

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 a 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-281, Mexico Cement Dispute) may be made by calling the USTR Reading Room at (202) 395-6186. 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.*

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## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

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

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

**ACTION:** Notice requesting comments.

**SUMMARY:** Delta Air Lines, Northwest Airlines, and Continental Airlines have resubmitted their codeshare and frequent-flyer program reciprocity agreements to the Department for review. The three airlines originally submitted those agreements for review under 49 U.S.C. 41720 on August 23, 2002. The Department determined that the agreements, if implemented as presented by the three airlines, could result in significant adverse impacts on airline competition unless the airlines

agreed to six conditions that would limit the likelihood of competitive harm. The three airlines have accepted three of the six conditions and, after consultations with the Department, have proposed alternative language for the remaining three conditions. The Department is inviting interested persons to submit comments on whether the airlines' proposed alternative language adequately addresses the competitive concerns relating to those three conditions.

Any comments should be submitted by March 18, 2003.

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

#### **FOR FURTHER INFORMATION CONTACT:**

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

**SUPPLEMENTARY INFORMATION:** On August 23, Delta, Northwest, and Continental ("the Alliance Carriers") submitted codeshare and frequent-flyer program reciprocity agreements to us for review. Their proposed alliance would be a comprehensive marketing arrangement that would involve code-sharing, frequent flyer reciprocity, and reciprocal access to airport lounges. Their alliance agreement would have a ten-year term. See 68 FR 3293, 3295, January 23, 2003.

The Alliance Carriers submitted their agreements under 49 U.S.C. 41720, which requires certain kinds of joint venture agreements among major U.S. passenger airlines to be submitted to us at least thirty days before they can be implemented. We may extend the waiting period by 150 days with respect to a code-sharing agreement and by sixty days for other types of agreements. At the end of the waiting period (either the thirty-day period or any extended period established by us), the parties may implement their agreement. The statute does not expressly require the parties to obtain our approval before proceeding, and, to block the implementation of 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 that would violate that section. We interpret and 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. At the conclusion of the proceeding, we could issue an order directing the parties to cease and desist from practices found to be anti-competitive.

Following the original submission of the agreements, we invited interested persons to submit comments. We required the Alliance Carriers to make available to interested parties unredacted copies of their alliance agreements. 67 FR 69804, November 19, 2002. We reviewed the comments, material obtained by us from the three airlines, and other data in our possession. We met with the Alliance Carriers and with parties opposed to their proposed alliance. After analyzing the agreements 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. 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. 68 FR 3293, January 23, 2003 ("the January Notice").

As described more fully in the January Notice, we had the following concerns with the alliance: It 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 these 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