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Order 2001-2-5
Served: February 6, 2001

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

Issued by the Department of Transportation
on the 6th day of February, 2001

Joint Application of **CONTINENTAL AIRLINES, INC.** **and** **COMPAÑÍA PANAMEÑA DE AVIACIÓN, S.A.** **under 49 U.S.C. §§ 41308 and 41309 for approval of and antitrust immunity for an Alliance Agreement**

Docket OST-2000-8577- 7

ORDER ESTABLISHING PROCEDURAL DATES, GRANTING ACCESS TO DOCUMENTS, AND DIRECTING THE SUBMISSION OF EVIDENTIARY MATERIAL

On December 22, 2000, Continental Airlines, Inc. (Continental) and Compañía Panameña de Aviación (COPA) (together the Joint Applicants) filed an application for approval of and antitrust immunity for an alliance agreement.

Concurrently, the Joint Applicants submitted additional documents in support of their request and filed a joint motion under 14 C.F.R. 302.12 of our regulations requesting confidential treatment for this material. They assert that these documents are proprietary, commercially sensitive, and confidential in nature and qualify for being withheld from public disclosure. The motion was unopposed.

On January 12, 2001, the Department placed in the docket a redacted version of the partners' Alliance Agreement. At the same time, we directed them to provide us with all redacted provisions of the Alliance Agreement for review of the relevancy of the redacted material.

On January 16, 2001, the Joint Applicants provided the Department with a complete copy of their Alliance Agreement. Based on our review, we have determined that materials in the document are relevant, consistent with earlier findings in matters similar to these,[1] to our determinations in this case. We therefore direct the Joint Applicants to file the relevant materials in the docket within three business days from the service date of this order.[2]

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[1] For example, see Order 95-11-5 at 6 (Docket OST-95-618); Order 97-5-4 at 6-7 (Docket OST-96-1700); and Notice served on February 12, 1998 (Docket OST-97-3285).

[2] The applicants could then seek confidential treatment of this material under Rule 12.

We will rule on the merits of the Rule 12 Motions by subsequent order.

With the submission of the above-described supplemental material, we find that the application will be substantially complete.[3] Therefore, in order to provide all interested parties sufficient time to analyze adequately and comment fully on all material in the public and non-public record, under conditions imposed by the Department under similar recent circumstances,[4] we will grant immediate interim access to all documents covered by the Rule 12 Motions to counsel and outside experts for interested parties who file appropriate affidavits with the Department in advance.

Moreover, we find it appropriate to grant interim access to any subsequent materials filed in this docket under a Rule 12 Motion to counsel and outside experts for interested parties who have filed appropriate affidavits with the Department in advance, unless the party filing the motion objects. Finally, we will require that answers to the application be filed no later than 21 days from the date that the additional material is filed in the docket, and that replies be filed no later than 7 business days after the last day for filing an answer.

All affidavits must state that (1) the affiant is counsel for an interested party or an outside independent expert providing services to such a party; (2) the affiant will use the information only for the purpose of participating in this proceeding; and (3) the affiant will disclose such information only to other persons who have filed a valid affidavit in Docket OST-2000-8577. Affiants and interested parties must understand and agree that any pleading or other filing that includes or discusses information contained in the covered documents must itself be accompanied by a Rule 12 motion requesting confidential treatment. Affidavits must be filed in Docket OST-2000-8577 with the Department of Transportation, Dockets, Room PL-401, 400 Seventh Street, S.W., Washington, D.C., 20590.

Affiants having filed affidavits may examine the documents at the Department of Transportation at the Dockets location. Affiants must present a stamped copy of the affidavit filed with the Department of Transportation before examination of the documents.

ACCORDINGLY:

1. We direct Continental Airlines, Inc. and Compañía Panameña de Aviación to file in this docket the supplemental information described in this order within three business days of the service date of this order;

2. We grant to counsel and outside experts for the interested parties immediate interim access to all confidential materials filed in Docket OST-2000-8577, subject to the procedures and restrictions set forth in this order;

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[3] We reserve the right to require the subsequent filing of any information not specifically requested in this order.

[4] See Notice in Docket OST-2000-6791 dated May 26, 2000.

3. We direct interested parties to file comments in Docket OST-2000-8577 no later than 21 days from the date that the supplemental information provided for in ordering paragraph 1 is filed in Docket OST-2000-8577, and replies shall be filed no later than 7 business days after the last day for filing answers;

4. This order is effective immediately; and

5. We shall serve this order on all persons on the service list in this docket.

By:

SUSAN E. McDERMOTT
Deputy Assistant Secretary for Aviation
and International Affairs

(SEAL)

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