



Order 97-2-29

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

Served: February 27, 1997

Issued by the Department of Transportation  
on the 27th day of February, 1997

**AMERICAN AIRLINES, INC. *et al.*  
ALM ANTILLEAN AIRLINES N.V., and  
BWIA INTERNATIONAL AIRWAYS LIMITED  
RECIPROCAL CODE-SHARE SERVICES  
PROCEEDING**

**Docket OST 97-2159**

Applications of

**AMERICAN AIRLINES, INC.  
ALM ANTILLEAN AIRLINES N.V. and  
BWIA INTERNATIONAL AIRWAYS LIMITED**

for exemptions under 49 U.S.C. section 40109 and  
exemptions from 49 U.S.C. section 41302

**Docket 50311  
Docket 50312  
Docket OST 96-1940  
Docket OST 96-1941  
Docket OST 96-1942  
Docket OST 96-1939**

Applications of

**AMERICAN AIRLINES, INC.  
ALM ANTILLEAN AIRLINES N.V. and  
BWIA INTERNATIONAL AIRWAYS LIMITED**

for statements of authorization under 14 C.F.R. Parts 207  
and 212 (reciprocal code-sharing services)

**Undocketed**

**ORDER INSTITUTING PROCEEDING**

**Summary**

American Airlines, Inc. ("American"), and its regional affiliates on the one hand, and ALM Antillean Airlines N.V. ("ALM"), and BWIA International Airways Limited ("BWIA"), on the other hand, filed (1) various applications for exemptions, and (2) certain applications for

<sup>1</sup> Specifically, Executive Airlines, Inc., Flagship Airlines, Inc., Simmons Airlines, Inc., and Wings West Airlines, Inc.

statements of authorization to engage in reciprocal code-sharing services, between American-ALM and American-BWIA. In the interest of administrative efficiency, we have decided to institute the *American Airlines, Inc., et al., ALM Antillean Airlines N.V., and BWIA International Airways Limited Reciprocal Code-Share Services Proceeding*. We therefore consolidate into this proceeding the captioned applications of American, ALM, and BWIA for certain exemption authorities; and the American, ALM, and BWIA applications for statements of authorization for reciprocal code-sharing services. We are also requiring additional information to facilitate our review of the applications, since they raise significant competitive issues, and are deferring consideration of these applications pending further notice. Finally, when we have determined that the record of this case is complete, we will announce an appropriate procedural schedule for reaching a decision expeditiously.

## **Applications and Responsive Pleadings**

### **I. American and BWIA**

On April 27, 1995, American applied for an exemption to allow it to conduct foreign air transportation of persons, property, and mail between the United States and Guyana. American also requests the right to integrate the U.S.-Guyana authority with its certificate of public convenience and necessity for Route 137 (U.S.-Caribbean). American states that the requested exemption will be used to implement the American-BWIA code-sharing arrangement.

Concurrently, BWIA applied for an exemption to allow it to conduct foreign air transportation of persons, property, and mail between Trinidad and Tobago, on the one hand, and Boston, Orlando,<sup>3</sup> and Washington, D.C., on the other hand. BWIA states that the requested exemption will be used to implement the American-BWIA code-sharing arrangement.

By applications dated April 27, 1995, American and BWIA filed separate applications for statements of authorization to engage in certain reciprocal code-sharing services under C.F.R. Parts 207 and 212<sup>4</sup>

<sup>2</sup> Order 95-3-25, effective April 13, 1995.

<sup>3</sup> The United States-Trinidad and Tobago Air Transport Agreement provides that Orlando may be served during the period July 1 through September 30. The applicant states that the Government of Trinidad and Tobago has requested the United States to consider favorably authorizing BWIA to provide service to Orlando on a year-around basis. Application at 2.

<sup>4</sup> The authorizations would allow (1) American to use its "AA" airline designator code on certain flights operated by BWIA in the following markets: Miami/New York (Kennedy Airport)-Antigua; Barbados-Antigua/Port of Spain/St. Lucia/St. Maarten; and Port of Spain-Georgetown/Grenada, and (2) BWIA to use its "BW" airline designator code on certain flights operated by American in the following markets (BWIA does not propose to carry local traffic in these markets): Miami-Boston/Orlando/Washington, D.C. (Dulles and National Airports); and New York (Kennedy Airport)-Boston/Washington, D.C. (Dulles and National Airports).

On May 10, 1995, Trans World Airlines (“TWA”) filed an answer opposing the code-share arrangement. TWA argues that the code-share arrangement raises serious competitive issues, and may restrain trade in violation of the Sherman Act and 49 U.S.C. 41712. TWA views the proposed alliance as uniting “the only carriers serving many of these points...combining to preclude competitive entry into these countries.” TWA also states that it is interested in establishing its own code-share relationship with BWIA so that it can expand its Caribbean network.<sup>5</sup> TWA requests that the applications be denied.

On May 19, 1995, BWIA filed a motion for leave to file and a response to TWA’s answer. We will grant the motion. BWIA asserts, contrary to TWA’s claims, that a BWIA-TWA code-share arrangement in the U.S.-Caribbean market would not be economically worthwhile for either airline; and that TWA has never chosen to compete seriously in the U.S.-Caribbean market, while BWIA and American have each developed an extensive U.S.-Caribbean route network. Finally, BWIA states that the “exclusivity” clause cited by TWA is justified by BWIA’s significant investment in the proposed arrangement, including moving to American’s Kennedy Airport terminal building, adjusting flight schedules, switching to SABRE<sup>6</sup> and incurring other coordination-related expenses. Finally, the applicant states that DOT precedent supports approval of the American-BWIA code-share arrangement.

On May 19, 1995, American filed a motion for leave to file and a response to TWA’s answer. We will grant the motion. American asserts that the proposed arrangement is in the public interest, and consistent with other arrangements approved by the Department. It maintains that passengers and shippers will benefit from better on-line connections, and coordinated check-in and baggage procedures. American states that the arrangement is a procompetitive alliance that will bring substantial benefits to the public, and that it should be authorized without delay.

American argues that each of the Caribbean points served under the proposed arrangement is open-entry for service by any interested U.S. airline. American argues that nothing has prevented TWA from expanding its Caribbean services, and nothing in the proposed code-share arrangement would prevent TWA from doing so in the future. American also states that the

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<sup>5</sup> TWA notes that section I.B. of the American-BWIA cooperative agreement states that “American shall be the sole United States air carrier with which BWIA operates codeshared services, and that American shall not codeshare with an air carrier domiciled in a Caribbean country between an city-pair operated, at that time, non-stop by BWIA.”

<sup>6</sup> American’s parent corporation, AMR Corp., is the principal owner of SABRE, a U.S. Computer Reservations System (CRS).

<sup>7</sup> American notes that 12 U.S. airlines are authorized to provide service at Antigua and Barbuda; 18 at Barbados; 9 at Guyana (including Georgetown); 11 at Grenada; 16 at Trinidad and Tobago (including Port of Spain); 8 at St. Lucia; and 18 at Netherlands Antilles (including St. Maarten). Reply at 2.

Caribbean points in issue are served by numerous U.S. and foreign airlines, in addition to the extensive charter services offered in the marketplace.

Finally, American maintains that it fully intends to invest significant resources coordinating the American-BWIA cooperative arrangement. American asserts that it is therefore clearly in the business interest of each party to protect its investment with an exclusivity provision. American also maintains that such a provision is consistent with applicable precedent.

On May 31, 1995, TWA filed a motion for leave to file and a response to the applicants' replies. We will grant the motion. TWA reiterates its view that the applicants are the dominant airlines in the Caribbean; that the disparity between authorized service and actual operations in the disputed markets underscores how difficult it is to compete with American and BWIA in those markets; and that neither American nor BWIA has demonstrated why the exclusivity provision is necessary or why it has to be so broad.

## **II. American and ALM**

On November 12, 1996, American applied for various exemptions to allow it to conduct foreign air transportation of persons, property, and mail between San Juan, Puerto Rico and Caracas, Venezuela, via Curacao, Netherlands Antilles (Docket OST-96-1940); between the United States and Paramaribo, Surinam, via Curacao, Netherlands Antilles (Docket OST-96-1941); and between the United States and Bonaire, Netherlands Antilles (Docket OST-96-1942).

Concurrently, ALM applied for an exemption to allow it to conduct foreign air transportation of persons, property, and mail between (1) Miami and Atlanta/Boston/Chicago/New York/Newark/Philadelphia; (2) and between San Juan, Puerto Rico, and Boston/Chicago/ Miami/New York/Newark/Philadelphia (Docket OST-96-1939).

American and ALM state that the requested exemptions will be used to implement the American-ALM reciprocal code-sharing arrangement.

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<sup>8</sup> Motion and Reply at 3-4.

<sup>9</sup> On November 12, 1996, American, and its regional affiliates, and ALM filed a joint application for a statement of authorization to engage in certain reciprocal code-sharing services under C.F.R. Parts 207 and 212. The authorizations would allow American to use its "AA" airline designator code on certain flights operated by ALM in the following markets: Atlanta-Aruba/Bonaire/ Curacao; Miami-Aruba/ Bonaire/Curacao/Port-au-Prince/St. Maarten; San Juan-Caracas (via Curacao)/ Curacao/St. Maarten; Curacao-Aruba/Bonaire/ Paramaribo. Additionally, ALM would be authorized to use its "LM" airline designator code on certain flights operated by American in the following markets (ALM does not propose to carry local traffic in these markets): Miami-Aruba/Curacao/ St. Maarten; New York/Newark-Aruba; San Juan-St. Maarten; Miami-Atlanta/Boston/Chicago/New York/Newark/Philadelphia; and San Juan-Boston/Chicago/Miami/New York/Newark/Philadelphia.

By letter dated November 19, 1996, TWA objected to the proposed American-ALM code-share alliance and urged the Department to consolidate this request with its current investigation of the American/TACA Group Reciprocal Code-Share Services Proceeding (Docket OST-96-1700). TWA views these applications as “part of the ongoing American campaign to combine with its major competitors in regional markets to exclude potential competition.” TWA argues that the proposed agreement will result in an American/ALM joint domination of the Eastern Caribbean marketplace. They further maintain that American, by coopting ALM (its major competitor to the Netherlands Antilles), will not only eliminate competition from ALM, but will also preempt potential entry by other U.S. airlines on either a direct or code-share basis, contrary to the public interest. TWA urges the Department to deny the applications, or institute an investigation.

On November 27, 1996, United Air Lines, Inc. (“United”) filed an answer opposing the requests. United argues that the American/ALM alliance will further entrench American as the dominant airline in the U.S.-Caribbean/Latin American markets; increase American’s dominance at Miami, further insulating American’s Caribbean, Central/South American operations from competition; provide American a monopoly on non-stop service in the Miami-Netherlands Antilles market; and eliminate United’s ability to maintain or expand its network operations to the Netherlands Antilles through code-share agreements with ALM. United also asks that these applications be consolidated into Docket OST-96-1700 for contemporaneous consideration.

On December 9, 1996, ALM and American filed replies. ALM states that the objections raised by United and TWA are without substance. ALM claims that the proposed arrangement is beneficial to the traveling public, will strengthen its competitive position in the market, and will increase traffic and influence other U.S. airlines to enter the market. ALM maintains that there are no obstacles preventing U.S. airline entry into the Netherlands Antilles market, and that the Netherlands Antilles has *ale facto* open-skies policy.

American asserts that neither United nor TWA has advanced any justifiable basis for denying the applications. American argues that there is nothing to prevent United from entering the Netherlands Antilles market, or any other Caribbean market. American states that the alliance is procompetitive and will benefit consumers with greater price, quality, and service options, consistent with the Department’s Statement of International Air Transportation Policy issued in April 1995. Finally, American maintains that there is no basis whatsoever for the Department to consolidate the American/ALM and American/TACA proposals.

On December 18, 1996, United filed a consolidated response and motion for leave to file. We will grant the motion. United restates the basis for its opposition to the proposed alliance and asserts its view that the American/ALM alliance raises issues comparable to those involved in

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On February 7, 1997, American and ALM amended their joint application for statements of authorization dated November 12, 1996, so as to seek authority to place the “LM” designator code on American’s flights in the San Juan-Aruba market. On February 19, 1997, United filed an objection to this amendment.

American's proposed alliance with the TACA Group for U.S.-Central America services. United maintains that the applicants have offered nothing in their replies that would distinguish the competitive issues arising from their own proposal from those that caused the Department to institute an investigation of the American/TACA Group application.

## Discussion

ALM is an airline of the Netherlands Antilles. ALM holds a foreign air carrier permit which authorizes it to engage in scheduled foreign air transportation between points in the Netherlands Antilles, and the coterminal points Miami, Florida; New York, New York; and San Juan, Puerto Rico,<sup>10</sup> via various intermediate points including Santo Domingo, Dominican Republic; and Port-au-Prince, Haiti. Order 81-11-99.

BWIA is an airline of Trinidad and Tobago. BWIA holds an exemption from 49 U.S.C. 41301 to exercise the currently-authorized permit and exemption authority previously issued to Trinidad & Tobago (BWIA International) Airways Corporation Order 96-3-33. BWIA's foreign air carrier permit authorizes it to engage in scheduled foreign air transportation between (1) the coterminal points Trinidad and Tobago; Jamaica; the Cayman Islands; and Belize; and the terminal point Miami, Florida, via various intermediate points including Antigua; Barbados; and St. Lucia; and (2) Barbados, and New York, New York.<sup>11</sup>

Order 82-1-7.

American-ALM and American-BWIA are seeking authority under 49 U.S.C. §§ 40109 and 41302 and 14 C.F.R. Parts 207 and 212 for the operations detailed by their Code-Share Agreements. We may not grant these applications without finding that the proposed operations will be in the public interest. Like the American-TACA Group alliance,<sup>12</sup> these cooperative arrangements present serious competitive issues, primarily because of the positions currently held by American, ALM, and BWIA in a number of U.S.-Caribbean markets.<sup>13</sup>

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<sup>10</sup> Additionally, ALM has exemptions from 49 U.S.C. 41301 to conduct scheduled, combination operations between (1) Curacao/Bonaire, Netherlands Antilles, and Atlanta, Georgia, via the intermediate point Aruba (Notice of Action Taken, dated September 20, 1996, Docket OST-96-1720); and (2) Curacao, Netherlands Antilles, and Ft. Lauderdale, Florida, via the intermediate point Aruba (See Notice of Action Taken, dated October 22, 1996, Docket OST-96-1814).

<sup>11</sup> BWIA also holds various exemptions authorizing it to operate in the Miami/New York-St. Maarten/Georgetown/Grenada markets, among others. Docket OST-95-112.

<sup>12</sup> See Orders 96-9-15 and 96-11-12 (Docket OST-96-1700).

<sup>13</sup> For example, we note that American is the hub-dominant airline at Miami, the dominant gateway for U.S.-Caribbean service; and the code-share partners provide the only direct, nonstop service in various Caribbean markets (such as, American and ALM in the Miami-Curacao/St. Maarten, and San Juan-Aruba/Curacao markets, and American and BWIA in the Miami-Antigua/Barbados/Port of Spain markets).

These facts, among others, require us to examine closely the applications' competitive implications. Furthermore, since the American-ALM and American-BWIA cases raise similar competitive concerns and affect a common geographic region, we find it appropriate, for administrative efficiency, to consolidate these cases for consideration. The applications present other public interest issues which we must also consider carefully. Since we cannot conduct a thorough investigation without additional information, we will require the applicants to submit certain supplemental information.

While the American/TACA Group and American/ALM/BWIA cases raise certain analogous competitive concerns, we have determined that in other relevant respects the cases are sufficiently distinct to warrant an independent investigation. For example, we find that the two cases do have certain contrasting elements, including the size, number, and geographic dispersion of the affected markets.

### **Additional Information Requirements**

Based on our preliminary review of the applications and comments, we have determined that in light of the issues that have been raised, certain additional relevant information is essential for a thorough assessment of the proposed arrangements. We therefore require American, ALM, and BWIA to provide the Department with the additional data and evidentiary information set forth in the attachment.

### **Accordingly:**

1. We institute the *American Airlines, Inc. et al., ALM Antillean Airlines N.V., and BWIA International Airways Limited Reciprocal Code-Share Services Proceeding* which will be decided by non-oral hearing procedures<sup>14</sup>
2. We direct American Airlines, Inc., ALM Antillean Airlines N.V., and BWIA International Airways Limited to submit the additional data and evidentiary information set forth in the attachment to this order into Docket OST 97-2159;
3. The applicants shall submit an original and five copies of all additional data and evidentiary information requested in ordering paragraph 2. The joint applicants shall also accompany all foreign language documents with English translations;
4. We consolidate (1) the applications for exemption of American Airlines, Inc., in Dockets 50311, OST 96-1940, OST 96-1941, and OST 96-1942; ALM Antillean Airlines N.V., in Docket OST-96-1939; and BWIA International Airways Limited, in Docket 50312; and (2) the

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<sup>14</sup> If parties want to receive Department issuance's by electronic mail (Email), please provide an Email address on all pleadings. The Department will issue its orders in Microsoft Word for Windows version 6. Service of pleadings may be made by facsimile. Parties should include their facsimile number on all pleadings.

undocketed applications for statements of authorization of American Airlines, ~~Inc~~ *al.*, ALM Antillean Airlines N.V, and BWIA International Airways Limited into ~~the~~ *American Airlines, Inc. et al., ALM Antillean Airlines N.V., and BWIA International Airways Limited Reciprocal Code-Share Services Proceeding*

5. We defer consideration of this matter pending further notice;
6. We grant all motions for leave to file otherwise unauthorized documents;
7. Upon our determination that the application(s) are 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
8. We shall serve this order on American Airlines, Inc.; ALM Antillean Airlines N.V.; and BWIA International Airways Limited; the Ambassadors of the Netherlands Antilles, and Trinidad and Tobago in Washington, D.C.; the Department of Justice (Antitrust Division); the Department of State (Office of Aviation Negotiations); and all other parties served with the applications.

By:

**CHARLES A. HUNNICUTT**  
Assistant Secretary for Aviation  
and International Affairs

(SEAL)

**EVIDENCE REQUEST FOR THE AMERICAN AIRLINES, INC., et al.  
ALM ANTILLEAN AIRLINES N.V., and  
BWIA INTERNATIONAL AIRWAYS LIMITED  
RECIPROCAL CODE-SHARE SERVICES PROCEEDING**

**I. Plans and Agreements**

**(Note: unless otherwise indicated, include the following for each carrier party separatelyand any joint products, where applicable.)**

1. Complete copies of all “agreements/arrangements,” including marketing and any other cooperative agreements/arrangements, that involve the creation or implementation of the proposed code-sharing relationships and related relationships between American-ALM and American-BWIA.
2. Separate description of each party’s strategic objectives in forming the code-share agreements/arrangements.
3. All studies, reports, and analyses, dated or produced within the last two years, that discuss route development, internal expansion, service expansion, or marketing plans or strategies, concerning air services between the U.S. (including San Juan, Puerto Rico), and the Caribbean and air services behind and beyond U.S. (including San Juan, Puerto Rico)-Caribbean markets.
4. All studies, surveys, analyses and reports, dated or produced within the past three years, that were prepared by or for any officer, director, or individual exercising similar functions that evaluate or analyze the subject of potential code sharing or other cooperative agreements/arrangements between ALM and BWIA (as individual airlines or as a group) and any U.S. carrier. (If not contained in the document itself, the date of preparation and the name and title of each individual who prepared each such document should be included.)
5. All studies, surveys, analyses and reports, dated or produced within the last two years, that were prepared by or for any officer, director, or individual exercising similar functions for the purpose of evaluating or analyzing the proposed agreements/arrangements with respect to market shares, competition, competitors, fares, markets, potential for traffic growth or expansion into geographic markets. (If not contained in the document itself, the date of preparation and the name and title of each individual who prepared each such document should be included.)
6. All documents that discuss any service or operational changes planned or anticipated as a result of the proposed agreements/arrangements.

## **II. Routes**

1. A list of all routes that each of the parties is currently serving, and of routes each would serve if the agreements are approved. Additionally, fully identify of the parties' current code-share/alliance arrangements and their route systems and any plans to alter such arrangements or alliances if the American-ALM and American-BWIA alliances are approved.
2. List all "overlap" markets now existing between American-ALM-BWIA, including markets served in combination with other code-share or marketing partners (specifically, include all gateway-to-gateway, all nonstop, and all connecting markets).
3. List all of the new markets that would receive "first on-line service" as a result of the alliance and provide estimates of the number of passengers that would benefit from this new "on-line service" and how many of these passengers would be U.S.-originating travelers.

## **III. Services**

1. Provide a discussion of the level of service that each carrier party intends to provide in the U.S.-Caribbean market including behind- and beyond-gateway markets.
2. Provide a discussion of significant service and equipment changes that the parties would expect to make within two years of DOT approval of the proposed alliances.

## **IV. Traffic**

1. Provide an analysis of how much traffic each code-share partner carries in each "overlap" market and differentiate between local gateway-to-gateway traffic, behind traffic, and beyond traffic.

## **V. Public Interest and Competition**

1. Provide a discussion of whether and how the alliances are consistent with the public interest, and what public benefits are expected to result from the agreements/arrangements.
2. Provide a discussion of how the agreements/arrangements would affect important international aviation policy objectives of the United States.
3. Provide a discussion of the agreements'/arrangements' impact on both U.S. domestic and international airline competition.
4. Provide forecast information and data concerning any traffic diversion anticipated from other U.S. flag carriers should the agreements/arrangements be approved.

5. Provide complete information describing the extent to which airport facilities, including, but not limited to, gates, counter-space, and ground-handling, are or will be made available to any U.S. airline desiring to begin or increase service at the Caribbean airports served by any of the applicants.
6. Provide all studies, surveys, analyses, and reports, dated or produced within the last two years, that discuss airline competition in any U.S. Caribbean market.
7. All studies, surveys, analyses, and reports, dated or produced within the last two years, that discuss the impact on American Airlines of any of the code-sharing relationships between other U.S. airlines and ALM/BWIA, including the impact of any such relationship on American Airlines' ability to compete for traffic in any U.S. Caribbean market.
8. All studies, surveys, analyses, and reports that discuss the impact on other U.S. airlines of the proposed code-sharing relationships between American Airlines and ALM/BWIA, produced in the last two years
9. An assessment of availability of commercially usable slots at the foreign applicants' homeland international gateway airports for U.S. airlines, particularly new entrants.
  - a. Detailed analysis of slot and gate allocations by each airline serving the foreign applicants' homeland gateway international airports.
  - b. Description of the slot allocation procedures for the foreign applicants' homeland gateway international airports.
  - c. Any other evidence of meaningful access to the foreign applicants' homeland gateway international airports for U.S. airlines.