Dated: April 1, 2003.

Lorne W. Craner,

Assistant Secretary for Democracy, Human Rights and Labor, Department of State.

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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: On February 28, Delta Air Lines, Northwest Airlines, and Continental Airlines resubmitted their code-share and frequent-flyer program reciprocity agreements to the Department for review under 49 U.S.C. 41720. The implementation of these two agreements would constitute a key part of the three airlines' proposed alliance. In their resubmission, the airlines accepted three of the six conditions that the Department had stated were necessary to avoid a formal enforcement proceeding, and they proposed alternative language for the other three conditions. The Department has determined that the alternative language proposed by the airlines adequately addresses the competitive concerns relating to those three conditions. The Department is therefore terminating its current review of the agreements. In reaching this conclusion, the Department is relying on the terms of the agreements, the airlines' representations that they will compete independently on capacity and fares, and their formal acceptance of the six conditions as modified.

FOR FURTHER INFORMATION CONTACT: Thomas Ray, Office of the General Counsel, 400 Seventh St. SW., Washington, DC 20590, (202) 366–4731.

SUPPLEMENTARY INFORMATION: On February 28, Delta, Northwest, and Continental (''the Alliance Carriers'') resubmitted their code-share and frequent-flyer program reciprocity agreements to us for review under 49 U.S.C. 41720. These agreements form essential elements of the airlines' proposed alliance, which will be a comprehensive marketing arrangement that will also include reciprocal access to airport lounges and some joint marketing. Their alliance agreement has a ten-year term. See 68 FR 3293, 3295, January 23, 2003.

The Alliance Carriers initially submitted the agreements on August 23, 2002. After an extensive investigation and analysis, we concluded that the agreements as presented raised serious competitive concerns. We stated that we would direct our Enforcement Office to begin a formal enforcement proceeding to determine whether the alliance would be unlawful unless the Alliance Carriers accepted six conditions that would address our competitive concerns. 68 FR 3293, January 23, 2003 (''the January Notice''). The Alliance Carriers at first refused to accept our conditions but thereafter consulted with us on possible modifications to the language of three of the conditions. On the basis of those consultations, they resubmitted their agreements on February 28, stated that they would accept three of our original six conditions, proposed alternative language for the other three conditions, and acknowledged our legal authority to impose conditions to prevent unfair methods of competition in the airline industry.

We invited interested persons to submit comments on the proposed alternative language. 68 FR 10770, March 6, 2003. We received public comments from JetBlue Airways; U.S. Airways; Galileo International, a computer reservations system; the Airports Council International-North America (''ACI''), which represents local, regional, and state governing bodies that own and operate the principal U.S. airports used by scheduled service airlines; the Massachusetts Port Authority (''Massport''), which operates Boston-Logan International Airport; the Montana Department of Transportation; the Memphis-Shelby County Airport Authority; and M. Michelle Buchecker. JetBlue, USAirways, Galileo, and Ms. Buchecker contend that we should not accept the alternative language. Massport asserts that we should require the Alliance Carriers to surrender different gates at Boston Logan. ACI expresses concern that we may, in the future, take steps that would interfere with the airports' right to manage their own affairs. The Montana state agency and the Memphis airport authority support the alternative language.

A group of airlines (''the Non-aligned Carriers'')—AirTran, America West, Frontier, JetBlue, Midwest, Southwest, and Spirit—filed joint comments that oppose the alternative language and requested confidential treatment for their filing.

After considering the Alliance Carriers' resubmission and the comments, we have determined that the alternative conditions adequately address our competitive concerns at this time. We are therefore ending our review of the agreements. The three airlines have agreed to our conditions with some modifications. We believe that these restrictions on their behavior should adequately reduce the possibility of anti-competitive behavior. Each airline has also represented that it will continue to compete independently on fares and service levels. Finally, the Alliance Carriers have separately agreed to abide by certain additional conditions imposed by the Department of Justice under its authority to enforce the antitrust laws.

We recognize that the implementation of the alliance could ultimately reduce competition in the airline industry, despite the conditions, although we do not expect such a result. We further recognize that the Alliance Carriers' actual implementation of the alliance may differ from their anticipated behavior. In addition, we are fully aware that world events and general economic conditions may lead to major changes in the airline industry, which could change the alliance's impact on airline competition. We will therefore closely monitor the Alliance Carriers' implementation of their agreements to ensure that they abide by their representations to us and comply with the conditions. Furthermore, in our on-going monitoring of industry conditions, we will be watchful for major changes in the level and type of competitive behavior in the airline industry. We have the statutory authority to undertake a new review of the competitive effects of the alliance at any time that we believe that such a review is warranted. We will not hesitate to initiate such a review if developments indicate that it is necessary.

Background

The statute requiring our review of the alliance agreements—49 U.S.C. 41720—requires certain kinds of joint venture agreements among major U.S. passenger airlines to be submitted to us at least 30 days before they are implemented. The statute does not expressly require the parties to obtain our approval before proceeding. 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 may implement their agreement. To prohibit the parties from implementing an agreement, we would normally institute a formal enforcement proceeding under 49 U.S.C. 41712

(formerly section 411 of the Federal Aviation Act) to determine whether the agreement's implementation would be an unfair or deceptive practice or unfair method of competition. We apply section 41712 in light of the express direction of the statute that we consider the public policy factors set forth in 49 U.S.C. 40101. If we found that the agreement would violate section 41712, we could issue an order directing the parties to cease and desist from the practices found to be unlawful.

Last year we reviewed another alliance between major airlines, the United/US Airways alliance. We determined to end the waiting period for the United/US Airways agreements and take no action at that time to prevent the airlines from implementing the agreements. 67 FR 62846, October 8, 2002. The information then available to us was not sufficient to indicate that an enforcement proceeding under section 41712 would be warranted, although we expressed concern that the alliance could lead to a lessening of competition between the two airlines in some markets. We also noted, however, that United and U.S. Airways had accepted certain restrictions imposed by the Department of Justice under its authority to enforce the antitrust laws. We additionally noted the United/US Airways alliance could benefit a number of travelers and could increase competition in some markets, as long as United and U.S. Airways had strong incentives to continue to compete with each other.

On August 23, 2003, the Alliance Carriers submitted their code-share and frequent flyer program reciprocity agreements for our review under 49 U.S.C. 41720. The proposed alliance would add Delta to the existing alliance between Continental and Northwest. We invited the public to submit comments on the proposed agreements. To enable interested parties to submit more meaningful comments, we required the Alliance Carriers to make available unredacted copies of their alliance agreements. 67 FR 69804, November 19, 2002.

After reviewing the comments and other material and conducting an extensive informal investigation, we determined that the agreements, if implemented as presented by the three airlines, could result in significant adverse impacts on airline competition unless the airlines accepted six conditions developed by us to limit potential competitive harm. Our January Notice explained the basis for this determination. We stated that we would direct our Aviation Enforcement Office to institute a formal enforcement proceeding regarding the matter if the Alliance Carriers chose to implement the agreements without accepting those conditions.

We were aware that the Alliance Carriers represented that each of them would independently set its own fares and schedules and that they had structured their alliance so that each partner would continue to compete independently. Under that structure, the ticket price paid by a traveler would go to the operating airline, even if the passenger bought the ticket from a marketing airline. Since the marketing airline would not share in the ticket revenue, that airline would have an incentive to operate its own flights. In addition, they alleged that their agreements would not authorize any discussions prohibited by the antitrust laws. They would engage in discussions on subjects such as flight arrival times, gate locations, and certain other service features only in order to provide ''more seamless service.'' They asserted that their alliance would benefit consumers by providing on-line services to travelers in markets that now have no on-line service and improved access to frequent flyer programs and airport lounges. *See* 68 FR 3295.

As described more fully in the January Notice, we nonetheless had several concerns with the alliance's potential impact on airline competition. The alliance would create a potential for collusion among the three partners; it could enable the Alliance Carriers to take advantage of their combined dominant market presence in a number of cities in ways that could force unaffiliated airlines to exit the markets and deter entry by other airlines; it would establish joint marketing efforts that could reduce competition between the partners and preclude effective competition from unaffiliated airlines; it could lead to a ''hoarding'' of airport facilities; and it could result in ''screen clutter,'' causing the services of competing carriers to be downgraded in the displays offered to travel agents by computer reservations systems (''CRSs''). 68 FR 3295–3297. We developed six conditions in an attempt to address these concerns. The January Notice set forth the text of those conditions. 68 FR 3297–3299.

The Department of Justice, pursuant to its separate and independent authority to enforce the antitrust laws, reviewed the alliance agreements and determined that it would not challenge the implementation of the agreements under the antitrust laws if the Alliance Carriers accepted certain conditions, which the Department of Justice concluded were necessary to preserve competition among the carriers. The three airlines have accepted those conditions. Under those conditions, Delta, Continental, and Northwest will not code-share on local traffic on routes where more than one of them offers nonstop service, including their hub-to-hub routes (Atlanta-Detroit/Houston, for example). For purposes of this restriction, Newark Liberty International Airport, John F. Kennedy International Airport, and LaGuardia Airport are treated as one point. The bar against code-sharing, however, does not cover flights between Washington Reagan National, LaGuardia, and Boston Logan. The Alliance Carriers also agreed to conditions that bar certain pricing conduct that could provide a vehicle for price signaling and collusion. Accordingly, each party is limited in the extent to which it can set prices on flights operated by another airline.[1] Finally, each Alliance Carrier must continue to act independently in establishing the terms and conditions of its frequent flyer programs and in bidding on corporate contracts, although when consistent with the antitrust laws the Alliance Carriers may offer customers the option of a joint bid. These conditions are substantially the same as the conditions accepted last year by United and U.S. Airways and by Northwest and Continental when they began implementing their own alliance five years ago.

While the Alliance Carriers accepted the Department of Justice conditions, they initially stated that they would implement their alliance without accepting our conditions. Soon thereafter, however, they asked whether we would consider alternatives for three of our six conditions and postponed the implementation of their alliance. On the basis of consultations with us, they resubmitted the agreements for our review with their proposed alternative conditions on February 28. They stated that they accepted, without change, our first, fifth, and sixth conditions, which involve the alliance's steering committee, CRS displays, and the agreements' exclusivity provision. They

[1] Under the pricing condition required by the Department of Justice, the marketing carrier's fares must be the same as the operating carrier's fares on routes that are not served by the marketing airline (the marketing airline is the airline that does not operate the flight but nonetheless sells seats under its code). On routes served by two or more of the partners with connecting service, when one airline is the marketing airline it must sell seats on flights operated by the partner airline for the same fares it charges for its own flights or for the fares established by the operating airline. On routes where one airline offers nonstop service and the other airline offers connecting service, the latter airline's fares for the nonstop service must be the same as the operating carrier's fares.

requested changes in the second, third, and fourth conditions, which involve airport facilities, limits on code-sharing flights, and joint marketing. They requested that we complete our review within 30 days. They acknowledged our legal authority under section 41712 to impose conditions, but asserted that, in their view, neither our conditions nor the conditions required by the Department of Justice were necessary to protect competition.

We invited public comment on the Alliance Carriers' proposed alternative language. 68 FR 10770, March 6, 2003. Our notice set forth the proposed language. We directed the commenters to discuss only whether the Alliance Carriers' three new proposals would adequately address the competitive concerns regarding the three corresponding conditions, which we explained in our January Notice, and not whether the findings and analysis in the January Notice were adequate or reasonable. We stated that we would decide whether the Alliance Carriers' proposals were acceptable within 30 days. We noted that, if we determine that the alternative conditions adequately address our concerns, and the Alliance Carriers formally accept them along with the other three conditions developed by us, we would not now institute a formal enforcement proceeding to determine whether the airlines' agreements violate section 41712. However, we would retain our full statutory authority to continue to monitor the three airlines' implementation of their alliance, and to take enforcement action under section 41712 in the future if necessary. We reaffirmed our conclusion that, if the alliance were implemented as originally presented to us, it would raise serious competitive issues and we would begin a formal enforcement proceeding if the Alliance Carriers implemented the alliance without conditions satisfactory to us.

As noted, we received comments from the Non-aligned Carriers, JetBlue, U.S. Airways, Galileo, ACI, Massport, the Montana Department of Transportation, the Memphis-Shelby County Airport Authority, and M. Michelle Buchecker. This notice discusses the arguments presented by the public comments. Due to the Non-aligned Carriers' request that their comments remain confidential, this notice does not discuss their objections. We have nonetheless given careful consideration to the Non-aligned Carriers' arguments.

Decision

Congress has given this Department the responsibility to prevent unfair methods of competition in the airline industry through section 41712. Congress directed us, in interpreting and applying section 41712, to consider the factors set forth in section 40101. Our statutory authority is separate and independent from the Department of Justice's authority to enforce the antitrust laws. Section 41712 states that we should take enforcement action when we find that doing so is in the public interest, based on our consideration of the factors set forth in section 40101. After considering the comments, we have concluded that allowing the Alliance Carriers to go forward with their agreements, subject to the six conditions as modified, will best serve the public interest at this time. We presently believe that the six conditions, as modified with the alternative language, will adequately address our competitive concerns with the alliance. Therefore, at this time, we do not believe it necessary to institute a formal enforcement proceeding to determine whether the alliance will violate section 41712. We will therefore terminate our current review of the agreements under 49 U.S.C. 41720. As stated earlier, however, we will continue to monitor the alliance's implementation to see whether the Alliance Carriers' future conduct or changes in the airline industry's structure and competitive conditions raise competitive concerns requiring further review, including potential enforcement action under section 41712.

If the Alliance Carriers at any future time decide that they will no longer comply with the restrictions which they have agreed upon with us (which incorporate the restrictions they agreed upon with the Justice Department), they will have created a new agreement and must submit that new agreement to us under 49 U.S.C. 41720. Implementation of any such new agreement must be deferred until the end of the statutory waiting period. The same will be true if they materially modify the terms of the written agreements submitted to us for review on August 23. Under our established interpretation of 49 U.S.C. 41720, airlines that significantly modify a joint venture agreement must submit the modified agreement to us for review under that statute.

We do not agree with the commenters who have urged us to extend the waiting period under 49 U.S.C. 41720. They contend that we cannot now accurately assess the alliance's competitive impact when current world events such as war in Iraq and potential changes in the industry's structure may substantially change the alliance's potential impact on airline competition. While no one can predict with certainty what may happen, we do not believe that these events warrant a delay in the alliance's implementation. The conditions should mitigate the anti-competitive effects of the alliance, and we intend to monitor closely the alliance's effects on competition in light of future developments. We retain our full statutory authority to take enforcement action at any time if we have reason to believe that the alliance has a significant adverse impact on airline competition, and we will do so.

Similarly, we are not persuaded that it is necessary to delay the implementation of the alliance pending a review of Delta's new low-fare operation, Song. According to JetBlue's comments, Delta will launch Song this spring, and Song should be operating 36 aircraft by the end of the year. JetBlue asserts that Song is designed to ''attack'' low-fare competitors, implying that such an ''attack'' is not a legitimate response to consumer demands and industry competition. We do not believe it necessary to block the implementation of the alliance pending a more detailed investigation of Delta's plans for Song's operations or to exclude Song from the alliance until completion of further review. Rather, we will continue to assess the effects of the alliance in the light of actual experience. As a general matter, we have no reason to block Delta, or any other airline, from restructuring its operations to meet competitive challenges from other airlines and to satisfy consumer demands for lower fares. Incumbent airlines may legitimately respond to competitive actions by others, and Delta is entitled to compete fairly for a share of the Northeast-Florida market. While JetBlue fears that Song will engage in unlawful conduct, JetBlue Comments at 3–4, we cannot assume now that Delta will operate Song unlawfully. If, after Song begins operations, JetBlue were to present evidence to us indicating that Song may be engaged in unfair methods of competition, we would have full authority to consider that evidence under section 41712 and determine what action would be appropriate at that time.

In determining whether to end our review of the Alliance Carriers' agreements, we considered the commenters' arguments that we should require the Alliance Carriers to accept our original conditions without modification. As discussed below, however, we presently believe that the alternative language proposed by the Alliance Carriers may be sufficient to address our competitive concerns.

Again, if the conditions prove to be insufficient, adversely affected parties may complain to us, and we will have the power to take enforcement action at that time.

Airport Facilities. Our original condition on airport facilities would have required the Alliance Carriers to surrender gates at four of their hubs as a result of co-location and, if requested by the airport operator, to surrender additional gates at their hubs and Boston Logan that were used less than six turns each day. The alternative language still requires them to give up thirteen gates at four of their hubs, and requires Delta to give up thirteen additional gates at Boston Logan in 2005. However, rather than establish a usage standard that would govern the future conduct of these carriers alone, the alternative language would require the carriers to give up gates now at two congested airports, Boston Logan and LaGuardia. We believe that the alternative language should be sufficient. The requirement that the Alliance Carriers surrender specific gates now offers immediate benefits over our original proposal, which may have made gates available in the future if they were underused and were requested by the airport sponsor. It is unlikely that any gates ultimately surrendered under the original condition would have been desirable gates. We therefore are not persuaded that the alternative language should be rejected due to alleged defects in several of the gates to be surrendered. We have reviewed the adequacy of the gates at Boston Logan and LaGuardia. We understand that the gates are useable for many purposes, if not all, and will enable airlines to gain access to these two airports, where access has historically been difficult.

Massport, the airport sponsor of Boston Logan, states that it would prefer that Northwest give up two different gates, which could be used by wide-body aircraft, unlike the gates that Northwest has chosen to surrender. However, no carrier commenter has complained about the adequacy of those particular gates. Our principal concern in our review of the alliance has been its impact on domestic airline competition. The gates to be surrendered by Northwest should be adequate for the needs of most domestic airlines, since airlines operate wide-body aircraft on relatively few domestic routes.

ACI does not specifically support or oppose the alternative language for the gate access condition or our original gate condition. ACI instead expresses its dissatisfaction with the alleged efforts of this Department and the Federal Aviation Administration to interfere with the airports' asserted right to manage their facilities. ACI fears that we may interpret the condition as requiring an airport sponsor to relinquish its rights under leases with the Alliance Carriers. ACI's concern is unfounded. We are not requiring any airport to take action that would surrender its rights under its lease agreements. The condition requires gates to be surrendered only if requested by the airport sponsor, except for the gates that will be given up by Delta at Boston Logan upon its relocation to a new terminal. Presumably the airport sponsor will take into account its leasehold interests in determining whether to request the gates. Furthermore, giving an airport the opportunity to obtain gates that can be used by other airlines for new or expanded services should benefit the airport's customers and thus the airport sponsor.

Nonetheless, we do not accept ACI's implicit premise that airport sponsors should be able to manage their airports without regard for federal interests or their obligations under federal law. The airports used by the Alliance Carriers have received substantial grants from the FAA. As required by 49 U.S.C. 47107, the airports had to accept specific assurances in order to obtain those federal funds. Those assurances require among other things that the airport be available for public use on reasonable terms and conditions. 49 U.S.C. 47107(a)(1). Airports therefore have an obligation to make gates available for airlines that wish to begin service (or expand service) and are otherwise unable to obtain the facilities needed to operate those services. *See* FAA/OST Task Force Study, U.S. Department of Transportation, *Airport Business Practices and Their Impact on Airline Competition* (October 1999) at 13–26. We will continue to review airport facilities issues in connection with our review, under federal law, of airport competition plans, and will investigate complaints about ''hoarding'' of gates pursuant to our authority under section 41712.

ACI additionally asked us to clarify the alternative language's proviso that an Alliance Carrier need not surrender a gate ''if it will be required to continue to pay rentals, charges or any other lease obligations related thereto.'' ACI contends that we should explicitly state that this language does not exempt the airline's compliance with the lease obligations accruing before the surrender of the gates. ACI Comments at 5–6. However, ACI has misread the condition, which is only intended to define when an Alliance Carrier must surrender a gate, not to define the extent of its obligations under its lease with the airport sponsor.

Code-sharing Limitations. In an effort to ensure that the Alliance Carriers fulfilled their promises of consumer benefits due to new on-line service in many markets, we required that at least one-fourth of each marketing carrier's code-share flights must be to or from airports that the airline and its regional affiliates either did not directly serve or served with no more than three daily roundtrips as of August 2002. We also required that an additional thirty-five percent of the code-share flights must either meet that requirement or be to or from small hub and non-hub airports. The condition limited the total number of code-share flights between Delta and Continental and between Delta and Northwest to 2,600 (but does not affect the existing code-sharing between Continental and Northwest). We committed ourselves to reviewing these restrictions after the first year. We believed these restrictions were necessary to ensure that the Alliance Carriers implemented their representations that the alliance would provide consumer benefits by creating on-line service in a number of new markets. 68 FR 3298.

The alternative language allows the Alliance Carriers to code-share on an additional 2,600 flights in the second year, subject to the requirement that thirty percent of these additional code-share flights must be flights in new markets or to small hub or non-hub airports. If the Alliance Carriers wish to add additional code-share flights after the second year, they must give us 180 days advance notice and provide any information requested by us on the additional code-share services. 68 FR 10771.

We believe that the alternative language will continue to ensure that the Alliance Carriers use their code-sharing to extend their networks, as they publicly stated was their intent. As under our original condition, they may use a large share of their code-share flights for larger markets where they compete with other airlines. The alternative language will also establish an upper limit on the number of additional code-share flights in the second year of the alliance. While the Alliance Carriers may expand code-sharing to significantly more markets in the second year, we retain our statutory authority to review the competitive impact of any such expansion. If at any time, we believe the effects of the alliance are anti-competitive, we may

institute a proceeding under section 41712. In addition, the Alliance Carriers are required to give us 180 days notice before code-sharing on additional flights after the second year of their alliance. That will enable us to conduct a thorough review of the impact on competition of the first two years of the alliance, and of any proposed expansion of code-share operations, and to take action if necessary. Finally, the restrictions imposed separately by the Department of Justice will prevent the Alliance Carriers from code-sharing in markets where two or more of the partners offer nonstop service. Again, we will closely monitor the competitive impact of the Alliance Carriers' implementation of their code-sharing agreement and will consider whether additional limits should be placed on that activity.

Joint Marketing Restrictions. We have also determined to accept the Alliance Carriers' alternative language on joint marketing. Although it will give them greater ability to make joint offers to corporations and travel agencies than under our original condition, their ability to make joint offers will remain subject to substantial restrictions. In their agreement with the Justice Department, they acknowledge that they may not make joint offers where doing so would violate the antitrust laws. Our condition, with the Alliance Carriers' alternative language, gives each corporation and travel agency the right to request separate offers from each of the Alliance Carriers and allows the airline partners to make a joint bid only if the corporation or travel agency has made a written request for a joint offer. The Alliance Carriers may not make a joint bid for domestic travel, or for domestic travel linked with international travel, to a corporation or travel agency that has its headquarters or a principal place of business in specified cities where the Alliance Carriers' joint market share exceeds fifty percent, except that they may submit a joint bid to such a corporation or travel agency for travel originating from cities other than the principal place of business or headquarters city. No joint bid may make the discounted corporate fares or travel agency commissions dependent on the satisfaction of minimum booking requirements in specific domestic O&D markets offered by one partner, unless the corporation or travel agency has stated in writing that it desires such an offer in order to compare it with a competitive bid from one of the other seven largest carriers or from another airline alliance.

Some commenters suggest that the requirement of a written request from the corporation or travel agency may be ineffective, because the Alliance Carriers may put pressure on corporations and travel agencies to request a joint bid. *See, e.g.,* Galileo Comments at 2. However, we believe the requirement may still have its intended effect. Any such conduct by the Alliance Carriers would violate the condition, and potentially section 41712. We believe that there is a significant likelihood that some corporations and travel agencies subjected to unlawful pressure will report it to us, and we encourage them to do so. We would take very seriously any such reports. The requirement that any joint offer be preceded by a request from the corporation or travel agency should therefore be effective. As with the other conditions, however, we will monitor the effectiveness of the limitations on joint marketing and take further action if necessary.

One objection to the alternative language reflects a misunderstanding of its restrictions. As noted, the prohibition against joint bids to corporations or travel agencies that have their headquarters or a principal place of business in the cities listed in Exhibit A allows joint bids for travel originating from cities other than their principal place of business or headquarters city. Some commenters have assumed that this exception would allow the Alliance Carriers to make a joint bid for the return trips of a corporation's personnel located at the headquarters or principal place of business, even if the bid may not cover their outbound trips. Any such interpretation would be wrong. The Joint Carriers could not make a joint bid to a company headquartered in Atlanta for the travel of the headquarters personnel, but they could make a joint bid for travel originating at such a company's facility in California, assuming such a bid would comply with the antitrust laws. That bid, however, could only cover the travel of employees and contractors located at the California facility, not those located in Atlanta. The joint bid thus could not cover travel from California to Atlanta by personnel located in Atlanta. The Alliance Carriers accordingly cannot evade the restriction by treating trips by headquarters personnel from the field to headquarters as travel originating in another city, since the travel of such personnel originated in the headquarters city.

Conclusion

In sum, after thorough consideration of all comments, we are not persuaded that we should postpone the completion of our review of the agreements or that we should reject the alternative language. Subject to our conditions, the agreements should not unreasonably restrict each partner's incentives and ability to compete independently or be likely to result in collusion on fares or service levels. However, given our strong concern that the agreements not lead to unfair methods of competition, we intend to monitor their implementation closely. If and when the airlines' implementation of their joint venture appears to be having an adverse impact on competition, we will consider taking action under section 41712. Furthermore, as stated above, if at any point the Alliance Carriers decide that they will no longer comply with the restrictions to which they have agreed, they will have created a new agreement which must be submitted to us under 49 U.S.C. 41720 and whose implementation must be delayed until the end of a new waiting period.

Our review will be deemed terminated when we receive from the Alliance Carriers a signed written acceptance, in a form satisfactory to us, of the six conditions, including the proposed alternative language as discussed in this Notice.

Issued in Washington, DC on March 31, 2003.

Read C. Van de Water,

Assistant Secretary for Aviation and International Affairs.

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DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed the Week Ending March 28, 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–2003–14811.
Date Filed: March 26, 2003.
Parties: Members of the International Air Transport Association.
Subject: PTC2 EUR 0506 dated 28 March 2003. Mail Vote 286—Resolution 010y TC2 Within Europe Special Passenger Amending Resolution from Italy to Europe. *Intended effective date:* 1 April 2003.

Docket Number: OST–2003–14816.
Date Filed: March 27, 2003.
Parties: Members of the International Air Transport Association.
Subject: PTC2 EUR 0508 dated 28 March 2003. Mail Vote 289—Resolution 010b. TC2 Within Europe Special