



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

Issued by the Department of Transportation
on the 25th day of June, 1998

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

ORDER

Background

On January 10, 1997, American Airlines, Inc. and British Airways PLC (hereafter "British Airways") (together "the Joint Applicants") filed 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. 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.

By Order 98-3-31, issued March 30, 1998, the Department determined that the record of this case was substantially complete, and we established procedural dates for the filing of answers and replies to the application. By Order 98-5-7, issued May 6, 1998, we directed British Airways to submit additional documents and information into the docket, and we found it appropriate to extend our procedural schedule for filing answers from May 11 to May 22, 1998, and replies from June 10 to June 23, 1998.¹

By letter dated May 20, 1998,² the Department directed British Airways to provide other documents and information for *in camera* review by the Department to determine their relevance

¹ Representatives of U.S. Airways informed the Department of the possibility that certain information in the record of a pending civil case, *U.S. Airways Group, Inc. v. British Airways PLC*, 96 Civ. 5724 (MGC), may be material and relevant to the issues under review by the Department in this case.

² See document identified in the record of this case as OST-97-2058-219.

to the issues in this case.³ At that time, the Department stated that to the extent that it determined that any such material was relevant, the Department would order British Airways to file it in the Docket, subject to the carrier's right to request confidential treatment under our Rule 39 procedures.

***In Camera* Review to Determine Relevance**

As an initial matter, we have previously determined that if, upon review of this material, we find that the information is relevant to this proceeding, we will require that the information be filed in the record. Conversely, if we initially determine that the reviewed information is not relevant, we will not require that the information be filed in the docket, while reserving our right to decide later that the previously reviewed information is relevant after all, and therefore must be placed in the docket. Of course, British Airways may seek confidential treatment of such material under Rule 39.

On June 12, 1998, the Department reviewed the material that British Airways represented as satisfying the Department's May 20, 1998, request. Based on this *in camera* review, we have determined that the following documents, information, and data are relevant to this proceeding:⁴

1. Robert John Ayling, Deposition Taken April 23, 1998
 Deposition pages: 1-280.
 Tab 167, BAU numbers 469341-469342.
 Tab 251, BAU numbers 421218-421227.
 Tab 305, BAU numbers 00102-00103.
 Tab 306, BAU numbers 352577-352578.
2. Barbara Cassani, Deposition Taken April 24, 1998
 Deposition pages: 161-178, and 269-275.
 Tab 18, BAX numbers 705671-705675.

³ By Motion filed May 7, 1998, TWA requested the submission of additional material in this Docket. TWA stated that the record indicated that there may be other materials that had been submitted in the above referenced civil litigation that also may be relevant to our determinations in this case.

On May 13, 1998, British Airways filed in opposition to TWA's motion.

On May 14, 1998, US Airways filed a reply stating that the material sought by TWA contained information that it understood to be relevant to these matters. US Airways' regulatory counsel stated that they had not reviewed these materials. However, it had been authorized to represent that US Airways, through its outside counsel in the civil litigation in New York, "believes that the discovery materials sought by TWA's motion may be relevant to matters before the Department."

⁴ To the extent that British Airways has already filed any of these documents in this proceeding, British Airways should identify each previously submitted document both by date filed and by specific BAP number(s).

Tab 35, Notes of meeting.

Tab 319, BAX numbers 005555-005557.

Tab 323, BAU numbers 447776-447784.

Tab 325, BAU numbers 447753-447756.

Tab 328, BAX numbers 701067-701070.

Tab 329, BAX number 703536.

Tab 330, BAX numbers 703541-703547.

Tab 332, BAU numbers 477542-477552.

Tab 333, BAU numbers 320010-320012.

Tab 338, BAX number 701356.

3. Michael Jackson, Deposition Taken April 8, 1998

Tab 15, BAX numbers 704365-704377.

Tab 68, BAX numbers 308266-308268.

Tab 263, MS numbers 002215-002286.

Tab 264, BAX number 022713.

Tab 265, BAX numbers 024240-024249.

Tab 270, BAX numbers 017190-017204.

Tab 274, BAX numbers 023842-023861.

Tab 278, BAX numbers 020774-020776.

Tab 283, BAX numbers 018946-018953.

Tab 284, BAX numbers 020221-020227.

Tab 286, BAX numbers 005568-005586.

Tab 289, BAX numbers 024003-024116.

Tab 290, BAX numbers 023892-023895.

If, during the course of our further review and analysis, we subsequently determine that some or all of the previously reviewed information is relevant, but is not being required for submission pursuant to this order, we reserve the right to require that the information be filed in this docket.

Although the above identified documents may contain information considered sensitive by British Airways, they nonetheless are relevant to the Department's statutory responsibility to evaluate the merits of this case and thus must be part of the record. Therefore, we direct British Airways to submit these additional documents and information into the docket, no later than three business days from the date that this order is served, and to notify all interested parties that are identified on the service list attached to British Airways' joint application when the documents are filed.

By Notice dated July 31, 1997, we found it appropriate to grant interim access to any subsequent materials filed in this docket under a Rule 39 Motion to counsel and outside experts for interested parties who file or who have previously filed appropriate affidavits with the Department in advance, unless the party filing the motion objects. If British Airways finds it appropriate to file a Rule 39 Motion for confidential treatment of these documents, but objects to their interim release, British Airways should segregate the appropriate document(s) and explain how and why implementation of the Department's previously established confidentiality procedures to these documents would adversely affect the interests of British Airways and are not required in the interest of the public.

Accordingly:

1. We direct British Airways PLC to file in this docket, no later than three (3) business days from the date that this order is served, documents, information, and data as described in this order;
2. Interested parties may review the confidential materials, described in this order as follows: (1) in the U.S. Department of Transportation's Dockets Facility, Room PL 401, 400 Seventh Street, SW, Washington, D.C. 20590; and (2) in the offices of Sullivan and Cromwell, Counsel for British Airways, 1701 Pennsylvania Ave., N.W., 7th Floor, Washington, D.C. 20006 (contact Jeffrey W. Jacobs, (202) 956-7510). Interested parties shall submit in advance an affidavit stating that the person will preserve the confidentiality of the information and will only use it to participate in this proceeding. Further, each affidavit must specifically indicate that the person(s) are counsel or outside expert(s) for the interested parties in this case;⁵ and
3. We will serve this order on all persons on the service list in this docket.

By:

CHARLES A. HUNNICUTT
Assistant Secretary for Aviation
and International Affairs

(SEAL)

An electronic version of this document is available on the World Wide Web at:

⁵ Any pleading or other filing that includes or discusses information contained in the confidential documents must be accompanied by a Rule 39 motion requesting confidential treatment.

<http://dms.dot.gov/general/orders/aviation.html>