INC.  
1629 K Street, N.W.  
Washington, D.C. 20006  
(202) 296-6464

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## TABLE OF CONTENTS

	<u>Page</u>
<b>I. INTRODUCTION AND BACKGROUND .....</b>	1
<b>II. THE DELTA-SWISSAIR/SABENA/AUSTRIAN ALLIANCE AGREEMENTS .....</b>	9
<b>III. THE ALLIANCE AGREEMENTS SHOULD BE APPROVED UNDER 49 U.S.C. § 41309 AND ANTITRUST IMMUNITY SHOULD BE GRANTED UNDER 49 U.S.C. § 41308 .....</b>	14
<b>A. Grant Of The Joint Application Would Provide Important Public Benefits That Would Not Otherwise Be Possible .....</b>	14
<b>B. Foreign Policy Considerations Support Approval Of And Grant Of Antitrust Immunity To The Alliance Agreements .....</b>	22
<b>C. The Aviation Act And The Department's Well-Established Precedents Support Approval Of The Alliance Agreements .....</b>	25
<b>1. The Alliance Agreements Will Not Substantially Reduce Or Eliminate Competition Between The United States and Europe .....</b>	25
<b>2. The Alliances Will Not Substantially Reduce Or Eliminate Competition On Any Route .....</b>	29
<b>3. The Joint Application Meets The Department's Standards For Grant Of Antitrust Immunity .....</b>	35
<b>a. Grant Of Antitrust Immunity Is Required In The Public Interest .....</b>	35
<b>b. The Joint Applicants Will Not Proceed With The Alliance Agreements In The Absence Of Antitrust Immunity .....</b>	42
<b>c. The Approval Of And Grant Of Immunity For The Alliance Agreements Will Accelerate Full Liberalization Of The U.S.-Europe Marketplace .....</b>	43

	<u>Page</u>
<b>IV. OTHER APPROVAL ISSUES .....</b>	<b>44</b>
<b>A. CRS .....</b>	<b>44</b>
<b>B. Duration Of Approvals .....</b>	<b>45</b>
<b>V. CONCLUSION .....</b>	<b>46</b>

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**JOINT APPLICATION OF DELTA AIR LINES, INC.,  
SWISSAIR, SWISS AIR TRANSPORT CO., LTD.,  
SABENA S.A., SABENA BELGIAN WORLD AIRLINES,  
AND AUSTRIAN AIRLINES FOR APPROVAL OF AND  
ANTITRUST IMMUNITY FOR ALLIANCE AGREEMENTS**

**I. INTRODUCTION AND BACKGROUND.**

Delta Air Lines, Inc. ("Delta"), Swissair, Swiss Air Transport Co., Ltd. ("Swissair"), Sabena S.A., Sabena Belgian World Airlines ("Sabena") and Austrian Airlines, Österreichische Luftverkehrs AG ("Austrian") hereby submit this Joint Application for approval of and antitrust immunity for three separate and parallel cooperation agreements ("Cooperation Agreements") between Delta, on the one hand, and each of Swissair, Sabena and Austrian, on the other hand, and a Coordination Agreement among the four applicants covering the coordination of the three parallel Cooperation Agreements

(collectively referred to herein as the "Alliance Agreements") pursuant to 49 U.S.C. §§ 41309 and 41308. Copies of the Alliance Agreements are contained in Exhibits 1A through 1D to this Joint Application.

The Alliance Agreements create legal frameworks which, subject to negotiation and execution of definitive operating agreements consistent with those frameworks, would allow Delta, Swissair, Sabena and Austrian, while retaining their separate corporate and national identities, jointly to cooperate to the extent necessary to create a seamless air transport system. The resulting global alliance would be procompetitive and proconsumer and will bring to the marketplace significant service and pricing benefits through the substantial expansion of online services that would be made possible by linking the hub-and-spoke networks of the respective applicants. The Joint Applicants seek to establish across the Atlantic the same kind of multi-hub network that Delta and other U.S. carriers have successfully created in the domestic U.S. marketplace, and that has proved to be beneficial to U.S. consumers. The proposed network would be similar to the network already created by Northwest and KLM and that has been immunized by the Department. Antitrust immunity is necessary to achieve the benefits of such a multi-hub, multi-carrier network because, as a practical matter, the carriers will not implement the Alliance Agreements without such immunity.

The Alliance Agreements are fully consistent with, and a natural development foreseen in, the recently issued United States International Air Transportation Policy:

To meet demand and to improve their efficiency, many carriers are developing international hub-and-spoke systems that permit them to combine traffic flows from many routes (the

"spokes") at a central point (the "hub") and transport them to another point either directly or through a hub in another region. Just as U.S. carriers developed hub-and-spoke systems to tap the broad traffic pool in the domestic market and to provide the most cost-efficient service for hundreds of communities that could not support direct service, international air carriers are developing world-wide hub-and-spoke systems to tap the substantial pool of international city-pairs. Internationally, an even larger portion of traffic moving over hub-and-spoke systems will require the use of at least two hubs (*e.g.*, a hub in both the U.S. and Europe for a passenger moving from an interior U.S. point to a point beyond the European hub). This increases the complexity and interdependence of the components of the system (both the spokes and hubs) and the importance of multinational traffic rights to the success of the system.

Policy Statement issued April 1995 at 3. As Secretary Peña observed when he unveiled the final Policy Statement:

Although [point-to-point] operations continue to be important components of international air transport, major changes have occurred during the past few years that are challenging traditional notions of these services. Airlines are becoming increasingly global. Route networks are now being linked in alliances consisting of carriers from different nations, with international hub-and-spoke networks that offer passengers on-line service to cities around the world.

Statement of Secretary Peña, April 1995.

Approval of and immunity for the Alliance Agreements will produce substantial public benefits. The proposed Alliance will create network synergies by (1) linking the U.S. and European hubs of the Alliance partners, (2) producing cost efficiencies and savings through integration and coordination which can be passed on to consumers in the

form of lower fares and improved service, and (3) increasing transatlantic competition.

As a GAO Study on airline alliances noted:

In the long run, consumers could pay lower fares, according to many U.S. and foreign airline representatives, as (1) airlines in alliances integrate further and achieve cost efficiencies that could be passed on to the consumer and (2) competition increases among alliances and between alliances and other airlines.

GAO Report, April 1995, GAO/RCED-95-99, at 44-45.

In order to gain these benefits, the applicants have decided to form an alliance, because legal and other obstacles preclude the formation of integrated route systems either individually or through mergers. The applicants have not been able individually to develop and expand an integrated network of U.S.-Europe services on a cost-efficient basis because of bilateral obstacles and the enormous financial burden required to set up meaningful overseas hubs. In addition, prohibitions against cabotage prevent foreign airlines from operating service between domestic U.S. segments. Moreover, the Alliance carriers are not able to achieve these benefits through a merger, although there is little question that such a merger would pass muster under the U.S. antitrust laws. As discussed in detail below, a merger of the applicants would largely be end-to-end and would have little effect on horizontal competition. However, U.S. and foreign laws concerning nationality and ownership effectively preclude mergers of airlines of different nations.

In the absence of a merger, the comprehensive commercial cooperation envisioned by the Alliance Agreements requires the applicants to reach agreements that will expose them to the risk that their coordinated activities would be challenged on antitrust grounds.

Although the joint venture proposed by the carriers would be procompetitive and produce efficiencies, the applicants are not willing to implement the Alliance Agreements unless they are shielded from such attacks. As noted in the GAO Report, "the key benefit of immunity . . . is the protection from legal challenge by other airlines" thereby allowing the carriers "to more closely integrate their operations and marketing than they otherwise would for fear of legal reprisal." GAO Report at 30.

In the absence of immunity it is virtually impossible to engage in the close levels of collaboration and coordination that is necessary to integrate the carriers' respective networks into an effective multi-hub U.S.-Europe alliance. Without antitrust immunity the carriers must confine their cooperative marketing relationships to the current limited code-sharing and similar arrangements on certain routes where the carriers essentially share aircraft space but continue to be marketplace antagonists. The current code-share arrangements between Delta and Austrian, Swissair and Sabena involve ten gateway-to-gateway nonstop transatlantic routes, one one-stop transatlantic route and a handful of intra-Europe city-pairs<sup>1/</sup>, and represent only a small portion of the carriers' total transatlantic services.

While the existing code-share arrangements have been beneficial both to the carriers and their customers,<sup>2/</sup> without closer collaboration the carriers are unable to develop

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<sup>1/</sup> Atlanta-Brussels/Zurich; Boston-Brussels; Chicago-Brussels; Cincinnati-Zurich; New York-Brussels, Geneva, Vienna, Zurich; Washington-Geneva. Delta and Austrian have a code-share arrangement on one-stop service between Washington and Vienna via Geneva. Delta also code-shares with Sabena between Brussels and Germany and with Swissair between Zurich and Germany. See Orders 95-3-17, 94-9-28 and Notice of Action Taken dated January 10, 1995.

<sup>2/</sup> With respect to each code-share operation, each carrier independently prices and markets its own service and competes for traffic on the flights.

the efficiencies and achieve the market expansion benefits that would be available through the proposed Alliance Agreements. Under the current regime, joint sales on commonly-served routes are precluded and, in the absence of the ability to negotiate revenue divisions, the carriers lack the financial incentive to interconnect their networks by coordinating schedules to direct connecting traffic to the code-share flights. As the recent GAO study on airline alliances pointed out: "Without immunity, airlines that are significant competitors cannot discuss pricing issues and must develop prorate agreements in 'arm's length' negotiations to divide revenues, a cumbersome process when thousands of city-pairs are involved." GAO Report at 29.

As the Joint Applicants demonstrate below, approval of the Alliance Agreements coupled with antitrust immunity would be consistent with the statutory standards since such approval would not be adverse to the public interest, and would enhance competition. Furthermore, the grant of antitrust immunity is required by the public interest since it is necessary to enable the parties to proceed with the proposed procompetitive transactions.

Delta, as the U.S. partner to the proposed alliance, submits that the grant of antitrust immunity will advance U.S. international aviation policy objectives. Approval would accelerate liberalization of the U.S.-Europe marketplace, thus achieving an important goal of the Department's Open Skies initiative. The U.S. Open Skies initiative is bringing some pressure within the E.U. for multilateral liberalization. While the Open Skies initiative represents a forward-thinking approach to liberalizing European markets, open skies bilateral agreements with smaller European countries will not be sufficient to

encourage the large and restrictive aviation regimes to eschew their protectionist policies. Actual competitive pressure in the marketplace -- such as would be made possible by the Alliance proposed here -- will change aeropolitical policy. Approval of the proposed Alliance Agreements coupled with antitrust immunity will generate economic and competitive pressures that will create real marketplace incentives that are essential to foster and accelerate meaningful reform. Delta believes that antitrust immunity is a powerful, strategic negotiating tool to encourage foreign governments to eliminate restrictions on U.S. airlines. GAO Report at 54.

As Secretary Peña recently stated:

Some carriers engaged in alliances with foreign airlines have raised the possibility of seeking antitrust immunity from the Department of Transportation, asserting that such immunity is important, if not essential, to maximizing the benefits of integrated alliances. My Department is actively considering this question of antitrust immunity. Where the overall net effect of a particular transaction for which immunity is sought is procompetitive and proconsumer, there may be important benefits to be gained from granting immunity in appropriate cases. The existence of an "open skies" environment, and the elimination of other competitive restrictions, would be key factors in any consideration of a request for immunity.

Statement of Secretary Peña before the Committee on Commerce, Science and Transportation Concerning International Aviation Policy, July 11, 1995 at 13-14. This Application meets the Secretary's expressed objectives.

In addition, approval of the Alliance Agreements and the grant of antitrust immunity is warranted by foreign policy considerations and is consistent with each of the Open Skies accords between the United States and the Governments of Switzerland, Belgium

and Austria. In the Northwest-KLM case, the Department concluded that approval of the Northwest-KLM integration agreement with antitrust immunity was consistent with the spirit of the U.S.-Netherlands Open Skies Agreement. Indeed, even though there was no specific provision in the Netherlands MOU requiring approval, the Department determined that "the Netherlands would consider a denial of immunity contrary to the Open Skies initiative, unless we had a strong basis for a refusal to grant antitrust immunity." Order 93-1-1 at 12. As the GAO Report stated:

In approving the Northwest/KLM application for antitrust immunity, DOT emphasized that the grant of such immunity was consistent with the open skies accord. DOT also implied a favorable treatment of future applications by other U.S. and foreign airlines in exchange for liberal aviation accords.

GAO Report at 52.

The Open Skies accords with Switzerland, Belgium and Austria provide the same compelling basis for grant of immunity as the Netherlands agreement, because they create a framework for the carriers (in Secretary Peña word's), "to participate in the globalization of air services". Statement of Secretary Peña, dated January 27, 1995, announcing the nine-country Open Skies initiative. Indeed, the Belgium and Austrian MOCs explicitly refer to the filing of antitrust immunity applications such as this, and they provide for fair and expeditious consideration of such applications. Switzerland has also made this clear in correspondence with the U.S. Government. As a result, each country could view a denial of this Joint Application as antithetical to the spirit of the Open Skies Agreements.

Uniform, fair and consistent application of regulatory policy requires the Department to accord similar antitrust immunity to the Joint Applicants to avoid a double standard which would place Delta and its European partners at a competitive disadvantage against the antitrust-immunized Northwest-KLM alliance. It would be contrary to public policy for the Department to perpetuate a two-class system under which only one alliance (Northwest-KLM) is accorded unique antitrust treatment not available to other alliances involving carriers from open-skies countries. There are no significant commercial, competitive or aeropolitical distinctions between the instant Alliance Agreements and the Northwest/KLM agreement that would justify denial of antitrust immunity.

The Alliance Agreements are procompetitive. Approval of the Alliance Agreements and the grant of antitrust immunity is consistent with existing law, policy and precedent and is necessary to give effect to the Open Skies Agreements.

## **II. THE DELTA-SWISSAIR/SABENA/AUSTRIAN ALLIANCE AGREEMENTS.**

The four applicants propose to expand their existing cooperative marketing relationships, which have involved point-to-point code-share arrangements on a limited number of routes, by entering into three separate and parallel Cooperation Agreements (between Delta and each of the European carriers) and a Coordination Agreement (among all four carriers) that would cover the coordination of the three parallel Cooperation Agreements (collectively the "Alliance Agreements").<sup>3/</sup> The purpose of the Alliance

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<sup>3/</sup> There exist ownership relationships among the applicants as follows: Delta and Swissair each hold equity interests in each other constituting approximately five percent of the voting common stock of each airline, and Swissair holds a ten percent equity interest in Austrian. On July 19, 1995, the European Commission approved the acquisition by Swissair of 49.5% of Sabena's voting stock.

Agreements is to establish a contractual framework for the future comprehensive collaboration and coordination by the four carriers in a proposed Alliance. If the Alliance Agreements are approved and antitrust immunity is granted, the applicants will then proceed to negotiate and conclude operating accords that will provide for the specific coordination/integration undertakings with respect to scheduling, marketing, planning, joint services and related matters. (The applicants have not made such agreements because, in the absence of immunity, such arrangements might subject the carriers to the risk of an antitrust lawsuit.)

The Alliance Agreements submitted herewith establish a general framework for subsequent definitive agreements that will permit coordination in the following key areas:

1. Marketing and Sales Programs. The coordination and integration of sales personnel of the four carriers and the establishment of joint marketing programs creating a seamless transportation system (including frequent flyer and other similar programs), selling a single product or set of products. This will enable the carriers to gain substantial efficiencies by developing a coordinated approach to sales and marketing, by establishing cooperative sales programs and by deploying the carriers' resources in the most efficient and productive manner.
2. Coordinated Schedules. The coordination of airline schedules, flight networks, route planning, information systems, and third-party marketing to maximize sales by the interconnection of the applicants' systems.

3. Sharing of Revenue/Earnings. The sharing and/or pooling of revenues and earnings in particular Alliance markets to ensure that each carrier is fairly compensated for both the value of its respective service and its contribution to the joint enterprise in order to maximize the incentive of all parties to pursue services, sales and marketing initiatives for the benefit of the Alliance.
4. Coordinated Commission Programs. The coordination of commission programs, including but not limited to agency, corporate and group commissions.
5. Standard Form Contracts. The coordination and standardization of contracts with respect to service providers, travel agents, general sales agents, corporations, organizations and individuals.
6. Coordinated Management Structure. The establishment of management committees to oversee the coordination activities including but not limited to project development, budgets, strategic planning, scheduling, pricing, and policy direction.
7. Joint Use of Accounting Data and Information Systems. The sharing, joint use and coordination of accounting data, information systems, information with respect to marketing, fares, frequent flyer programs, costs and revenues to assist in the development of the proposed Alliance.
8. Coordinated Service Standards and Procedures. The development of mechanisms to promulgate, review and enforce the provision of uniform service

standards such that the coordinated programs of the Alliance carriers will be considered to be seamless and transparent to the customer.

9. Joint Advertising/Media Programs. The establishment of joint advertising and media programs that would jointly promote the Alliance as a seamless, world-wide transportation network.
10. Joint Identities. The development of a joint identity or identities through jointly developed service marks which may include a single, master identity and/or individual local identities, the harmonization of existing identities and service marks of the four carriers, the use of the jointly developed identities on aircraft exteriors and interiors, employee uniforms, facilities and ground equipment, stationery and other similar material.
11. Coordinated Pricing and Inventory Control. The establishment of common pricing and inventory control with respect to all coordinated services, including but not limited to retail fares, prorates, wholesale net fares and corporate discount programs.
12. Coordinated Cargo Programs. The development of coordinated cargo programs which will include the provision of cargo service and the joint sales and marketing of cargo on a worldwide basis to provide the shipper with the benefits of the efficiencies which can be gained by such programs.

The foregoing areas of coordination would allow the carriers to generate significant efficiencies and provide a broad array of enhanced online services. See discussion at

pages 36-40 below of the economic efficiencies and other public benefits that will result from grant of approval and immunity for the Alliance Agreements. The Department's study on code-share and other cooperative arrangements highlighted the benefits that can be garnered through antitrust immunity:

**The strongest type of airline alliance can be formed when two airlines are granted antitrust immunity.** The granting of antitrust exemption permits carriers involved in international alliances to discuss and jointly decide on fare levels and the capacity deployed. . . . The result is that both airlines can aggressively market service in every city-pair market they serve.

**Antitrust immunity is a powerful business tool in permitting carriers that exist as separate corporate entities to act as one business firm.** Absent the legal ability to merge, antitrust immunity may yield many of the benefits of merger while avoiding prohibitions against international ownership.

. . . Antitrust immunity allows alliance partners to share revenue equally, assuring that both carriers can capture the benefits of the alliance.

Study of International Airline Code-Sharing, Prepared for the Office of the Secretary of Transportation, December 9, 1994, Page 9, emphasis added.

**III. THE ALLIANCE AGREEMENTS SHOULD BE APPROVED UNDER 49 U.S.C. § 41309 AND ANTITRUST IMMUNITY SHOULD BE GRANTED UNDER 49 U.S.C. § 41308.**

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**A. Grant Of The Joint Application Would Provide Important Public Benefits That Would Not Otherwise Be Possible.**

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The Alliance Agreements would allow the Joint Applicants to create a multi-hub network of services across the Atlantic, similar to the successful multi-hub networks operated in the domestic U.S. marketplace. The transatlantic market is the world's largest and most competitive international air transport marketplace. The development of a successful transatlantic network is critical to any international carrier's global strategy. The most efficient and competitive way to build a global system is to establish hubs on both sides of the Atlantic to generate and enhance network-to-network traffic flows.

Delta and other U.S. carriers have demonstrated that, through coordination of multiple hubs, many more cities can be served, with greater frequency, via online connections, than would be the case with no hub or with only single hub systems. To maximize competition between the U.S. and Europe, carriers must have the ability to flow traffic over hub-and-spoke systems in both the United States and Europe. It is economically, politically and legally impracticable for Delta to develop and build its own European-based multi-hub network, and likewise for Austrian, Sabena and Swissair to develop their own hub networks in the United States.

Delta has spent hundreds of millions of dollars to acquire and sustain a North Atlantic route system which it acquired from Pan American. Even with the acquisition, most of Delta's transatlantic service involves point-to-point operations. While

Delta's operations at Frankfurt are often referred to as a "hub", Delta operates flights to only eleven European cities from Frankfurt. Frankfurt is not a significant "hub", particularly in comparison to hub operations of European carriers, such as Lufthansa at Frankfurt, British Airways at London, Air France at Paris, and KLM at Amsterdam. Moreover, Delta's ability to expand service at Frankfurt is constrained by restrictions in the U.S.-Germany bilateral aviation agreement and with third countries. Regulatory barriers, restrictive bilaterals with third countries, as well as economic factors also impair Delta's ability to set up a hub network at other European cities. Thus, Delta does not have the ability to compete effectively against European carriers for transatlantic traffic originating in Europe.

The Department has recognized the difficulties faced by carriers in developing their own global networks of direct service noting that there are substantial "obstacles" that prevent U.S. carriers from developing their own global systems of direct service. These obstacles include (1) the lack of "substantial access not only to key hub cities overseas, but also through and beyond them to numerous other cities, mostly in third countries"; (2) the lack of "access to a large number of gates and takeoff/landing slots, frequently at some of the world's most congested airports"; (3) the lack of "considerable financial resources [necessary] to establish and sustain commercially successful overseas hub systems"; and (4) "the [in]ability to obtain infrastructure and establish market presence in a new region quickly." DOT Policy Statement at 3-4.

Furthermore, Delta has relatively limited authority in the largest and most important limited-entry transatlantic market -- the U.K. Delta provides direct service with

its own aircraft to London from only two U.S. gateways and has no authority to operate direct service from its largest international gateway -- New York -- or its hubs at Dallas/Ft. Worth, Orlando, and Los Angeles. Moreover, Delta has no direct access to London's Heathrow Airport (except under a limited code-share arrangement) -- Europe's largest airport and dominant connecting hub.

Swissair, Sabena and Austrian face similar obstacles, but in reverse. While each airline operates a European hub, each has been unable to develop traffic feed systems in the United States for legal (viz., ownership, control and cabotage laws) and practical economic reasons. Moreover, each of these carriers operates from a European gateway that develops relatively few local transatlantic passengers -- much less traffic, for example, than the gateways of British Airways, Air France, Lufthansa, Alitalia, and even less than KLM and SAS. The only way in which Sabena, Swissair and Austrian can compete effectively against their larger European rivals is to develop alliances that will capture traffic flows behind and beyond their gateways both in Europe and in the United States.

Thus, Delta, Swissair, Sabena and Austrian, individually, are at a substantial competitive disadvantage against the larger transatlantic alliances. Moreover, KLM and Northwest have the unique ability to operate as a single merged entity under an anti-trust exemption issued by the Department which allows the two carriers to coordinate marketing plans, services, prices and route strategy and to integrate facilities and personnel to produce economic benefits to both carriers. It is not surprising that Northwest's President has stated that antitrust immunity is one of his company's most valuable

"strategic assets" benefiting its bottom line to the tune of tens of millions of dollars a year. Aviation Daily, August 9, 1994, page 226. In fact, the Northwest-KLM alliance increased traffic over Northwest's flights by about 200,000 passengers in 1994. GAO Report at 27. The combined market share of KLM and Northwest increased from 7% before the alliance to 11.5% in 1994. GAO Report at 30. The antitrust immunized alliance infused up to \$175 million in added revenue to Northwest in 1994 alone, one-third of Northwest's total transatlantic passenger revenues. GAO Report at 28. KLM earned \$100 million in added revenues, equal to 18% of its transatlantic passenger revenues. Id. The GAO Report stated: "The alliance's success is due to the broad scope of the code-sharing network and the degree of integration the airlines have achieved", which was made possible by the antitrust immunity. GAO Report at 28-29. Moreover, these financial results were not the consequence of monopoly pricing -- which is all but impossible in the highly competitive transatlantic market -- but by the proconsumer synergies developed between the two carriers.

The proposed Alliance Agreements are fully consistent with the Department's policy to encourage and facilitate the globalization and cross-networking of air transportation. As Secretary Peña recently stated when he unveiled the U.S. International Aviation Policy Statement: "The process of globalization -- a phenomenon we have seen in telecommunications, banking and many other industries -- is now well underway in the world's airline industry."<sup>4/</sup> The Secretary further noted that "the United States believes that globalization will bring vast benefits for all nations and air carriers that embrace and

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<sup>4/</sup> Remarks of Secretary of Transportation Federico Peña, November 1, 1994, at the 50th Anniversary Commemoration of ICAO, at 4.

adapt to it", and that the new International Policy Statement "places the power of the United States Government firmly behind the movement to . . . increased international traffic and the growth of global networks." *Id.* at 3 and 6. See also Statement of Secretary Peña before the Senate Commerce Committee on July 11, 1995: "Our policy statement recognized that the trend towards globalization of air services through efficiency-enhancing networks and alliances is here to stay, and that this development offers great public benefits for all nations."

Secretary Peña correctly observed that globalization necessarily involves the inter-continental linkage of hub networks:

The U.S. airline industry's experience under domestic deregulation has clearly shown the airlines of the world the need to build efficient networks to deliver better service and more access to markets of all sizes. Now, the hub-and-spoke networks that already exist on different continents can be linked to permit more efficient service to hundreds of new international markets -- markets that are not large enough by themselves to support direct air service.<sup>51</sup>

The "ability to effectively flow passenger traffic between [U.S. carriers'] own and others' networks . . . enable carriers to provide much improved, more competitive services to millions more travelers and shippers every year." *Id.* at 4.

The new U.S. International Aviation Policy Statement issued in April 1995 reflects U.S. Government policy to support efficiency-enhancing global alliances such as the one proposed here. The following excerpts from the Policy Statement express the importance to the public interest of interconnecting transatlantic hub networks:

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<sup>51</sup> See, *supra* n.4.

The rapid growth of demand for international air service and the wider dispersion of traffic in city-pair markets are primary factors influencing the development of the air service industry. Carriers are increasingly finding that they cannot remain profitable unless they can respond to this changed demand. To compete effectively, carriers today must have unrestricted access to as many markets and passengers as possible.

To meet demand and to improve their efficiency, many carriers are developing international hub-and-spoke systems that permit them to combine traffic flows from many routes (the "spokes") at a central point (the "hub") and transport them to another point either directly or through a hub in another region. Just as U.S. carriers developed hub-and-spoke systems to tap the broad traffic pool in the domestic market and to provide the most cost-efficient service for hundreds of communities that could not support direct service, international air carriers are developing world-wide hub-and-spoke systems to tap the substantial pool of international city-pairs. Internationally, an even larger portion of traffic moving over hub-and-spoke systems will require the use of at least two hubs (*e.g.*, a hub in both the U.S. and Europe for a passenger moving from an interior U.S. point to a point beyond the European hub). This increases the complexity and interdependence of the components of the system (both the spokes and hubs) and the importance of multinational traffic rights to the success of the system.

As a result, carriers, wishing to establish global networks require a higher quality and quantity of supporting route authority than they have sought in the past. Airlines will become increasingly concerned with every market that enables them to flow passengers over any part of their system network. These airlines will be looking for broad, flexible authority to operate beyond and behind hub points, in addition to the hub-to-hub market between two countries.

\* \* \*

In short, as indicated by our domestic experience, a variety of service forms -- global networks with carriers participating either as the sole provider or as participant in a joint network, and regional niche carriers -- can exist in the international

aviation market and the competition among these services will enhance consumer benefits through efficient operations and low fares. Thus, our international aviation strategy should provide opportunities for all of these forms of service so that we realize the benefits from maximum competition among them.

U.S. International Aviation Policy Statement at 2-3, 6.

Thus, U.S. international aviation policy encourages and supports the Alliance proposed in this Joint Application, which will create "a new network-building technique: [a] cross-border marketing alliance[ ] that link[s] traffic flows between established hub-and-spoke systems in key cities of the Western Hemisphere, Europe and Asia." Policy Statement at 4. By allowing the Joint Applicants to establish a procompetitive global Alliance linking their respective U.S. and European networks, the Alliance Agreements are consistent with and would advance the Department's U.S. international aviation policies.

When the Department approved and immunized the Northwest-KLM combination, it anticipated that the grant of antitrust immunity to the Northwest-KLM alliance would not only encourage, but necessitate the development of other similar alliances between U.S. and European airlines:

We look to our Open Skies Accord with the Netherlands and our approval and grant of antitrust immunity to the [KLM/Northwest] Agreement to encourage other European countries to agree to liberalize their aviation services so that comparable opportunities may become available to other U.S. carriers.

Order 92-11-27 at 14. That invitation has been accepted by Austria, Belgium and Switzerland. Those countries were encouraged and have agreed completely to liberalize their

aviation regimes. The applicants now stand ready to make use of the announced "comparable opportunities" under the new Open Skies Agreements which can only be realized by the grant of this Application.

Furthermore, as discussed below, approval of the Joint Application would be consistent with established Department precedent as set forth in the Orders approving and granting antitrust immunity for the Commercial Cooperation and Integration Agreement between Northwest and KLM. The Alliance Agreements are virtually identical to the Northwest and KLM Agreement. The Department concluded in Orders 92-11-27 and 93-1-11 that the KLM-Northwest Agreement would be procompetitive and would produce efficiencies, and that "the grant of immunity should promote competition by furthering our efforts to obtain less restrictive aviation agreements with other European countries." Order 93-1-11 at 11-12. The same conclusion applies with equal force to the Alliance Agreements. Conversely, the denial of antitrust immunity would prevent consummation of the Alliance Agreements and thereby deny the public the substantial benefits otherwise obtainable.

Uniform, consistent and fair application of regulatory policy requires the Department to accord the same legal authority to the Joint Applicants (i.e., antitrust immunity) as accorded to Northwest-KLM to allow them to compete on a level playing field with that alliance in the global marketplace. This would be consistent with the new U.S. International Policy Statement to "ensure that competition is fair and the playing field is level." Policy Statement at 8. The Department should not perpetuate a two-class system

where only one alliance enjoys unique antitrust treatment not available to other alliances involving carriers from open skies countries.

**B. Foreign Policy Considerations Support Approval Of And Grant Of Antitrust Immunity To The Alliance Agreements.**

In Northwest-KLM, the Department concluded that "the public interest requires antitrust immunity for foreign policy reasons, particularly our bilateral relationship with the Netherlands." Order 93-1-11 at 12. Even though the Department stated that "the [U.S.-Netherlands] Accord by its terms does not mandate a grant of antitrust immunity in this case," the Department found that "denial of antitrust immunity would contravene the spirit of the Accord and be counterproductive to the United States' relations with the Netherlands. . . . We believe that the Netherlands would consider a denial of immunity contrary to the Open Skies Initiative, unless we had a strong basis for a refusal to grant antitrust immunity." Id.<sup>6/</sup> Moreover the Department found that:

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<sup>6/</sup> See also, Order 92-11-27 at 17 (Show Cause Order) in which the Department stated:

We recognize that the accord between the United States and the Netherlands does not expressly require us to grant a request for approval and antitrust immunity of an agreement on integrating the services of a U.S. carrier and a Dutch carrier. However, we have found that the Agreement is likely to benefit the traveling public in many markets and is unlikely to reduce significantly competition in any market, except perhaps for the two markets served by the applicants under their current blocked-space arrangement. Since the Agreement overall should benefit the public, it would be contrary to the spirit of the accord with the Netherlands to disapprove it (or to prevent its consummation by denying antitrust immunity). We believe that the Netherlands would consider it to be inconsistent with the Open Skies spirit if we denied the applicants' request, unless we had substantial grounds for taking such action (*e.g.*, because the proposal would substantially reduce competition in several markets without any offsetting benefits).

we would expect that our willingness to take such action [granting antitrust immunity] might well encourage other countries to seek similar liberal aviation arrangements with the United States . . . so that comparable opportunities may become available to other U.S. carriers.

Order 92-11-27 at 12, 14 (emphasis added). The GAO Report correctly observed that DOT's approval of Northwest-KLM antitrust immunity "implied a favorable treatment of future applications by other U.S. and foreign airlines in exchange for liberal aviation accords." GAO Report at 52.

Against this precedential backdrop, the Governments of Austria, Belgium and Switzerland entered into landmark "Open Skies" agreements with the United States. These agreements are designed "to promote an international aviation system based on competition among airlines in the marketplace with minimum government interference and regulation." See, e.g., Preamble to the U.S.-Belgium "Open Skies" Agreement. As Secretary Peña stated: "When these open skies agreements are concluded, they will provide substantial benefits to U.S. travelers, shippers and communities as well as to the U.S. economy. . . U.S. airlines will have new opportunities to participate in the globalization of air services, and U.S. communities will have new opportunities to attract international air services." Statement of Secretary Peña dated January 27, 1995. The realization of these benefits will fall far short without immunity to allow the applicants to form an alliance that can compete effectively against rival alliances.<sup>21</sup>

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<sup>21</sup> The extensive Northwest-KLM alliance has enjoyed antitrust immunity for the past two and one-half years. The British Airways-USAir alliance links one of the world's largest foreign carriers operating from one of the world's busiest hubs (Heathrow) with one of the largest U.S. airlines east of the Mississippi, under an arrangement that required USAir to withdraw from competing routes in favor of British Airways, thereby eliminating all potential antitrust exposure, and that gives British Airways extensive

Footnote continued on next page

Furthermore, the Memoranda of Consultations ("MOCs") between the U.S. and Belgium and Austria expressly recognize the importance placed by those European governments on the need for antitrust immunity: "antitrust immunity is an **essential complement to open skies** in order to compete against other global alliances." (Emphasis added.) In both MOCs, the U.S. Government affirmed that requests for antitrust immunity would "be given due consideration on a case specific basis, taking into account U.S. law and international policy at the time such request is filed." This language is similar to the precatory language contained in the U.S.-Netherlands MOC.

The Joint Applicants submit that the disapproval of the Alliance Agreements or the prevention of their consummation by withholding immunity would contravene the spirit and intent of the Open Skies Agreements with Austria, Belgium and Switzerland before the ink is dry. Such action would be inconsistent with the U.S. Government's commitment to open skies and free and fair international competition and to the Department's promise of "comparable opportunities" in exchange for open skies. Just as the Department found that § 1102(a) of the Federal Aviation Act (now 49 U.S.C. § 40105(b)) required approval of the Northwest-KLM alliance based on the spirit of the U.S.-Netherlands Open Skies Agreement, for the same reasons it would be contrary to the spirit of the Open Skies Agreements with Switzerland, Belgium and Austria -- and the expectations of those countries -- for the Department to disapprove the procompetitive

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ownership and governance rights. The United-Lufthansa alliance, although not immunized, links the largest U.S. airline with one of the world's most powerful foreign airlines, which has its principal hub in Germany, the largest country in Europe.

Alliance Agreements or to prevent their consummation by denying antitrust immunity absent overwhelming reasons to the contrary.

**C. The Aviation Act And The Department's Well-Established Precedents Support Approval Of The Alliance Agreements.**

The Aviation Act provides that the Department "shall approve an agreement . . . when the Secretary finds it is not adverse to the public interest and is not in violation of this part." 49 U.S.C. § 41309(b). The Department is required to disapprove an agreement that "substantially reduces or eliminates competition" unless the Department finds that the agreement satisfies a more rigorous public interest standard, i.e., that the agreement is "necessary to meet a serious transportation need or to achieve important public benefits (including international comity and foreign policy considerations)" and "the transportation need cannot be met or those benefits cannot be achieved by reasonably available alternatives that are materially less anticompetitive." 49 U.S.C. § 41309(b)(1)(A), (B).

The Alliance Agreements will enhance competition and will not have the overall effect of substantially reducing or eliminating competition. Consequently, the Alliance Agreements fully meet the public interest test contained in 49 U.S.C. § 41309(b).

**1. The Alliance Agreements Will Not Substantially Reduce Or Eliminate Competition Between The United States And Europe.**

The Alliance Agreements provide legal frameworks for the coordination and integration of the U.S.-Europe services of Delta with those of Swissair, Sabena and Austrian. In determining whether this transaction would violate the antitrust laws, the Department's policy is to "apply the standard Clayton Act test used in examining whether

mergers will substantially reduce competition in any relevant market." Order 92-11-27 (KLM-Northwest) at 13. Under the Clayton Act standard, the Department considers whether the Agreements "will substantially reduce competition by eliminating actual or potential competition. . . so that [the parties to the agreements] would be able to raise prices above competitive levels or reduce service below competitive levels." *Id.* Assuming the most conservative antitrust analysis, the Department should examine the Joint Application using the same analysis it would use if the carriers were proposing a merger.

The Joint Applicants submit that the U.S.-Europe market is the relevant market for analyzing the competitive effects of the Alliance Agreements, because every significant carrier providing transatlantic service operates a hub network on one or both sides of the Atlantic. U.S. carriers provide service between the United States and Europe by operating online service from multiple U.S. points over one or more U.S. hub gateways to multiple gateways in Europe. Some U.S. carriers operate connecting services over points in Europe either directly with their own aircraft or through code-sharing arrangements. European airlines operate from multiple points in Europe over their European hub gateways to multiple U.S. gateways. Virtually every significant transatlantic city-pair route is or can be served by numerous major U.S. and/or European carriers on either a nonstop, single-plane or one-stop online connecting basis. In light of the numerous overlapping networks of transatlantic service, the most appropriate relevant market to analyze the competitive effects of the proposed transaction would be the overall U.S.-Europe market.

With respect to U.S.-Europe traffic and seat capacity, the combination would increase Delta's share by a very small margin -- less than 4%. See Exhibits 2 and 3. The three European carriers are very small relative to the total market. Austrian and Sabena each account for substantially less than 1% of total U.S.-Europe passengers/seats and Swissair accounts for less than 3%. Delta's existing share of the U.S.-Europe market (12.8% of passengers, 13.25% of seats) does not give it the ability to dominate the market. The extremely small increase (less than 4%) in market share that would result by combining Delta with Swissair, Sabena and Austrian, would not permit such a combination to dominate the U.S.-Europe market so as to enable it to charge supra-competitive prices or to reduce service below competitive levels. There will always be more than adequate numbers of competitors, which, coupled with freedom of entry, will provide market discipline to ensure competition.

Under the Merger Guidelines used by the Department of Justice and the Federal Trade Commission, a merger of Delta with Swissair, Sabena and Austrian would result in a Herfindahl-Hirshman Index (HHI) of 894 based on frequencies and 826 based on seats. See Exhibit 3. The Merger Guidelines consider a market with an HHI figure of less than 1,000 as unconcentrated and provide that mergers in such markets are unlikely to have any adverse competitive effects. Order 92-11-27 at 15.

The U.S.-Europe market is unconcentrated, as demonstrated in Exhibits 4 through 7, attached hereto. Exhibit 4 sets forth the U.S. transatlantic gateways of the Alliance carriers. Exhibit 5 sets forth the U.S. transatlantic gateways of all other carriers, excluding the Alliance carriers. There are substantially more U.S. gateways served by

other carriers than served by the Alliance carriers. Exhibit 6 depicts the European gateways of the three European Alliance carriers. Exhibit 7 shows the European gateways of other airlines that directly compete with the Alliance carriers' hubs. There are many more European gateways operated by other carriers than by the Alliance carriers and many large hub gateways that are geographically proximate to and surround the hub gateways of the Alliance carriers.<sup>8/</sup>

Furthermore, other carriers operating between the United States and Europe will continue to have significant competitive advantages over the Joint Applicants. As noted above, Delta, unlike British Airways, United and American, has very limited authority to serve London, and no authority to serve London Heathrow with its own aircraft. The U.S.-London market is, by far, the largest U.S.-Europe market, and London has more intra-Europe service than any other European city. Delta has very limited ability to expand its beyond-Europe network because of economic considerations and political (bilateral) restrictions. See discussion of the "obstacles" facing U.S. carriers who wish to develop international networks using their own direct service contained in the U.S. International Air Transportation Policy at 3-4, and at pages 13-14, supra.

By contrast to the other foreign carrier alliances, Swissair, Sabena and Austrian operate from smaller homelands and their hubs are considerably smaller than those of other major European carriers (such as British Airways, Lufthansa, Air France, and KLM). The small size of each of their hubs and homeland traffic base impedes their

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<sup>8/</sup> In terms of beyond-Europe gateway service, Exhibit 10 shows the available services beyond Frankfurt, Geneva, Zurich, Vienna, and Brussels. Each point served by the Joint Applicants is also served by a carrier other than an Alliance partner via a number of alternate gateways.

ability to compete for transatlantic traffic. Prior to its alliance with Northwest, KLM was in a similar position. KLM overcame that problem through the merger of the Northwest and KLM networks, with the result that today KLM is a stronger competitor and enjoys nearly twice as much traffic flowing over Amsterdam as was the case prior to the formation of that alliance. Exhibit 8. This occurred because the Northwest-KLM alliance enabled the provision of a more attractive product than either carrier was able individually to offer prior to the combination. Northwest also became stronger. The GAO Report noted that the Northwest-KLM alliance gave Northwest access to traffic from over 30 new European cities adding over 200,000 new passengers to Northwest's system. GAO Report at 27.

In summary, approval of the Joint Application will increase, not reduce competition in the U.S.-Europe market.

**2. The Alliances Will Not Substantially Reduce Or Eliminate Competition On Any Route.**

Although the Joint Applicants submit that the only meaningful relevant market is the U.S.-Europe market, the Department has in the past also examined the U.S.-foreign country market and overlapping city-pairs.

**United States-Switzerland/Belgium/Austria.**

The competitive effects of the Alliance Agreements in the U.S.-Switzerland/Belgium/Austria country-pair markets would be no different than the effects the Department found with respect to the United States-Netherlands market when

it approved the Northwest-KLM combination. In that proceeding, the Department found that there would be no adverse competitive effects in the country-to-country markets:

In [the United States-Netherlands] market KLM and Northwest will have a dominant market share. KLM, after all, is the major scheduled carrier in the Netherlands. Nonetheless, we do not believe that the proposed integration will enable the applicants to charge supra-competitive prices or to reduce service below competitive levels.

Even if a merger creates a firm with a dominant market share, the merger would not substantially reduce competition if other firms have the ability to enter the market within a reasonable time if the merged firms charged supra-competitive prices. Despite the dominant position of KLM in the U.S.-Netherlands market, we see no barriers to entry by other carriers in that market.

Order 92-11-27 at 15.

Similarly, although Swissair, Sabena and Austrian arguably have large market share positions in their respective U.S.-homeland markets, the Open Skies Agreements between the U.S. and each country assure competitive discipline by allowing any U.S. carrier to serve those countries from any point in the United States (and to any point beyond those countries where route authority can be obtained) and to increase service and reduce fares if the Joint Applicants try to raise prices above competitive levels or lower the quality of service below competitive levels. Moreover, an abundance of alternative competitive services already exists between the United States and each of the affected countries.

In the U.S.-Switzerland market, two other large U.S. carriers (United and American) provide nonstop service. In addition, there are a host of convenient one-stop

online connecting services provided by other U.S. carriers, foreign carriers and code-sharing partners over numerous U.S. and foreign gateways.

In the U.S.-Belgium market, two major U.S. carriers (United and American) operate nonstop service. As with the Switzerland market, there are also a myriad of convenient online connecting services between the United States and Belgium via U.S. and foreign gateways.

In the U.S.-Austria market, there are numerous online connecting services including one-stop flights by major carriers such as British Airways over London, Lufthansa over Frankfurt, KLM/Northwest over Amsterdam that will ensure competitive discipline and prevent fares from rising above or service from falling below competitive levels.

Moreover, as noted above, U.S. and foreign carriers are able under the Open Skies Agreements to offer competitive service to points beyond Switzerland, Belgium and Austria.

Thus, for the same reasons that the Department determined that the KLM-Northwest combination would not substantially reduce competition between the United States and the Netherlands, so too should the Department conclude that the proposed Alliance Agreements will not substantially reduce competition between the United States, on the one hand, and Switzerland, Belgium and Austria, on the other hand.

### City-Pair Overlaps.

Exhibit 9 lists the ten overlap nonstop city-pairs where more than one Alliance carrier currently offers service. At the outset, any competitive analysis of the overlap city-pairs needs to recognize the following salient factors. First, each of the overlap transatlantic nonstop city-pairs involves code-share/blocked-space services where only one of the carriers operates the aircraft. In none of the overlap city-pairs do both carriers operate their own direct service. Second, in the absence of the code-share/blocked-space arrangements, there would have been fewer overlap city-pairs, since the code-share arrangements made possible either the introduction of new services or the preservation of services that otherwise would have been terminated. Third, the Open Skies Agreements with each of the Alliance partners' homeland governments will assure open entry for other carriers to serve the overlap city-pairs, thus imposing market force discipline on the Alliance carriers.

Exhibit 10 shows the numerous alternative services currently available in each of the overlapping city-pairs. This exhibit demonstrates that there are numerous competitive alternatives for consumers and that the Alliance Agreements would not significantly increase concentration on those routes. In several city-pairs (JFK-Brussels, JFK-Zurich, and Chicago-Brussels), there are alternative nonstop services. Moreover, in every overlapping city-pair there are single carrier one-stop online connections available over U.S. or European gateways.

Of the eight overlapping U.S. gateways served by the Alliance carriers, only two, Atlanta and Cincinnati, are Delta hubs. At the gateways other than Atlanta and

Cincinnati, there are a host of carriers providing nonstop service to Europe other than the Alliance carriers. Exhibit 11. With respect to the Atlanta and Cincinnati gateways, the number of local transatlantic passengers traveling between Atlanta and Cincinnati and the overlapping Europe city-pairs is extremely small<sup>9/</sup> and therefore not competitively significant. (In fact, most passengers traveling over the Atlanta and Cincinnati transatlantic segments are not local passengers but are connecting passengers from behind the gateway.) Moreover, even with respect to the local Atlanta and Cincinnati passengers, there are alternative online services available that allow them to reach Zurich, Geneva, Brussels and Vienna by various alternative convenient and competitive routings, thereby disciplining the fare and service offerings of the Alliance carriers. Exhibit 10. A significant percentage of local Atlanta/Cincinnati-Europe passengers use connecting service via other gateways.<sup>10/</sup> This is consistent with the finding the Department made with respect to the Northwest/KLM overlapping city-pairs of Amsterdam-Detroit and Minneapolis/St.

Paul-Amsterdam:

The fares charged in the two routes should be disciplined to some extent by the fares offered for connecting service, since travelers can reach Amsterdam from Detroit or Minneapolis-St. Paul by using the connecting service offered now by carriers such as British Airways and Air France and potentially by American and United.

Order 92-11-27 at 16.

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<sup>9/</sup> Due to the confidential nature of the DOT's International O&D Survey, actual O&D data is not cited; however, there were less than 25 daily Atlanta-Brussels local passengers, less than 15 daily Atlanta-Zurich local passengers, and less than 10 daily Cincinnati-Zurich local passengers during CY 1993.

<sup>10/</sup> Atlanta-Zurich: 46% use other gateways; Atlanta-Brussels: 38% use other gateways; Cincinnati-Zurich: 23% use other local gateways.

The facts show that the Department's assessment was correct. There have been substantial increases in traffic over the Amsterdam hub, significantly in excess of the growth of U.S.-Europe traffic, in general. Exhibit 8. Moreover, published fares over the two routes have remained in line with fares on other routes where the KLM/Northwest alliance faces competition. Exhibit 12.

With respect to behind-Atlanta/Cincinnati passengers (which comprise the bulk of travelers in these markets), there are a substantial number of competitive U.S. and foreign gateways over which those passengers can and do connect for transatlantic service. Exhibit 13. Thus, the Department's conclusion in KLM-Northwest certainly applies here: "the fares and service offered [by] them should continue to be disciplined by the connecting services offered by the applicants' competitors." Id.

The Department would undermine the potential efficiency benefits of the Alliance Agreements if it either excluded or limited antitrust immunity with respect to the overlap markets. The overlap city-pairs serve as bridges linking the carriers' respective networks. It would be impossible to carve out the bridges from the immunity given the interdependence of the bridges to the network-to-network systems. In KLM-Northwest, the Department considered and rejected carving out from the antitrust exemption the overlap city-pairs and concluded that "such an exclusion would be impracticable, given the applicants' stated intent to integrate all of their operations and the dependence of their services in those markets on the flow of connecting traffic." Order 92-11-27 at 16. Nor would it be workable to confine the antitrust immunity only to the overlap city-pairs: "Given the interrelations between [the overlap] routes and the rest of the applicants'

systems, it would not be feasible to confine the immunity to matters involving the [overlap] routes." Order 93-1-11 at 13.

**3. The Joint Application Meets The Department's Standards For Grant Of Antitrust Immunity.**

The Department has the discretion to grant antitrust immunity to agreements approved under 49 U.S.C. § 41309 if it finds that the immunity is required by the public interest. The Department's established policy is to grant antitrust immunity with respect to agreements that are found not substantially to reduce or eliminate competition, if the Department concludes that antitrust immunity is required in the public interest and the parties will not proceed with the transaction absent antitrust immunity. Order 92-11-27 at 18; Order 93-1-11 at 11.

**a. Grant Of Antitrust Immunity Is Required In The Public Interest.**

The Alliance Agreements would allow the carriers to capture the synergies of their respective route networks, establish a seamless air transport system through the network-to-network combinations, achieve competitive economies of scale, and enhance competition. These benefits would result in lower costs and enable the Alliance carriers to serve more efficiently thousands of online city-pairs and thus provide the public with more service options at less cost. Furthermore, the Alliance Agreements would permit Delta and the three smaller European carriers to compete more effectively against larger networks created by rival global alliances.

The Alliance Agreements are virtually identical to the Northwest-KLM Commercial Cooperation and Integration Agreement which was approved by DOT. That

agreement formed the basis of the Northwest-KLM global alliance. DOT concluded that the Northwest-KLM combination would be procompetitive (even though there were a limited number of overlap city-pairs in which KLM and Northwest competed) and that antitrust immunity would produce efficiencies and "should promote competition by furthering our efforts to obtain less restrictive aviation agreements with other European countries." The same conclusion applies with equal force to the instant Alliance Agreements.

The Alliance Agreements would allow the carriers to develop mechanisms to enhance efficiencies, reduce costs and provide better service to the traveling and shipping public in the following illustrative ways:

1. Increased Frequencies and Enhanced Online Services. The integration and coordination of the multi-hub networks of the Alliance carriers on both sides of the Atlantic will generate greater levels of traffic support. With enhanced traffic flows, the Alliance carriers will be able to expand frequencies over transatlantic segments. Furthermore, by interconnecting the multiple hubs of the Alliance carriers the Alliance would be able to link Delta's extensive domestic U.S. network from 134 cities in the U.S. and Canada behind the gateway hubs with the Europe, Mideast, Africa networks of Swissair, Sabena and Austrian to 126 beyond-hub cities. Exhibit 14. The joint enterprise would have the potential to offer online service (i.e., either single plane and/or connecting service) to over 17,000 city-pair routes between the United States and Europe. Id. Such service enhancements and expanded online service options can only be accomplished on an efficient basis through coordination and integration of schedules and route planning,

combined network planning, and the establishment of a common financial objective. The proposed combination would compare favorably in terms of U.S.-Europe market access to Northwest-KLM and British Airways-USAir. Exhibit 15.

2. Expanded Access to Delta and the European Alliance Carriers To Beyond and Behind Gateway Markets. The creation of the joint services having a common financial objective is essential to the Alliance carriers' ability to expand online service, particularly in behind and beyond gateway markets. The establishment of service with a common financial bottom line, involving marketing, sales, prices and the allocation of revenues and earnings cannot be accomplished without antitrust immunity. In the absence of immunity, competitors cannot discuss and agree to network coordination and must develop prorate arrangements in the context of "arms-length" negotiations to divide revenues among the transatlantic and behind/beyond segments. Such an arms-length process is cumbersome and, in the absence of a common financial objective, effectively forecloses access to behind-U.S. and behind-European gateway cities. The GAO Study on airline alliances concluded that, "With immunity, Northwest and KLM can develop formulas to set fares in all markets and, according to Northwest and KLM representatives, quickly enact fare reductions to attract traffic." GAO further observed that "Without immunity, airlines that are significant competitors cannot discuss pricing issues and must develop prorate agreements in 'arm's length' negotiations to divide revenues, a cumbersome process when thousands of city-pairs are involved." GAO Study at 29. Antitrust immunity will permit the Alliance carriers to negotiate prorates, divide revenues and gain access to each others' behind gateway city-pairs.

3. Coordinated Hubs and Transatlantic Segments. An immunized Alliance will be able to offer a greater variety of transatlantic services. The Alliance will be able to coordinate the respective hub networks and the transatlantic segments of the four carriers to achieve more efficient service and maximize service options for the traveling and shipping public. The Alliance carriers would like to be able to coordinate their multi-hub networks in the same way that Delta currently coordinates its domestic U.S. system over its six U.S. hubs. In the absence of immunity, the carriers must independently schedule their services to maximize their own individual positions. An antitrust-immunized alliance arrangement will establish common economic objectives that will allow the joint applicants to pool their resources to a greater degree than they can today to operate additional transatlantic services that would not be economically feasible in the absence of immunity. For example, Northwest and KLM have pooled their resources enabling them to provide new transatlantic service in city-pairs such as Memphis-Amsterdam and Washington, D.C.-Amsterdam.

In addition, the coordinated scheduling will allow for a greater variety of behind-gateway services. For example, assume that Sabena, Swissair and Austrian each serve a third country and schedule their flights to arrive at that country at about the same highly desirable peak hour.<sup>111</sup> If Delta were to code-share with each carrier for service from the United States to that country, in the absence of immunity and coordinated scheduling, Delta would only be able to offer three frequencies -- but it is likely that all of them would arrive at approximately the same time, since Delta's U.S.-Europe service pattern

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<sup>111</sup> For example, the three European carriers currently provide flights to Athens and Istanbul that arrive within about one hour of each other.

involves service to Brussels, Zurich and Vienna at only peak hours, and the European carriers serve the third country at about the same time. This pattern would not provide a variety of different service options for the traveling and shipping public. However, if the four carriers have the ability to coordinate their services according to a common economic objective and combine the synergies of their respective networks, the carriers could revise and add to their schedules to provide, for example, different arrival and departure times. The result would be a broader array of online service options for both U.S. and European travelers. The coordination will produce highly efficient and expanded service by the Alliance carriers. However, in the absence of antitrust immunity, such an arrangement might expose the carriers to the risk of antitrust challenge.

4. Expansion of Discount Fares. Currently, each carrier offers deep discount online fares that are only available for travel on that carrier's system. The common financial objective of the Alliance will enable the Alliance carriers to expand the availability of such deep-discount fares to additional online services operated by other Alliance carriers.

5. Availability of Discount Seats on Transatlantic Segments. The common financial objective of the Alliance arrangements will also enable the Alliance airlines to provide greater levels of discount seats than might otherwise be available in the absence of the immunized Alliance. Under the current arms-length code-share/blocked-space arrangements, each carrier's incentive is to maximize the return on each seat operated. Consequently, if demand is high, neither carrier has the incentive to release seats to its code-share competitor for resale by that carrier. The common financial "bottom line" and

the coordinated pricing component of the alliance arrangements will permit the Alliance carriers jointly to fill seats at price efficient levels.

6. Inventory Control. The coordinated Alliance can develop uniform and coordinated control of seat inventory to maximize management of capacity, thereby increasing utilization and efficiency, and reducing costs for the benefit of the traveling public.

7. Reduced Sales, Marketing and Reservations Costs. The Alliance will permit the carriers to maximize economic efficiencies by coordinating sales, marketing, reservations and airport services and reducing redundant costs in those areas.

8. More Effective Equipment Utilization. The Alliance will permit the carriers to maximize utilization of their aircraft. By coordinating their services, the Alliance carriers will be able to optimize the use of aircraft on routes where demand is higher and utilize smaller equipment on thinner routes.

The experience to date of the Northwest-KLM alliance is highly informative and demonstrates that the immunized joint enterprise produces substantial increased online service benefits to the traveling and shipping public and sizable efficiencies/earnings benefits to the joint enterprise. The GAO Study on airline alliances observed that the substantial degree of integration between KLM and Northwest allowed the linkage between Northwest's domestic hubs and KLM's European hub, permitting an expanded network of online services between 88 U.S. cities served by Northwest, on the one hand, and 30 European/Middle Eastern cities served by KLM, on the other hand. We calculate that the Northwest-KLM alliance has the potential to serve over 21,000 U.S.-Europe city-pairs

on an online basis. Exhibit 15. As a consequence of enhanced online services, KLM passengers traveling on Northwest's aircraft increased by 115% (nearly 200,000) from 1991 to the year ended June 1994. GAO Study at 27. Thus, as the GAO Study noted, "Northwest's data indicate that for the year ended June 1994, over 353,000 passengers traveled on Northwest aircraft as part of the alliance, compared to 164,450 passengers traveling on connecting Northwest and KLM interline flights in 1991." Id. The GAO Report further indicates that the alliance allowed Northwest to add to its system 30 overseas cities that it would not otherwise have served in the absence of the immunized alliance. Id. at 28. The GAO Study pointed out that the combination produced economic benefits for both airlines: "We estimate that the alliance produced between \$125 million and \$175 million in added revenues for [Northwest] in 1994", representing "about one-third of Northwest's \$455 million in transatlantic passenger revenues and about 5 percent of its \$3 billion in total international passenger revenues in 1994." Id. at 28.

The proposed coordinated activities among the joint applicants would, in the absence of antitrust immunity, expose them to antitrust risk. Business prudence dictates that the Alliance carriers are not willing to take the risk that the activities pursuant to the Alliance Agreements would be challenged by third parties asserting such actions to be unlawful under the antitrust laws. Consequently, the grant of antitrust immunity for the Alliance Agreements is absolutely essential in the public interest and necessary to allow the parties to proceed with the proposed transactions.

**b. The Joint Applicants Will Not Proceed With The Alliance Agreements In The Absence Of Antitrust Immunity.**

Under the Department's longstanding precedent, antitrust immunity will not be granted to agreements that would not violate the antitrust laws, unless the parties refuse to implement the agreement without immunity. Order 92-11-27 (Northwest-KLM). The Joint Applicants categorically state that they will not carry out the collaboration, coordination and integration contemplated by the Alliance Agreements in the absence of antitrust immunity because of the substantial risk that the Joint Applicants will be subject to antitrust litigation.

The Alliance Agreements contemplate joint sales/marketing activities, price coordination, revenue pooling and schedule coordination/integration. The applicants firmly believe that these arrangements will create service enhancements and produce efficiencies that could not be achieved in the absence of the Alliance Agreements. However, absent the grant of immunity, there is no assurance that the Alliance would not be challenged on antitrust grounds. This very real threat of a challenge would chill the Alliance and reduce its benefits to the traveling and shipping public. As the GAO Report on Airline Alliances notes:

[DOT and DOJ] officials stated that they believed the key benefit of immunity [in the Northwest-KLM case] is the protection from legal challenge by other airlines, thereby allowing Northwest and KLM to more closely integrate their operations and marketing than they otherwise would for fear of legal reprisal.

GAO Report at 30.

In short, the integration and coordination necessary to meld the joint applicants' networks will not occur without antitrust immunity, because none of the applicants is willing to incur the risk of an antitrust challenge.

**c. The Approval Of And Grant Of Immunity For The Alliance Agreements Will Accelerate Full Liberalization Of The U.S.-Europe Marketplace.**

Delta, as the U.S. partner in the proposed Alliance, points out that approval of the Alliance Agreements and the grant of an antitrust exemption will accelerate the U.S. Government's ability to achieve liberal open skies agreements with other European countries -- including those with currently restrictive aviation policies -- so that "comparable opportunities" may become available to other U.S. carriers in the context of a broadly liberalized U.S.-European marketplace. See Order 92-11-27 at 14.

Delta notes the Department has embarked upon an important Open Skies initiative with nine smaller European countries. That initiative represents an important step in the U.S. Government's effort to obtain a liberalized U.S.-Europe market. However, several major European countries continue to resist liberalization. Real competitive pressure in the marketplace is required to effect a change in restrictive aviation policies. Approval of the Alliance Agreements coupled with antitrust immunity would create just such a competitive prod and help establish the economic and political imperatives necessary to encourage restrictive foreign aviation powers to open their markets so that carriers from those countries may also enjoy the benefits of global service networks. As the GAO Report pointed out: ". . . antitrust immunity could be a powerful incentive for

governments -- which are often seeking to benefit one national flag carrier -- to eliminate their restrictions on U.S. airlines." GAO Report at 54.

The Department had hoped that the U.S. Open Skies Agreement with the Netherlands and the Northwest-KLM Alliance would "encourage other European countries to agree to liberalize their aviation services so that comparable opportunities may become available to other U.S. carriers." Order 92-11-27 at 14. The success of the Northwest-KLM Alliance has encouraged Austria, Belgium and Switzerland and six other countries to agree to the Open Skies accords and has precipitated the Delta/Swissair/Sabena/Austrian Alliance. This Alliance will, in turn, increase the pressure on other governments to break down their protectionist walls.

#### **IV. OTHER APPROVAL ISSUES.**

##### **A. CRS.**

Consistent with the Department's holding in Northwest-KLM, the grant of antitrust immunity should also cover the coordination of (1) the presentation and sale of the carriers' airline services in the Worldspan and Galileo systems and in other CRSs, and (2) the operations of their respective internal reservations systems, but excluding the carriers' management of their interests in Worldspan and Galileo. Delta, through a subsidiary company, is a part owner of Worldspan, L.P., and Austrian and Swissair are part owners of Galileo. Sabena does not own an interest in a computer reservation system. The Department addressed a similar situation in Northwest-KLM and determined that, while the coordination of such CRS activities could arguably reduce competition, the competitive

concern was not so significant as to outweigh the justification for grant of antitrust immunity. The same conclusion applies with equal force here. See, Order 93-1-11 at 15.

**B. Duration Of Approvals.**

The Joint Applicants request that the Department grant the requested approval and immunity for a five-year term, consistent with the duration of approvals granted by the Department to KLM-Northwest in Order 93-1-11 and Order 92-11-27. As the Department concluded in KLM-Northwest: "a shorter term may not allow the full effect of the implementation of the Agreement to become apparent. Furthermore, Section 414 [now 49 U.S.C. § 41308] does not require us to review the implementation of the Agreement within a shorter period of time." Order 93-1-11 at 16.<sup>12/</sup>

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<sup>12/</sup> Since this application is jointly submitted by each of the parties to the Alliance Agreements, the applicants request waiver, to the extent necessary, of the requirement in 14 C.F.R. § 303.04(c) that each page be marked with the name, initials or other identifying symbol of the applicant.

V. CONCLUSION.

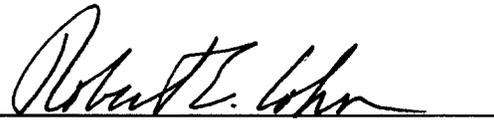
For the reasons set forth above, Delta, Swissair, Sabena and Austrian urge the Department to approve the Alliance Agreements pursuant to 49 U.S.C. § 41309 and to grant discretionary antitrust immunity to the Alliance Agreements pursuant to 49 U.S.C. § 41308.

Respectfully submitted,



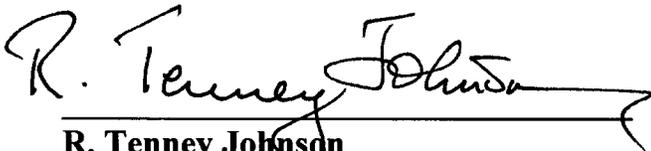
**William Karas**  
STEPTOE & JOHNSON  
1330 Connecticut Avenue, N.W.  
Washington, D.C. 20036  
(202) 429-6223

Attorney for  
**SWISSAIR, SWISS AIR TRANSPORT  
CO., LTD.**



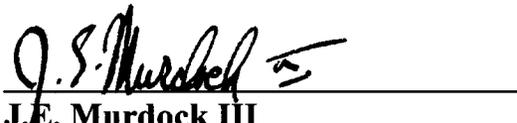
**Robert E. Cohn**  
SHAW, PITTMAN, POTTS &  
TROWBRIDGE  
2300 N Street, N.W.  
Washington, D.C. 20037  
(202) 663-8060

Attorney for  
**DELTA AIR LINES, INC.**



**R. Tenney Johnson**  
2300 N Street, N.W., 6th Floor  
Washington, D.C. 20037  
(202) 663-9030

Attorney for  
**SABENA S.A., SABENA BELGIAN  
WORLD AIRLINES**



**J.E. Murdock III**  
SHAW, PITTMAN, POTTS &  
TROWBRIDGE  
2300 N Street, N.W.  
Washington, D.C. 20037  
(202) 663-8342

Attorney for  
**AUSTRIAN AIRLINES,  
ÖSTERREICHISCHE  
LUFTVERKEHRS AG**

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Joint Application of Delta Air Lines, Inc., Swissair, Swiss Air Transport Co., Ltd., Sabena S.A., Sabena Belgian World Airlines, and Austrian Airlines, Österreichische Luftverkehrs AG was served this 8th day of September, 1995, on all persons listed on the attached service list.

  
\_\_\_\_\_  
Lesly Belloff

## SERVICE LIST

Roger W. Fones  
Chief, Transportation, Energy  
& Agriculture Section  
Antitrust Division  
U.S. Department of Justice  
Room 9104, Judiciary Center Building  
555 Fourth Street, N.W.  
Washington, D.C. 20001

Elliott M. Seiden  
Megan Rae Poldy  
Northwest Airlines  
901 15th Street, N.W., Suite 500  
Washington, D.C. 20005

R Bruce Keiner  
Crowell & Moring  
1001 Pennsylvania Ave., N.W.  
10th Floor North  
Washington, D.C. 20004

Joel Stephen Burton  
Ginsburg, Feldman & Bress  
1250 Connecticut Avenue, N.W.  
Suite 800  
Washington, D.C. 20036

Carl B. Nelson, Jr.  
Associate General Counsel  
American Airlines, Inc.  
1101 17th Street, N.W., Ste 600  
Washington, D.C. 20036

Richard D. Mathias  
Frank Costello  
Cathleen P. Peterson  
Zuckert, Scoutt & Rasenberger  
888 17th Street, N.W., Ste. 600  
Washington, D.C. 20006

R. D. Devlin  
Richard J. Fahy, Jr.  
Trans World Airlines  
808 17th Street, N.W., Suite 520  
Washington, D.C. 20006

James R. Weiss  
Preston, Gates, Ellis  
& Rouvelas  
1735 New York Avenue, N.W.  
Suite 500  
Washington, D.C. 20590

Nathaniel P. Breed, Jr.  
Shaw, Pittman, Potts &  
Trowbridge  
2300 N Street, N.W.  
Washington, D.C. 20037

Stephen L. Gelband  
Hewes, Morella, Gelband  
& Lamberton, P.C.  
1000 Potomac Street, N.W.  
Suite 300  
Washington, D.C. 20007

Mr. Jon F. Ash  
Global Aviation Associates, Ltd.  
1800 K Street, N.W., Suite 1104  
Washington, D.C. 20006

**COOPERATION AGREEMENT**

This Cooperation Agreement dated September 8, 1995 (the "Agreement") is made by and between SWISSAIR, SWISS AIR TRANSPORT COMPANY, LTD, a corporation organized and existing under the laws of Switzerland and having its principal office at Zurich Airport, Balsberg Building, 8058 Zurich, Switzerland, and DELTA AIR LINES, INC., a corporation organized and existing under the laws of the State of Delaware and having its principal office at Hartsfield Atlanta International Airport, Atlanta, GA., 30320.

**WITNESSETH**

**WHEREAS**, Swissair holds an equity interest in Delta which constitutes approximately five percent of the voting common stock of Delta;

**WHEREAS**, Delta holds an equity interest in Swissair which constitutes approximately five percent of the voting common stock of Swissair; and

**WHEREAS**, Delta and Swissair have entered into certain marketing arrangements and wish to create a global airline alliance through more specific global marketing programs which will generate efficiencies for each carrier and make each carrier a stronger competitor in the global air transportation marketplace; and

**WHEREAS**, Delta and Swissair have previously entered into a Memorandum of Intention dated December 9, 1988, a Memorandum of Understanding dated March 15, 1989, and Code-Sharing Agreements (these agreements collectively referred to as the "Marketing Agreements"), in order to benefit customers and enhance international competition, which agreements have been and shall be implemented consistent with applicable competition laws, regulations, and treaties; and

**WHEREAS**, Delta and Swissair desire to expand their airline alliance throughout transportation markets worldwide, and

**WHEREAS**, Delta and Swissair wish to agree upon the principles governing the overall conduct and exploitation of their commercial cooperation; and

**WHEREAS**, the proposed commercial cooperation of Delta and Swissair as set forth herein, will enhance international competition through the efficiencies and synergies created through the optimized use of the resources of Delta and Swissair; and

**WHEREAS**, the United States government has recently concluded and executed an "Open Skies" bilateral air services agreement with the government of Switzerland, and the parties wish to take full advantage of the commercial opportunities presented thereby; and

**WHEREAS**, the Parties intend to file this Agreement for approval and antitrust immunity;

**NOW, THEREFORE**, in consideration of the premises and the mutual covenants and agreements herein contained, Delta and Swissair agree, subject to all necessary approvals from the requisite government authorities, to enter into this Agreement under the terms and conditions set forth herein.

## **ARTICLE 1: SCOPE OF THE AGREEMENT**

1.1 Delta and Swissair hereby agree to enhance their commercial cooperation, pursuant to the principles set forth herein, which will be implemented through a series of agreements designed to achieve a high level of cooperation for the carriers' sales and marketing activities, generate efficiencies for each carrier and make each carrier a stronger competitor in the global air transportation marketplace.

1.2 The objective of this Agreement is to establish a legal framework under which Delta and Swissair may expand and enhance the current cooperative marketing efforts between Delta and Swissair as set forth in the Marketing Agreements. Accordingly, this Agreement will:

1.2.1 be taken into account on matters concerning the interpretation, administration and exploitation of the Marketing Agreements, consistent with the terms of those agreements, which shall remain in full force and effect.

1.2.2 set forth the principles governing the development of additional agreements, including, without limitation, agreements to further define and implement the Passenger Program and the Cargo Program (as those terms are defined in Articles 2.1 and Article 3, hereof).

## **ARTICLE 2: COOPERATION IN PASSENGER PROGRAMS BY DELTA AND SWISSAIR**

2.1 Delta and Swissair hereby agree, as part of their commercial cooperation, to market both carriers' air transportation of passengers through cooperative, joint marketing operations and programs (the "Passenger Program"). The Passenger Program will contain those joint sales and marketing elements set forth in Article 2.2, below.

2.2 The first stage of the Passenger Program consists of the Marketing Agreements. Upon execution of this Agreement, the next stage will consist of an agreement or agreements to be negotiated for a comprehensive marketing and sales program or programs throughout the worldwide air transportation systems of Delta and Swissair. The second stage of the Passenger Program may include, without limitation, the following:

2.2.1 A combination of Delta and Swissair sales personnel, including a common staff, who would be authorized to represent both Delta and Swissair, independently and jointly, in marketing their products to customers and travel agents for sales of the services offered by both carriers. The joint marketing program may be structured as a joint venture of Delta and Swissair as if Delta and Swissair were a single entity selling a single product or set of products, identified with the Service Marks (as defined in Article 4) of either or both entities or with jointly developed Service Marks.

2.2.2 For the products to be jointly developed or marketed pursuant to this Agreement, the Parties shall consult as necessary from time to time throughout the term hereof and may reach agreement, among other things, on:

2.2.2.1 the establishment of fares to be charged and inventory control, including systems, by each air carrier with respect to all coordinated Passenger Program products including wholesale net fares and corporate discount programs;

2.2.2.2 coordination of schedules, third party marketing, network planning, and information systems between Delta and Swissair to maximize sales possibilities by connecting services between the Delta and Swissair systems; and

2.2.2.3 the establishment of agreements and procedures for the sharing and/or pooling of revenues or earnings in particular markets, according to such formula as may be agreed by the parties.

2.2.2.4 the establishment of joint marketing programs, including frequent flyer and similar programs.

2.2.3 The establishment of a unified commission schedule, including agency, corporate, group, and override commissions to be agreed upon from time to time by Delta and Swissair throughout the term hereof.

2.2.4 The use of standard form contracts for sales to travel agencies general sales agents, corporations, organizations and individuals.

2.2.5 The use of service contracts between the parties and standard service contracts with third parties to avoid redundancy and to ensure that the delivery of services is consistent with the joint products and joint identities of the Parties.

2.2.6 The assignment of specific personnel from both carriers, at various levels with authority to resolve disputes or waive conditions.

2.2.7 The establishment of Passenger Program management committees to oversee, among other things, project development, budgets, and directions.

2.2.8 The joint use of marketing, fare, frequent flyer, cost, revenue and accounting data and information systems available to the Parties, consistent with applicable laws governing each Party.

2.2.9 The development of standard terms for additional blocked space, code sharing and other cooperative contracts.

2.2.10 The creation of mechanisms to promulgate, police and enforce on the highest levels of priority Passenger Program quality and service standards and to ensure that Passenger Program products are viewed as seamless and transparent to the customer.

2.2.11 The establishment of ancillary programs, including, without limitation, travel packages, coordination of facilities, information systems, or mail service to enhance the products marketed by the Parties.

2.2.12 The establishment of policies, procedures, information systems, and programs that would otherwise facilitate the Passenger Program.

2.2.13 The establishment of advertising and media programs that would jointly promote Delta and Swissair as a seamless, worldwide transportation system.

2.2.14 The entry of either carrier into new markets, as regulatory requirements permit, in order to expand the combined presence of Delta and Swissair throughout transportation markets worldwide.

2.2.15 The development of a joint identity through jointly developed Service Marks, which may include (a) a single, master identity and individual local identities, which will differ from the master identity only if required by local conditions, (b) harmonization of the existing identities and Service Marks of the Parties, (c) the use of the master and local identities on the aircraft exteriors and interiors, employee uniforms, facilities and ground vehicles, business cards and stationery of the Parties, and (d) such other terms as are mutually agreeable to the Parties.

2.3 The parties shall expand the Passenger Program so as to allow their marketing forces throughout the world to aggressively sell and market the products and services of Delta and Swissair both independently and jointly. Any expansion of these programs shall be subject to mutual written consent of Delta and Swissair.

### **ARTICLE 3: COOPERATION IN CARGO PROGRAMS BY DELTA AND SWISSAIR**

In addition to the Passenger Program described in Article 2 above, the cooperative marketing operations and programs of Delta and Swissair shall include joint cargo sales and marketing (the "Cargo Program"). The terms of the Cargo Program will include those elements on which the Parties mutually agree, including, without limitation, elements equivalent to those set forth in Article 2.2, hereof and the marketing of both carriers' air transportation of cargo through cooperative, joint marketing operations.

### **ARTICLE 4: SERVICE MARKS**

4.1 For purposes of this Agreement, "Service Marks" shall mean the name, logos, promotions, designs, artworks, or other symbols or devices describing or identifying Delta or Swissair, respectively, or jointly, or the services, products, or programs of either or both carriers, whether or not previously registered as trademarks or service marks in the United States, Switzerland, or any other country.

4.2 The Service Marks of Delta and Swissair are and shall remain the property of each carrier. Delta and Swissair shall each retain the right to change its Service Marks at any time during the term of this contract in its sole discretion. Delta and Swissair are hereby authorized to use each other's Service Marks in advertising and promoting the sales and promotions under this Agreement; provided, however, that such use shall be subject to the prior approval by each carrier of all such uses. The rights to use Delta's and Swissair's Service Marks are non-exclusive, non-assignable, and non-transferable. Upon the termination of this agreement, for any reason, each carrier shall immediately cease using the other carrier's Service Marks in any manner whatsoever, except to the extent explicitly permitted under this Agreement or any other relevant agreement between the Parties.

4.3 All Service Marks developed jointly between Delta and Swissair, shall enure to the benefit of both Parties during the term of this Agreement. The Parties agree to take appropriate steps to protect the rights of the Parties in the Service Marks and to license the use of jointly developed Service Marks to both Parties as fully and completely as permitted by law and this Agreement.

4.4 Neither Party shall sell or license the Service Marks of the other, or any jointly developed Service Marks, without the prior written consent of the other.

4.5 Each Party represents and warrants to the other that its Service Marks do not infringe upon the trademarks, tradenames, Service Marks, similar rights, or rights therein of any third party.

## **ARTICLE 5: IMPLEMENTATION OF THIS AGREEMENT**

All aspects of commercial cooperation hereunder, including the Passenger Program, the Cargo Program and the use of Service Marks shall be subject to the prior review and written approval of both Delta and Swissair. Following the receipt of such approvals, matters relating to the implementation of this Agreement shall be dealt with through a steering committee established by the head offices of the Parties.

## **ARTICLE 6: GOVERNMENTAL AND REGULATORY APPROVALS**

6.1 In carrying out this agreement, the parties will comply with all necessary government laws, regulations, and requirements, including but not limited to the applicable competition laws.

6.2 The Parties shall take all necessary steps, in cooperation with each other, to obtain all approvals, if any, from government authorities in the United States, Switzerland, or any other appropriate governmental authority, in order to carry out the terms of this Agreement.

6.3 In the event that any governmental agency or regulatory body having jurisdiction over the subject matter hereof shall require any material condition or limitation to this Agreement, the Parties hereto shall negotiate in good faith to make such amendments to this Agreement as shall be necessary to achieve the purposes and objectives of this Agreement. If any such condition or limitation, in the reasonable judgment of either Party, is fundamental to the intent of such Party and the operation of this Agreement, the Party shall have the right to declare that this Agreement shall not enter into effect or to terminate this Agreement upon thirty (30) days advance written notice to the other Party.

6.4 In the event that any necessary governmental approval is withdrawn or any governmental order issued or there is any change in applicable statutes, laws, or regulations governing the operations contemplated by this Agreement which would materially affect the rights, benefits, and/or obligations of the Parties hereto, the Parties shall comply therewith by mutual agreement, and shall not be liable to each other for failure to fulfill any obligations under this Agreement that may be inconsistent with such changes, orders, statutes, laws, or regulations. If any such change in government approvals, orders, statutes, laws or regulations, in the reasonable judgment of either Party, would have a material adverse effect on the operation of this Agreement, the Party shall have the right to terminate this Agreement upon thirty (30) days advance written notice to the other Party. The Parties shall negotiate in good faith to make such amendments to this Agreement as may be necessary and sufficient to achieve the purposes and objectives of this Agreement.

## **ARTICLE 7: SEVERABILITY**

7.1 If any non-material provision contained in this Agreement shall be held to be invalid or unenforceable in any respect in any jurisdiction, such invalidity or unenforceability shall not affect the other provisions hereof which can be given effect without the invalid provision, and to this end the provisions of this Agreement are intended to be and shall be deemed severable.

7.2 The Parties agree to use their best efforts to replace such invalid or unenforceable provision with a valid and enforceable provision having to the maximum extent possible the same economic or practical effect.

7.3 If in the reasonable judgment of either Party, any provision or provisions held to be invalid and unenforceable is or are fundamental to the intent of such Party and the operation of this Agreement, such Party shall have the right to terminate this Agreement on the effective date of the traffic season following the traffic season then in effect. In order to terminate the Agreement on such date, a ninety (90) day prior written notice is required.

## **ARTICLE 8: APPLICABLE LAW**

This Agreement, regardless of where concluded or executed, shall be construed in accordance with, and all rights and obligations accruing to either Party hereto shall be governed by the laws of the State of New York, and the laws of the United States of America. This provision shall not apply to any other agreement between the parties which specifies a different governing law.

## **ARTICLE 9: ARBITRATION**

Any dispute between the Parties concerning the validity, interpretation or application of this Agreement shall be settled in accordance with the terms and procedures of the IATA Arbitration Rules then effective and subject to New York law in accordance with Article 8. Any such arbitration procedures shall be held in Frankfurt, Germany and in the English language. The arbitration tribunal shall issue a final award within 180 days of the selection of the arbitrator(s) appointed to resolve the dispute.

## **ARTICLE 10: EXECUTION AND TERMINATION**

10.1 This Agreement shall be effective, subject to necessary government approvals, from the date first set forth for the above, and remain in effect thereafter until terminated by either Party upon twelve (12) months prior written notice to the other Party. The Parties agree that this Agreement may be executed in counterparts, including facsimile transmission copies, that each executed copy

shall be deemed to be an original, and that all originals together shall constitute one instrument.

10.2 Notwithstanding Article 10.1, either Party may terminate this Agreement forthwith at any time if the other Party becomes insolvent, makes a general assignment for the benefit of creditors, or commits an act of bankruptcy, or if a petition in bankruptcy for its reorganization or the readjustments of its indebtedness be filed by or against it, or if a receiver, trustee, or liquidator of all or substantially all of its property be appointed or applied for or if it ceases to be in business as an air carrier. In addition, in the event either Party shall default in the performance of any of the terms, covenants or conditions of this Agreement, the other Party may give written notice of such default, and, in the event such default is not cured within fifteen (15) days after the giving of such notice, the other Party may, at any time within thirty (30) days after the expiration of said fifteen (15) day period, terminate this Agreement by further written notice to the Party at default, without prejudice to any other right which the other Party may have.

10.3 Each Party, however, agrees to fulfill all obligations which accrued hereunder prior to the termination becomes effective.

10.4 Notice of termination shall be addressed to the principal office of either Party, mentioned in the preamble of this Agreement.

#### **ARTICLE 11: ASSIGNMENT**

Neither Party will assign or otherwise transfer any of its rights or obligations under this Agreement to any third party without the prior written consent of the other party. Any attempted assignment or transfer of this Agreement without the required consent shall be void and no effect.

#### **ARTICLE 12: NON-WAIVER**

No waiver of any provisions hereof shall be effective unless in writing and signed by the Party alleged to have waived such provision. Any single waiver shall not operate to waive subsequent or other defaults.

#### **ARTICLE 13: FORCE MAJEURE**

With the exception of outstanding rights and obligations, neither Party shall be liable for delays or failure in its performance hereunder caused by any act of God, war, strike, labor dispute, work stoppage, fire, act of government, or any other cause, whether similar or dissimilar, beyond the control of that Party. .

#### **ARTICLE 14: CAPTIONS**

The captions included in this Agreement have been inserted as a matter of convenience only and are not in any way intended to define, limit, or be used in connection with the interpretation of this Agreement.

#### **ARTICLE 15: MODIFICATIONS**

Any additions to or modifications of this Agreement shall have to be agreed upon in writing by the head offices of both Parties; provided, however, that any modifications or additions which become necessary by reason of IATA resolutions binding upon either or both of the Parties to this Agreement shall be deemed to be incorporated herein as from the effective date of such resolution.

#### **ARTICLE 16: STAMP, DUTIES, REGISTRATION FEES**

All stamp duties and registration fees in connection with this Agreement which may be prescribed under the national law of either Party to this Agreement, are payable by that Party.

#### **ARTICLE 17: CONSTRUCTION OF AGREEMENT**

It is intended that the terms of this Agreement be interpreted and the commercial cooperation described herein be undertaken in a manner that would not cause the Parties to be treated for any purpose as participating in a partnership.

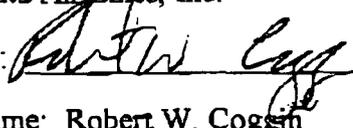
#### **ARTICLE 18: COMPETITIVE MARKETING**

In order to secure the economic and operational efficiencies hereunder, the Parties agree that, during the term of this Agreement, Delta and Swissair shall not enter into an agreement with any other United States carrier for nonstop service between the United States and Switzerland, without the prior written consent of the other Party. Except for the limitation specified in this Article 18, nothing in this Agreement confers any rights on one Party to restrict the other Party's ability:

- (a) to maintain or change rates, fares, tariffs, markets, schedules, equipment, services, capacity, distribution and marketing methods, competitive strategies or similar matters; or
- (b) to engage in vigorous and full competition with other entities; or
- (c) to do business, or choose not to do business, with other entities.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed in their names and on their behalf by their respective officers duly authorized, on the day and year first above written.

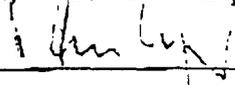
Delta Air Lines, Inc.

By: 

Name: Robert W. Coggan

Title: Senior Vice President - Marketing

Swissair, Swiss Air Transport, Ltd

By: 

Name: Paul Reutlinger

Title: Executive Vice President  
Marketing & Ground Services

By: 

Name: Michael Eggenschwiler

Title: Vice President External Relations

## **COOPERATION AGREEMENT**

This Cooperation Agreement dated September 8, 1995 (the "Agreement") is made by and between SABENA, S.A. [Sabena Belgian World Airlines], a corporation organized and existing under the laws of Belgium, having its principal office at Avenue Mounier, 2 1200 Brussels, Belgium, (hereinafter referred to as "Sabena"), and DELTA AIR LINES, INC., a corporation organized and existing under the laws of the State of Delaware and having its principal office at Hartsfield Atlanta International Airport, Atlanta, GA., 30320.

### **WITNESSETH**

**WHEREAS**, Delta and Sabena have entered into certain marketing arrangements and wish to create a global airline alliance through more specific global marketing programs which will generate efficiencies for each carrier and make each carrier a stronger competitor in the global air transportation marketplace; and

**WHEREAS**, Delta and Sabena have previously entered into Code-Sharing Agreements (these agreements collectively referred to as the "Marketing Agreements"), in order to benefit customers and enhance international competition, which agreements have been and shall be implemented consistent with applicable competition laws, regulations, and treaties; and

**WHEREAS**, Delta and Sabena desire to expand their airline alliance throughout transportation markets worldwide, and

**WHEREAS**, Delta and Sabena wish to agree upon the principles governing the overall conduct and exploitation of their commercial cooperation; and

**WHEREAS**, the proposed commercial cooperation of Delta and Sabena as set forth herein, will enhance international competition through the efficiencies and synergies created through the optimized use of the resources of Delta and Sabena; and

**WHEREAS**, the United States government has recently concluded and executed an "Open Skies" bilateral air services agreement with the government of Belgium, and the parties wish to take full advantage of the commercial opportunities presented thereby; and

**WHEREAS**, the Parties intend to file this Agreement for approval and antitrust immunity;

**NOW, THEREFORE**, in consideration of the premises and the mutual covenants and agreements herein contained, Delta and Sabena agree, subject to all necessary approvals from the requisite government authorities, to enter into this Agreement under the terms and conditions set forth herein.

### **ARTICLE 1: SCOPE OF THE AGREEMENT**

## **ARTICLE 1: SCOPE OF THE AGREEMENT**

1.1 Delta and Sabena hereby agree to enhance their commercial cooperation, pursuant to the principles set forth herein, which will be implemented through a series of agreements designed to achieve a high level of cooperation for the carriers' sales and marketing activities, generate efficiencies for each carrier and make each carrier a stronger competitor in the global air transportation marketplace.

1.2 The objective of this Agreement is to establish a legal framework under which Delta and Sabena may expand and enhance the current cooperative marketing efforts between Delta and Sabena as set forth in the Marketing Agreements. Accordingly, this Agreement will:

1.2.1 be taken into account on matters concerning the interpretation, administration and exploitation of the Marketing Agreements, consistent with the terms of those agreements, which shall remain in full force and effect.

1.2.2 set forth the principles governing the development of additional agreements, including, without limitation, agreements to further define and implement the Passenger Program and the Cargo Program (as those terms are defined in Articles 2.1 and Article 3, hereof).

## **ARTICLE 2: COOPERATION IN PASSENGER PROGRAMS BY DELTA AND SABENA**

2.1 Delta and Sabena hereby agree, as part of their commercial cooperation, to market both carriers' air transportation of passengers through cooperative, joint marketing operations and programs (the "Passenger Program"). The Passenger Program will contain those joint sales and marketing elements set forth in Article 2.2, below.

2.2 The first stage of the Passenger Program consists of the Marketing Agreements. Upon execution of this Agreement, the next stage will consist of an agreement or agreements to be negotiated for a comprehensive marketing and sales program or programs throughout the worldwide air transportation systems of Delta and Sabena. The second stage of the Passenger Program may include, without limitation, the following:

2.2.1 A combination of Delta and Sabena sales personnel, including a common staff, who would be authorized to represent both Delta and Sabena, independently and jointly, in marketing their products to customers and travel agents for sales of the services offered by both carriers. The joint marketing program may be structured as a joint venture of Delta and Sabena as if Delta and Sabena were a single entity selling a single product or set of products, identified

with the Service Marks (as defined in Article 4) of either or both entities or with jointly developed Service Marks.

2.2.2 For the products to be jointly developed or marketed pursuant to this Agreement, the Parties shall consult as necessary from time to time throughout the term hereof and may reach agreement, among other things, on:

2.2.2.1 the establishment of fares to be charged and inventory control, including systems, by each air carrier with respect to all coordinated Passenger Program products including wholesale net fares and corporate discount programs;

2.2.2.2 coordination of schedules, third party marketing, network planning, and information systems between Delta and Sabena to maximize sales possibilities by connecting services between the Delta and Sabena systems; and

2.2.2.3 the establishment of agreements and procedures for the sharing and/or pooling of revenues or earnings in particular markets, according to such formula as may be agreed by the parties.

2.2.2.4 the establishment of joint marketing programs, including frequent flyer and similar programs.

2.2.3 The establishment of a unified commission schedule, including agency, corporate, group, and override commissions to be agreed upon from time to time by Delta and Sabena throughout the term hereof.

2.2.4 The use of standard form contracts for sales to travel agencies general sales agents, corporations, organizations and individuals.

2.2.5 The use of service contracts between the parties and standard service contracts with third parties to avoid redundancy and to ensure that the delivery of services is consistent with the joint products and joint identities of the Parties.

2.2.6 The assignment of specific personnel from both carriers, at various levels with authority to resolve disputes or waive conditions.

2.2.7 The establishment of Passenger Program management committees to oversee, among other things, project development, budgets, and directions.

2.2.8 The joint use of marketing, fare, frequent flyer, cost, revenue and accounting data and information systems available to the Parties, consistent with applicable laws governing each Party.

2.2.9 The development of standard terms for additional blocked space, code sharing and other cooperative contracts.

2.2.10 The creation of mechanisms to promulgate, police and enforce on the highest levels of priority Passenger Program quality and service standards and to ensure that Passenger Program products are viewed as seamless and transparent to the customer.

2.2.11 The establishment of ancillary programs, including, without limitation, travel packages, coordination of facilities, information systems, or mail service to enhance the products marketed by the Parties.

2.2.12 The establishment of policies, procedures, information systems, and programs that would otherwise facilitate the Passenger Program.

2.2.13 The establishment of advertising and media programs that would jointly promote Delta and Sabena as a seamless, worldwide transportation system.

2.2.14 The entry of either carrier into new markets, as regulatory requirements permit, in order to expand the combined presence of Delta and Sabena throughout transportation markets worldwide.

2.2.15 The development of a joint identity through jointly developed Service Marks, which may include (a) a single, master identity and individual local identities, which will differ from the master identity only if required by local conditions, (b) harmonization of the existing identities and Service Marks of the Parties, (c) the use of the master and local identities on the aircraft exteriors and interiors, employee uniforms, facilities and ground vehicles, business cards and stationery of the Parties, and (d) such other terms as are mutually agreeable to the Parties.

2.3 The parties shall expand the Passenger Program so as to allow their marketing forces throughout the world to aggressively sell and market the products and services of Delta and Sabena both independently and jointly. Any expansion of these programs shall be subject to mutual written consent of Delta and Sabena.

### **ARTICLE 3: COOPERATION IN CARGO PROGRAMS BY DELTA AND SABENA**

In addition to the Passenger Program described in Article 2 above, the cooperative marketing operations and programs of Delta and Sabena shall include joint cargo sales and marketing (the "Cargo Program"). The terms of the Cargo Program will include those elements on which the Parties mutually agree, including, without limitation, elements equivalent to those set forth in Article 2.2,

hereof and the marketing of both carriers' air transportation of cargo through cooperative, joint marketing operations.

#### **ARTICLE 4: SERVICE MARKS**

4.1 For purposes of this Agreement, "Service Marks" shall mean the name, logos, promotions, designs, artworks, or other symbols or devices describing or identifying Delta or Sabena, respectively, or jointly, or the services, products, or programs of either or both carriers, whether or not previously registered as trademarks or service marks in the United States, Belgium, or any other country.

4.2 The Service Marks of Delta and Sabena are and shall remain the property of each carrier. Delta and Sabena shall each retain the right to change its Service Marks at any time during the term of this contract in its sole discretion. Delta and Sabena are hereby authorized to use each other's Service Marks in advertising and promoting the sales and promotions under this Agreement; provided, however, that such use shall be subject to the prior approval by each carrier of all such uses. The rights to use Delta's and Sabena's Service Marks are non-exclusive, non-assignable, and non-transferable. Upon the termination of this agreement, for any reason, each carrier shall immediately cease using the other carrier's Service Marks in any manner whatsoever, except to the extent explicitly permitted under this Agreement or any other relevant agreement between the Parties.

4.3 All Service Marks developed jointly between Delta and Sabena, shall enure to the benefit of both Parties during the term of this Agreement. The Parties agree to take appropriate steps to protect the rights of the Parties in the Service Marks and to license the use of jointly developed Service Marks to both Parties as fully and completely as permitted by law and this Agreement.

4.4 Neither Party shall sell or license the Service Marks of the other, or any jointly developed Service Marks, without the prior written consent of the other.

4.5 Each Party represents and warrants to the other that its Service Marks do not infringe upon the trademarks, tradenames, Service Marks, similar rights, or rights therein of any third party.

#### **ARTICLE 5: IMPLEMENTATION OF THIS AGREEMENT**

All aspects of commercial cooperation hereunder, including the Passenger Program, the Cargo Program and the use of Service Marks shall be subject to the prior review and written approval of both Delta and Sabena. Following the receipt of such approvals, matters relating to the implementation of this Agreement shall be dealt with through a steering committee established by the head offices of the Parties.

## **ARTICLE 6: GOVERNMENTAL AND REGULATORY APPROVALS**

6.1 In carrying out this agreement, the parties will comply with all necessary government laws, regulations, and requirements, including but not limited to the applicable competition laws.

6.2 The Parties shall take all necessary steps, in cooperation with each other, to obtain all approvals, if any, from government authorities in the United States, Belgium, or any other appropriate governmental authority, in order to carry out the terms of this Agreement.

6.3 In the event that any governmental agency or regulatory body having jurisdiction over the subject matter hereof shall require any material condition or limitation to this Agreement, the Parties hereto shall negotiate in good faith to make such amendments to this Agreement as shall be necessary to achieve the purposes and objectives of this Agreement. If any such condition or limitation, in the reasonable judgment of either Party, is fundamental to the intent of such Party and the operation of this Agreement, the Party shall have the right to declare that this Agreement shall not enter into effect or to terminate this Agreement upon thirty (30) days advance written notice to the other Party.

6.4 In the event that any necessary governmental approval is withdrawn or any governmental order issued or there is any change in applicable statutes, laws, or regulations governing the operations contemplated by this Agreement which would materially affect the rights, benefits, and/or obligations of the Parties hereto, the Parties shall comply therewith, and shall not be liable to each other for failure to fulfill any obligations under this Agreement that may be inconsistent with such changes, orders, statutes, laws, or regulations. If any such change in government approvals, orders, statutes, laws or regulations, in the reasonable judgment of either Party, would have a material adverse effect on the operation of this Agreement, the Party shall have the right to terminate this Agreement upon thirty (30) days advance written notice to the other Party. The Parties shall negotiate in good faith to make such amendments to this Agreement as may be necessary and sufficient to achieve the purposes and objectives of this Agreement.

## **ARTICLE 7: SEVERABILITY**

7.1 If any non-material provision contained in this Agreement shall be held to be invalid or unenforceable in any respect in any jurisdiction, such invalidity or unenforceability shall not affect the other provisions hereof which can be given effect without the invalid provision, and to this end the provisions of this Agreement are intended to be and shall be deemed severable.

7.2 The Parties agree to use their best efforts to replace such invalid or unenforceable provision with a valid and enforceable provision having to the maximum extent possible the same economic or practical effect.

7.3 If in the reasonable judgment of either Party, any provision or provisions held to be invalid and unenforceable is or are fundamental to the intent of such Party and the operation of this Agreement, such Party shall have the right to terminate this Agreement on the effective date of the traffic season following the traffic season then in effect. In order to terminate the Agreement on such date, a ninety (90) day prior written notice is required.

#### **ARTICLE 8: APPLICABLE LAW**

This Agreement, regardless of where concluded or executed, shall be construed in accordance with, and all rights and obligations accruing to either Party hereto shall be governed by the laws of the State of New York, and the laws of the United States of America. This provision shall not apply to any other agreement between the parties which specifies a different applicable law.

#### **ARTICLE 9: ARBITRATION**

Any dispute between the Parties concerning the validity, interpretation or application of this Agreement shall be settled in accordance with the terms and procedures of the IATA Arbitration Rules then effective and subject to New York law in accordance with Article 8. Any such arbitration procedures shall be held in Frankfurt, Germany and in the English language. The arbitration tribunal shall issue a final award within 180 days of the selection of the arbitrator(s) appointed to resolve the dispute.

#### **ARTICLE 10: EXECUTION AND TERMINATION**

10.1 This Agreement shall be effective, subject to necessary government approvals, from the date first set forth for the above, and remain in effect thereafter until terminated by either Party upon twelve (12) months prior written notice to the other Party. The Parties agree that this Agreement may be executed in counterparts, including facsimile transmission copies, that each executed copy shall be deemed to be an original, and that all originals together shall constitute one instrument.

10.2 Notwithstanding Article 10.1, either Party may terminate this Agreement forthwith at any time if the other Party becomes insolvent, makes a general assignment for the benefit of creditors, or commits an act of bankruptcy, or if a petition in bankruptcy for its reorganization or the readjustments of its indebtedness be filed by or against it, or if a receiver, trustee, or liquidator of all or substantially all of its property be appointed or applied for or if it ceases to be in

business as an air carrier. In addition, in the event either Party shall default in the performance of any of the terms, covenants or conditions of this Agreement, the other Party may give written notice of such default, and, in the event such default is not cured within fifteen (15) days after the giving of such notice, the other Party may, at any time within thirty (30) days after the expiration of said fifteen (15) day period, terminate this Agreement by further written notice to the Party at default, without prejudice to any other right which the other Party may have.

10.3 Each Party, however, agrees to fulfill all obligations which accrued hereunder prior to the termination becomes effective.

10.4 Notice of termination shall be addressed to the principal office of either Party, mentioned in the preamble of this Agreement.

#### **ARTICLE 11: ASSIGNMENT**

Neither Party will assign or otherwise transfer any of its rights or obligations under this Agreement to any third party without the prior written consent of the other party. Any attempted assignment or transfer of this Agreement without the required consent shall be void and no effect.

#### **ARTICLE 12: NON-WAIVER**

No waiver of any provisions hereof shall be effective unless in writing and signed by the Party alleged to have waived such provision. Any single waiver shall not operate to waive subsequent or other defaults.

#### **ARTICLE 13: FORCE MAJEURE**

With the exception of outstanding rights and obligations, neither Party shall be liable for delays or failure in its performance hereunder caused by any act of God, war, strike, labor dispute, work stoppage, fire, act of government, or any other cause, whether similar or dissimilar, beyond the control of that Party. .

#### **ARTICLE 14: CAPTIONS**

The captions included in this Agreement have been inserted as a matter of convenience only and are not in any way intended to define, limit, or be used in connection with the interpretation of this Agreement.

#### **ARTICLE 15: MODIFICATIONS**

Any additions to or modifications of this Agreement shall have to be agreed upon in writing by the head offices of both Parties; provided, however, that any modifications or additions which become necessary by reason of IATA resolutions

binding upon either or both of the Parties to this Agreement shall be deemed to be incorporated herein as from the effective date of such resolution.

**ARTICLE 16: STAMP, DUTIES, REGISTRATION FEES**

All stamp duties and registration fees in connection with this Agreement which may be prescribed under the national law of either Party to this Agreement, are payable by that Party.

**ARTICLE 17: CONSTRUCTION OF AGREEMENT**

It is intended that the terms of this Agreement be interpreted and the commercial cooperation described herein be undertaken in a manner that would not cause the Parties to be treated for any purpose as participating in a partnership.

**ARTICLE 18: COMPETITIVE MARKETING**

In order to secure the economic and operational efficiencies hereunder, the Parties agree that, during the term of this Agreement, Delta and Sabena shall not enter into an agreement with any other United States carrier for nonstop service between the United States and Belgium, without the prior written consent of the other Party. Except for the limitation specified in this Article 18, nothing in this Agreement confers any rights on one Party to restrict the other Party's ability:

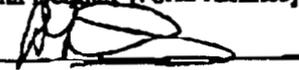
- (a) to maintain or change rates, fares, tariffs, markets, schedules, equipment, services, capacity, distribution and marketing methods, competitive strategies or similar matters; or
- (b) to engage in vigorous and full competition with other entities; or
- (c) to do business, or choose not to do business, with other entities.

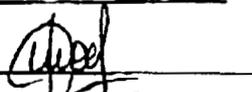
IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed in their names and on their behalf by their respective officers duly authorized, on the day and year first above written.

Delta Air Lines, Inc.

By:   
Name: Robert W. Coggin  
Title: Senior Vice President - Marketing

Sabena, S.A.  
[Sabena Belgian World Airlines]

By:   
Name: G. FRANCIS  
Executive Vice President  
Commercial  
Title: \_\_\_\_\_

By:   
Name: J.L. Bindekens  
Title: Vice President  
North/South America

## **COOPERATION AGREEMENT**

This Cooperation Agreement dated September 8, 1995 (the "Agreement") is made by and between Austrian Airlines, Österreichische Luftverkehrs AG, a corporation organized and existing under the laws of Austria, having its principal office at Fontanastrasse 1, 1107 Vienna, Austria (hereinafter referred to as "Austrian"), and Delta Air Lines, Inc., a corporation organized and existing under the laws of the State of Delaware and having its principal office at Hartsfield Atlanta International Airport, Atlanta, GA., 30320.

### **WITNESSETH**

**WHEREAS**, Delta and Austrian have entered into certain marketing arrangements and wish to create a global airline alliance through more specific global marketing programs which will generate efficiencies for each carrier and make each carrier a stronger competitor in the global air transportation marketplace; and

**WHEREAS**, Delta and Austrian have previously entered into a Letter of Intent concerning marketing programs between the carriers and a Code-Sharing Agreement (that agreement referred to herein as the "Marketing Agreement"), in order to benefit customers and enhance international competition, which agreements have been and shall be implemented consistent with applicable competition laws, regulations, and treaties; and

**WHEREAS**, Delta and Austrian desire to expand their airline alliance throughout transportation markets worldwide, and

**WHEREAS**, Delta and Austrian wish to agree upon the principles governing the overall conduct and exploitation of their commercial cooperation; and

**WHEREAS**, the proposed commercial cooperation of Delta and Austrian as set forth herein, will enhance international competition through the efficiencies and synergies created through the optimized use of the resources of Delta and Austrian; and

**WHEREAS**, the United States government has recently concluded and executed an "Open Skies" bilateral air services agreement with the government of Austria, and the parties wish to take full advantage of the commercial opportunities presented thereby; and

**WHEREAS**, the Parties intend to file this Agreement for approval and antitrust immunity;

**NOW, THEREFORE**, in consideration of the premises and the mutual covenants and agreements herein contained, Delta and Austrian agree, subject to all necessary approvals from the requisite government authorities, to enter into this Agreement under the terms and conditions set forth herein.

## **ARTICLE 1: SCOPE OF THE AGREEMENT**

1.1 Delta and Austrian hereby agree to enhance their commercial cooperation, pursuant to the principles set forth herein, which will be implemented through a series of agreements designed to achieve a high level of cooperation for the carriers' sales and marketing activities, generate efficiencies for each carrier and make each carrier a stronger competitor in the global air transportation marketplace.

1.2 The objective of this Agreement is to establish a legal framework under which Delta and Austrian may expand and enhance the current cooperative marketing efforts between Delta and Austrian as set forth in the Marketing Agreement. Accordingly, this Agreement will:

1.2.1 be taken into account on matters concerning the interpretation, administration and exploitation of the Marketing Agreement, consistent with the terms of that agreement, which shall remain in full force and effect.

1.2.2 set forth the principles governing the development of additional agreements, including, without limitation, agreements to further define and implement the Passenger Program and the Cargo Program (as those terms are defined in Articles 2.1 and Article 3, hereof).

## **ARTICLE 2: COOPERATION IN PASSENGER PROGRAMS BY DELTA AND AUSTRIAN**

2.1 Delta and Austrian hereby agree, as part of their commercial cooperation, to market both carriers' air transportation of passengers through cooperative, joint marketing operations and programs (the "Passenger Program"). The Passenger Program will contain those joint sales and marketing elements set forth in Article 2.2, below.

2.2 The first stage of the Passenger Program consists of the Marketing Agreement. Upon execution of this Agreement, the next stage will consist of an agreement or agreements to be negotiated for a comprehensive marketing and sales program or programs throughout the worldwide air transportation systems of Delta and Austrian. The second stage of the Passenger Program may include, without limitation, the following:

2.2.1 A combination of Delta and Austrian sales personnel, including a common staff, who would be authorized to represent both Delta and Austrian, independently and jointly, in marketing their products to customers and travel agents for sales of the services offered by both carriers. The joint marketing

program may be structured as a joint venture of Delta and Austrian as if Delta and Austrian were a single entity selling a single product or set of products, identified with the Service Marks (as defined in Article 4) of either or both entities or with jointly developed Service Marks.

2.2.2 For the products to be jointly developed or marketed pursuant to this Agreement, the Parties shall consult as necessary from time to time throughout the term hereof and may reach agreement, among other things, on:

2.2.2.1 the establishment of fares to be charged and inventory control, including systems, by each air carrier with respect to all coordinated Passenger Program products including wholesale net fares and corporate discount programs;

2.2.2.2 coordination of schedules, third party marketing, network planning, and information systems between Delta and Austrian to maximize sales possibilities by connecting services between the Delta and Austrian systems; and

2.2.2.3 the establishment of agreements and procedures for the sharing and/or pooling of revenue or earnings in particular markets, according to such formula as may be agreed by the parties.

2.2.2.4 the establishment of joint marketing programs, including frequent flyer and similar programs.

2.2.3 The establishment of a unified commission schedule, including agency, corporate, group, and override commissions to be agreed upon from time to time by Delta and Austrian throughout the term hereof.

2.2.4 The use of standard form contracts for sales to travel agencies general sales agents, corporations, organizations and individuals.

2.2.5 The use of service contracts between the parties and standard service contracts with third parties to avoid redundancy and to ensure that the delivery of services is consistent with the joint products and joint identities of the Parties.

2.2.6 The assignment of specific personnel from both carriers, at various levels with authority to resolve disputes or waive conditions.

2.2.7 The establishment of Passenger Program management committees to oversee, among other things, project development, budgets, and directions.

2.2.8 The joint use of marketing, fare, frequent flyer, cost, revenue and accounting data and information systems available to the Parties, consistent with applicable laws governing each Party.

2.2.9 The development of standard terms for additional blocked space, code sharing and other cooperative contracts.

2.2.10 The creation of mechanisms to promulgate, police and enforce on the highest levels of priority Passenger Program quality and service standards and to ensure that Passenger Program products are viewed as seamless and transparent to the customer.

2.2.11 The establishment of ancillary programs, including, without limitation, travel packages, coordination of facilities, information systems, or mail service to enhance the products marketed by the Parties.

2.2.12 The establishment of policies, procedures, information systems, and programs that would otherwise facilitate the Passenger Program.

2.2.13 The establishment of advertising and media programs that would jointly promote Delta and Austrian as a seamless, worldwide transportation system.

2.2.14 The entry of either carrier into new markets, as regulatory requirements permit, in order to expand the combined presence of Delta and Austrian throughout transportation markets worldwide.

2.2.15 The development of a joint identity through jointly developed Service Marks, which may include (a) a single, master identity and individual local identities, which will differ from the master identity only if required by local conditions, (b) harmonization of the existing identities and Service Marks of the Parties, (c) the use of the master and local identities on the aircraft exteriors and interiors, employee uniforms, facilities and ground vehicles, business cards and stationery of the Parties, and (d) such other terms as are mutually agreeable to the Parties.

2.3 The parties shall expand the Passenger Program so as to allow their marketing forces throughout the world to aggressively sell and market the products and services of Delta and Austrian both independently and jointly. Any expansion of these programs shall be subject to mutual written consent of Delta and Austrian.

### **ARTICLE 3: COOPERATION IN CARGO PROGRAMS BY DELTA AND AUSTRIAN**

In addition to the Passenger Program described in Article 2 above, the cooperative marketing operations and programs of Delta and Austrian shall include joint cargo sales and marketing (the "Cargo Program"). The terms of the Cargo Program will include those elements on which the Parties mutually agree, including, without limitation, elements equivalent to those set forth in Article 2.2, hereof and the marketing of both carriers' air transportation of cargo through cooperative, joint marketing operations.

### **ARTICLE 4: SERVICE MARKS**

4.1 For purposes of this Agreement, "Service Marks" shall mean the name, logos, promotions, designs, artworks, or other symbols or devices describing or identifying Delta or Austrian, respectively, or jointly, or the services, products, or programs of either or both carriers, whether or not previously registered as trademarks or service marks in the United States, Austria, or any other country.

4.2 The Service Marks of Delta and Austrian are and shall remain the property of each carrier. Delta and Austrian shall each retain the right to change its Service Marks at any time during the term of this contract in its sole discretion. Delta and Austrian are hereby authorized to use each other's Service Marks in advertising and promoting the sales and promotions under this Agreement; provided, however, that such use shall be subject to the prior approval by each carrier of all such uses. The rights to use Delta's and Austrian's Service Marks are non-exclusive, non-assignable, and non-transferable. Upon the termination of this agreement, for any reason, each carrier shall immediately cease using the other carrier's Service Marks in any manner whatsoever, except to the extent explicitly permitted under this Agreement or any other relevant agreement between the Parties.

4.3 All Service Marks developed jointly between Delta and Austrian, shall enure to the benefit of both Parties during the term of this Agreement. The Parties agree to take appropriate steps to protect the rights of the Parties in the Service Marks and to license the use of jointly developed Service Marks to both Parties as fully and completely as permitted by law and this Agreement.

4.4 Neither Party shall sell or license the Service Marks of the other, or any jointly developed Service Marks, without the prior written consent of the other.

4.5 Each Party represents and warrants to the other that its Service Marks do not infringe upon the trademarks, tradenames, Service Marks, similar rights, or rights therein of any third party.

## **ARTICLE 5: IMPLEMENTATION OF THIS AGREEMENT**

All aspects of commercial cooperation hereunder, including the Passenger Program, the Cargo Program and the use of Service Marks shall be subject to the prior review and written approval of both Delta and Austrian. Following the receipt of such approvals, matters relating to the implementation of this Agreement shall be dealt with through a steering committee established by the head offices of the Parties.

## **ARTICLE 6: GOVERNMENTAL AND REGULATORY APPROVALS**

6.1 In carrying out this agreement, the parties will comply with all necessary government laws, regulations, and requirements, including but not limited to the applicable competition laws.

6.2 The Parties shall take all necessary steps, in cooperation with each other, to obtain all approvals, if any, from government authorities in the United States, Austria, or any other appropriate governmental authority, in order to carry out the terms of this Agreement.

6.3 In the event that any governmental agency or regulatory body having jurisdiction over the subject matter hereof shall require any material condition or limitation to this Agreement, the Parties hereto shall negotiate in good faith to make such amendments to this Agreement as shall be necessary to achieve the purposes and objectives of this Agreement. If any such condition or limitation, in the reasonable judgment of either Party, is fundamental to the intent of such Party and the operation of this Agreement, the Party shall have the right to declare that this Agreement shall not enter into effect or to terminate this Agreement upon thirty (30) days advance written notice to the other Party.

6.4 In the event that any necessary governmental approval is withdrawn or any governmental order issued or there is any change in applicable statutes, laws, or regulations governing the operations contemplated by this Agreement which would materially affect the rights, benefits, and/or obligations of the Parties hereto, the Parties shall comply therewith by mutual agreement, and shall not be liable to each other for failure to fulfill any obligations under this Agreement that may be inconsistent with such changes, orders, statutes, laws, or regulations. If any such change in government approvals, orders, statutes, laws or regulations, in the reasonable judgment of either Party, would have a material adverse effect on the operation of this Agreement, the Party shall have the right to terminate this Agreement upon thirty (30) days advance written notice to the other Party. If the Parties elect to comply, they shall amend the Agreement accordingly. The Parties shall negotiate in good faith to make such amendments to this Agreement as may be necessary and sufficient to achieve the purposes and objectives of this Agreement.

## **ARTICLE 7: SEVERABILITY**

7.1 If any non-material provision contained in this Agreement shall be held to be invalid or unenforceable in any respect in any jurisdiction, such invalidity or unenforceability shall not affect the other provisions hereof which can be given effect without the invalid provision, and to this end the provisions of this Agreement are intended to be and shall be deemed severable.

7.2 The Parties agree to use their best efforts to replace such invalid or unenforceable provision with a valid and enforceable provision having to the maximum extent possible the same economic or practical effect.

7.3 If in the reasonable judgment of either Party, any provision or provisions held to be invalid and unenforceable is or are fundamental to the intent of such Party and the operation of this Agreement, such Party shall have the right to terminate this Agreement on the effective date of the traffic season following the traffic season then in effect. In order to terminate the Agreement on such date, a ninety (90) day prior written notice is required.

## **ARTICLE 8: APPLICABLE LAW**

This Agreement, regardless of where concluded or executed, shall be construed in accordance with, and all rights and obligations accruing to either Party hereto shall be governed by the laws of the State of New York, and the laws of the United States of America. This provision shall not apply to any other agreement between the parties which specifies a different governing law.

## **ARTICLE 9: ARBITRATION**

Any dispute between the Parties concerning the validity, interpretation or application of this Agreement shall be settled in accordance with the terms and procedures of the IATA Arbitration Rules then effective and subject to New York law in accordance with Article 8. Any such arbitration procedures shall be held in Frankfurt, Germany and in the English language. The arbitration tribunal shall issue a final award within 180 days of the selection of the arbitrator(s) appointed to resolve the dispute.

## **ARTICLE 10: EXECUTION AND TERMINATION**

10.1 This Agreement shall be effective, subject to necessary government approvals, from the date first set forth for the above, and remain in effect thereafter until terminated by either Party upon twelve (12) months prior written

notice to the other Party. The Parties agree that this Agreement may be executed in counterparts, including facsimile transmission copies, that each executed copy shall be deemed to be an original, and that all originals together shall constitute one instrument.

10.2 Notwithstanding Article 10.1, either Party may terminate this Agreement forthwith at any time if the other becomes insolvent, makes a general assignment for the benefit of creditors, or commits an act of bankruptcy, or if a petition in bankruptcy for its reorganization or the readjustments of its indebtedness be filed by or against it, or if a receiver, trustee, or liquidator of all or substantially all of its property be appointed or applied for or if it ceases to be in business as an air carrier. In addition, in the event either Party shall default in the performance of any of the terms, covenants or conditions of this Agreement, the other Party may give written notice of such default, and, in the event such default is not cured within fifteen (15) days after the giving of such notice, the other Party may, at any time within thirty (30) days after the expiration of said fifteen (15) day period, terminate this Agreement by further written notice to the Party at default, without prejudice to any other right which the other Party may have.

10.3 Each Party, however, agrees to fulfill all obligations which accrued hereunder prior to the termination becomes effective.

10.4 Notice of termination shall be addressed to the principal office of either Party, mentioned in the preamble of this Agreement.

#### **ARTICLE 11: ASSIGNMENT**

Neither Party will assign or otherwise transfer any of its rights or obligations under this Agreement to any third party without the prior written consent of the other party. Any attempted assignment or transfer of this Agreement without the required consent shall be void and no effect.

#### **ARTICLE 12: NON-WAIVER**

No waiver of any provisions hereof shall be effective unless in writing and signed by the Party alleged to have waived such provision. Any single waiver shall not operate to waive subsequent or other defaults.

#### **ARTICLE 13: FORCE MAJEURE**

With the exception of outstanding rights and obligations, neither Party shall be liable for delays or failure in its performance hereunder caused by any act of God, war, strike, labor dispute, work stoppage, fire, act of government, or any other cause, whether similar or dissimilar, beyond the control of that Party.

#### **ARTICLE 14: CAPTIONS**

The captions included in this Agreement have been inserted as a matter of convenience only and are not in any way intended to define, limit, or be used in connection with the interpretation of this Agreement.

#### **ARTICLE 15: MODIFICATIONS**

Any additions to or modifications of this Agreement shall have to be agreed upon in writing by the head offices of both Parties; provided, however, that any modifications or additions which become necessary by reason of IATA resolutions binding upon either or both of the Parties to this Agreement shall be deemed to be incorporated herein as from the effective date of such resolution.

#### **ARTICLE 16: STAMP, DUTIES, REGISTRATION FEES**

All stamp duties and registration fees in connection with this Agreement which may be prescribed under the national law of either Party to this Agreement, are payable by that Party.

#### **ARTICLE 17: CONSTRUCTION OF AGREEMENT**

It is intended that the terms of this Agreement be interpreted and the commercial cooperation described herein be undertaken in a manner that would not cause the Parties to be treated for any purpose as participating in a partnership.

#### **ARTICLE 18: COMPETITIVE MARKETING**

In order to secure the economic and operational efficiencies hereunder, the Parties agree that, during the term of this Agreement, Delta and Austrian shall not enter into an agreement with any other United States carrier for nonstop service between the United States and Austria, without the prior written consent of the other Party. Except for the limitation specified in this Article 18, nothing in this Agreement confers any rights on one Party to restrict the other Party's ability:

- (a) to maintain or change rates, fares, tariffs, markets, schedules, equipment, services, capacity, distribution and marketing methods, competitive strategies or similar matters; or
- (b) to engage in vigorous and full competition with other entities; or
- (c) to do business, or choose not to do business, with other entities.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed in their names and on their behalf by their respective officers duly authorized, on the day and year first above written.

Delta Air Lines, Inc.

Austrian Airlines  
Österreichische Luftverkehrs AG

By: *Robert W. Coggin*

By: *Konrad M. Rehma*

Name: Robert W. Coggin

Name: Dr. H. Bammer M. Rehma

Title: Senior Vice President - Marketing

Title: President President

## **COORDINATION AGREEMENT**

This Coordination Agreement dated September 8, 1995 (the "Agreement") is made by and among AUSTRIAN AIRLINES, of Vienna, Austria; DELTA AIR LINES, INC., of Atlanta, Georgia; SABENA S.A., SABENA BELGIAN WORLD AIRLINES, of Brussels, Belgium; and SWISSAIR, SWISS AIR TRANSPORT COMPANY, LTD., of Zurich, Switzerland (collectively, the "Parties").

### **WITNESSETH**

**WHEREAS**, Delta has, as of the date hereof, entered into (1) a Cooperation Agreement with Austrian, (2) a Cooperation Agreement with Sabena, and (3) a Cooperation Agreement with Swissair (collectively, the "Cooperation Agreements"); and

**WHEREAS**, each of the Cooperation Agreements provides for commercial cooperation between Delta and the other European airline signatory thereto, as described in each such agreement; and

**WHEREAS**, the Parties view each of the Cooperation Agreements as complementary of the others and wish to coordinate their respective activities under each such agreement with a view toward maximizing efficiencies overall; and

**WHEREAS**, there exist ownership relationships among the Parties, as follows: Delta and Swissair each hold equity interests in each other constituting approximately five percent of the voting common stock of each airline, and Swissair holds a ten percent equity interest in Austrian and a 49.5 percent equity interest in Sabena; and

**WHEREAS**, the United States Government has recently concluded and executed "open skies" bilateral air services agreements with the Governments of Austria, Belgium and Switzerland, the home countries of Austrian, Sabena and Swissair, respectively;

**WHEREAS**, the Parties view the Cooperation Agreements as establishing a contractual framework for commercial cooperation and integration of the airline systems of each of the Parties;

**NOW, THEREFORE**, in consideration of the premises and the mutual covenants and agreements herein contained, the Parties agree, subject to all necessary approvals from the requisite government authorities, to enter into this Agreement under the terms and conditions set forth herein.

1. The Parties periodically shall meet (in person or by telephone, and with such frequency as they may agree) to:

1.1 exchange information regarding the activities undertaken, or planned to be undertaken, pursuant to the Cooperation Agreements (or any of them) and to any agreement(s) ancillary thereto;

1.2 discuss the manner in which activities under a particular Cooperation Agreement relate, or should relate, to activities under the other Cooperation Agreements;

1.3 make recommendations regarding any coordination of activities among any two or all three of the Cooperation Agreements that seems desirable and likely to achieve additional efficiencies from the enhancement of commercial cooperation and integration among the Parties; and

1.4 enter into agreements regarding coordination of activities among any or all of the Parties that further the cooperation and integration of the Parties' airline systems. Such agreements shall be implemented in accordance with the Cooperation Agreements.

2. In between the meetings referred to above (and prior to the first such meeting), any combination of the Parties may engage in conduct described in paragraph 1, provided that the other Parties are kept informed, within a reasonable period thereafter, of any significant information exchanges and discussions that concern them. Nothing in this Agreement, however, addresses or limits the ability of Delta and the European airline signatory to any particular Cooperation Agreement to discuss and agree on matters within the purview of that Cooperation Agreement.

3. The Parties shall not carry out this Agreement in a jurisdiction unless and until the Agreement is in compliance with all necessary government laws, regulations and requirements of that jurisdiction, including the securing of any governmental approvals.

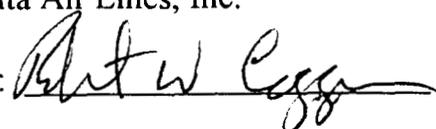
Austrian Airlines

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Delta Air Lines, Inc.

By:  \_\_\_\_\_

Name: Robert W. Coggin

Title: Senior V.P. - Marketing

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Austrian Airlines

By: *Dr. H. Bammer*

Name: Dr. H. Bammer M. Rehulka

Title: President President

Delta Air Lines, Inc.

By: \_\_\_\_\_

Name: Robert W. Coggin

Title: Senior V.P. - Marketing

Sabena S.A., Sabena Belgian  
World Airlines

By:  \_\_\_\_\_

Name: B. PRANZI  
Executive Vice President  
Commercial

Title: \_\_\_\_\_

Swissair, Swiss Air Transport  
Company, Ltd.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

By:  \_\_\_\_\_

Name: J. L. Lindekens

Title: Vice President  
North/South America

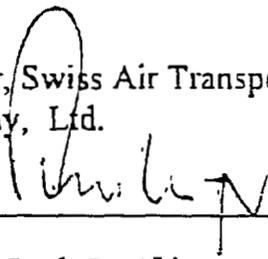
Sabena S.A., Sabena Belgian  
World Airlines

By: \_\_\_\_\_

Name: \_\_\_\_\_

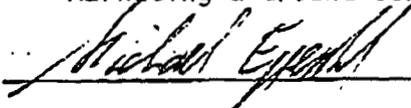
Title: \_\_\_\_\_

Swissair, Swiss Air Transport  
Company, Ltd.

By: 

Name: Paul Reutlinger

Title: Executive Vice President  
Marketing & Ground Services

By: 

Name: Michael Eggenschwiler

Title: Vice President External Relations

**INS Passengers  
Between the U.S. and Europe**

**Year Ended September 1994**

<b>Carrier</b>	<b>Total Passengers</b>	<b>Share of Passengers</b>
Delta	3,998,940	12.8%
Swissair	858,320	2.7%
Sabena	232,531	0.7%
Austrian	152,967	0.5%
Other Carriers	26,083,049	83.3%
<b>Total</b>		
U.S.-Europe Passengers	31,325,807	100.0%
<b>Total Alliance</b>		
<b>U.S. - Europe Passengers</b>	5,242,758	16.7%

Sources:

Delta: Delta Internal Files

All other carriers: DOT/INS U.S. International Travel Statistics

## Summary of North Atlantic Market Concentration May 1995

Rank	Carrier	Frequency Per Week	Market Share	Carrier	Seats Per Week	Market Share
1	Delta	347	15.64%	British Airways	77,392	15.61%
2	British Airways	249	11.22%	Delta	65,694	13.25%
3	American Airlines	236	10.64%	American Airlines	50,461	10.16%
4	United Airlines	205	9.24%	United Airlines	33,423	6.74%
5	Lufthansa	138	6.22%	Northwest Airlines	28,211	5.69%
6	Northwest Airlines	123	5.54%	Air France	23,575	4.75%
7	KLM Airlines	98	4.42%	Lufthansa	23,208	4.68%
8	Air France	83	3.74%	KLM Airlines	19,021	3.84%
9	Air Canada	82	3.70%	Trans World	18,259	3.68%
10	Continental	71	3.20%	Air Canada	17,482	3.53%
11	Trans World	69	3.11%	Alitalia	13,487	2.72%
12	Swireair	59	2.66%	Virgin Airlines	13,427	2.71%
13	Virgin Airlines	52	2.34%	Continental	13,233	2.67%
14	Alitalia	45	2.09%	Swireair	11,469	2.31%
15	Canadian Intl	42	1.89%	Canadian Intl	8,289	1.67%
16	SAS	34	1.53%	Air Lingus	8,144	1.64%
17	Sabena	26	1.17%	Iberian Airlines	6,516	1.31%
18	Air Lingus	23	1.04%	SAS	5,658	1.12%
19	USAir	21	0.95%	USAir	4,366	0.88%
20	Austrian Airlines	18	0.81%	Martinair	4,354	0.88%
21	Iberian Airlines	17	0.77%	Air India	4,244	0.86%
22	LOT Polish Airlines	17	0.77%	Sabena	4,073	0.82%
23	Icelandair	16	0.72%	LOT Polish Airlines	4,047	0.82%
24	Martinair	15	0.69%	Olympic	3,813	0.77%
25	TAP Air Portugal	11	0.50%	Icelandair	3,007	0.61%
26	Air India	10	0.45%	Singapore	2,854	0.58%
27	Aeroflot	9	0.41%	LTU Airlines	2,763	0.56%
28	LTU Airlines	9	0.41%	Finnair	2,615	0.53%
29	Royal Jordanian	9	0.41%	Air New Zealand	2,506	0.51%
30	Olympic	9	0.41%	Tower Air	2,251	0.45%
31	Finnair	8	0.36%	Royal Jordanian	2,186	0.44%
32	Pakistan Intl	8	0.36%	Pakistan Intl	2,055	0.41%
33	Malev	7	0.32%	Turk Hava Yollari	2,005	0.40%
34	Singapore	7	0.32%	TAP Air Portugal	1,775	0.36%
35	Turk Hava Yollari	7	0.32%	Austrian Airlines	1,640	0.33%
36	Air New Zealand	6	0.27%	Czech Airlines	1,432	0.29%
37	Czech Airlines	6	0.27%	Aeroflot	1,181	0.24%
38	Tarom Romanian	5	0.23%	Tarom Romanian	1,044	0.21%
39	Tower Air	5	0.23%	Kuwait Airlines	965	0.20%
40	Kuwait Airlines	4	0.18%	Malev	858	0.17%
41	Lauda Air	3	0.14%	Minerve	808	0.16%
42	Minerve	3	0.14%	Lauda Air	627	0.13%
43	Biman Bangladesh	2	0.09%	Biman Bangladesh	541	0.11%
44	El Al Airlines	2	0.09%	El Al Airlines	362	0.08%
45	Balkan Bulgarian	2	0.09%	Balkan Bulgarian	384	0.08%
46	Metro Airlines	1	0.05%	Metro Airlines	181	0.04%
	<b>TOTAL</b>	<b>2,218</b>	<b>100.00%</b>		<b>465,862</b>	<b>100.00%</b>

**HHI Index:**

Pre Alliance	736	720
Post Alliance	884	826

**Notes:**

Includes Code Share Flights:

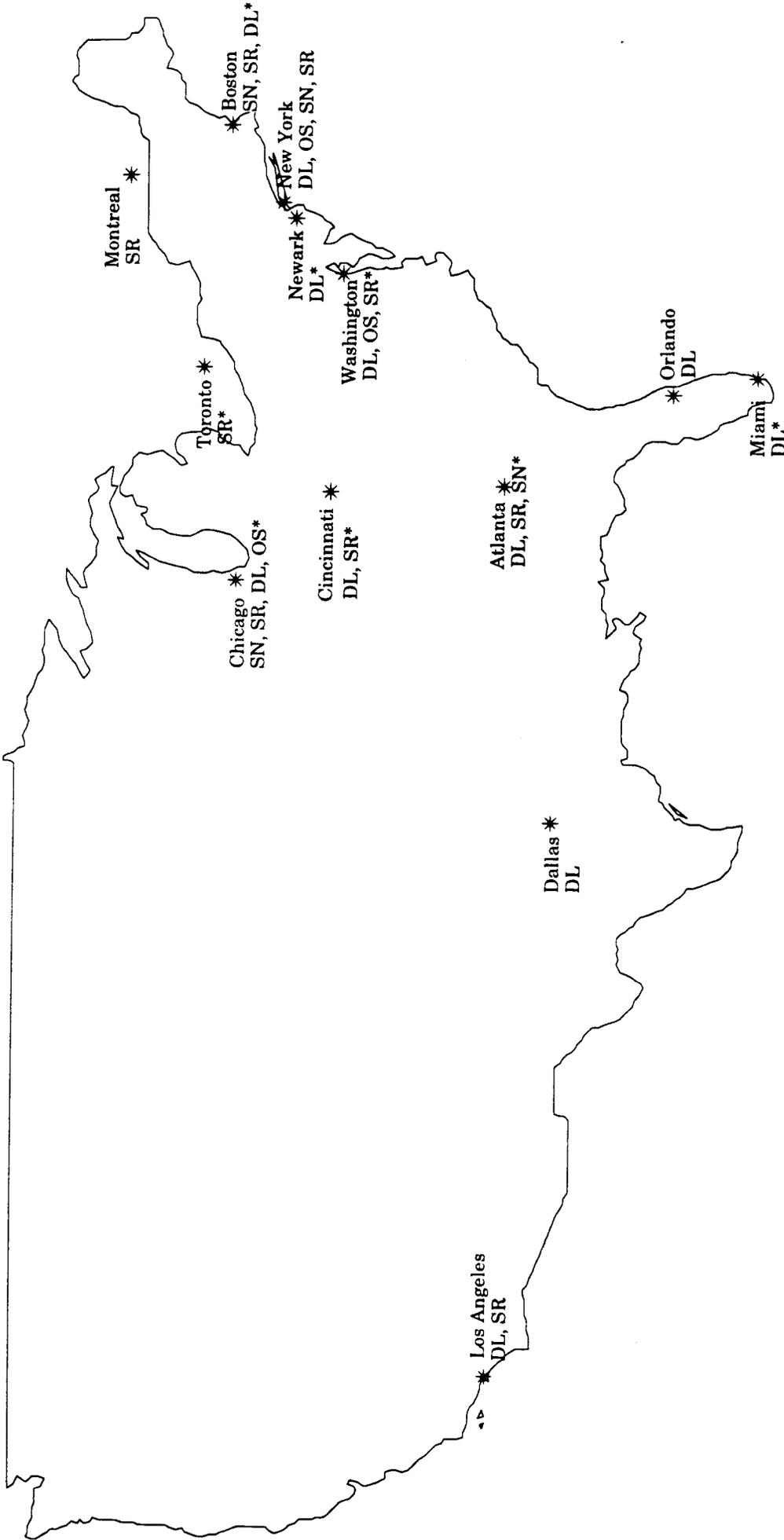
- Frequency shown for both operator and code share partner.
- Seats allocated 2/3 operator, 1/3 code share partner (NWK allocated on 1/2-1/2 basis)

Analysis in one direction, US-Europe, for scheduled airline service.

Alliance carriers indicated in bold.

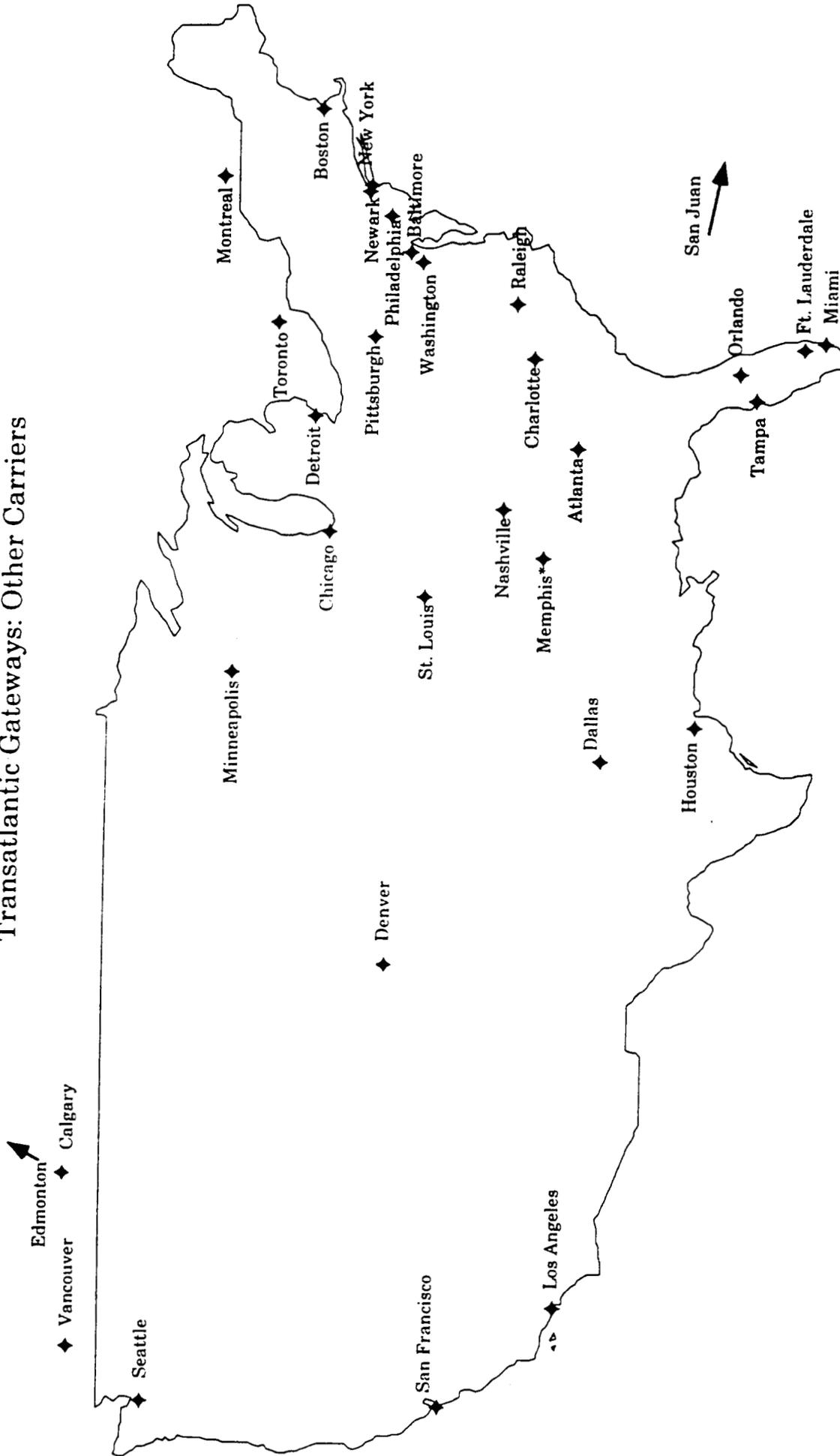
Source: May 1995 OAG

# Transatlantic Gateways: Alliance Carriers



\*Offers only code-share service.

Transatlantic Gateways: Other Carriers



\*Memphis service commences June 1995. All other service as of April 2, 1995.

# European Transatlantic Hub Gateways: Alliance Carriers



Note: A hub gateway is a city where the transatlantic carrier has service to 10 or more other European cities.

# European Transatlantic Hub Gateways: Other Carriers



Note: A hub gateway is a city where the transatlantic carrier has service to ten or more other European cities.

## INS Passengers by European Hub City 1994 vs. 1990

	1990		1994		% Change	
	TOTAL	US FLAG	TOTAL	US FLAG	TOTAL	US FLAG
<b><u>Amsterdam</u></b>						
QTR 1	254,635	34,097	463,446	138,573	82.0%	306.4%
QTR 2	396,156	78,053	703,139	207,265	77.5%	165.5%
QTR 3	489,138	123,724	830,686	247,628	69.8%	100.1%
QTR 4*	248,276	54,633	411,962	123,328	65.9%	125.7%
<b>Total</b>	<b>1,388,205</b>	<b>290,507</b>	<b>2,409,233</b>	<b>716,794</b>	<b>73.6%</b>	<b>146.7%</b>
<b><u>Paris-Charles de Gaulle</u></b>						
QTR 1	618,354	405,040	687,030	453,480	11.1%	12.0%
QTR 2	909,917	617,606	1,049,473	682,171	15.3%	10.5%
QTR 3	1,096,039	717,004	1,212,806	767,056	10.7%	7.0%
QTR 4*	455,785	290,063	578,712	371,230	27.0%	28.0%
<b>Total</b>	<b>3,080,095</b>	<b>2,029,713</b>	<b>3,528,021</b>	<b>2,273,937</b>	<b>14.5%</b>	<b>12.0%</b>
<b><u>Copenhagen</u></b>						
QTR 1	115,770	30,435	104,448	13,036	-9.8%	-57.2%
QTR 2	157,825	30,878	151,919	20,766	-3.7%	-32.7%
QTR 3	203,082	37,812	168,438	32,039	-17.1%	-15.3%
QTR 4*	74,647	10,871	67,358	15,859	-9.8%	45.9%
<b>Total</b>	<b>551,324</b>	<b>109,996</b>	<b>492,163</b>	<b>81,700</b>	<b>-10.7%</b>	<b>-25.7%</b>
<b><u>London-Heathrow</u></b>						
QTR 1	1,742,338	886,351	2,041,610	887,937	17.2%	0.2%
QTR 2	2,456,639	1,252,079	2,882,905	1,267,249	17.4%	1.2%
QTR 3	2,950,008	1,518,072	3,511,299	1,583,222	19.0%	4.3%
QTR 4*	1,463,486	705,544	1,833,568	753,525	25.3%	6.8%
<b>Total</b>	<b>8,612,471</b>	<b>4,362,046</b>	<b>10,269,382</b>	<b>4,491,933</b>	<b>19.2%</b>	<b>3.0%</b>

\*QTR 4=Oct.-Nov. only.

Source: DOT/INS U.S. International Travel Statistics

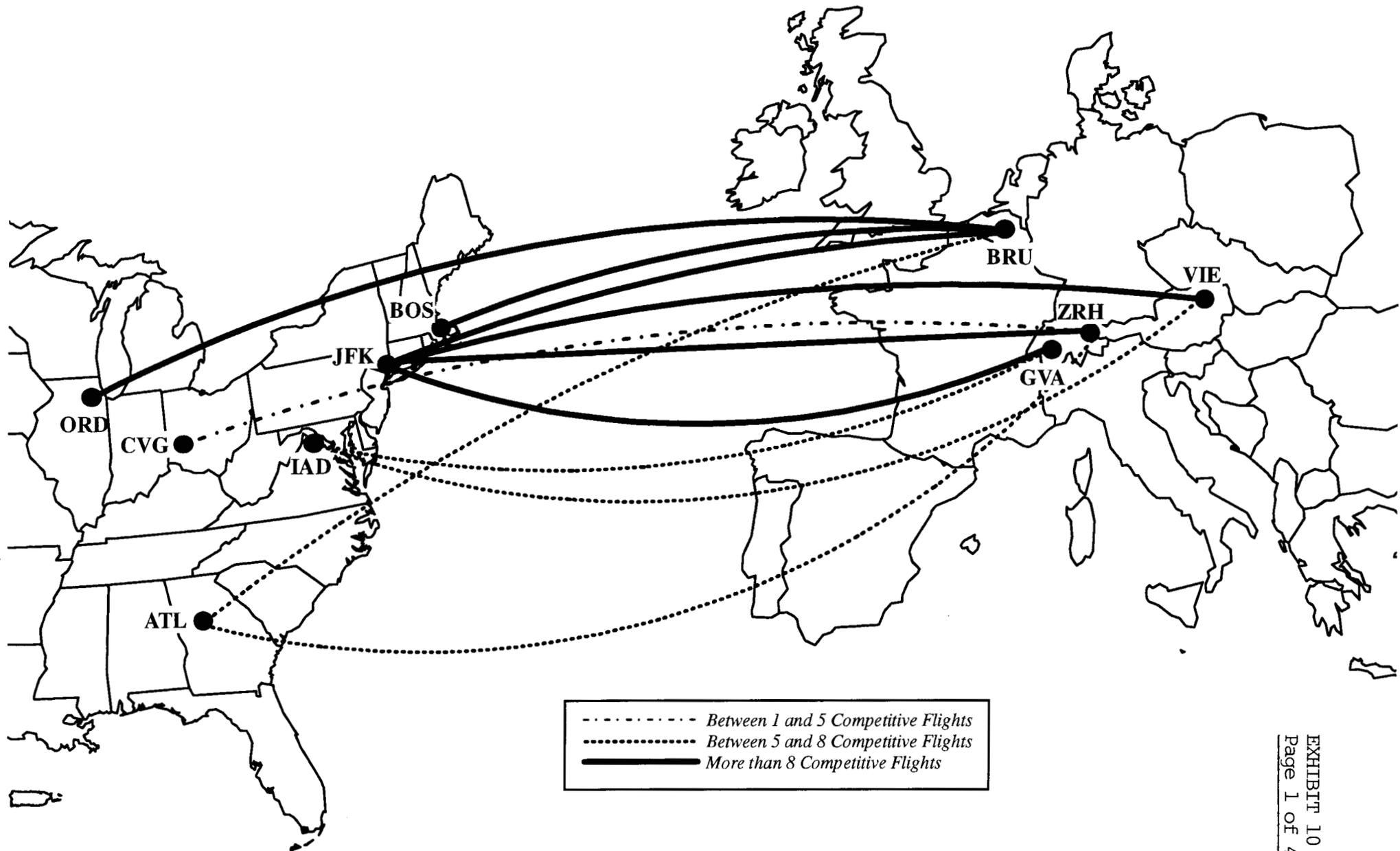
## Code-Sharing Among Alliance Carriers on Nonstop Transatlantic Routes

<b>North American Gateway</b>	<b>European Gateway</b>	<b>Serving Carrier</b>	<b>Partner</b>
Atlanta	Brussels	Delta	Sabena
Atlanta	Zurich	Swissair	Delta
Boston	Brussels	Sabena	Delta
Chicago-O'Hare	Brussels	Sabena	Delta
Cincinnati	Zurich	Delta	Swissair
New York-JFK	Brussels	Sabena	Delta
New York-JFK	Geneva	Swissair	Delta
New York-JFK	Vienna	Austrian	Delta
New York-JFK	Zurich	Swissair	Delta
Washington-Dulles	Geneva	Austrian*	Delta/Swissair

\*Austrian provides the aircraft and both Austrian and Delta sell seats between Washington and Vienna.

Source: Delta Internal Schedule Files

# Competitive Services in Alliance Partner Nonstop and One-Stop Service Markets



Source: Summer 1995 Carrier Schedules

## Competitive Services in Alliance Partner Nonstop and One-Stop Markets

Market	1st Leg Cxr	2nd Leg Cxr	Cnx Apt	Stops	NA Flt #	Dep. Time	Arr. Time	Elap. Hours	Elap Tm vs NS
<b>ATL-BRU</b>	DL	na	na	0	DL124	17:35	8:00	8.4	na
1	UA	UA	IAD	1	UA950	14:25	7:20	10.9	130%
2	AA	AA	ORD	1	AA88	18:31	11:30	11.0	130%
3	LH	LH	FRA	1	LH495	16:45	10:15	11.5	137%
4	KL	KL	AMS	1	KL622	17:25	11:10	11.8	140%
5	NW	KL	AMS	1	NW8622	17:25	11:10	11.8	140%
<b>ATL-ZRH</b>	SR	na	na	0	SR121	19:25	10:15	8.8	na
1	LH	LH	FRA	1	LH445	16:45	9:45	11.0	125%
2	UA	LH	FRA	1	UA3506	16:45	9:45	11.0	125%
3	UA	UA	IAD	1	UA964	14:25	7:40	11.3	127%
4	TW	AA	JFK	1	AA64	14:25	8:05	11.7	132%
5	KL	KL	AMS	1	KL622	17:25	11:30	12.1	137%
6	NW	NW	AMS	1	NW8622	17:25	11:30	12.1	137%
7	AA	AA	ORD	1	AA38	13:11	8:10	13.0	147%
<b>BOS-BRU</b>	SN	na	na	0	SN534	19:45	8:25	6.7	na
1	BA	BD	LHR	1	BA212	18:00	8:55	8.9	134%
2	AA	AA	LHR	1	AA108	19:20	10:20	9.0	135%
3	AA	BD	LHR	1	AA108	19:20	10:20	9.0	135%
4	AA	BA	LHR	1	AA108	19:20	10:20	9.0	135%
5	LH	LH	FRA	1	LH423	18:55	10:15	9.3	140%
6	BA	BA	LHR	1	BA212	18:00	9:20	9.3	140%
7	BA	BA	LHR	1	BA214	20:10	12:00	9.8	148%
8	KL	KL	AMS	1	KL8038	19:05	11:10	10.1	151%
9	AA	AA	JFK	1	AA98	16:30	8:40	10.2	153%
10	UA	UA	IAD	1	UA950	14:55	7:20	10.4	156%
<b>CVG-ZRH</b>	DL	na	na	0	DL122	21:00	11:20	8.3	na
1	AA	AA	ORD	1	AA38	13:34	8:10	12.6	151%
<b>IAD-VIE</b>	OS	OS	GVA	1	OS516	18:10	10:50	10.7	na
1	UA	UA	FRA	1	UA3502	17:40	9:50	10.2	95%
2	LH	LH	FRA	1	LH419	17:40	9:50	10.2	95%
3	KL	KL	AMS	1	KL652	23:15	15:30	10.3	96%
4	LH	LH	FRA	1	LH6419	17:25	9:50	10.4	98%
5	UA	UA	FRA	1	UA916	17:25	9:50	10.4	98%
6	UA	KL	AMS	1	UA946	18:10	10:55	10.8	101%
7	UA	BA	LHR	1	UA920	18:55	11:55	11.0	103%
8	BA	BA	LHR	1	BA700	18:15	11:55	11.7	109%

Market	1st Leg Cxr	2nd Leg Cxr	Cnx Apt	Stops	NA Flt #	Dep. Time	Arr. Time	Hours	Elap Tm vs NS
<b>IAD-GVA</b>	SR	na	na	0	SR117	18:10	8:20	8.2	na
1	UA	UA	FRA	1	UA3502	17:40	10:05	10.4	128%
2	LH	LH	FRA	1	LH419	17:40	10:05	10.4	128%
3	KL	KL	AMS	1	KL652	23:15	15:45	10.5	129%
4	UA	UA	FRA	1	UA916	17:15	10:05	10.8	133%
5	LH	LH	FRA	1	LH6419	17:15	10:05	10.8	133%
6	BA	BA	LHR	1	BA216	18:15	11:05	10.8	133%
7	UA	BA	LHR	1	UA920	18:15	11:05	10.8	133%
8	BA	BA	LHR	1	BA216	21:30	15:20	11.8	145%
<b>JFK-BRU</b>	SN	na	na	0	SN548	19:15	8:15	7.0	na
1	BA*	BD	LHR	1	BA2	8:45	20:40	5.9	85%
2	BA*	BA	LHR	1	BA2	8:45	20:40	5.9	85%
3	AA	na	na	0	AA98	19:25	8:40	7.3	104%
4	BA	BA	MAN	1	BA182	18:15	9:20	9.1	130%
5	BA	BA	LGW	1	BA172	18:30	9:45	9.3	132%
6	BA	BA	LHR	1	BA174	19:00	10:35	9.6	137%
7	KL	KL	AMS	1	KL642	18:40	10:25	9.8	139%
8	AA	AA	LHR	1	AA100	18:35	10:20	9.8	139%
9	UA	UA	IAD	1	UA950	15:30	7:20	9.8	140%
10	LH	LH	FRA	1	LH401	18:20	10:15	9.9	142%
<b>JFK-GVA</b>	SR	na	na	0	SR111	19:20	9:00	7.7	na
1	BA*	BA	LHR	1	BA2	8:45	21:35	6.8	89%
2	AF	AF	CDG	1	AF009	21:50	13:20	9.5	124%
3	VS	BA	LHR	1	VS4	19:30	11:05	9.6	125%
4	UA	UA	FRA	1	UA3516	18:20	10:05	9.8	127%
5	LH	LH	FRA	1	LH4574	18:20	10:05	9.8	127%
6	BA	BA	LGW	1	BA172	18:30	10:25	9.9	129%
7	BA	BA	LHR	1	BA174	19:00	11:05	10.1	132%
8	LH	LH	FRA	1	LH405	21:45	14:00	10.3	134%
9	NW	NW	AMS	1	NW8642	18:25	11:00	10.6	138%
10	KL	KL	AMS	1	KL642	18:25	11:00	10.6	138%
<b>JFK-VIE</b>	OS	na	na	0	OS502	18:55	9:45	8.8	na
1	LH	LH	DUS	1	LH409	17:15	9:00	9.8	110%
2	UA	LH	DUS	1	UA3526	17:15	9:00	9.8	110%
3	LH	LH	FRA	1	LH405	21:45	13:55	10.2	115%
4	KL	KL	AMS	1	KL644	23:10	15:30	10.3	117%
5	VS	BA	LHR	1	VS4	19:30	11:55	10.4	118%
6	KL	KL	AMS	1	KL642	18:25	10:55	10.5	119%
7	NW	NW	AMS	1	NW8642	18:25	10:55	10.5	119%
8	BA	BA	LHR	1	BA174	19:00	11:55	10.9	124%
9	AZ	AZ	FCO	1	AZ611	17:30	10:50	11.3	128%
10	MA	MA	BUD	1	MA91	17:45	11:05	11.3	128%

Market	1st Leg Cxr	2nd Leg Cxr	Cnx Apt	Stops	NA Flt #	Dep. Time	Arr. Time	Hours	Elap Tm vs NS
<b>JFK-ZRH</b>	SR	na	na	0	SR101	20:30	10:00	7.5	na
1	AA	na	na	0	AA64	18:05	8:05	8.0	107%
2	LH	LH	FRA	1	LH401	18:20	9:45	9.4	126%
3	UA	LH	FRA	1	LH3516	18:20	9:45	9.4	126%
4	AA	BA	LHR	1	AA100	18:25	10:25	10.0	133%
5	LH	LH	DUS	1	LH409	17:15	9:15	10.0	133%
6	UA	LH	DUS	1	UA3526	17:15	9:15	10.0	133%
7	UA	UA	IAD	1	UA964	15:30	7:40	10.2	136%
8	BA	BA	LHR	1	BA116	22:15	14:35	10.3	138%
9	KL	KL	AMS	1	NW8644	23:10	15:45	10.6	141%
10	OK	OK	PRG	1	OK051	18:20	12:30	12.2	162%
<b>ORD-BRU</b>	SN	na	na	0	SN540	16:25	7:20	8.9	na
1	AA	na	na	0	AA88	20:25	11:30	9.1	102%
2	AA	BD	LHR	1	AA66	17:20	10:20	11.0	123%
3	AA	AA	LHR	1	AA66	17:20	10:20	11.0	123%
4	AF	AF	CDG	1	AF55	15:45	8:55	11.2	125%
5	UA	LH	FRA	1	UA3500	16:45	10:15	11.5	129%
6	LH	LH	FRA	1	LH431	16:45	10:15	11.5	129%
7	UA	UA	IAD	1	UA950	13:30	7:20	11.8	133%
8	KL	KL	AMS	1	KL612	16:30	11:10	12.7	142%
9	NW	NW	AMS	1	NW8612	16:30	11:10	12.7	142%

*Notes:*

*IAD/DCA and JFK/LGA O&D markets combined.*

*BA\*=Concorde Equipment*

## Non-Alliance Carriers Providing Nonstop Transatlantic Service at Overlap Gateways Other Than Atlanta and Cincinnati

March 1995

<b>Boston</b>	<b>Chicago-O'Hare</b>	<b>Los Angeles</b>	<b>Newark</b>	<b>New York-JFK</b>	<b>New York-JFK&amp;EWR</b>	<b>Washington, DC</b>
Aer Lingus	Aeroflot	Air France	Air France	Aer Lingus	Aer Lingus	Aeroflot
Alitalia	Air France	Air New Zealand	Alitalia	Aeroflot	Aeroflot	Air France
American Airlines	Air Ukraine	Alitalia	British Air	Air France	Air France	British Air
British Air	Alitalia	American Airlines	Continental	Air India	Air India	KLM/Northwest
Lufthansa	American Airlines	AOM French Airlines	El Al Israel Airlines	Air Ukraine	Air Ukraine	Lufthansa
KLM/Northwest	British Air	British Air	Lot-Polish Airlines	Alitalia	Alitalia	United
Olympic Airways	Czechoslovak Airlines	KLM/Northwest	Lufthansa	American Airlines	American Airlines	
Trans World Airlines	KLM/Northwest	LTU International Airways	SAS Scandinavian Airline	Biman Bangladesh	Biman Bangladesh	
United	Lot-Polish Airlines	Lufthansa	TAP Air Portugal	British Air	British Air	
Virgin Atlantic Airways	Lufthansa	United	United	Czechoslovak Airlines	Continental	
	Royal Jordanian	Virgin Atlantic Airways	Virgin Atlantic Airways	Finnair	Czechoslovak Airlines	
	Tarom-Romanian			Iberia	El Al Israel Airlines	
	United			Icelandair	Finnair	
				KLM/Northwest	Iberia	
				Kuwait Airways	Icelandair	
				Lot-Polish Airlines	KLM/Northwest	
				Lufthansa	Kuwait Airways	
				Malev-Hungarian Airlines	Lot-Polish Airlines	
				Olympic Airways	Lufthansa	
				Pakistan International	Malev-Hungarian Airlines	
				Royal Jordanian	Olympic Airways	
				Singapore Airlines	Pakistan International	
				Tarom-Romanian	Royal Jordanian	
				Tower Air	SAS Scandinavian Airline	
				Trans World Airlines	Singapore Airlines	
				Turk Hava Yollari	TAP Air Portugal	
				United	Tarom-Romanian	
				Virgin Atlantic Airways	Tower Air	
					Trans World Airlines	
					Turk Hava Yollari	
					United	
					Virgin Atlantic Airways	

Source: Delta Internal Schedule Files

**FARES TO AMSTERDAM FROM SELECTED U.S. GATEWAYS  
SUMMER 1995 VS SUMMER 1990**

	<u>Summer 1990</u>	<u>Summer 1995</u>	<u>% Chg.</u>
<b><u>MSP</u></b>			
F	\$ 2,570	\$ 2,970	15.6%
C	\$ 1,484	\$ 1,805	23.3%
Y	\$ 1,056	\$ 1,329	25.9%
YEE	\$ 1,295	\$ 1,338	3.3%
Deep Disc.	\$ 658	\$ 848	28.9%
<b><u>DTI</u></b>			
F	\$ 2,290	\$ 2,811	22.8%
C	\$ 1,220	\$ 1,527	25.2%
Y	\$ 995	\$ 1,221	22.7%
YEE	\$ 1,183	\$ 1,318	11.4%
Deep Disc.	\$ 658	\$ 828	25.8%
<b><u>GHI</u></b>			
F	\$ 2,290	\$ 2,811	22.8%
C	\$ 1,220	\$ 1,527	25.2%
Y	\$ 995	\$ 1,221	22.7%
YEE	\$ 1,183	\$ 1,338	13.1%
Deep Disc.	\$ 658	\$ 848	28.9%
<b><u>NYC</u></b>			
F	\$ 2,042	\$ 2,506	22.7%
C	\$ 1,094	\$ 1,369	25.1%
Y	\$ 861	\$ 1,057	22.8%
YEE	\$ 1,093	\$ 1,268	16.0%
Deep Disc.	\$ 618	\$ 778	25.9%

\*Current YEE versus '90 YHWE

\*\*Current LHXAN1 versus '90 GHXNR

Data Source: Delta Air Lines Pricing & Revenue Control Department

**Other Gateways Used by Transatlantic Passengers  
from Delta's Top 28 Behind-Atlanta or Behind-Cincinnati Cities**

**CY 1993**

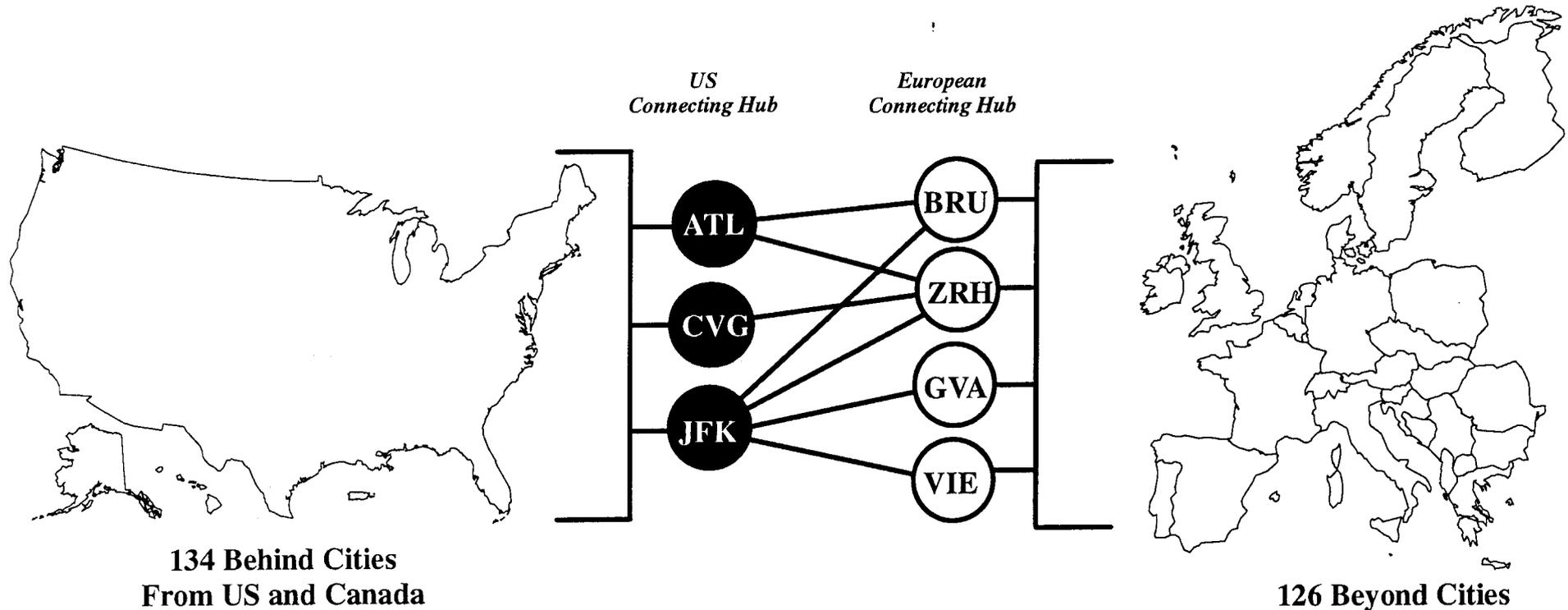
<b>City</b>	<b>Gateways Other Than Atlanta or Cincinnati Used by 5% or More of Passengers*</b>						<b>% of U.S. Carrier Passengers Using a Gateway Other Than Atlanta or Cincinnati**</b>
Charleston	CLT	IAD	JFK				33%
Charlotte	CLT						74%
Chicago	IAD	JFK	ORD				88%
Cleveland	DTW	EWR	IAD	JFK	ORD		65%
Dallas-Ft. Worth	DFW	IAH	JFK	ORD			79%
Denver	DEN	EWR	IAD	MSP	ORD		70%
Ft. Lauderdale	EWR	IAD	JFK	MCO			45%
Ft. Myers	MCO						33%
Greenville	CLT						24%
Jacksonville	CLT	EWR	JFK				36%
Kansas City	DTW	EWR	JFK	ORD	STL		59%
Los Angeles	JFK	LAX					76%
Louisville	JFK	ORD					44%
Memphis	BOS	DTW	MSP	ORD			54%
Miami	EWR	JFK	MIA				74%
Nashville	JFK	ORD					61%
New Orleans	DTW	IAD	IAH	JFK	ORD		52%
Orlando	BOS	IAD	JFK	MCO			54%
Phoenix	DFW	DTW	IAD	JFK	MSP	ORD	58%
Raleigh/Durham	CLT	IAD	JFK	ORD	RDU		69%
Salt Lake City	DFW	JFK	MSP	ORD			51%
San Diego	DFW	JFK	LAX	ORD	SAN		61%
San Francisco	JFK	ORD	SFO				73%
Sarasota	CLT	EWR	MCO	MLA			36%
Savannah	CLT						17%
Seattle	IAD	ORD	SEA				70%
Tampa	BOS	EWR	IAD	JFK			43%
West Palm Beach	EWR	JFK	MCO	RDU			44%

- Gateways used by 5% or more of passengers between the U.S. city (e.g. Charleston) and 18 European cities (Amsterdam, Brussels, Budapest, Dublin, Frankfurt, Geneva, Hamburg, London, Madrid, Manchester, Milan, Munich, Paris, Prague, Rome, Shannon, Vienna, and Zurich). Some gateways may be omitted because the database contained only the top 3 gateways for each city pair.

- \*\* This percentage is understated because the database contained only the top 3 gateways for each city pair.

Source: U.S. Department of Transportation, Origin and Destination Survey, DB1A.

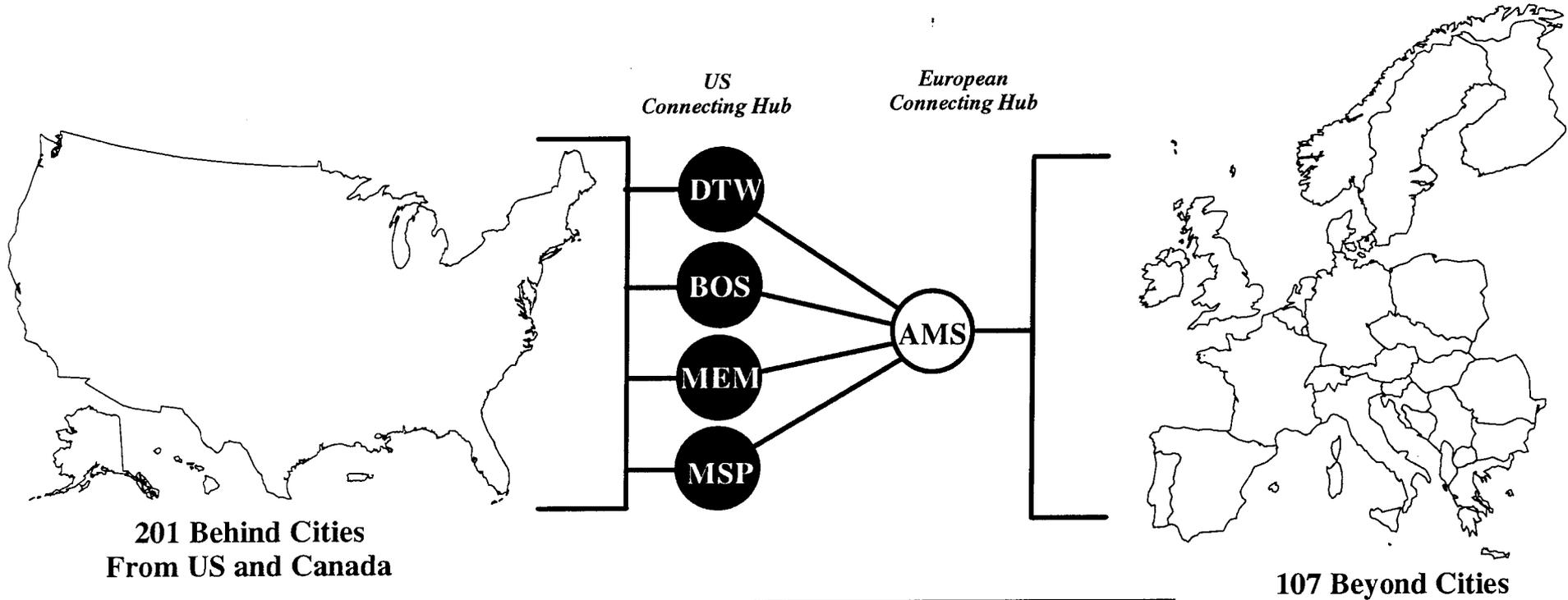
# Delta/Swissair/Austrian/Sabena Alliance U.S. & Canada to Europe & Beyond Online Services Through Primary Hub Network



<b>Summary of Potential Impact of Delta/Swissair/Austrian/Sabena Alliance</b>	
Nonstop City Pair Services	7
Single Plane & Connecting Services*	17,420
<i>*Includes 1 and 2 stop single plane/connection opportunities.</i>	

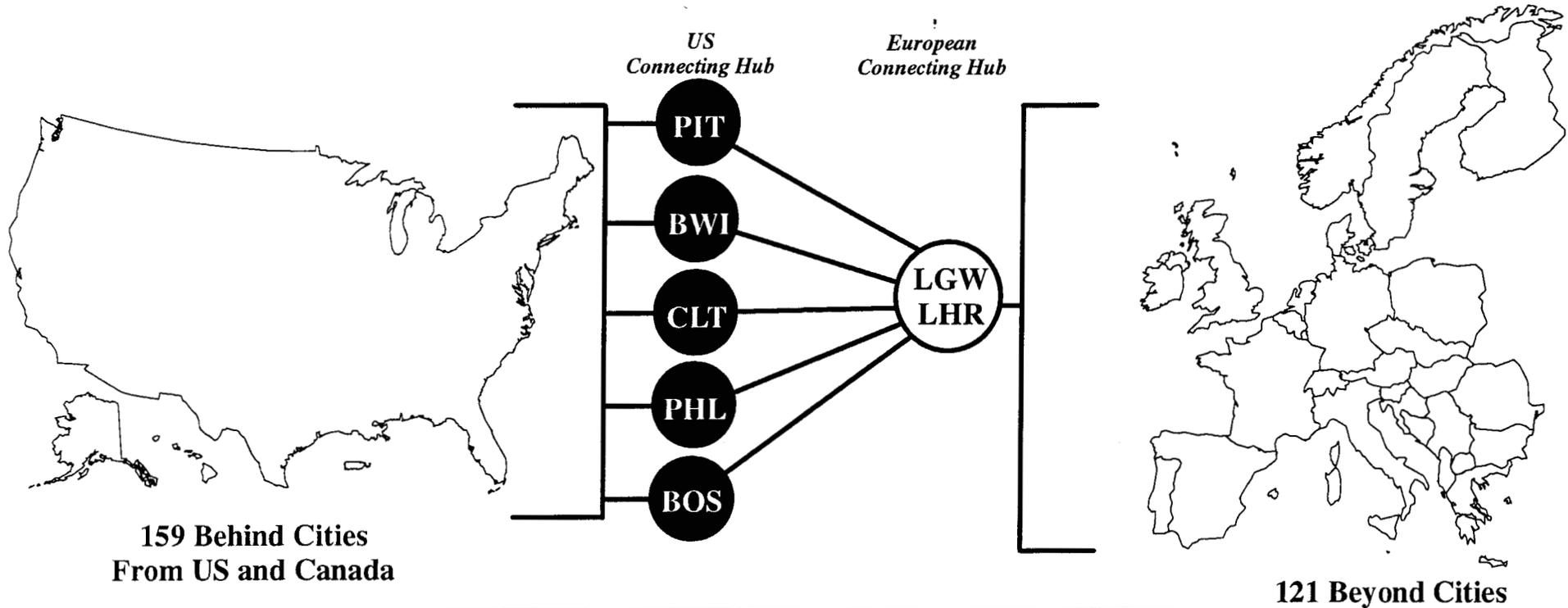
Source: August 1995 OAG

# Northwest/KLM Alliance U.S. & Canada to Europe & Beyond Online Services Through Primary Hub Network



<b>Summary of Potential Impact of Northwest/KLM Alliance</b>	
Nonstop City Pair Services	4
Single Plane & Connecting Services*	21,708
<i>*Includes 1 and 2 stop single plane/connection opportunities.</i>	

# USAir/British Airways Alliance U.S. & Canada to Europe & Beyond Online Services Through Primary Hub Network



<b>Summary of Potential Impact of USAir/British Airways Alliance</b>	
Nonstop City Pair Services	5
Single Plane & Connecting Services*	19,398
<i>*Includes 1 and 2 stop single plane/connection opportunities.</i>	

Source: August 1995 OAG