

notification of their intention by December 6, 2002. The notification should include: (1) The name, address, and telephone number of the person presenting the testimony; and (2) a short (one or two paragraph) summary of the presentation, including the subject matter and, as applicable, the product(s) (with HTS number(s)), service sector(s), or other subjects (such as investment, intellectual property and/or government procurement) to be discussed. A copy of the testimony must accompany the notification. Remarks at the hearing should be limited to no more than five minutes to allow for possible questions from the TPSC. Persons with mobility impairments who will need special assistance in gaining access to the hearing should contact Gloria Blue at the number given above.

Interested persons, including persons who participate in the hearing, may submit written comments by noon, December 20, 2002. Written comments may include rebuttal points demonstrating errors of fact or analysis not pointed out at the hearing. All written comments must state clearly the position taken, describe with particularity the supporting rationale, and be in English. The first page of the written comments must specify the subject matter including, as applicable, the product(s) (with HTS number(s)), service sector(s), or other subjects (such as investment, intellectual property and/or government procurement).

### 3. Requirements for Submissions

To facilitate prompt processing of submissions, the Office of the U.S. Trade Representative strongly urges and prefers electronic (e-mail) submissions in response to this notice. In the event that an e-mail submission is impossible, submissions should be made by facsimile.

Persons making submissions by e-mail should use the following subject line: "Free Trade Agreement with Southern Africa" followed by (as appropriate) "Notice of Intent to Testify," "Testimony," or "Written Comments." Documents should be submitted as either WordPerfect, MSWord, or text (.TXT) files. Supporting documentation submitted as spreadsheets are acceptable as Quattro Pro or Excel. For any document containing business confidential information submitted electronically, the file name of the business confidential version should begin with the characters "BC-", and the file name of the public version should begin with the characters "P-". The "P-" or "BC-" should be followed by the name of the submitter. Persons who make

submissions by e-mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. To the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files.

Written comments, notice of testimony, and testimony will be placed in a file open to public inspection pursuant to 15 CFR 2003.5, except confidential business information exempt from public inspection in accordance with 15 CFR 2003.6. Business confidential information submitted in accordance with 15 CFR 2006.6 must be clearly marked "BUSINESS CONFIDENTIAL" at the top of each page, including any cover letter or cover page, and must be accompanied by a nonconfidential summary of the confidential information. All public documents and nonconfidential summaries shall be available for public inspection in the Reading Room at the Office of the United States Trade Representative. The Reading Room is open to the public, by appointment only, from 10 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday. An appointment to review the file may be made by calling (202) 395-6186. Appointments must be scheduled at least 48 hours in advance.

General information concerning the Office of the United States Trade Representative may be obtained by accessing its Web site (<http://www.ustr.gov>).

**Carmen Suro-Bredie,**

*Chairman, Trade Policy Staff Committee.*

[FR Doc. 02-29095 Filed 11-12-02; 3:33 pm]

**BILLING CODE 3190-01-P**

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

#### Review Under 49 U.S.C. 41720 of Delta/Northwest/Continental Agreements

**AGENCY:** Office of the Secretary, Department of Transportation.

**ACTION:** Notice of access on restricted basis to unredacted agreements.

**SUMMARY:** Delta Air Lines, Northwest Airlines, and Continental Airlines have submitted code-sharing and frequent-flyer program reciprocity agreements to the Department for review under 49 U.S.C. 41720. That statute requires such agreements between major U.S. passenger airlines to be submitted to the Department at least 30 days before the agreements' proposed effective date.

The Department is providing outside parties access on a restricted basis to unredacted copies of the agreements. Comments by interested persons reflecting their review of the unredacted copies may assist the Department in determining whether to extend the waiting period or take other action on the agreements.

**ADDRESSES:** Comments must be filed with Randall Bennett, Director, Office of Aviation Analysis, Room 6401, U.S. Department of Transportation, 400 7th St. SW., Washington, DC 20590. To facilitate consideration of comments, each commenter should file three copies of its comments.

**FOR FURTHER INFORMATION CONTACT:**

Thomas Ray, Office of the General Counsel, 400 Seventh St. SW., Washington, DC 20590, (202) 366-4731.

**SUPPLEMENTARY INFORMATION:** On August 23, Delta, Northwest, and Continental submitted code-sharing and frequent-flyer program reciprocity agreements to us for review under 49 U.S.C. 41720. That statute requires such joint venture agreements among major U.S. passenger airlines to be submitted to us at least thirty days before they can be implemented. We may extend the waiting period by 150 days with respect to a code-sharing agreement and by 60 days for other types of agreements. At the end of the waiting period (either the 30 day period or any extended period established by us), the parties are free to implement their agreement, unless we have issued an order under 49 U.S.C. 41712 (formerly section 411 of the Federal Aviation Act) in a formal enforcement proceeding determining that the agreement's implementation would be an unfair or deceptive practice or unfair method of competition that would violate that section.

As required by 49 U.S.C. 41720, Delta, Continental, and Northwest provided us with unredacted copies of their agreements and asked that we give the agreements confidential treatment under 49 CFR 7.13 and rule 12 of the Department's rules of practice for airline industry economic regulatory proceedings, 14 CFR 302.12. Rule 12 sets forth the procedures for objections to the public disclosure of information submitted pursuant to a statutory requirement.

We have been reviewing the agreements submitted by Delta, Continental, and Northwest under 49 U.S.C. 41720 on an informal basis. In our review we are focusing on whether the agreements may constitute unfair methods of competition that would violate 49 U.S.C. 41712. Airline practices that violate the antitrust laws

or antitrust principles would be unfair methods of competition. See *United Air Lines v. CAB*, 766 F.2d 1101 (7th Cir. 1985). Our role under 49 U.S.C. 41720 is analogous to the review of major mergers and acquisitions conducted by the Justice Department and the Federal Trade Commission under the Hart-Scott-Rodino Act, 15 U.S.C. 18a, in that we consider whether we should institute a formal proceeding for determining whether an agreement would violate section 41712.

Although our review has been informal, due to the public interest in the matter, we gave interested persons an opportunity to submit comments on the Delta/Continental/Northwest agreements. To assist outside parties in preparing their comments, we required the three airlines to submit redacted copies of the agreements that could be reviewed by other parties. 67 FR 56340 (September 3, 2002). We took similar action during our review of the code-share and frequent flyer reciprocity agreements filed earlier by United and US Airways. 67 FR 50745 (August 5, 2002). In the course of our review of the Delta/Northwest/Continental agreements, we have thus far extended the waiting periods for a total of 60 days. 67 FR 59328 (September 20, 2002); 67 FR 64960 (October 22, 2002).

Several of the outside parties that wish to comment on the agreements among Delta, Continental, and Northwest have alleged that their lack of access to unredacted copies of the agreements has substantially handicapped their ability to comment on the agreements' potential competitive effects. See, e.g., Joint Motion of Air Tran *et al.* (October 15, 2002).

After considering these comments and the nature of the agreements at issue, we have determined that, as contemplated by rule 12, we should allow other parties to see unredacted copies of the agreements on a restricted basis and that doing so should facilitate our consideration of the issues presented by the agreements. For example, the incentives of Delta, Continental, and Northwest to compete with each other will depend in large part on the applicable financial terms when one airline sells seats under its code on a flight operated by one of the other two airlines. That kind of information has been redacted in the copies of the agreements submitted by Delta, Continental, and Northwest for public review, precluding outside parties from fully analyzing the likely competitive impact of the agreements.

As noted, Delta, Continental, and Northwest have requested confidential

treatment of the agreements under rule 12. The rule states that we can make confidential information available to other parties on a restricted basis notwithstanding a request for confidential treatment. Subparagraph (d)(3) of rule 12 thus provides, "During the pendency of such motion, the ruling official may, by notice or order, allow limited disclosure to parties' representatives, for purposes of participating in the proceeding, upon submission by them of affidavits swearing to protect the confidentiality of the documents at issue." Allowing outside parties to review unredacted copies of the Delta/Continental/Northwest agreements under our standard restrictions thus will be consistent with the rule.

Providing this kind of restricted access will also be consistent with our practice in docketed proceedings involving applications for approval and antitrust immunity for international alliance agreements. See, e.g., *Joint Application of American Airlines and British Airways*, Docket OST-2001-10387, notice of August 16, 2001. While we are not conducting a formal review of the Delta/Continental/Northwest agreements and have not established a docketed proceeding, we have determined that we should provide comparable access to the agreements in order to give parties an adequate opportunity to comment.

We will follow our established procedures for providing access on a restricted basis. Only counsel and outside experts may review the unredacted agreements, and they may do so only after submitting affidavits representing that they will maintain confidentiality. Each such affidavit must state, at a minimum, that (i) the affiant is counsel for an interested party or an outside expert providing services to such a party; (ii) the affiant will use the information only for the purpose of participating in the submission of comments on the agreements; (iii) the affiant will disclose such information only to other persons who have filed a valid affidavit respecting the confidentiality of the agreements; and (iv) the affiant will destroy or return all copies of the agreements when the Department has concluded its review. Affiants and interested parties must understand and agree that any filing that includes or discusses information obtained through the review of the unredacted agreements must itself be accompanied by a rule 12 motion requesting confidential treatment. Affidavits must be filed with the Department of Transportation, Room PL-401, 400 Seventh Street, SW.,

Washington, DC 20590, and must be served on Delta, Continental, and Northwest. Affiants who have filed affidavits may examine the documents at Room PL-401, if they present a stamped copy of the affidavit filed with the Department before examination of the documents.

We will allow persons submitting affidavits to copy the agreements, subject to their representation in the affidavits that they will destroy or return all such copies to Delta, Continental, or Northwest within one week after we have determined that we will or will not institute a formal investigation under 49 U.S.C. 41712 of the agreements. Cf. *Joint Application of American Airlines and British Airways*, Order 2001-9-12 (September 17, 2001) at 4.

We are not setting a deadline for submission of any supplemental comments based on the review of the unredacted agreements. However, any party that wishes to submit such comments should do so promptly, since the three airlines have asked us to decide expeditiously whether to allow them to implement the agreements. We will also be considering whether any additional extension of the waiting period for the code-share agreement would be appropriate.

This notice will be effective at 3 p.m. on November 12. We are serving Delta, Continental, and Northwest with a copy of this notice by FAX.

Issued in Washington, DC on November 8, 2002.

**Read C. Van de Water,**

*Assistant Secretary for Aviation and International Affairs.*

[FR Doc. 02-29068 Filed 11-14-02; 8:45 am]

**BILLING CODE 4910-62-P**

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

#### Aviation Proceedings, Agreements Filed During the Week Ending November 1, 2002

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days after the filing of the application.

*Docket Number:* OST-2002-13694.

*Date Filed:* October 28, 2002.

*Parties:* Members of the International Air Transport Association.

*Subject:*

PTC123 0202 dated September 16,  
2002

Mail Vote 240—TC123 Mid Atlantic