Don Horn

U.S. Department of Transportation
Office of the Secretary of Transportation

GENERAL COUNSEL

400 Seventh St., S.W.
Washington, D.C. 20590

December 28, 1998

Joel Stephen Burton, Esq.
Donald T. Bliss, Esq.
O'Melveny & Myers
555 13th Street, NW
Washington, DC 20004

Dear Messrs. Burton and Bliss:

You have inquired about the scope of 49 U.S.C. 41716, recent legislation relating to certain types of joint venture agreements. In particular, you ask whether the legislation imposes a waiting period on certain joint venture agreements entered into by US Airways with either a foreign air carrier or a company that is not an airline, such as a rental car company or tour operator.

Your first question is whether the provision applies to agreements other than between "major air carriers." In our opinion, it does not. First, the language of the statute expressly refers to "any other . . . arrangement . . . between 2 or more major air carriers" in section 41716(a)(1). Although this phrase appears in subparagraph (B) of that paragraph, the term "other" supports the position that Congress also contemplated only agreements between major air carriers in subparagraph (A). This reading is reinforced by legislative history, in which the section-by-section analysis notes that the section "(1) defines the sort of alliances between major airlines that are covered by this section." H. Rept. 105-822 (Part I), dated October 15, 1998 (See description of Section 401). (Emphasis added.)

Your second question addresses the statute's applicability to three particular types of agreements. The legislation would not apply to the first two categories, interline ticketing and baggage agreements and Special Protection Agreements, unless the Department chose to cover them by regulation. The third category, "blocked space ticket purchase agreements between US Airways and wholesale tour operators or charter companies," is not covered by virtue of the law's application only to agreements between major air carriers; between such carriers, of course, such agreements would be covered as specified in subparagraph (A) of section 41716(a)(1).

Thank you for bringing this question to the Department's attention. I hope that you find this explanation helpful. If you have further questions, please contact me at 202/366-4702.

Sincerely,

Nancy E. McFadden

C1-2787

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Honorable Charles A. Hunnicutt
Assistant Secretary for Aviation
& International Affairs

Honorable Nancy E. McFadden
General Counsel

U.S. Department of Transportation
400 Seventh Street, S.W.
Washington, D.C. 20590

Re: US Airways Frequent Flyer Agreements With Sabena, Swiss Air, and Austrian Airlines

Dear Mr. Hunnicutt and Ms. McFadden:

Pursuant to 49 U.S.C. §41716, US Airways is submitting copies of the Frequent Flyer Agreements entered into between US Airways and Sabena, Swiss Air, and Austrian Airlines, allowing US Airways' Dividend Miles members to accumulate and redeem miles on each of these partner airlines. A fourth agreement allows members of the Qualiflyer Program of Sabena, Swiss Air and Austrian to participate in the US Airways' Dividend Miles Program. Four copies of each agreement are being filed with the Office of Aviation Analysis.

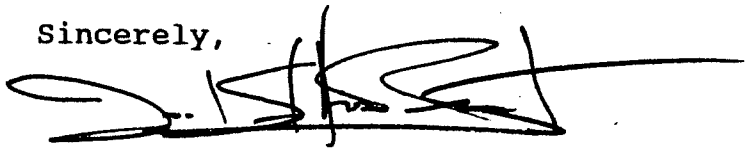
The Frequent Flyer Agreements are standard in the industry. By entering into these agreements, Austrian Airlines, Sabena and Swiss Air will be taking part in US Airways' Dividend Miles Program. Members of the Dividend Miles Program will have increased opportunities for mileage credit and redemption when traveling on the partner carriers. Under the agreements, Dividend Miles Program members traveling on any of the three European carriers will receive a 500-mile credit or the actual miles flown, whichever is greater, offering US Airways' frequent flyers a unique intra-Europe benefit. The parties propose to initiate the new frequent flyer partnerships on December 1, 1998.

Since US Airways does not have a European alliance partner, these Frequent Flyer Agreements will provide pro-competitive, expanded service benefits to frequent travelers on US Airways and enable US Airways to be a more effective competitor with other U.S. airlines that offer extensive intra-European services through their alliance partnerships. These frequent flyer partnerships are substantially similar to dozens of frequent flyer partnerships that are entered into by carriers throughout the world on a routine basis. They do not raise any special issues that should be of concern to the Department.

These are routine agreements that have not been subject to advance filing with the Department in the past, and the statutory provision requiring the filing of certain carrier agreements has only recently been enacted. Moreover, the Department has not yet issued any regulations or guidance to the industry specifically as to what agreements are covered, how such filings shall be handled and to what office they should be directed. For these reasons, US Airways inadvertently did not submit the agreements to the Department thirty (30) days in advance of their proposed effective date. Nevertheless, since 49 U.S.C. §41716(d) expressly provides that the Secretary "at any time after the date of submission of a joint venture agreement . . . may terminate the waiting periods . . . with respect to the agreement," US Airways respectfully requests, for the reasons set forth above, that the Department terminate the waiting period to allow US Airways to proceed with the initiation of its partnership agreements on December 1, 1998.

Please contact us if we can provide the Department with any further information in support of this request.

Sincerely,



Joel Stephen Burton
Donald T. Bliss
O'MELVENY & MYERS LLP

Counsel for US Airways, Inc.

cc: Regis Milan, Chief, Division of
Economic and Financial Analysis
(with four copies of each Agreement)