



Order 98-5-28
Served: May 21, 1998

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

Issued by the Department of Transportation
on the 21st day of May, 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

By Order 98-5-7, served May 6, 1998, the Department ("DOT") required British Airways PLC to file in this docket, no later than May 11, 1998, documents, information, and data that are part of civil litigation in New York.¹ The Order also established a procedural schedule for the filing of answers to the application by May 22, 1998, and replies by June 23, 1998.

On May 11, 1998, British Airways filed most of these documents with a Motion for Confidential Treatment under Rule 39 of the Department's regulations, 14 CFR § 302.39. Concurrently, British Airways filed a Petition for Reconsideration of Order 98-5-7 with respect to two documents that British Airways maintains are irrelevant to this proceeding.

By Notice dated May 13, 1998, we directed interested parties to file answers to British Airways' petition by May 15.

Responsive Pleadings

On May 15, 1998, Delta Air Lines, Inc. ("Delta") filed an answer opposing British Airways' Petition. Delta argues that the Department has previously determined that the two documents are relevant, and that British Airways has failed to demonstrate any valid reason why counsel and experts to interested parties should not have access to these documents, consistent with the Department's established confidentiality protections.

¹ *US Airways Group, Inc. v. British Airways PLC*, 96 Civ. 5724 (MGC).

Discussion

On May 13, 1998, the Department reviewed the two documents. The first document, identified in Order 98-5-7 as Item 1, was a pleading prepared by US Airways seeking relief from a January 17, 1997, protective order issued by the court in the above referenced civil litigation. As such, it sets forth US Airways' characterization of certain British Airways' documents. The second document, identified in Order 98-5-7 as Exhibit 6 to Item 1, was an e-mail document relating specifically to the contract dispute between British Airways and US Airways. Upon reconsideration, we find these documents are not relevant as evidence in this case. Therefore, these documents need not be filed in the docket at this time. However, if, in the course of our analysis, we determine that this information is relevant as evidence, we reserve the right to require that the information be filed in the docket.²

Accordingly:

1. We grant the petition of British Airways PLC for reconsideration of Order 98-5-7;
2. Upon reconsideration, we find that the two documents need not be submitted at this time;
3. We reserve the right subsequently to determine, at any time, that these materials are relevant as evidence to this proceeding and therefore must be placed in the docket; and
4. We will serve this order on all interested parties.

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

² Order 97-9-4 at 14.