

Order 97-11-5

Served: November 4, 1997



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

Issued by the Department of Transportation
on the 4th day of November, 1997

Joint Application of

AMERICAN AIRLINES, INC.

and

BRITISH AIRWAYS PLC

under 49 U.S.C. Sections 41308 and 41309 for
approval of and antitrust immunity for alliance
agreement

Docket OST-97-2058

**PRELIMINARY ORDER ON PETITIONS FOR RECONSIDERATION
REQUIRING *IN CAMERA* REVIEW**

On January 10, 1997, American Airlines, Inc. ("American") and British Airways PLC ("British Airways") (together "the Joint Applicants") filed in Docket OST-97-2058 an application for approval of and antitrust immunity for an "alliance agreement" (referred to also as "the Alliance") under 49 U.S.C. §§ 41308 and 41309. Subsequently, the Joint Applicants have filed several motions under Rule 39 of the Department's Rules of Practice, 14 C.F.R. § 302.39, for confidential treatment of documents submitted in support of that application and/or in response to information requests by the Department.

In Order 97-9-4, issued September 5, 1997, we directed the Joint Applicants to file for the record certain specific documents, information, and data which they had identified pursuant to information requests but for which they had requested determinations on relevance to the proceeding based upon *in camera* inspection by the Department.¹

On September 19, 1997, American and British Airways separately filed petitions for reconsideration of Order 97-9-4, to the extent that it required them to file "extremely sensitive

¹ At that time, we found that certain American and British Airways documents need not be filed for the record, reserving our right subsequently to determine, at any time, that those documents are relevant to specific issues in our evaluation of this proceeding and therefore must be filed for the record. Order 97-9-4 at 18-19.

documents” for which they had requested *in camera* review by the Department. Briefly, the Joint Applicants assert that many of these documents and materials are not relevant to the ability of “any interested party” to participate fully in this proceeding. Therefore, they urge the Department to reconsider Order 97-9-4 with respect to those documents and to vacate the requirement that such documents be submitted for the record.

On September 29, 1997, Continental Airlines, Inc., Delta Air Lines, Inc., Trans World Airlines, Inc., US Airways, Inc., United Air Lines, Inc., Virgin Atlantic Airways Limited filed answers opposing the Joint Applicants’ motions to reconsider the Department’s *in camera* document determinations. In general, these parties argue that the Department had correctly ordered the submission of relevant documents, and that the Joint Applicants have provided no justification for reconsideration of that decision.

We find it appropriate to accept in part the Joint Applicants’ petitions. The Department will review particular documents *in camera*, as delineated in ordering paragraphs 2 and 3 below. The Department will thereafter determine whether to grant the Joint Applicants’ requests that we rescind the order requiring the filing of those documents for the record in this docket. Our examination of these specific documents, however, does not constitute either an acceptance of the Joint Applicants’ petitions, except as provided herein, or an inclusion of these specified documents into the record, or a ruling on the merits of any issues raised by the several petitioners in this case. The Department will resolve those matters by subsequent order.

Accordingly:

1. We accept the petitions of American Airlines, Inc., and British Airways PLC for reconsideration of Order 97-9-4, to the extent necessary to allow the Department’s staff to review the documents described in ordering paragraphs 2 and 3 below;
2. We direct American Airlines, Inc. to submit to the Department the documents identified in its July 25, 1997, index as item III.78 (identified as AA0029588-619), and item III.84 (identified as AA0025839-43) for review (contact: Regis P. Milan, (202) 366-2349);
3. We direct British Airways PLC to submit to the Department the document identified in its April 7, 1997, submission as item 18 (identified as BAP135308 - 135352) for review (contact: Regis P. Milan, (202) 366-2349); and
4. We shall serve a copy of this order on all persons on the service list in this docket.

By:

CHARLES A. HUNNICUTT
Assistant Secretary for Aviation
and International Affairs

(SEAL)