

Posted July 23, 1998 – 3:00 P.M

Order 98-7-16



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

Issued by the Department of Transportation  
on the 23rd day of July, 1998

Served: July 27, 1998

Complaint of

**UNITED AIR LINES, INC.**

against

**THE EUROPEAN COMMISSION AND  
NATIONAL IMPLEMENTING  
AUTHORITIES**

under 49 U.S.C. § 41310

**Docket OST-98-4030**

**ORDER**

On July 8, 1998, United Air Lines, Inc. (United) filed a complaint under 49 U.S.C. § 41310 against the European Commission (the Commission) and certain European national implementing authorities (of the Governments of Germany, Denmark, Norway, and Sweden) (the Commission and these governments are referred to collectively as the Respondents). United argues that sanctions against the Respondents are necessary to redress actions proposed by the Commission against United's alliances with Deutsche Lufthansa AG (Lufthansa) and Scandinavian Airline System (SAS) which will preclude United and its alliance partners from exercising rights specifically provided for under the open-skies aviation agreements between the United States and the individual European countries involved. United argues that such action is essential to ensure the continued viability of the U.S. Government's open-skies policy in Europe.

In support of its complaint, United states that in 1996, after careful review by the Department of Transportation and the Department of Justice, approval and antitrust immunity was granted to the alliance operations among United, Lufthansa, and SAS, and that in granting such approval, the Department found that the alliance operations were consistent with the rights provided for under

the open-skies agreements between the United States and Germany and between the United States and the Scandinavian countries involved.

Notwithstanding this approval, United states that on July 8, the Commission, following an investigation by the Directorate General IV of the Commission (DG-IV) of the United/Lufthansa/SAS alliance, as well as of other U.S.-European carrier alliances, proposed that certain conditions be imposed on United's alliance with its European partners. United states that these conditions would impose limitations on the level of services provided by the carriers under the alliance, on slots available to them at U.S. and European airports, on their pricing, on their CRS displays, and on the joint operation of frequent flyer programs, and would effectively preclude the carriers from exercising the full level of rights guaranteed under the operative open-skies agreements. United further states that such conditions discriminate both procedurally and substantively against the alliance. Given these circumstances, United argues that resolution of this matter with the EC is essential to preserving the U.S. Government's open-skies policy with Europe.

Based on the above, United urges the Department to exercise its authority to impose sanctions. Specifically,

United urges the Department to issue an order finding that the actions of the Commission, and the German and Scandinavian governments through which it must act, are illegal and in violation of the German and Scandinavian Agreements.

United further urges the Department to promptly request assurances from the Respondents that the German and Scandinavian Agreements remain in full force and effect as valid and continuing international agreements.

Finally, in the event that the Department remains unable to persuade the Commission to cease interfering with the bilateral rights afforded to the Alliance under the German and Scandinavian Agreements, the Secretary of Transportation, in keeping with his statutory responsibility regarding IATFPCA sanctions and remedies, should consult with the United States Trade Representative. (Complaint at 25-26)

Section 41310 provides that the Department shall approve, deny, dismiss, or set a complaint for hearing, or institute other procedures proposing remedial action, within 60 days after receipt of the complaint. We may extend the period for taking action up to 90 days from the date of the complaint if we conclude that it is likely that the complaint can be resolved satisfactorily through negotiations. We may further extend the action deadline up to 180 days from receipt of the complaint, in 30-day increments, if we find that intergovernmental negotiations have progressed to a point that a satisfactory resolution of the complaint appears imminent.

In order to develop the record for our consideration of this matter, we invite interested persons to answer United's complaint in Docket OST-98-4030. We will require that answers be filed no later than 21 days from the date of service of this order. Answers filed should include all data, evidence, and arguments upon which the respondents rely to support their positions, and should

cover all substantive and procedural issues that they wish the Department to consider. Replies to any answers should be filed no later than seven calendar days from the answer date.<sup>1</sup>

After receipt and consideration of responsive pleadings and any supporting evidence submitted, we will issue a further order in this proceeding.

**ACCORDINGLY,**

1. We invite interested persons to file answers to the complaint of United Air Lines, Inc., in Docket OST-98-4030, no later than 21 days from the date of service of this order; and if answers are filed, replies to those answers should be filed no later than seven calendar days from the due date for filing answers.<sup>2</sup> Answers to the complaint and replies, if any, should be served upon the persons named in ordering paragraph 3, below;
2. If timely and properly supported answers are filed, we will give full consideration to the matters and issues raised by the answers before we take further action; and
3. We will serve this order on Air Transport International LLC; American Airlines, Inc.; Amerijet International, Inc.; Arrow Air, Inc., Challenge Air Cargo, Inc.; Continental Airlines, Inc.; Delta Air Lines, Inc.; DHL Airways, Inc.; Emery Worldwide Airlines, Inc.; Evergreen International Airlines, Inc.; Federal Express Corporation; Northwest Airlines, Inc.; Polar Air Cargo, Inc.; Tower Air, Inc.; Trans World Airlines, Inc.; United Air Lines, Inc.; United Parcel Service Company; US Airways, Inc.; World Airways, Inc.; Lufthansa German Airlines; Condor Flugdienst; Scandinavian Airlines System; Scanair; Maersk Air; Blue Scandinavia AB; Premiair A/S; Nova Airlines, AB; Deutsche BA Luftfahrtgesellschaft mbH; Eurowings Luftverkehrs AB; Hapag-Lloyd Fluggesellschaft; Lufthansa Cargo, AG; Transwede Airways AB; LTU Lufttransport-Unternehmen GmbH; Britannia Airways; Sterling; Air Sweden; Finnair Oy; the Ambassadors of the Delegation of the Commission of the European Communities, the Federal Republic of Germany, Norway, Denmark, and Sweden in Washington, D.C.; the U.S. Department

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<sup>1</sup> We assign to the Director, Office of International Aviation, the authority to dispose of all procedural questions arising in this proceeding, except for requests for oral evidentiary hearing, until further Department order.

<sup>2</sup> The original submission is to be unbound and without tabs on 8 1/2" x 11" white paper using dark ink (not green) to facilitate use of the Department's docket imaging system.

of State (Office of Aviation Negotiations); the Assistant U. S. Trade Representative (Office of the United States Trade Representative); the U.S. Department of Commerce (Office of Service Industries); and the Air Transport Association.

By:

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

(SEAL)

*An electronic version of this notice is available on the World Wide Web at  
<http://dms.dot.gov/general/orders/aviation.html>.*