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Order 2001-3-4  
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**UNITED STATES OF AMERICA  
DEPARTMENT OF TRANSPORTATION  
OFFICE OF THE SECRETARY  
WASHINGTON, D.C.**

Issued by the Department of Transportation  
on the 2nd day of March, 2001

Joint Application of

**UNITED AIR LINES, INC.**

and

**AIR NEW ZEALAND LIMITED**

under 49 U.S.C. §§ 41308 and 41309 for approval  
of and antitrust immunity for alliance agreements

Docket OST-1999-6680 - 7

**ORDER TO SHOW CAUSE**

By this order, we tentatively grant approval of and antitrust immunity for an Alliance Agreement<sup>1</sup> between United Air Lines, Inc. ("United") and Air New Zealand Limited ("Air New Zealand" or "ANZ"), under 49 U.S.C. §§ 41308 and 41309.<sup>2</sup> If made final, we will direct the Joint Applicants to resubmit their Alliance Agreement to the Department for review no later than five years from the service date of the Final Order. If the Joint Applicants choose to operate under a common name or brand, they will have to obtain advance approval from the Department before implementing the arrangement.

<sup>1</sup> For purposes of this application, the term "Alliance Agreement" shall include the following agreements executed or anticipated by the Joint Applicants: (1) the Alliance Expansion Agreement entered into on December 1, 1999, *see* Exhibit JA-1; (2) the Air New Zealand-United Airlines Alliance Agreement effective December 2, 1996, *see* Exhibit JA-2; (3) the Code Share and Regulatory Cooperation Agreement effective December 2, 1996, *see* Exhibit JA-3; (4) the International Passenger Special Prorate Agreement effective May 15, 1997, *see* Exhibit JA-4; (5) the International Bilateral Cargo Prorate Agreement effective July 1, 1998, *see* Exhibit UA-1 filed under Rule 39 confidentiality procedures; (6) the United Mileage Plus\* and Air New Zealand Air Points\*\* International Carrier Participation Agreements effective April 15, 1997, *see* Exhibit UA-2 filed under Rule 39 confidentiality procedures; and (7) any implementing agreements in furtherance of the above agreements.

<sup>2</sup> ANZ states that its Australian subsidiary companies Ansett Australia Holdings Limited, Ansett Australia Limited, and Ansett International Limited are not parties to the Alliance Expansion Agreement. *See* Application at fn. 7. Accordingly, the proposed grant of antitrust immunity in this order would not apply to these Australian subsidiaries.

As an express condition of the grant of antitrust immunity to the Alliance, we also direct United and ANZ to withdraw from all International Air Transport Association ("IATA") tariff conference activities affecting through prices between the United States and New Zealand and for other markets described below. We further propose to direct Air New Zealand to report full-itinerary Origin-Destination Survey of Airline Passenger Traffic data ("O&D Survey") for all passenger itineraries that include a United States point (similar to the O&D Survey data already reported by their partner United). We further tentatively find it appropriate to condition our approval as more fully explained below. We are providing the Joint Applicants and other interested parties the opportunity to comment on these tentative findings.

## **I. Background**

### **A. United-Air New Zealand Operational Relationship**

The Joint Applicants are currently partners in a code-share alliance that does not have immunity and that has operated since May 1997, between the United States, on the one hand, and New Zealand, Australia, Fiji, Tahiti, Western Samoa and the Cook Islands, on the other hand.<sup>3</sup> They state that their alliance has enabled them to extend the reach of their global networks, increase the number of itinerary options each offers the public, and compete more effectively against the American Airlines-Qantas Airways code-share alliance. They now want to broaden and deepen their alliance to achieve greater operational efficiencies and continue the expansion of their networks on a more integrated and coordinated basis.

### **The Open-Skies Agreement with New Zealand**

On June 18, 1997, the United States and New Zealand signed an open-skies agreement. The predicate for our approval and grant of antitrust immunity for this proposed alliance is the existence of the expansive new aviation agreement between the United States and New Zealand. The accord allows any U.S. airline to serve any point in New Zealand (and open intermediate and beyond rights) from any point in the United States and allows any airline of New Zealand to do the same. An open-skies aviation regime also encourages new competitive service in the U.S.-New Zealand marketplace. Since market forces now discipline the price and quality of U.S.-New Zealand airline service, U.S. consumers benefit from enhanced passenger and shipping options.

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<sup>3</sup> The code-share agreement is not a guaranteed, blocked-space arrangement. Accordingly, neither United nor ANZ purchases or guarantees the seats allocated to it by the other. Rather, the seats are allocated only for purposes of inventory management. See Exhibit JA-3 at 2.

## **II. The United-Air New Zealand Alliance Agreement**

Through an enhanced alliance, the Joint Applicants state that they intend to coordinate their services, improve the efficiency of their operations, enhance their ability to compete in the global marketplace, and expand the benefits available to the traveling and shipping public. Although they will continue to be independent companies, the underlying objective of their arrangement is to enable the companies to plan and coordinate services over their respective route networks as if there had been an operational merger between them. They say that the expanded alliance will position them to compete more aggressively with Qantas Airways and its partners in the Oneworld Alliance: American Airlines, British Airways, Cathay Pacific Airways, Canadian International, Finnair, and Iberia, resulting in increased price and service competition among all market participants.

For example, the proposed arrangement provides for coordinated pricing, inventory and yield management; the establishment of an "Alliance Committee" to oversee and manage the two companies' cooperative activities; joint marketing, advertising, sales and distribution networks; coordinated flight schedules, route networks, and route planning; revenue pooling and sharing; coordination and integration of frequent flyer programs; coordinated purchasing of goods and services from third-party suppliers, travel agents, general sales agents; sharing of facilities at airports; uniform service standards; and coordinated cargo programs.

## **III. The Application and Responsive Pleadings**

### **A. The Joint Application**

On December 17, 1999, the Joint Applicants filed an application seeking approval of and antitrust immunity for their Alliance Agreement, for at least a five-year term. They state that the purpose of the proposed arrangement is to establish a legal framework enabling them to expand their existing code-share relationship, while permitting each of them to retain its independent corporate and national identity. While the arrangement does not involve any exchange of equity or other forms of cross-ownership,<sup>4</sup> they state that the objective of the Alliance Agreement is to enable the partners to plan and coordinate service over their respective route networks as if they were a single entity. The Joint Applicants are members of

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<sup>4</sup> ANZ owns a 50 percent interest in Ansett Australia Holdings Limited, which wholly owns Ansett Australia Limited, an Australian airline. Ansett Australia Holdings Limited also holds a 49 percent interest in Ansett International Limited, an Australian airline that operates scheduled international passenger service in the Australia-Asia/South Pacific markets. Application at 6-8.

On February 18, 2000, ANZ announced that it had reached agreement to acquire full ownership of Ansett Australia Holdings Limited, pending Government regulatory consents and approval by ANZ's shareholders.

the "Star Alliance."<sup>5</sup> They also state that they will not implement the proposed alliance without antitrust immunity.<sup>6</sup>

The Joint Applicants assert that the public and commercial benefits promoted by the proposed arrangement and U.S. international aviation policy supports granting their request. They represent that their alliance will produce significant network synergies by creating a coordinated network of competitive network services between the U.S. and Australia and New Zealand and beyond, and producing cost efficiencies and savings through integration and coordination that can be passed on to consumers, as global competition between alliances increases. They maintain that the proposed alliance will create a seamless United-ANZ network that will enhance competition in the U.S.-South Pacific market and the worldwide marketplace by enabling United-ANZ to compete with other global alliances, especially the American Airlines-Qantas Airways-British Airways partnership, thereby increasing global competition. The Joint Applicants assert that the alliance cannot achieve the expected benefits and efficiencies absent antitrust immunity.

The Joint Applicants state that the proposed alliance will not substantially reduce or eliminate competition in any relevant market: the South Pacific regional market; the U.S.-Australia-New Zealand markets; and the two city-pair markets in which the Joint Applicants operate overlapping non-stop services, Los Angeles-Auckland and Los Angeles-Sydney. Indeed, they argue that a fully implemented alliance will enable them to increase their competitiveness, placing additional commercial pressure on rival South Pacific airlines and other existing global network systems.

They argue that in the U.S.-South Pacific market, Qantas Airways serves more points in Australia, New Zealand, and Fiji than any other airline. Additionally, they maintain that because of Qantas' affiliation with the Oneworld Alliance, Qantas has been able to extend its online network to many more key commercial and population centers in the U.S. and Canada. They argue that their alliance is the principal competitive alternative in the South Pacific to the Oneworld Alliance. If approved, they state that their fully integrated networks will serve about 10,000 online city-pair markets,<sup>7</sup> offering consumers access to more foreign destinations with new and improved routing alternatives. They state that not only will their proposed integration make their alliance a stronger South Pacific competitor, but that U.S.-New Zealand open skies will provide other airlines and alliances with new opportunities to develop their services and compete for transpacific market share, including Qantas and its partners in the Oneworld Alliance. They maintain that the increased competition provided by an immunized United-Air New Zealand alliance in the South Pacific market will increase the likelihood for complete liberalization of the U.S.-Australia market, facilitating the growth and expansion of U.S.-Australia air services.

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<sup>5</sup> Application at 59-61.

<sup>6</sup> Application at 57-58. Also, see Article 7 of the Alliance Expansion Agreement.

<sup>7</sup> Application at 37.

Regarding the U.S.-Australia/New Zealand market, the Joint Applicants argue that Qantas is the leading carrier in this market. They also note that Qantas has unrestricted access to the New Zealand domestic market because of the Single Aviation Market agreement between Australia and New Zealand.<sup>8</sup> The Joint Applicants state that Qantas, supported by the Oneworld Alliance network and Air Pacific, operates 70 percent more weekly frequencies in the U.S.-Australia-New Zealand market than ANZ and 20 percent more than United. Therefore, the Joint Applicants maintain that Qantas' strong market position should mitigate any concern that the Department may have regarding their ability to reduce service below competitive levels or to charge supra-competitive prices should the Department approve this application. Finally, the Joint Applicants maintain that the U.S.-New Zealand open-skies agreement ensures that competing airlines, such as American, Delta and Northwest, have the ability, individually or via their established global alliances, to reenter this market whenever they find it appropriate.

Regarding the city-pair markets, the Joint Applicants state that their alliance has only two overlapping nonstop city-pair markets, Los Angeles-Auckland and Los Angeles-Sydney. They also note that in each of these markets, Qantas provides competing nonstop service. They also maintain that, since neither partner is hub dominant at Los Angeles,<sup>9</sup> Auckland, or Sydney, the overlap situation in this case is dissimilar from the overlapping routes that were part of alliances that the Department has previously immunized. Further, they assert that the open-skies agreement between the U.S. and New Zealand will assure competitive discipline by providing for open entry and pricing and service freedom.

Finally, the Joint Applicants state that grant of antitrust immunity here should also cover the coordination of (1) the presentation and sale of the applicant carriers' airline services in Computer Reservations Systems (CRS), and (2) the operations of their respective international reservations systems.<sup>10</sup>

#### **B. Responsive Pleadings<sup>11</sup>**

On February 8, 2000, Air Pacific Limited, the national airline of Fiji, filed a motion for leave to file an answer "conditionally" opposing the request.<sup>12</sup> Air Pacific states that a United-ANZ immunized alliance will strengthen the partners' market power in the South Pacific island market. Air Pacific argues that ANZ has established a dominant position in the South Pacific islands. Air Pacific maintains that an immunized United-ANZ alliance will preclude other competing airlines from entering South Pacific island markets served by the United-ANZ

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<sup>8</sup> Application at 40.

<sup>9</sup> See Order 97-5-7 at 4.

<sup>10</sup> See discussion, below.

<sup>11</sup> By Notice dated January 12, 2000, the Department provided interested parties interim access to the non-public record, required that answers to the application be filed no later than February 2, and that replies be filed no later than February 11.

<sup>12</sup> We will grant the motion for leave to file an otherwise unauthorized document.

alliance, unless Air Pacific and its code-share partners also obtain similar authority from the Department. Air Pacific argues that ANZ's network gives United an advantage over Air Pacific's code-share partner American Airlines.<sup>13</sup>

On February 17, 2000, the Joint Applicants filed a motion for leave to file and a reply.<sup>14</sup> The Joint Applicants maintain that Air Pacific has not offered any public interest justification for denying their application. They assert that Air Pacific primarily opposes their request because the Air Pacific-American Airlines-Qantas Airways' partnership is not immunized, while noting that Air Pacific and its partners have not filed an application with the Department seeking antitrust immunity for their code-share arrangement. The Joint Applicants assert that Air Pacific has not demonstrated how competition between the United States and the South Pacific islands would be diminished by a grant of immunity or how a grant of immunity would jeopardize Air Pacific's relationship with American Airlines or Qantas Airways. They argue that Air Pacific will continue to be a strong competitor in the Pacific islands and that Air Pacific will continue to enjoy substantial traffic feed from American and Qantas to support its Pacific island route network.

#### **IV. Tentative Decision**

We tentatively find that approving and granting antitrust immunity to the proposed Alliance Agreement is in the public interest, as limited and conditioned. If made final, we will require the Joint Applicants (1) to withdraw from all IATA tariff conference activities relating to through prices between the United States and New Zealand, as well as between the United States and the homeland(s) of foreign airlines participating with U.S. airlines in other immunized alliances; (2) to file all subsidiary and subsequent agreement(s) with the Department for prior approval; and (3) to resubmit for review their Alliance Agreement within five years of the issuance of a final decision in this case. We also tentatively find it in the public interest to direct Air New Zealand to report full-itinerary O&D Survey data for all passenger itineraries that contain a point in the United States (similar to the O&D data already reported by United Air Lines).

Our decision in this case rests on an examination of the impact of the proposed alliance on competition and the public interest in the relevant markets. Our tentative grant of antitrust immunity rests on our tentative evaluation that the proposed transaction is on balance pro-competitive, pro-consumer, and consistent with our international aviation competition policy.<sup>15</sup>

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<sup>13</sup> The record indicates that Air Pacific and American Airlines code share in the Honolulu/Los Angeles-Nadi, Fiji market. Motion and Answer at 2. Air Pacific also states that if we approve the request it will be at a competitive disadvantage, since it does not now enjoy antitrust immunity with its code-share partners (American, British Airways, and Qantas).

<sup>14</sup> We will grant their motion.

<sup>15</sup> Immunized partners are required to conduct their operations consistent with applicable U.S. laws and regulations.

## V. Decisional Standards under 49 U.S.C. Sections 41308 and 41309

### A. Section 41308

Under 49 U.S.C. Section 41308, the Department has the discretion to exempt a person affected by an agreement under Section 41309 from the operations of the antitrust laws "to the extent necessary to allow the person to proceed with the transaction," provided that the Department determines that the exemption is required in the public interest. It is not our policy to confer antitrust immunity simply on the grounds that an agreement does not violate the antitrust laws. We are willing to make exceptions, however, and thus grant immunity, if the parties to such an agreement would not otherwise go forward without it, and we find that the public interest requires that we grant antitrust immunity.

### B. Section 41309

Under 49 U.S.C. Section 41309, the Department must determine, among other things, that an inter-carrier agreement is not adverse to the public interest and not in violation of the statute before granting approval.<sup>16</sup> The Department cannot approve an inter-carrier agreement that substantially reduces or eliminates competition unless the agreement is necessary to meet a serious transportation need or to achieve important public benefits that cannot be met, and those benefits cannot be achieved, by reasonably available alternatives that are materially less anticompétitive.<sup>17</sup> The public benefits include international comity and foreign policy considerations.<sup>18</sup>

The party opposing the agreement or request has the burden of proving that it substantially reduces or eliminates competition and that less anticompétitive alternatives are available.<sup>19</sup> On the other hand, the party defending the agreement or request has the burden of proving the transportation need or public benefits.<sup>20</sup>

## VI. Tentative Approval of the Alliance Agreement

### The Market Summary

The U.S.-New Zealand market is governed by an open-skies agreement that eliminates barriers to new entry, expansion and competition created by government regulation in the U.S.-New Zealand market. The agreement provides for unrestricted competitive opportunities for all U.S. and New Zealand airlines, including the flexibility to operate their own direct services, or joint services with another airline. The U.S.-New Zealand open-skies agreement recognizes the value

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<sup>16</sup> Section 41309(b).

<sup>17</sup> Section 41309(b)(1)(A) and (B).

<sup>18</sup> Section 41309(b)(1)(A).

<sup>19</sup> Section 41309(c)(2).

<sup>20</sup> *Id.*

of airline networks and provides the opportunity for competing carriers and alliances to offer the services covered by this new, liberalized accord.

The Department has examined and found substantial consumer and competitive benefits ensuing from open-skies agreements and from the structural changes that have occurred in the global airline system, such as alliances.<sup>21</sup> The purpose of the application now before us is to allow the partners to broaden and deepen their code-share alliance to achieve greater operational efficiencies and to continue the expansion of their route networks on a more integrated and coordinated basis.

#### 1. U.S.-New Zealand

United operates daily nonstop flights between Los Angeles and Auckland; and it code shares on flights operated by Air New Zealand in the Honolulu-Auckland market. American Airlines offers daily nonstop code-share service in the Los Angeles-Auckland market on flights operated by its Oneworld Alliance partner Qantas Airways, an Australian airline.

Air New Zealand operates daily nonstop flights in the Los Angeles-Auckland and Honolulu-Auckland markets. Qantas Airways operates daily nonstop flights in the Los Angeles-Auckland market. British Airways offers daily nonstop code-share service in the Los Angeles-Auckland market on flights operated by its Oneworld Alliance partner Qantas Airways. Finally, Ansett Australia and Lufthansa German Airlines offer daily nonstop code-share service in the Los Angeles-Auckland market on flights operated by their partner Air New Zealand.

#### 2. U.S.-Australia

United operates daily nonstop flights in the Los Angeles-Melbourne/Sydney and the San Francisco-Sydney markets. American Airlines offers nonstop code-share service in the Honolulu-Sydney and the Los Angeles-Melbourne/Sydney markets on flights operated by its Oneworld Alliance partner Qantas.

ANZ operates daily nonstop flights in the Los Angeles-Sydney market; and it code shares on flights operated by United in the Los Angeles-Melbourne/Sydney and the San Francisco-Sydney markets. Qantas offers daily nonstop service in the Honolulu-Sydney and the Los Angeles-Melbourne markets; and it offers nonstop service in the Los Angeles-Sydney market, three times a week. Finally, Air Canada offers nonstop service in the Honolulu-Sydney market.

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<sup>21</sup> See *International Aviation Developments: Global Deregulation Takes Off* (First Report), U.S. Department of Transportation, Office of the Secretary, December 1999; and *International Aviation Developments: Transatlantic Deregulation, The Alliance Network Effect* (Second Report), U.S. Department of Transportation, Office of the Secretary, October 2000.

### 3. U.S.-Fiji

Air Pacific operates nonstop flights between Honolulu/Los Angeles and Nadi, Fiji. Qantas offers nonstop code-share service in the Honolulu/Los Angeles-Nadi, Fiji markets on flights operated by its partner Air Pacific. American Airlines offers nonstop code-share service in the Los Angeles-Nadi, Fiji market on flights operated by its partner Air Pacific.

ANZ operates nonstop flights between Honolulu/Los Angeles and Nadi, Fiji. United offers nonstop code-share service in the Honolulu/Los Angeles-Nadi, Fiji markets on flights operated by its partner ANZ.

It is against this competitive background that we have tentatively decided to approve and grant antitrust immunity to the United-ANZ alliance agreement, subject to the conditions noted, and a limitation on coordinated pricing in the Los Angeles-Auckland/Sydney markets.

#### Public Benefit Summary

We tentatively find that the proposed alliance would provide important public benefits. The applicants contend that the proposed arrangement is pro-competitive and pro-consumer, and will offer the traveling public a greater choice of destinations and competitive routings. We have previously determined that the pro-competitive effect of global alliances is particularly evident in the case of the behind- and beyond-markets where integrated alliances with coordinated connections, marketing, and services can offer competition well beyond mere interlining.<sup>22</sup> Integrated alliances can offer a multitude of new on-line services to thousands of city-pair markets, on a global basis. In this case, the record shows that United serves 256 cities worldwide, and Air New Zealand serves 48.<sup>23</sup> Significantly, the record indicates that the proposed partnership will create a global network of about 9,500 city pairs.<sup>24</sup> This further supports our view that the proposed immunized alliance will benefit consumers by increasing international access to more foreign destinations with new and improved routing options, particularly for traffic to or from cities behind major gateways. Our recent evaluation of international alliances shows that they stimulate traffic in these connecting markets and thereby increase competition and service options in the overall international market and increase overall opportunities for the traveling public and the aviation industry.<sup>25</sup> The proposed alliance would also allow the partners to improve the efficiency of their operations and to otherwise work together to improve service not only in the U.S. and New Zealand market, but also in the U.S.-South Pacific market generally.

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<sup>22</sup> See Order 96-5-12 at 17-18.

<sup>23</sup> Application at 53.

<sup>24</sup> Application at 53.

<sup>25</sup> See fn. 20, above.

Moreover, approval of the proposed alliance will facilitate the implementation of the open-skies agreement with New Zealand and all of the significant public benefits that we expect will be made available by the U.S.-New Zealand accord.

### Competitive Summary

We also tentatively find that the proposed alliance would not substantially reduce or eliminate competition in any relevant market, as conditioned. United and ANZ now compete head-to-head in the Los Angeles-Auckland and the Los Angeles-Sydney markets. The significant competitive issue presented here is that Los Angeles-Auckland/Sydney travelers will lose this nonstop competition upon implementation of the proposed alliance. As more fully discussed below, we have therefore tentatively decided to impose conditions on our approval to maintain competition and consumer choice of services between Los Angeles and Auckland and Sydney.<sup>26</sup>

Considering the open-entry nature of the U.S.-New Zealand market in an open-skies regime, we tentatively find that the likelihood of potential entry from Los Angeles and the competitive discipline afforded by potential competing U.S. hubs and existing competition from nonstop, one-stop, and connecting services should provide competitive discipline for the U.S.-New Zealand market, if the partners should charge supra-competitive fares or lower service below competitive levels, except as to certain time-sensitive passengers.

As for the Los Angeles-Sydney market, at least in the short-term, our tentative actions will reduce the number of competitors from three to two. However, as discussed below, our evaluation of the U.S.-Australia market tentatively indicates that the likelihood of potential entry from Los Angeles could provide competitive discipline for the partners' operations, if they should provide inadequate service or supra-competitive prices, except as to certain time-sensitive passengers.

Approval of the alliance will increase the presence and market share of the alliance partners in the U.S.-South Pacific market.<sup>27</sup> However, as explained below, the proposed alliance will face vigorous competition from other airlines and alliances in this market.

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<sup>26</sup> See Appendix A.

<sup>27</sup> See U.S.-South Pacific Market Analysis, below.

## A. Antitrust Issues

The Joint Applicants state that, through the proposed enhanced alliance, United and Air New Zealand intend to coordinate their services, improve the efficiency of their operations, enhance their ability to compete in the global marketplace, and expand the benefits available to the traveling and shipping public. They state that, while retaining their separate corporate and national identities, they fully intend to cooperate to the extent necessary to create a seamless air transport system. Accordingly, the Alliance Agreement's intended commercial and business effects are equivalent to those resulting from a merger of the two airlines. In determining whether the proposed transaction would violate the antitrust laws, we apply the Clayton Act test used in examining whether mergers will substantially reduce competition in any relevant market.<sup>28</sup>

The Clayton Act test requires the Department to consider whether the Alliance Agreement will substantially reduce competition by eliminating actual or potential competition between the partners so that they would be able to charge supra-competitive prices or reduce service below competitive levels.<sup>29</sup> To determine whether a transaction is likely to violate the Clayton Act, the Department considers whether the transaction is likely to create or enhance market power, market power being defined as the ability profitably to maintain prices above or reduce product and service quality below competitive levels for a significant period of time. To determine whether a proposed transaction is likely to create or enhance market power, we primarily consider whether the transaction would significantly increase concentration in the relevant markets, whether the transaction raises concern about potential competitive effects in light of concentration in the market and other factors, and whether entry into the market would be timely, likely, and sufficient either to deter or to counteract a proposed transaction's potential for harm.

The markets requiring a competitive analysis are: first, the U.S.-South Pacific market; second, the U.S.-New Zealand market; and third, the city-pair markets.

### 1. U.S.-South Pacific Market (Australasia and Oceania) and the U.S.-New Zealand Market<sup>30</sup>

In these relevant markets, ANZ and United will have the largest market share. Nonetheless, we tentatively find that the conditions and limitations that we are imposing on the Joint Applicants' operations, combined with the opportunity provided to competitors by our open-skies agreement, will prevent them from charging supra-competitive prices or reducing service below competitive levels.

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<sup>28</sup> Order 92-11-27 at 13 (*The Acquisition of Northwest Airlines By Wings Holdings, Inc.*).

<sup>29</sup> *Id.*

<sup>30</sup> Source: T-100 and T-100(f) nonstop segment and market data, for the 12 months ended September 1999.

In terms of passengers transported, ANZ's U.S.-South Pacific nonstop passenger market share was 25.8 percent. The alliance (including United, at 22.3 percent) would have a market share of 48.1 percent. United is the largest U.S.-flag airline in the U.S.-South Pacific market, and third overall. In contrast, Qantas and its oneworld partners (including American) had a 30.2 percent passenger market share; Continental Micronesia had a 7.3 percent market share; and Air Pacific had a 4.9 percent market share. Moreover, we note that other U.S. and third-country airlines offered nonstop service in the market; they had a combined market share of 9.4 percent. We therefore tentatively find that the U.S.-South Pacific market is competitive in terms of service, and that the alliance if immunized, would not substantially reduce this competition.

In the U.S.-New Zealand market, ANZ is the major scheduled carrier. ANZ's nonstop passenger market share was 42 percent. United had about a 28 percent passenger market share for a combined passenger market share of about 70 percent.<sup>31</sup> Nonetheless, we tentatively find that, with the pricing condition we have proposed on the Los Angeles-Auckland market, the proposed integration, coupled with the open-skies regime, will not enable United-ANZ either to impede competition or to increase fares above, or lower service below, competitive levels. As previously determined, even if a transaction creates a partnership with a preponderant market share, the transaction would not substantially reduce competition if competitors have free and open access to the marketplace.<sup>32</sup> This is precisely the type of market envisioned and promoted by the U.S.-New Zealand open-skies accord. Despite the large market share held by United's foreign partner in its homeland market, we see no barriers to entry by other airlines in this market. Because of the open-skies accord, any U.S. carrier may serve New Zealand from any point in the United States. Furthermore, the record of this case does not show any significant operational barriers to entry in the U.S.-New Zealand market (*i.e.*, access to slots or airport facilities) or marketing barriers that would prevent entry. We also note that Qantas Airways has an impressive presence in the U.S.-New Zealand market. Qantas carried about 26 percent of the passengers in the U.S.-New Zealand market.<sup>33</sup> Moreover, Qantas's code-share alliance with American Airlines and its membership in the Oneworld Alliance provide it with significant access to behind-gateway traffic at Los Angeles.

As a final matter, in the U.S.-Fiji market, Air Pacific is the major scheduled carrier. Air Pacific and its code-share partner Qantas had about 56 percent of the nonstop passenger market, about 59 percent of the departures, and about 64 percent of the seats. ANZ and its code-share partner United had about 44 percent of the nonstop passenger market, about 41 percent of the departures, and about 36 percent of the seats.<sup>34</sup>

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<sup>31</sup> See Los Angeles-Auckland analysis, below.

<sup>32</sup> Order 96-5-26 at 23.

<sup>33</sup> The New Zealand-Australia aviation accord provides Qantas with unrestricted access to the New Zealand domestic market and to the trans-Tasman market between Australia and New Zealand. Application at 40.

<sup>34</sup> See discussion, below.

## 2. U.S.-Australia Market

Importantly, we note that the U.S.-Australia aviation agreement provides for unlimited entry by airlines of each side. For example, American Airlines, Continental Airlines, and Northwest Airlines have each provided U.S.-Australia operations. The U.S.-Australia aviation regime also guarantees that U.S. airlines may inaugurate a minimum of four roundtrip frequencies per week between the U.S. and Australia, without limitation as to aircraft type. Moreover, the agreement guarantees that U.S. airlines may annually increase frequencies in the market. Finally, we note that both the United States and Australia have approved capacity increases that were in excess of those specific guarantees and that neither government has disapproved any airline request for a capacity increase in excess of the guarantees. With this perspective, we find that, with the condition that we are imposing in the Los Angeles-Sydney market, our actions here should increase the efficiency of the Joint Applicants operations and allow them to more fully implement the public benefits advanced by the U.S.-New Zealand open-skies agreement.

## 3. The City-Pair Markets

The record indicates that the Joint Applicants operate their own flights in the Los Angeles-Auckland and Los Angeles-Sydney markets. They maintain that their proposed alliance will not produce anti-competitive effects in these markets. They assert that these markets are leisure-oriented routes. They state that the markets are also served by Qantas Airways, a vigorous nonstop competitor, whose market position and competitiveness is enhanced by its alliance with American Airlines and its membership in the Oneworld global alliance. The Joint Applicants also maintain that they are not hub dominant at Los Angeles.<sup>35</sup>

We tentatively find that the Los Angeles-Auckland/Sydney markets raise competitive concerns, specifically regarding the alliance partners (1) hub strength at each end of the market, and (2) joint ability to set prices and capacity that would reduce or eliminate competition. United and ANZ are two of only three airlines providing nonstop service in the Los Angeles-Auckland and Sydney markets.<sup>36</sup>

Los Angeles-Auckland: for the twelve months ended September 1999, United and ANZ operated about 70 percent of the total departures and carried about 70 percent of the passengers in this market.<sup>37</sup> Qantas operated about 30 percent of the total departures and carried about 30 percent of the total passengers.

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<sup>35</sup> For 1999, United carried about 24 percent of the Los Angeles domestic O&D passenger traffic. American Airlines carried about 13 percent of the Los Angeles domestic O&D passenger traffic.

<sup>36</sup> ANZ, Qantas, and United each operate daily nonstop flights. Official Airline Guides, Inc., July 2000. See p 8, *supra*.

<sup>37</sup> We also note that Continental Airlines, Delta Air Lines, and Northwest Airlines each have a local presence at Los Angeles and each has the potential to provide a competitive response in the Los Angeles-

Los Angeles-Sydney: for the twelve months ended September 1999, United and ANZ operated about 44 percent of the total departures and carried about 46 percent of the passengers in this market. Qantas operated about 56 percent of the total departures and carried about 54 percent of the total passengers.

The alliance agreement, as proposed, may further diminish this level of competition. If antitrust immunity is approved, the number of nonstop competitors would necessarily decline from three to two carriers. United does operate a hub at Los Angeles, and the applicants may therefore have some competitive advantage in these two markets. Therefore, consistent with previous determinations on routes similar to these,<sup>38</sup> we tentatively find it appropriate to exclude certain local traffic in the Los Angeles-Auckland and Sydney markets for time-sensitive passengers traveling on certain "unrestricted fares" (*i.e.*, published fares not requiring either a Saturday night stay or a minimum stay of seven days or more). Typically, fares requiring minimum/maximum stays ("restricted fares") are used by the bulk of passengers whose greater flexibility in time of travel permits them readily to take advantage of competing one-stop and connecting fares on other carriers.<sup>39</sup>

#### **B. Public Interest Issues**

Under Section 41309, we must determine whether the Alliance Agreement would be adverse to the public interest. Section 41308 requires a similar public interest examination. Except as noted, we tentatively find that approval of the Alliance Agreement will promote the public interest.

Open-skies agreements with foreign countries give any authorized carrier from either country the ability to serve any route between the two countries (and open intermediate and beyond rights) if it so wants. These agreements place no limits on the number of flights that carriers can operate, and carriers can charge any fare unless both countries disapprove it.<sup>40</sup>

It is in all these circumstances that we have tentatively found that approving the Alliance Agreement will benefit the traveling public, taking into account the conditions imposed by the Department, and is unlikely to reduce competition significantly in any relevant markets, and is otherwise in the public interest.

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Auckland market if the Joint Applicants reduced product and service quality or raised prices above competitive levels.

<sup>38</sup> For example, Order 96-5-12 at 23-24.

<sup>39</sup> See Orders 96-5-12 at 23-24 and 96-5-26 at 26.

<sup>40</sup> Order 92-8-13, August 5, 1992.

As enunciated in our April, 1995 U.S. International Air Transportation Policy Statement, airlines around the world are forming alliances and linking their systems to become partners in transnational networks to capture the operating efficiencies of larger networks, and to permit improved service to a wider array of city-pair markets. We are already seeing the benefits of these international alliances, and we have undertaken to facilitate them and the efficiencies they can generate, where possible to do so consistently with consumer welfare. We believe that competition between and among these global alliances is likely to play a critically important role in ensuring that consumers in this emerging environment have multiple competing options to travel where they wish as inexpensively and conveniently as possible.

In this case, having tentatively determined that the overall competitive effect of the Alliance Agreement is beneficial and consistent with our international aviation policy, we tentatively believe that the public interest favors the grant of antitrust immunity. In so stating, of course, we will continue to monitor closely the effects of an immunized alliance on consumers and on competition, to ensure that the immunized alliance continues to serve the public interest.

## VII. Air Pacific's Concerns

While Air Pacific raises broad competitive concerns about the Pacific Island market, we note that Air Pacific only provides nonstop service between the United States and Nadi, Fiji.<sup>41</sup>

Air Pacific "conditionally" opposes the request. Air Pacific maintains that our actions here will prevent it from effectively competing with the Joint Applicants in the Pacific Islands because Air Pacific and its code-share partners do not have antitrust immunity.

We have granted immunity to several alliances. Our examinations of the effects of our earlier actions indicate that immunized international airline alliances are pro-competitive and pro-consumer, and that antitrust immunity has contributed to this result by providing parties with an opportunity for enhanced coordination that would not occur without immunity.<sup>42</sup> Further, our evaluation of this arrangement tentatively indicates that it too is pro-competitive, pro-

<sup>41</sup> Air Pacific is the national airline of Fiji and it now provides nonstop service in the Honolulu-Nadi, Fiji market, two times a week; and in the Los Angeles-Nadi, Fiji market, four times a week. Additionally, both American (Los Angeles-Nadi) and Qantas (Honolulu/Los Angeles-Nadi) offer nonstop code-share service in the U.S.-Fiji market on flights operated by their partner Air Pacific. We also tentatively find no competitive concerns in the other Pacific Island markets provided for under the United/ANZ code-share arrangement (*i.e.*, U.S.-Cook Islands/Tahiti/Western Samoa). For example, the Honolulu/Los Angeles-Raratonga, Cook Islands and the Los Angeles-Apia, Western Samoa markets are not currently served by Air Pacific on a nonstop or connecting basis. Polynesian Airlines provides nonstop service in the Honolulu-Apia market. Hawaiian Airlines provides nonstop service in the Honolulu-Papeete, French Polynesia market; and Air France, AOM French Airlines, and Air Tahiti provide nonstop service in the Los Angeles-Papeete market. OAG Flight Guide, Worldwide Edition, February 2001.

<sup>42</sup> Order 99-4-17 at 15-16.

consumer, and consistent with our international aviation competition policy, and consistent with the public interest.

We find nothing in our actions here that would prevent the Air Pacific-American-Qantas joint operations from competing with the Joint Applicants in the U.S.-Fiji market. As noted, the Joint Applicants already conduct code-share operations in this market. However, the code-share agreement does not provide for guaranteed blocked-space reservations. Accordingly, neither United nor ANZ purchases or guarantees the seats allocated to it by the other. Seats are allocated only for purposes of inventory management. The operating airline maintains control over inventory on the code-share flights. See Exhibit JA-3 at 2 and 17. In these circumstances, the partners do not incur a risk incentive to price compete in their code-share markets. Thus, we tentatively find no significant current price competition between these alliance partners. Furthermore, no U.S. airline operates either nonstop or its own-single-plane service between the United States and Fiji. In these circumstances, the proposed transaction would not result in any significant loss of competition in the U.S.-Fiji market.

Finally, while Air Pacific asserts that it must obtain antitrust immunity to compete with the applicants, we note that the Governments of the United States and Fiji have not concluded an open-skies agreement.

#### **VIII. Tentative Grant of Antitrust Immunity**

We have the discretion to grant antitrust immunity to agreements approved by us under Section 41309 if we find that immunity is required by the public interest. It is not our policy to confer antitrust immunity simply on the grounds that an agreement does not violate the antitrust laws. However, we are willing to grant immunity if the parties to such an agreement would not otherwise go forward, and if we find that the public interest requires the grant of antitrust immunity.

The record shows that the Joint Applicants will not proceed with the Alliance Agreement without antitrust immunity.<sup>43</sup> United and ANZ claim that they cannot accomplish the public benefits that they seek to achieve through the formation of this alliance absent antitrust immunity. They state that the proposed integration of services will surely expose them to possible antitrust challenges, since they fully intend to establish a common financial objective, permitting them to compete more effectively with other strategic alliances. Additionally, they indicate that full operational integration will necessarily mean that they will coordinate all of their scheduling, route planning, pricing, marketing, sales, and inventory control.<sup>44</sup>

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<sup>43</sup> Application at 57. Also, see Article 7.1.2 of the Alliance Expansion Agreement.

<sup>44</sup> Application at 3.

Since the antitrust laws let competitors engage in joint ventures that are pro-competitive, we think it unlikely that the integration of their services would be found to violate the antitrust laws. Nevertheless, the record suggests that the Joint Applicants could be subject to extensive and burdensome antitrust litigation if we did not grant their request. The record also persuades us that they will not proceed without antitrust immunity.

To the extent discussed above, we tentatively find that we should grant antitrust immunity to the Alliance Agreement, subject to our proposed condition on the Los Angeles-Auckland/Sydney markets. We also intend to review and monitor the Joint Applicants' progress in implementing the Alliance Agreement, if we approve and immunize them, in order to ensure that the partners are carrying out the arrangements pro-competitive aims. We will also require them to resubmit the Alliance Agreement for review in five years, if we make final this tentative decision to approve and immunize it.

While tentatively concluding that we should approve and give immunity to the alliance, we find, as discussed next, that certain conditions are necessary to allow us to find that our actions in these matters are in the public interest.

#### **IX. IATA Tariff Coordination Issue**

Consistent with our decision in Order 99-9-9 (*American Airlines and LAN Chile antitrust immunity case*), it is contrary to the public interest to permit alliances to participate in certain price-related coordination that is now immunized within IATA tariff coordination. We therefore tentatively condition our approval and grant of antitrust immunity in this case by requiring United and ANZ to withdraw from participation in any IATA tariff conference activities that discuss any proposed through fares, rates or charges applicable between the United States and New Zealand, or between the United States and any other countries designating a carrier that has been or is subsequently granted antitrust immunity by the Department for participation in similar alliances with a U.S. airline.<sup>45</sup> Under this condition, the Alliance partners may not participate in IATA tariff coordination activities affecting fares, rates and charges between the United States and New Zealand, and between the United States and the homelands of their similarly immunized alliance competitors. Through prices between the U.S. and other countries, as well as all local fares in intermediate and beyond markets, are not covered by the condition.<sup>46</sup>

<sup>45</sup> This condition currently applies to prices between the United States and the Netherlands; between the United States and Italy (*see* Order 99-12-5 at 3); between the United States and Germany (*see* Order 96-5-27 at 17); between the United States and Denmark, Norway, and Sweden (*see* Order 96-11-1 at 23); and between the United States and Chile (*see* Order 99-9-9 at 21). Also, by letter dated May 8, 1996, Northwest and KLM indicated their willingness to limit voluntarily their participation in IATA (Dockets OST-96-1116 and OST-95-618).

<sup>46</sup> Under this condition, the Joint Applicants could discuss local segment prices, arbitraries or generic fare construction rules that have independent applicability outside such markets. IATA activities covered by our condition would include all those discussing prices proposed for agreement, including

We tentatively find that this condition is in the public interest for a number of reasons. The immunity that is requested in this proceeding includes broad coverage of price coordination activities between the Joint Applicants. With respect to internal Alliance needs, tariff coordination through the IATA conference mechanism is duplicative and unnecessary. At the same time, one of the reasons that we tentatively find supports immunity for the proposed Alliance activities is the potential for increased price competition among the Alliance partners and other carriers, particularly other international alliances. We have tentatively found that such potential competition will, on balance, outweigh any potential anticompetitive effects of price coordination within the Alliance itself and encourage the passing on of economic efficiencies realized by the Alliance to consumers in the form of lower prices. Permitting the Joint Applicants to continue tariff coordination within IATA undermines such competition.

#### **X. O&D Survey Data Reporting Requirement**

We have access to market data where our airlines operate, including markets that they serve jointly with foreign airlines, for example, the Department's Origin-Destination Survey of Airline Passenger Traffic (O&D Survey). We have also collected special O&D Survey code-share reports for three large alliances and have directed all other U.S. airlines to file reports for their transatlantic code-share operations beginning with the second quarter of 1996.

However, we receive no market information for passengers traveling to or from the U.S. when their entire trip is on foreign airlines, except for T-100 data for nonstop and single-plane markets. Such passengers account for a substantial portion of all O&D traffic between the U.S. and foreign cities, and the absence of such information severely handicaps our ability to evaluate the economic and competitive consequences of the decisions we must make on international air service.

We must also ensure that our grant of antitrust immunity does not lead to anticompetitive consequences. Consistent with determinations in similar cases,<sup>47</sup> we have therefore tentatively decided to require Air New Zealand to report full-itinerary Origin-Destination Survey of Airline Passenger Traffic for all passenger itineraries that contain a United States point (similar to the O&D Survey data already reported by United).<sup>48</sup>

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both meetings and exchanges of documents such as those preceding meetings and those used in mail votes.

<sup>47</sup> For example, see Order 99-9-9 at 17 and 21.

<sup>48</sup> Consistent with our determinations in Orders 96-7-21, 96-11-1, and 99-9-9 we intend to request other foreign carrier members of immunized international alliances involving U.S. carriers to submit O&D Survey data and condition any further grants of antitrust immunity on provision of such data. We will treat the foreign airlines' O&D data as confidential, will not allow U.S. airlines any access to the data, and will not allow Air New Zealand or other foreign airlines any access to U.S. airline O&D Survey data.

We have tentatively decided to grant confidentiality to the Air New Zealand O&D Survey reports and special reports on code-share passengers. Currently, we grant confidential treatment to international O&D Survey data. We provide these data confidential treatment because of the potentially damaging competitive impact on U.S. airlines and the potential adverse effect upon the public interest that would result from unilateral disclosure of these data (data covering the operations of foreign air airlines that are similar to the information collected in the Passenger O&D Survey are generally not available to the Department, to U.S. airlines, or to other U.S. interests).

14 C.F.R. Part 241 section 19-7(d)(1) provides for disclosure of international O&D Survey data to air carriers directly participating in and contributing to the O&D Survey. While we have tentatively found it appropriate to direct the foreign partners to provide certain limited data to the O&D Survey, the foreign partners are not air carriers within the meaning of Part 241.

14 C.F.R. Part 241, Section 03 defines an air carrier as "any citizen of the United States who undertakes, whether directly or indirectly or by a lease or any other arrangement, to engage in air transportation." The foreign partners accordingly will have no access to the data filed by U.S. air carriers. Moreover, we will be making the Air New Zealand submissions confidential while maintaining the current restriction on access to U.S. air carrier O&D Survey data by foreign air carriers.

## **XI. Computer Reservations System (CRS) Issues**

Another competitive issue concerns ownership interests that the Joint Applicants may have in competing CRSs. United and Air New Zealand have ownership and/or marketing ties with Galileo and Sabre, competing CRS firms. As with the Delta Air Lines-Austrian-Sabena-Swissair (see Order 96-5-26 at 31-32) and the Northwest-KLM (see Order 92-11-27 at 16) arrangements, the proposed integration of marketing operations of the Joint Applicants presents a risk that CRS competition may be reduced. In view of these factors, we tentatively find that any grant of antitrust immunity for the Alliance Agreement should exclude the carriers' CRS interests and operations.

## **XII. Operation under a Common Name/Consumer Issues**

Since operation of the Alliance Agreement could raise important consumer issues and "holding out" questions, if United and ANZ choose to operate under a common name or use "common brands," they will have to seek separate approval from the Department prior to such operations. For example, it is Department policy to consider the use of a single air carrier designator code by two or more carriers to be unfair and deceptive and in violation of the Act unless the air carriers give reasonable and timely notice to passengers of the actual operator of the aircraft.<sup>49</sup>

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<sup>49</sup> See 14 C.F.R. 399.88.

### **XIII. Summary**

We tentatively grant approval and antitrust immunity to the Alliance Agreement, as discussed in this order, and further limited and conditioned in Appendix A. We also tentatively direct the Joint Applicants to resubmit the Alliance Agreement five years from the date of the issuance of the final order in this case. However, the Department is not authorizing United-ANZ to operate under a common name. If they choose to operate under a common name, they will have to comply with our relevant procedures before implementing the change.

We also tentatively direct the Joint Applicants to withdraw from participation in any IATA tariff conference activities that discuss any proposed through fares, rates or charges applicable between the United States and New Zealand, and/or between the United States and any other countries whose designated carriers participate in similar agreements with U.S. airlines or are subsequently granted antitrust immunity by the Department; and file all subsidiary and/or subsequent agreements with the Department for prior approval.<sup>50</sup> We also tentatively direct United and ANZ to report full-itinerary O&D Survey data for all passenger itineraries that contain a United States point (similar to the O&D Survey data already reported by United Air Lines).

Objections or comments to our tentative findings are due no later than 15 calendar days from the service date of this order. Answers to objections shall be due no later than 7 business days thereafter.

#### **ACCORDINGLY:**

1. We direct all interested persons to show cause why we should not issue an order making final our tentative findings and conclusions, granting approval and antitrust immunity to the Alliance Agreement between United Air Lines, Inc. and Air New Zealand Limited, subject to the provisions that the antitrust immunity will not cover any activities of the Joint Applicants as owners of Sabre and Galileo computer reservations system businesses, and subject to the proposed limits and conditions discussed in this order and subject to the proposed limits and conditions indicated in Appendix A;

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<sup>50</sup> Regarding this requirement, we do not expect the Joint Applicants to provide the Department with minor technical understandings that are necessary to implement fully their day-to-day operations but that have no additional substantive significance. We do, however, expect and direct them to provide the Department with all contractual instruments that may materially alter, modify, or amend the Alliance Agreements.

2. We tentatively direct United Air Lines, Inc. and Air New Zealand Limited to resubmit their Alliance Agreement five years from the date of issuance of the final order in this case;
3. We tentatively direct interested persons to show cause why we should not further condition our grant of approval and immunity to require United Air Lines, Inc. and Air New Zealand Limited to withdraw from participation in any International Air Transport Association (IATA) tariff conference activities that discuss any proposed through fares, rates or charges applicable between the United States and New Zealand, and/or between the United States and any other countries whose designated carriers participate in similar agreements with U.S. airlines or are subsequently granted antitrust immunity by the Department;
4. We tentatively direct Air New Zealand Limited to report full-itinerary Origin-Destination Survey of Airline Passenger Traffic for all passenger itineraries that include a United States point (similar to the O&D Survey data already reported by United Air Lines, Inc.);
5. We tentatively direct United Air Lines, Inc. and Air New Zealand Limited to submit any subsequent subsidiary agreement(s) implementing the Alliance Agreements for prior approval;<sup>51</sup>
6. We tentatively direct United Air Lines, Inc. and Air New Zealand Limited to obtain prior approval from the Department if they choose to operate or hold out service under a common name or use "common brands";
7. We direct interested persons wishing to comment on our tentative findings and conclusions, or objecting to the issuance of a final order to file an original and five copies in Docket OST-1999-6680 and to serve a statement of such objections or comments together with any supporting evidence the commenter wishes the Department to notice on all persons on the service list in that docket no later than 15 days from the service date of this order. Answers to objections shall be due no later than 7 business days after the last day for filing objections/ comments;<sup>52</sup>
8. If parties' file timely and properly supported objections, we will afford full consideration to the matters or issues raised by the objections before we take further action. If no objections are filed, we will deem all further procedural steps to have been waived;

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<sup>51</sup> See fn. 50, p.20, *supra*.

<sup>52</sup> The original filing should be on 8½" by 11" white paper using dark ink and be unbound without tabs, which will expedite use of our docket imaging system. In the alternative, filers are encouraged to use the electronic submission capability through the Dockets DMS Internet site (<http://dms.dot.gov>) by following the instructions at the web site. For the convenience of the parties, service by facsimile is authorized. Parties should include their fax numbers on their submissions and should indicate the method of service on their certificates of services.

- 9 We grant all motions for leave to file otherwise unauthorized documents; and
10. 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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<http://dms.dot.gov/search>

**CONDITIONS GOVERNING THE ANTITRUST IMMUNITY FOR THE  
ALLIANCE EXPANSION AGREEMENT BETWEEN  
UNITED AIR LINES, INC. AND AIR NEW ZEALAND LIMITED**

**Grant of Immunity**

The Department grants immunity from the antitrust laws to United Air Lines, Inc. and Air New Zealand Limited for the Alliance Expansion Agreement dated December 1, 1999, between United Air Lines, Inc. and Air New Zealand Limited and for any agreement incorporated in or pursuant to the Alliance Expansion Agreement.

**Limitations on Immunity**

The foregoing grant of antitrust immunity shall not extend to the following activities by the parties: pricing, inventory or yield management coordination, or pooling of revenues, with respect to unrestricted coach-class fares or any business or first-class fares for local U.S.-point-of-sale passengers flying nonstop between Los Angeles and Auckland and Los Angeles and Sydney; or the provision by one party to the other of more information concerning current or prospective fares or seat availability for such passengers than it makes available to airlines and travel agents generally.

**Exceptions to Limitations on Immunity**

Despite the foregoing limitations, antitrust immunity shall extend to the joint development, promotion or sale by the parties of the following discounted fare products with respect to local U.S.-point-of-sale passengers flying nonstop between Los Angeles and Auckland and Los Angeles and Sydney: corporate fare products; consolidator/wholesaler fare products; promotional fare products; group fare products; and fares and bids for government travel or other traffic that either party is prohibited by law from carrying on service offered under its own code. For immunity to apply, however: (1) in the case of corporate fare products and group fare products, local U.S. point-of-sale non-stop traffic shall constitute no more than 25% of a corporation's or group's anticipated travel (measured in flight segments) under its contract with United-ANZ; and (2) in the case of consolidator/wholesaler fare products and promotional fare products, the fare products must include similar types of fares for travel in at least 25 city-pairs in addition to Los Angeles-Auckland and Los Angeles-Sydney.

**Definitions for Purposes of this Order**

"Corporate fare products" means the offer of non-published fares at discounts from the otherwise applicable tariff prices to corporations or other entities for authorized travel, which discounts may be stated as percentage discounts from specified published fares, net prices, volume discounts, or other forms of discount.

"Consolidator/wholesaler fare products" means the offer of non-published fares at discounts from the otherwise applicable tariff prices to (1) consolidators for sale by such consolidators to members of the general public either directly, or through travel agents or other intermediaries, at prices to be decided by the consolidator, or (2) wholesalers for sale by such wholesalers as part of tour packages in which air travel is bundled with other travel products, which discounts, in either case, may be stated either as net prices due the parties on sales by such consolidator or wholesaler, or as percentage commissions due the consolidator or wholesaler on such sales.

"Promotional fare products" means published fares that offer directly to the general public for a limited time discounts from previously published fares having similar travel restrictions.

"Group fare products" means the offer of non-published fares at discounts from the otherwise applicable tariff prices for the members of an organization or group to travel from multiple origination points to a single destination to attend an identified special event, which discounts may be stated either as percentage discounts from specified published fares or net prices.

**Clarification of Scope of Limitation on Immunity**

Under no circumstances shall the limitations on antitrust immunity set forth above be construed to limit the parties' antitrust immunity for activities jointly undertaken pursuant to the Alliance Expansion Agreement other than as specifically set forth in this Order. Immunized activities include, without limitation: decisions by the parties regarding the total number frequencies and types of aircraft to operate on the Los Angeles-Auckland and Los Angeles-Sydney routes, and the configuration of such aircraft; coordination of pricing, inventory and yield management and pooling of revenues, with respect to non-local passengers traveling on non-stop flights on the Los Angeles-Auckland and Los Angeles-Sydney routes; and the provision by one party to the other of access to its internal reservations system to the extent necessary for use exclusively in checking-in passengers or making sales to or reservations for the general public at ticketing or reservations facilities.

**Review of Limitations on Immunity**

Within eighteen months from the date that this Order becomes final, or at any time upon application of the parties, the Department will review the limitations on antitrust immunity set forth above to determine whether they should be discontinued or modified in light of: current competitive conditions in the Los Angeles-Auckland and Los Angeles-Sydney markets; the efficiencies to be achieved by the parties from further integration that would be made possible by discontinuation of the limitations on immunity, when balanced against any potential for harm to competition from such a discontinuation; regulatory conditions applicable to competing alliances; or other factors that the Department may deem appropriate.