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Served: November 6, 2001

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

Joint Application of United Air Lines, Inc., British Midland Airways Limited, Austrian Airlines, Österreichische Luftverkehrs AG, Lauda Air Luftfahrt AG, Deutsche Lufthansa, A.G., and Scandinavian Airlines System for Approval of and Antitrust Immunity for an Alliance Agreement under 49 U.S.C. §§ 41308 and 41309
Docket OST-2001-10575-11
and
United Air Lines, Inc., British Midland Airways Limited for Statements of Authorization and Related Exemptions
Docket OST-2001-10576-4

NOTICE PROVIDING ACCESS TO DOCUMENTS

On September 5, 2001, United Air Lines, Inc. ("United"), British Midland Airways Limited ("BMI"), Austrian Airlines, Österreichische Luftverkehrs AG, Lauda Air Luftfahrt AG, Deutsche Lufthansa, A.G., and Scandinavian Airlines System (collectively, the "Joint Applicants"), filed an application for approval of and antitrust immunity for an Alliance Expansion Agreement between United and BMI,[1] and an Amended Coordination Agreement among the partners,[2] together with exhibits.

The Joint Applicants also submitted additional documents and information in connection with the application in Docket OST-2001-10575 and filed motions under 14 C.F.R. 302.12 (Rule 12) of our regulations requesting confidential treatment for this material.[3] Each maintains that the material contains documents that are proprietary, commercially sensitive, and confidential in nature which qualifies for being withheld from public disclosure. The parties ask that access to this material be limited to counsel and outside experts for interested parties. These motions are unopposed.[4]

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1 See Joint Application, Exhibit JA-1.

2 See Joint Application at 2, fn 5.

3 These motions were filed separately into the record of this case on October 18, 19, and 22, 2001.

4 We will rule on the merits of the Rule 12 Motions by subsequent order. By Notice dated September 13, 2001, we suspended the procedural schedule of this case, finding the record incomplete. At that time, we also decided that the procedural schedule for responsive pleadings to both of the captioned applications should be the same.

In order to afford interested parties prompt access to the material for which confidentiality is requested under conditions agreed to by the Joint Applicants and imposed by the Department under similar recent circumstances,[5] 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 that may be filed in these cases under a Rule 12 Motion to counsel and outside experts for interested parties who file appropriate affidavits with the Department in advance, unless the party filing the motion objects. Our actions here will make evidentiary materials available for use by interested parties in either of the pending cases.

We expect all affidavits to state, at a minimum, 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 the above referenced dockets. 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 the above referenced dockets 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.

Moreover, at the Dockets facility, Parties will be permitted to make copies of the exhibits for use by persons who have filed confidentiality affidavits.[6] Immediately after the completion of any judicial review of the final decision in this proceeding or the expiration of the 60-day period within which a person may petition for judicial review, all persons who have filed confidentiality affidavits in this proceeding are hereby directed to file a further affidavit stating that all copies of the applicants' confidential materials have been destroyed or returned to the applicants.[7]

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5 See Notice in Docket OST-2000-7088 dated April 7, 2000.

6 See Notice in Docket OST-2001-10387 dated September 11, 2001.

7 See Order 2001-9-12, issued September 17, 2001 (Docket OST-2001-10387).

We will announce an appropriate procedural schedule for the processing of these cases at a later date. We shall serve this notice on all persons on the service list in these dockets.

By:

READ C. VAN DE WATER
Assistant Secretary for Aviation
and International Affairs

Date: November 6, 2001

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