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Order 2000-1-26
Served: January 28, 2000

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.

Issued by the Department of Transportation
on the 28th day of January 2000

Joint Application of **MALAYSIA AIRLINES** **and** **NORTHWEST AIRLINES, INC.** for approval of and antitrust immunity for an Alliance Agreement under 49 U.S.C. §§ 41308 and 41309

Docket OST-2000-6791 -2

ORDER

On January 13, 2000, Malaysia Airlines ("MAS") and Northwest Airlines, Inc. ("Northwest") (collectively the "Joint Applicants") filed an application for approval of and antitrust immunity for their Coordination Agreement dated December 22, 1999. They urge the Department to grant the request for at least five years.

The Joint Applicants state that their arrangement establishes the contractual framework for implementation of comprehensive coordinated activities by the two airlines. They state that if the agreement is approved and antitrust immunity is granted, they will then proceed to conclude specific coordination and integration undertakings with respect to scheduling, marketing, pricing, joints services, and other related matters. The Joint Applicants state that they will not make such agreements absent antitrust immunity.

Our preliminary examination of this request indicates that the Joint Applicants did not submit certain relevant information. In order to consider this matter fairly and expeditiously, we require the Joint Applicants to provide the Department with the following information, specifically, that they:

A. Provide all joint applicants' corporate documents (in English or with English translations) dated within the last two years that address competition in the U.S.-transpacific markets.

B. Provide all joint applicants' studies, surveys, analyses and reports (in English or with English translations) dated within the last two years, which were prepared by or for any officer(s) or director(s) (or, individual(s) exercising similar functions) for the purpose of evaluating or

analyzing the proposed alliance with respect to market shares, competition, competitors, markets, potential for traffic growth or expansion into geographic markets, and indicate (if not contained in the document itself) the date of preparation, the name and title of each individual who prepared each such document.

C. Describe separately each applicant's strategic objectives in forming this arrangement.

D. In addition to the traffic data that MAS states it will make available in the non-public record,[1] provide an analysis of the effect on international competition of the proposed arrangement between the Joint Applicants.

E. Provide a discussion of the level of service that each partner intends to provide in the U.S.-Pacific market including behind- and beyond-gateway markets.

F. Describe the extent to which airport facilities, including gates and commercially usable slots, are available to U.S. flag carriers who want to begin or increase service to Malaysia.

G. Discuss significant service/equipment changes anticipated by the Joint Applicants and the integration of Northwest's domestic route system with MAS' international route system.

H. Provide complete information on whether the proposed arrangement involves any exchange of equity or other forms of cross-ownership between the partners.

I. Discuss any labor effects of the proposed alliance, and whether, how and to what extent employees of Northwest and MAS will be integrated. In particular, state whether the transaction or a similar type of transaction had been the subject of recent collective bargaining discussions between Northwest and its unions. Provide a discussion of whether both union and non-union employees adversely affected by the alliance would be compensated or otherwise protected.

Since we are requiring the Joint Applicants to file additional information, we defer the otherwise applicable 21-day comment deadline until further notice. When we have determined that the record of this case is complete, we will announce an appropriate procedural schedule for reaching a decision.

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[1] While recognizing that the Department has in past cases required the foreign applicant to submit O&D Survey traffic data for its top 100 city-pair markets involving a U.S. point, MAS states that it only maintains traffic data on a "gateway-to-gateway" basis. MAS states that it will submit its traffic data for the 1997-1999 period. Application at 29.

Accordingly:

1. We direct Malaysia Airlines and Northwest Airlines, Inc. to submit the additional information set forth in this order, as a supplement to their joint application;

2. We defer the 21-day deadline for the filing of comments set forth in 14 CFR Part 303 until further notice;

3. Upon our determination that the joint application is complete, we will establish a procedural schedule for comments and such other responsive pleadings as may be determined necessary to decide this matter fairly and expeditiously; and

4. We shall serve this order on all persons on the service list in this docket, the Ambassador of Malaysia in Washington, D.C.; the Department of State (Office of Aviation); the Department of Justice (Antitrust Division); the Federal Aviation Administration (AFS-200); the Department of Defense.

By:

A. BRADLEY MIMS
Deputy Assistant Secretary for Aviation
and International Affairs

(SEAL)

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