• The DOC failed to base the initiation of its sunset review on sufficient evidence that the termination of the antidumping duty order would likely lead to a continuation or recurrence of dumping;

• The use by the United States of a de minimis standard of 0.5 percent in a sunset review;

• The DOC's misapplication of the ''likelihood'' standard;

• The U.S. standard for determining whether the termination of antidumping orders would be ''likely'' to lead to the continuation or recurrence of injury;

• The failure by the ITC to conduct an ''objective examination'' of the record and its failure to base its determination of ''positive evidence''; and

• The U.S. statutory requirements that the ITC determine whether injury would be likely to continue or recur ''within a reasonably foreseeable time'' and that the ITC ''shall consider that the effects of revocation or termination may not be imminent, but may manifest themselves only over a longer period of time''.

Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in this dispute. Persons submitting comments may either send one copy by U.S. mail, first class, postage prepaid, to Sandy McKinzy at the address listed above, or transmit a copy electronically to *FR0051@ustr.gov,* with ''Argentina Sunset Dispute'' in the subject line. For documents sent by U.S. mail, USTR requests that the submitter provide a confirmation copy, either electronically, to the electronic mail address listed above, or by fax to (202) 395–3640. USTR encourages the submission of documents in Adobe PDF format, as attachments to an electronic mail. Interested persons who make submissions by electronic mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. Similarly, 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. Comments must be in English. A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the submitting person. Confidential business information must be clearly marked ''BUSINESS CONFIDENTIAL'' in a contrasting color ink at the top of each page of each copy.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitting person believes that information or advice may qualify as such, the submitting person—

(1) Must so designate the information or advice;

(2) Must clearly mark the material as ''SUBMITTED IN CONFIDENCE'' in a contrasting color ink at the top of each page of each copy; and

(3) Is encouraged to provide an non-confidential summary of the information or advice.

Pursuant to section 127(e) of the URAA (19 U.S.C. 3537(e)), USTR will maintain a file on this dispute settlement proceeding, accessible to the public, in the USTR Reading Room, which is located at 1724 F Street, NW., Washington, DC 20508. The public file will include non-confidential comments received by USTR from the public with respect to the dispute; if a dispute settlement panel is convened, the U.S. submissions to that panel, the submissions, or non-confidential summaries of submissions, to the panel received from other participants in the dispute, as well as the report of the panel; and, if applicable, the report of the Appellate Body. An appointment to review the public file (Docket No. WT/DS–268, Argentina Sunset Dispute) may be made by calling the USTR Reading Room at (202) 395–6168. The USTR Reading Room is open to the public from 9:30 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday.

Daniel E. Brinza,

Assistant United States Trade Representative for Monitoring and Enforcement.

[FR Doc. 03–1529 Filed 1–22–03; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

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

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Termination of review of joint venture agreements.

SUMMARY: As required by 49 U.S.C. 41720, Delta Air Lines, Northwest Airlines, and Continental Airlines submitted code-sharing and frequent-flyer program reciprocity agreements to the Department for review. After analyzing the agreements and conducting an extensive informal investigation, the Department has determined that the agreements, if implemented as presented by the three airlines, could result in a significant adverse impact on airline competition, unless the airlines formally accept and abide by certain conditions that are intended to limit the likelihood of competitive harm. If the airlines choose to implement the agreements without accepting those conditions, the Department will direct its Aviation Enforcement office to institute a formal enforcement proceeding regarding the matter.

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, 2002, as required by 49 U.S.C. 47120, Delta, Northwest, and Continental (''the Alliance Carriers'') submitted code-sharing and frequent-flyer program reciprocity agreements to us for review. That statute requires such agreements between major U.S. airlines to be submitted to us more than 30 days before they are implemented. We may extend that waiting period by up to 150 days for code-sharing agreements and 60 days for other types of agreements. The airline parties to a joint venture agreement may implement the agreement without obtaining our approval once the waiting period has expired.

Our authority to extend the waiting period enables us to conduct an informal investigation and make a preliminary determination as to whether the agreement may unreasonably reduce competition and therefore constitute an unfair method of competition that would violate 49 U.S.C. 41712, formerly section 411 of the Federal Aviation Act.[1] If we determine that an agreement violates section 411, we may bar the airlines from implementing it. Unfair methods of competition include airline agreements and other practices that violate the antitrust laws or antitrust principles. *See United Air Lines* v. *CAB*, 766 F.2d 1101 (7th Cir. 1985). A complaint that an airline practice is an unfair method of competition would be resolved after a hearing before an administrative law judge.

Rather than institute a formal enforcement proceeding, we may also ask the airline parties to make changes to their agreement to address our concerns about the agreement's impact

[1] This notice will refer to the section as section 411, its traditional name.

on airline competition. In an earlier case, we obtained the airline parties' agreement to make such changes in their agreement. In this case, we have proposed conditions to the three airlines that would alleviate our immediate competitive concerns with their proposed alliance. If the Alliance Carriers formally accept these conditions, we would not now need to institute a formal enforcement proceeding to determine whether the airlines' agreements violate section 411.

The Department's Investigation. With particular attention to our statutory responsibilities under 49 U.S.C. 40101, we reviewed the agreements as presented to us under our governing statutes to analyze their likely impact on airline competition if fully implemented. We have given outside parties the opportunity to review unredacted copies of the agreements and to submit comments based on that review and other information available to such commenters. 67 FR 69804 (November 19, 2002). We received written comments from a number of parties, including other U.S. airlines, civic parties, and the American Antitrust Institute. We have reviewed the comments, along with material obtained by us from the three airlines, we have met with the three Alliance Carriers and with parties opposed to their alliance, and we have analyzed the proposed alliance's potential impact on the basis of that material and the data presently available to us.

The proposed agreements, and their potential effects, are unusually complex. To allow sufficient time to complete our analysis, we extended the waiting period as to the code-sharing agreement for a total of 120 days, and we extended the waiting period for the frequent flyer agreement for 60 days. 67 FR 59328 (September 20, 2002); 67 FR 64960 (October 22, 2002); 67 FR 69804 (November 19, 2002); 67 FR 78036 (December 20, 2002). The airlines have not implemented either of those agreements.

In our meetings with the Alliance Carriers, we advised them that the agreements as presented to us raised serious competitive issues. We explained that this proposed alliance presents more serious competitive concerns than did the United/US Airways alliance, which we allowed to take effect subject to conditions imposed independently by the Department of Justice, in carrying out its separate statutory authority responsibilities to enforce the antitrust laws. This proposed alliance is fundamentally different from that presented to us by United/US Airways, because of the much greater overlap between the route systems of these three airlines and their possession of a substantially larger share (approximately 35 percent) of the national airline market. We invited them to propose ways that they could alleviate our concerns. We reviewed their proposals and concluded that they were not adequate. We therefore presented specific comments to the three airlines that were intended to address our primary competitive concerns while preserving the alliance's principal benefits for the traveling public and the airlines. We have had lengthy further discussions with the airlines about the terms of proposed conditions and have considered their concerns. If the Alliance Carriers formally accept and agree to abide by the conditions set forth herein, we would not seek to block their implementation of their alliance agreements at this time.

The conditions we have developed are intended to lessen the likelihood of unlawful collusion, to prevent the three airlines from hoarding airport facilities at their hubs and to make underutilized facilities available to competitors, to address the three airlines' potentially dominant combined market share at many cities and the resulting detrimental effect on entry by competitors and therefore on consumers, and to prevent anti-competitive practices involving joint marketing. We have developed these conditions in furtherance of our statutory responsibilities under 49 U.S.C. 40101 and our authority under section 411 to prevent unfair methods of competition in the airline industry and on the basis of our analysis of the alliance's potential impact on airline competition. Our conditions, designed to address this Department's present concerns under our unique statutory scheme, are in addition to, and independent of, any conditions that may be required by the Department of Justice, pursuant to its separate and distinct statutory authority to enforce the antitrust laws, and its own independent review of the proposed alliance's competitive effects.

Public Policy Background. In carrying out our responsibilities in this matter, we are mindful that Congress has mandated that the Department ''shall consider'' the factors enumerated in section 40101. For purposes of this proceeding, a number of these factors are particularly relevant. We must analyze the potential effects of the Alliance Carriers' proposal in the context of the express statutory goals, among others, of

(9) preventing unfair, deceptive, predatory, or anticompetitive practices in air transportation,

(10) avoiding unreasonable industry concentration, excessive market domination, monopoly powers, and other conditions that would tend to allow at least one air carrier * * * unreasonably to increase prices, reduce services, or exclude competition in air transportation, and

(13) encouraging entry into air transportation markets by new and existing air carriers and the continued strengthening of small air carriers to ensure a more effective and competitive airline industry.[2]

Consistent with these provisions, Congress has charged us with a responsibility to review anti-competitive conduct in the airline industry. This Department's authority under section 411 to prohibit airlines from engaging in unfair methods of competition was intended to supplement, but in no way to supplant or interfere with, the Justice Department's authority to enforce the antitrust laws. As the Supreme Court has stated, ''[S]ection 411 * * * was designed to bolster and strengthen antitrust enforcement.'' *Pan American World Airways* v. *United States*, 371 U.S. 296, 307 (1963).

When Congress deregulated the airline industry in 1978, Congress retained the pre-existing authority of our predecessor agency, the Civil Aeronautics Board, to prevent unfair competition in the airline industry. The Airline Deregulation Act did not reduce or modify the Board's authority to prohibit unfair methods of competition. Similarly, when Congress enacted the Civil Aeronautics Board Sunset Act of 1984, Public Law 98–443, 98 Stat. 1703, it reaffirmed its intent that deregulation must be coupled with the authority to prevent anticompetitive conduct. Section 3 of that statute transferred to this Department the Board's authority to prohibit unfair methods of competition in the airline industry. Congress explained that maintaining that authority was both necessary and consistent with airline deregulation, H.R. Rep. No. 98–793, 98th Cong., 2d Sess. (1984) at 4–5:

> There is also a strong need to preserve the Board's authority under Section 411 to ensure fair competition in air transportation * * *. Although the airline industry has been deregulated, this does not mean that there are no limits to competitive practices.

[2] 49 U.S.C. 40101(a). Congress added these goals to the statutory statement of public policy goals when it enacted the Airline Deregulation Act of 1978, P.L. 95–504, 92 Stat. 1705, 1707 (1978). The statute's public policy goals provide the context for our enforcement of the prohibition against unfair methods of competition in the airline industry. *Pan American World Airways* v. *United States*, 371 U.S. 296, 307–309 (1963).

As is the case with all industry, carriers must not engage in practices which would destroy the framework under which fair competition operates. Air carriers are prohibited, as are firms in other industries, from practices which are inconsistent with the antitrust laws or the somewhat broader prohibitions of Section 411 of the Federal Aviation Act (corresponding to Section 5 of the Federal Trade Commission Act) against unfair competitive practices.

Subsequently, Congress expressly determined that this Department should implement special procedures to ensure that the potential anti-competitive effects of code-share agreements and other joint venture agreements between major airlines are thoroughly analyzed before the agreements may go into effect. Congress implemented that determination by enacting 49 U.S.C. 47120. Congress enacted section 47120 after several announcements of proposed code-share arrangements between major U.S. airlines, including the existing arrangement between Northwest and Continental.[3]

The Airlines' Proposed Relationship. The proposed Delta/Continental/Northwest alliance is a comprehensive marketing arrangement that would involve code-sharing, frequent flyer reciprocity, and reciprocal access to airport lounges. The alliance agreements have a ten-year term. Each airline would put its code on each of its partners' flights to the extent possible given the limited number of available flight numbers. The airline operating the flight would obtain the revenue paid by the passenger. Members of each airline's frequent flyer program could earn award miles and use them on flights operated by the other two airlines. Members of each partner's airport lounge program will have access to the other two airlines' airport lounges. The three airlines would engage in joint marketing programs whereby they would make joint contract proposals to corporate customers to the extent allowed by the antitrust laws and create joint travel agency incentive commission programs.

The three airlines have vigorously asserted that their alliance will benefit consumers by providing on-line services to travellers in markets that now have no on-line service and improved access to frequent flyer programs and airport lounges. They contend that each of them will independently set its own fares and schedules. They assert that they will engage in some discussions on subjects such as flight arrival times, gate locations, and certain other service features in order to provide "more seamless service." Delta, Continental, and Northwest also contend that they have structured their alliance so that they will continue to compete independently. That contention is based primarily on the fact that the ticket price paid by a traveller would go to the operating airline, even if the passenger bought the ticket from a marketing airline. Since the marketing airline does not share in the ticket revenue, that airline assertedly should have an incentive to operate its own flights. In addition, their agreements would not authorize any discussions prohibited by the antitrust laws.

Our Authority under Section 411. Our review of this proposed alliance has been conducted under this Department's unique statutory scheme. Under our governing statutes, any determination that the agreements should be prohibited would be based on a finding that they constituted an unfair method of competition. Section 411 authorizes us to prohibit conduct that does not violate the Sherman Act. See, *e.g., Pan American World Airways* v. *United States*, 371 U.S. 296, 303–308 (1963). As discussed above, our statutory authority under section 411 must be exercised in the context of the mandates to protect the public interest enumerated in 49 U.S.C. 40101.

The leading case on the scope of our authority under section 411 is *United Air Lines* v. *CAB*, 766 F.2d 1107 (7th Cir. 1985) (Posner, J.). This Department inherited from the CAB the same statutory provision that was at issue in that case. In United Air Lines, the Court affirmed the Board's computer reservations system rules notwithstanding the absence of any finding that the systems' practices violated the antitrust laws. The Court held that the Board could nonetheless regulate CRS practices, because the Board "can forbid anticompetitive practices before they become serious enough to violate the Sherman Act." *United Air Lines*, 766 F.2d at 1114.

Competition Analysis. In reviewing the agreements between Delta, Continental, and Northwest, we are mindful that their joint venture relationship will not be the equivalent of a merger, that they do not now intend to significantly integrate their operations, and that each airline has represented that it will independently establish its fare levels and capacity levels in its city-pair markets. We note as well that the fares paid by passengers on flights operated under the code-share arrangement will go to the airline operating the flight, even if the passenger bought the ticket under the other airline's code. This should give each airline some incentive to compete with its partner by operating its own flights.

Nonetheless, based on all the facts presented to us, our independent knowledge of and long experience with the airline industry, and our detailed analysis under our governing statute, the Delta/Continental/Northwest alliance presents serious competitive concerns. It is substantially different from previous alliances between U.S. airlines, both in terms of the combined size of the three partners and the extent of overlap between their route systems.

First, in contrast to earlier alliances, the Delta/Continental/Northwest alliance involves three airlines that together have a large share of the national market. Northwest and Continental together have a national market share of 18 percent as measured by domestic revenue passenger miles, and Delta has 17 percent of the national market. The proposed three-airline alliance would therefore have a national market share of 35 percent. In contrast, the largest of the previous alliances, United/US Airways, resulted in a combined market share of 23 percent, and that share may be expected to decline if the two airlines' financial difficulties ultimately lead to a shrinkage of their route systems.

More significantly, both the existing Continental/Northwest alliance and the recent United/US Airways alliance involved airlines whose route systems overlapped relatively little. In 2001, Continental and Northwest overlapped in 558 markets, accounting for 6.5 million annual passengers. The United/US Airways alliance involved 543 overlapping markets accounting for 15.1 million annual passengers. United has a largely east-west route system, while US Airways has a largely north-south route system along the East Coast. In dramatic contrast, the three alliance partners' services overlap in 3,214 markets accounting for approximately 58 million annual passengers.

Thus, the Delta/Continental/Northwest alliance is not an end-to-end alliance, unlike most of the other domestic and international alliances reviewed by us, which typically have expanded the network of each alliance partner. Contrary to the three airlines' representations regarding new on-line service, Delta's code-share with Continental would give Delta access to only eleven domestic airports not now

[3] Because Northwest and Continental implemented their code-share proposal before the enactment of 49 U.S.C. 47120, the Justice Department reviewed that agreement pursuant to its authority to enforce the antitrust laws. That Department determined that it would not challenge the code-share arrangement if the two airlines complied with certain conditions, but challenged Northwest's simultaneous acquisition of the major block of Continental voting stock.

served by Delta, all of which are small. While Delta's code-share with Northwest would give Delta access to significantly more domestic airports, it appears that the total number of new on-line markets created by the alliance would still account for only 89,530 annual passengers, far less than one-tenth of one percent of all domestic passengers. Thus, the value of the alliance for the partners would come from capturing passengers now traveling on other airlines, rather than the stimulation of traffic in new ''online'' markets. As a result, the proposed alliance would not provide substantial network extension benefits, unlike other domestic alliances.

It also appears that the Delta/Continental/Northwest alliance would create neither substantial operating efficiencies nor substantial cost reductions for the three airlines. The alliance instead would benefit the three partners by increasing their ability to attract passengers away from competing airlines. Their ability to take passengers away from competing airlines would in part result from their improved service, such as an increased ability for travellers to earn frequent flyer awards, and, in part, from the significant advantages created when an airline (or airline alliance) dominates a city.

We recognize that the alliance could benefit a number of travellers. Travellers in some markets will have a greater choice of flights, and the members of the three airlines' frequent flyer programs will gain a greater ability to earn and use frequent flyer awards. Some markets, albeit very small markets, that now have no on-line service could, if the Alliance Carriers choose to code-share in those markets, obtain such service. In analyzing the three carriers' proposal, we must weigh the potential benefits of the alliance against its potential anti-competitive effects. The conditions set forth herein, while not preventing the airlines from implementing their alliance, would attempt to ensure that the alliance provides the benefits that its partners promised to the public. The conditions would attempt to limit the anti-competitive harm that could result from the alliance without interfering with the partners' ability to code-share in most markets, to offer reciprocity to each airline's frequent flyer and airport lounge program members, and to engage in joint marketing efforts in most cities.

In analyzing the alliance's potential impact on airline competition, we have considered the data available to us regarding the Continental/Northwest alliance, which the three airlines contend has caused no discernible competitive harm. We presently believe that that experience does not provide a valid basis for comparison. It appears that the Delta/Continental/Northwest alliance would create far fewer new on-line service opportunities, involve much more overlapping service, and pose a greater danger of collusion than did the Continental/Northwest alliance.

Our decision to allow United and US Airways to proceed with their alliance is not inconsistent in any way with our present view that the Delta/Continental/Northwest alliance presents serious competitive issues. We expressed reservations about the United/US Airways alliance, even though United and US Airways have a significantly smaller share of the national market and their route systems overlap much less than do the route systems of Delta and the existing Northwest/Continental alliance. We allowed United and US Airways to go forward, without imposing conditions additional to those imposed by the Justice Department, based on the airlines' representations that they would continue to compete independently, our analysis of the likelihood that the alliance would reduce competition, and our analysis of the potential public benefits of the alliance. 67 FR 62846 (October 8, 2002). Importantly, we did not find that the United/US Airways alliance would not reduce competition. Instead, we stated: ''At the present time, the material we have reviewed is not sufficient for us to conclude that an enforcement proceeding under 49 U.S.C. 41712 would be warranted.'' 67 FR 62847.

In sum, based on the information provided to us, we presently believe that the Delta/Continental/Northwest alliance proposal raises several serious competitive issues. Consumer access to low fares and adequate service cannot be assured without adequate competition. The goal of maintaining competition requires (i) that the partners continue competing with each other to the maximum extent possible and (ii) that unaffiliated airlines continue serving the three partners' markets or can enter those markets without artificial barriers.

Our concerns with this alliance proposal flow directly from our responsibilities under our unique statutory scheme. We do not seek to protect favored airlines. Competition works when individual competitors find ways to improve their lot relative to others, thus forcing others to respond. The end result is more efficient airlines, better service, lower fares, and economic growth. Here, however, multiple carriers would join forces in many different ways, making it extremely difficult, it appears, for other carriers to respond effectively, and thus forcing those competing carriers to exit some markets. Unaligned carriers could be particularly vulnerable to the unprecedented market power of the Delta/Continental/Northwest alliance, and many could be weakened or cease to exist. Accordingly, we have a number of specific concerns with the alliance, which we would attempt to address through the conditions described below. We would, of course, monitor the alliance's effects on competition, and would retain the power to take further action if necessary.

Potential Collusion. First, the alliance agreements authorize a wide range of discussions between the partners, since the three airlines intend to make their services as seamless as possible. Given the broad nature of the discussions that will be required to implement the alliance, we are concerned that the communications among the carriers may lead to collusion, either tacit or explicit, on such matters as fares and service levels, notwithstanding the partners' representation that they would remain independent competitors. The face-to-face oral discussions of scheduling, use of facilities, and joint pricing proposals to corporate travel departments and travel agencies would provide new opportunities to exchange information that could facilitate tacit collusion to restrain competition. In addition, the airlines' stated goal of harmonizing their service standards, which would strengthen the alliance's ''brand,'' seems likely to dampen the partners' interests in competing with each other on service factors, such as terms of their frequent flyer programs. In order to develop a multi-carrier ''on-line'' seamless service alliance, the partners may reduce the differences in their respective service features; consumers typically use differences in service features, such as frequent flyer program terms, to choose between airlines. Collusion, whether explicit or tacit, harms consumers, because it reduces or eliminates competition and enables firms to charge higher prices or offer poorer service than they would in a competitive market.

Increased Market Presence. The three airlines plan to take advantage of their combined presence at the cities they serve by code-sharing, offering frequent flyer program reciprocity, and making joint offers to corporate customers and travel agencies. This would extend the same types of competitive advantages possessed by the dominant airline in a city to a number of spoke cities, and this may substantially undermine the ability of competing airlines to maintain service in, or enter, markets served by the alliance partners. That potential harm would result primarily from the combination of the three airlines' increased market presence and the consequent marketing advantages created by their dominance of many markets, rather than because the alliance will enable the partners to offer substantially better service. Historical evidence and analysis support the conclusion that an airline that has a large market share at a city typically has substantial competitive advantages over other airlines that the latter often cannot offset, even by offering lower fares and attractive service features. An airline's possession of a dominant market share in a city, accordingly, will give it some ability to charge supracompetitive fares and to reduce service. *See, e.g.*, U.S. Department of Transportation, Findings and Conclusions on the Economic, Policy, and Legal Issues, *Enforcement Policy Regarding Unfair Exclusionary Conduct in the Air Transportation Industry* (January 17, 2001) at 22–26. This is particularly true at airline hubs, including the hubs operated by the three airlines. The three airlines' proposed alliance would enable them to extend these hub advantages to spoke cities, which could deter new entry and may cause existing competitors to end their services in some markets. The resulting reduction in competition may lead to higher fares and poorer service.

We recognize that the alliance proposed by Delta, Continental, and Northwest would not give any single airline a dominant market share and that the three airlines represent that they will continue to compete independently on fares, capacity, and scheduling. Nonetheless, we believe that at many cities the alliance's impact on the prospects of entry by competing airlines would be substantially equivalent to the impact that a single airline's dominance would have at that city. Indeed, the documents provided to us confirm that the three airlines seek through the alliance to increase their collective market share in ways that would undermine the competitive position of other airlines. They intend to offer joint corporate discount contracts, joint travel agency incentive programs, and, from the traveller's perspective, combine their frequent flyer programs. Their proposed code-sharing would also increase their dominance through the simple fact of multiplying the apparent number of flights offered by each of them. In these respects, the three airlines seek to secure the same competitive advantages of a dominant market share that would accrue to them through a merger.

Joint Marketing. As noted, the three airlines plan to offer corporate customers joint contracts and to offer travel agencies joint incentive programs. In general, the airline that offers the broadest range of services will be the most attractive bidder for a corporation's business, and the airline that operates the most service at a city will offer the most attractive incentive program to travel agencies in that city. An airline that dominates a city typically structures its corporate contracts and travel agency incentive programs in ways that leverage its existing dominant market share to gain an even larger share of the business of the corporate accounts and the bookings of the travel agencies. *See e.g.* General Accounting Office, ''Airline Deregulation: Barriers to Entry Continue to Limit Competition in Several Key Domestic Markets'' (October 1996) at 15–19; U.S. Department of Transportation, Findings and Conclusions on the Economic, Policy, and Legal Issues, *Enforcement Policy Regarding Unfair Exclusionary Conduct in the Air Transportation Industry* (January 17, 2001) at 23–24. If the proposed alliance is implemented, these three airlines could do the same. The partners' joint marketing plans threaten competition in two respects. First, if they make joint offers, they are less likely to compete individually for corporate customers and travel agency patronage. Second, they could leverage their combined market share in ways that preclude any effective competition from unaffiliated airlines. For example, the Alliance Carriers could offer a corporate customer discounts on Northwest's transpacific services only if the customer booked most of its domestic travel on a particular domestic route on Delta rather than on a competing airline. The tying of the partners' services in this way could make it extremely difficult for other airlines, especially those that do not have a worldwide network like that operated by the proposed alliance, to compete.

Airport Facilities. The alliance partners have represented that they plan to consolidate their operations at airports when doing so would be feasible, a step which could free a number of gates for use by others. Opposing parties have expressed a concern that the Alliance Carriers would not make underutilized gates available to competitors and would instead ''hoard'' gates at airports where other facilities for new service are not obtainable. Airlines cannot enter new markets or increase service in existing markets if they cannot obtain access to the necessary airport facilities. Facilities are presently unobtainable at a number of important airports, such as Boston. The alliance partners may have an incentive and the ability to ''hoard'' their existing facilities or terminate their competitors' use of subleased facilities at airports where gates are otherwise unobtainable to reduce competition. Such actions could worsen a situation that already exists, resulting ultimately in higher fares and less service for consumers.

CRS Displays. If the Alliance Carriers fully implemented their proposed code-sharing agreement, each of their flights could be listed three times in the displays offered to travel agents by most of the computer reservations systems (''CRSs''). Multiple listings of the same number of physical flights would move many of the services offered by other airlines to later CRS display screens, with the likely result that many travel agents would not find and book those services. The multiple listings of the same physical flights under the codes of all three partners could thus, by itself, have the effect of reducing the number of bookings obtained by competitors from travel agents using a CRS, without any actual improvement in capacity or reduction in price. In some markets, that phenomenon could undermine a competitor's ability to maintain any service at all. Similar concerns have caused us to consider, in a presently pending proceeding, amending our CRS rules to limit the number of times any flight can be displayed under different airline codes. 67 FR 69366, 69396–69397 (November 15, 2002). The European Union's CRS rules allow a single service to be displayed under no more than two codes, even if more than two airlines sell seats on the service under their codes. 67 FR 69397.

Proposed Conditions. Utilizing all of the information presently available to us, we have conducted an independent analysis of the proposed alliance under our unique statutory authority. As noted earlier, as a result of that analysis, we presently believe that unless the Alliance Carriers formally accept and agree to certain conditions, the proposed alliance poses a serious danger to competition. The conditions discussed herein would not affect the operation of the existing Northwest/Continental alliance. We have developed them, after careful and thorough consideration of all of the relevant issues, in an attempt to alleviate the competitive concerns raised by the Delta/Continental/Northwest alliance without the need for formal enforcement action. We would not now take enforcement action against the three airlines' implementation of the alliance if they formally agreed to the conditions. If the three airlines do not promptly notify us of their agreement to accept the conditions set forth herein, we will direct our Aviation Enforcement office to institute a formal enforcement proceeding to determine whether the airlines' agreements constitute unfair methods of competition in violation of section 411 and, if so, what remedies would be required.

We have developed six conditions, after considering the three airlines' responses to our stated concerns. For convenience, our conditions are set forth below, along with a short summary of the basis for each of them:

1. The following condition is intended to reduce the possibility of collusion that would be inconsistent with 49 U.S.C. 40101 or unlawful under 49 U.S.C. 41712:

Steering Committee: The Alliance Carriers shall not establish the Steering Committee as defined in Section 10.1 of the Marketing Agreement.[4] The Alliance Carriers shall not coordinate or agree upon pricing, scheduling (except for minor schedule adjustments to existing schedules to improve connectivity), capacity, route entry or exit, revenue/inventory management, frequent flyer terms, or upon any other matter as to which an agreement among competitors would be inconsistent with 49 U.S.C. 40101 or unlawful under 49 U.S.C. 41712. To ensure compliance with those sections, counsel shall monitor any communications concerning the above-specified topics. Monitoring by counsel shall not confer attorney-client privilege upon such communications. The Alliance Carriers shall maintain written records of all such communications among themselves regarding the Marketing Agreement and shall retain them until one year after the Marketing Agreement's termination.

2. The following condition is intended to implement the Alliance Carriers' agreement to release ''Surplus Gates'' and reduce the possibility that the Marketing Agreement will impede competition due to ''hoarding'' underutilized facilities at certain congested airports:

Airport Facilities: The Alliance Carriers agree that due to co-location the following gates, along with related facilities (including overnight positions), shall be released to the airport sponsor upon its request for lease to domestic non-Alliance Carriers or for common use: (a) Four gates at IAH, (b) two gates at DTW, (c) five gates at CVG, and (d) two gates at DFW. Additionally, if the Alliance Carriers choose to implement any provision of the Marketing Agreement at any of the hub airports[5] of any Alliance Carrier or Boston (BOS), each Alliance Carrier agrees to maintain records of daily gate usage at those airports and to retain those records until one year after the termination of the Marketing Agreement. Notwithstanding any lease provision to the contrary, the Alliance Carriers further agree to release, within sixty (60) days of request by an airport sponsor at an airport that does not have a gate available for use on reasonable and competitive terms, any underutilized leased gate, along with related facilities (including overnight positions) but excluding gates used only for international flights, for use by a domestic non-Alliance Carrier or for common-use. A gate is underutilized if it is used less than an average of six turns per day during any two consecutive calendar months. Subleases to non-Alliance Carriers shall not be cancelled to release gates under this condition. No Alliance Carrier shall be required to release an underutilized leased gate pursuant to this condition if it will be required to continue to pay rentals or charges to the airport sponsor for the gate. This condition shall not apply if a gate is underutilized due to an event of force majeure.[6]

3. The following condition is intended to ensure that the Alliance Carriers implement their representations of consumer benefits due to on-line service expansion:

Codesharing: As referenced in the Marketing Agreement, Domestic, Canadian, and Caribbean codesharing shall be limited to six hundred fifty (650) flights per two-carrier combination for a total of twenty-six hundred (2,600) flights. Not less than twenty-five percent (25%) of each marketing carrier's new codeshare flights must be to or from airports the carrier and its regional affiliates either did not directly serve or served with no more than three daily roundtrip flights as of August 2002. An additional thirty-five percent (35%) of each marketing carrier's new codeshare flights must either meet the above requirement or be to or from small hub and non-hub airports.[7] Beginning one year after the commencement of codeshare operations, any Alliance Carrier may request review of this condition. The Department will exercise its best efforts to complete the review within sixty (60) days following receipt from the Alliance Carriers of the information necessary to complete its review. Any request for modification shall not constitute a new agreement for the purposes of 49 U.S.C. 41720.

4. The following condition is intended to encourage continued independent competition and reduce the possibility of joint marketing arrangements that reduce competition:

Joint Corporate and Travel Agency Contracts: If the Alliance Carriers wish to offer joint bids to corporations or travel agencies, the corporation or travel agency shall be given the option of dealing with each Alliance Carrier separately or of receiving a joint bid from two or more of the Alliance Carriers. Only after the corporation or travel agency has requested a joint bid in writing shall such a bid be developed and submitted. In addition, the Alliance Carriers shall not offer a joint bid to any corporation or travel agency that has a principal place of business or headquarters in a city[8] where all three carriers (themselves or through regional affiliates) operate scheduled service and their combined market share[9] exceeds fifty percent as of the August prior to the offering of the joint bid. In any joint bid, the Alliance Carriers shall not make the contractual discounted fares or commissions dependent on satisfaction of minimum purchase or booking requirements, whether based on threshold or percentage, for specific domestic markets or for domestic services offered by one of the Alliance Carriers. This condition shall not apply to joint bids involving only Northwest and Continental.

5. The following condition is designed to limit the potential anti-competitive effects of multiple listings of one service under different codes, *i.e.* CRS ''screen clutter,'' while that issue is under active review in the Department's CRS rulemaking proceeding. At the conclusion of the proceeding, the same CRS rules applicable to all other codeshare arrangements would be applicable to this codeshare agreement as well:

CRS Displays: In the current CRS rulemaking the Department is soliciting comments on whether it should limit the number of times that codeshare services are displayed (67 FR 69396–97). The European Union CRS rules limit the number of codes displayed on a flight and CRSs operating in EU member states must comply with that limit. The Alliance Carriers shall make a good faith request in writing to each CRS that the CRS, during the pendency of the CRS rulemaking, not display an Alliance Carrier's service under more than two codes in any integrated display offered by the CRS. The requests and any responses thereto shall be submitted to the Department by the Alliance Carriers.

6. The following condition is intended to limit the duration of the potential anti-competitive effects of the exclusivity clauses of the Marketing Agreement to its proposed term:

[4] For the purposes of these conditions, the term ''Marketing Agreement'' includes all of the exhibits to the Marketing Agreement.

[5] For the purposes of this condition, ''hub airports'' are defined as Atlanta (ATL), Cincinnati (CVG), Cleveland (CLE), Dallas/Ft. Worth (DFW), Detroit (DTW), Houston (IAH), Memphis (MEM), Minneapolis/St. Paul (MSP), Newark (EWR), and Salt Lake City (SLC).

[6] For the purposes of this agreement, an ''event of force majeure'' is defined as follows: Acts of God; fire; damage to or destruction of aircraft or other flight equipment; riots or civil commotion; strikes, lockouts or labor disputes (whether resulting from disputes between the carrier and its employees or between other parties); U.S. military or airlift emergency or substantially expanded U.S. military airlift requirements as determined by the U.S. government; activation of the U.S. Civil Reserve Air Fleet; war or hazards or dangers incident to a state of war; acts of terrorism; or any other acts, matters or things, whether or not of a similar nature, which are beyond the control of the carrier and which shall directly or indirectly, prevent, delay, interrupt, or otherwise adversely affect the furnishing, operation or performance of a carrier; provided, however, that the carrier so affected shall take all commercially reasonable steps to cure such nonperformance or delay.

[7] For the purposes of this notice, ''small hub'' and ''non-hub'' airports are defined by the Airport Activity Statistics published by the Department of Transportation, Bureau of Transportation Statistics.

[8] For the purposes of this agreement, ''city'' is defined as a primary metropolitan statistical area.

[9] For the purposes of this agreement, ''market share'' is determined by scheduled departing seats on domestic flights.

Exclusivity Provisions: After the termination of the Marketing Agreement, no Alliance Carrier shall attempt to enforce any provision of the Marketing Agreement that would restrict any other Alliance Carrier from entering into an international or domestic marketing relationship with any other carrier.

Conclusion. If we are notified promptly that the three carriers agree to implement the alliance subject to the conditions set forth above, we would not now institute an enforcement case under our governing statute. Given our strong concern that the agreements could have anti-competitive results, however, we would continue to monitor closely the implementation of the agreements. We, of course, reserve the right, if we obtain evidence that leads us to believe that the joint venture is adversely affecting competition, to refer the matter for enforcement action. Further, if the three airlines at any time decide that they will no longer comply with a formal agreement accepting our conditions, they will have created a new agreement that must be submitted to us under 49 U.S.C. 41720, subject to all of the provisions of the statute, including the prescribed waiting period. Under our established interpretation of 49 U.S.C. 47120, the same will be true if they materially modify the terms of the agreements submitted by them on August 23.

Issued in Washington, DC on January 17, 2003.

Read C. Van de Water,

Assistant Secretary for Aviation and International Affairs.

[FR Doc. 03–1528 Filed 1–17–03; 2:20 pm]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed the Week Ending January 10, 2003

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–2003–14203.

Date Filed: January 6, 2003.

Parties: Members of the International Air Transport Association.

Subject: PTC COMP Fares 0273 dated December 17, 2002, TC12/TC123 North Atlantic—Resolution 015n—USA Add-on Amounts. Report—PTC COMP 990 dated December 20, 2002. Intended effective date: February 1, 2003.

Docket Number: OST–2003–14208.

Date: Filed January 6, 2003.

Parties: Members of the International Air Transport Association.

Subject: Mail Vote 257, PTC23 ME–TC3 0163 dated December 23, 2002, Resolution 010m, TC23/TC123 Middle East–TC3, Special Passenger Amending Resolution between China (excluding Hong Kong SAR and Macao SAR) and points in the Middle East. Intended effective date: January 15, 2003.

Dorothy Y. Beard,

Chief, Docket Operations & Media Management, Federal Register Liaison.

[FR Doc. 03–1480 Filed 1–22–03; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Motor Vehicles; Alternative Fuel Vehicle (AFV) Report

AGENCY: Office of the Secretary, DOT.

ACTION: Notice of Availability—Fleet (AFV) Report.

SUMMARY: In accordance with the Energy Policy Act of 1992 (EPAct) (42 U.S.C. 13211–13219) as amended by the Energy Conservation Reauthorization Act of 1998 (Pub. L. 105–388), and E.O. 13149, ''Greening the Government Through Federal Fleet and Transportation Efficiency,'' the Department of Transportation's annual alternative fuel vehicle reports are available on the following Department of Transportation Web site: *http://osam.ost.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Kurt T. Ettenger, Departmental Fleet Manager, Office of Security and Administrative Management, 400 7th Street SW., Washington, DC 20590; telephone (202) 366–2093.

Dated: January 15, 2003.

Richard Pemberton,

Associate Director, Office of Security and Administrative Management.

[FR Doc. 03–1481 Filed 1–22–03; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

Maritime Administration

[USCG–2003–14294]

El Paso Energy Bridge Gulf of Mexico, LLC Deepwater Port License Application

AGENCY: Coast Guard, DOT. Maritime Administration, DOT.

ACTION: Notice of application.

SUMMARY: The Coast Guard and the Maritime Administration (MARAD) give notice, as required by the Deepwater Port Act of 1974, as amended, that they have received an application for the licensing of a deepwater port, and that the application appears to contain the required information. The notice summarizes the applicant's plans and the procedures we will follow in considering the application.

DATES: Any public hearing held in connection with this application must be held not later than September 22, 2003. The application will be approved or denied within 90 days after the last public hearing held on the application.

ADDRESSES: The mailing address for the clerk in this proceeding is: Commandant (G–M), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001. Public docket USCG–2003–14294 is maintained by the Docket Management Facility, U.S. Department of Transportation, Room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001. The Docket Management Facility office maintains a Web site, *http://dms.dot.gov,* and can be reached by telephone at 202–366–9329 or fax at 202–493–2251.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Department of Transportation's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000, (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice call Robert Nelson, U.S. Coast Guard, (202) 267–0496, *rnelson@comdt.uscg.mil.*

SUPPLEMENTARY INFORMATION: *Receipt of application; determination.* On December 20, 2002, the Coast Guard and MARAD received an application from El Paso Energy Bridge Gulf of Mexico LLC,