

Carriers accepted certain conditions, primarily concerning pricing and code-sharing. The three airlines have accepted those conditions.

The Alliance Carriers initially stated their intent to proceed to implement their alliance without accepting our conditions. Subsequently, however, they asked us to consider alternatives for three of our six conditions. They are proposing alternatives to those three conditions after having consultations with us. On February 28 they resubmitted the agreements for our review with their proposed alternative conditions. They request that we complete our review within thirty days. While they acknowledge our legal authority under section 41712 to impose conditions, they assert that they consider that neither these conditions nor the conditions required by the Department of Justice are necessary to protect competition.

The Alliance Carriers assert that they accept, without change, our first, fifth, and sixth conditions, which involve the alliance's steering committee, CRS displays, and the agreements' exclusivity provision. They are requesting changes in the second, third, and fourth conditions, which involve airport facilities, limits on code-sharing flights, and joint marketing. Their requested alternative language for the three conditions is as follows:

2. Airport Facilities: The Alliance Carriers agree that due to co-location the following gates, along with related facilities (including overnight positions), shall be released at the time of co-location 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. In addition, within 90 days following the date of this agreement, Northwest Airlines shall release to the airport sponsor upon its request two gates at BOS¹, Continental shall release to the airport sponsor upon its request two gates at LGA², and Delta shall release to the airport sponsor upon request two gates at LGA³ for lease to domestic non-Alliance Carriers or for common use. Further, Delta Air Lines will release thirteen gates and related facilities at BOS upon Delta's relocation to its new Terminal A facility currently anticipated to be completed in the second quarter of 2005. Of these thirteen gates, eight gates shall be released to the airport sponsor and five gates shall be returned to the airline lessors from whom

Delta subleases such gates; provided however that if the lessor is also an Alliance Carrier, that lessor shall release the gate to the airport sponsor. Additionally, if during the term of the Marketing Agreement the Alliance Carriers choose to co-locate gates at any of their other hub airports⁴ or BOS, or to further co-locate at any of the above hub airports where the Alliance Carriers have agreed to release gates, the relocating carrier will promptly notify the Department of such co-location and the relocating carrier will release to the airport sponsor upon its request the same number of gates and related facilities as the number to which it relocates following such co-location move (or, in the case of leased gates from another airline, the relocating carrier will return the gates to the lessor, and, if the lessor is also an Alliance Carrier, that lessor shall release the gate to the airport sponsor), provided the airport sponsor or airline lessor assumes responsibility of any existing subleases. No Alliance Carrier shall be required to release a leased gate (or related facilities) pursuant to this condition if it will be required to continue to pay rentals, charges or any other lease obligations related thereto. For the purposes of this condition "co-locate" shall mean a move of the flight operations from one Alliance Carrier's gate(s) to another Alliance Carrier's gate(s), or to a gate or gates adjacent to the latter carrier's gates.

3. Codesharing: Domestic, Canadian, and Caribbean codesharing between Delta and Continental and between Delta and Northwest shall be limited to 650 flights per two-carrier combination for a total of 2,600 flights during the first year following the commencement of codeshare operations ("Year One"). In Year One, not less than 25% of each marketing carrier's new codeshare flights must be to or from airports that neither the carrier nor its regional affiliates directly served or served with no more than three daily roundtrip flights as of August 2002 ("Category I flights"). Also in Year One, an additional 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 ("Category II flights").⁵ In the second year following commencement of codeshare operations ("Year Two"), Domestic, Canadian, and Caribbean codesharing between Delta and Continental and between Delta and Northwest shall be limited to an additional 650 flights per two-carrier combination (for an additional 2,600 flights for Year Two and an aggregate total of 5,200 flights by the end of Year Two). For codeshare flights added in Year Two, no less than 12% of each marketing carrier's new codeshare flights must be Category I flights and no less than an additional 18% of each marketing carrier's new codeshare flights must be Category II flights.⁶ The Alliance

Carriers shall maintain the above percentages with respect to 5,200 codeshare flights (in this case, 18% Category I flights⁷ and 27% Category II flights) for the duration of the Marketing Agreement. In the event the carriers desire to add additional Domestic, Canadian, and Caribbean codeshare flights after Year Two, the carriers shall provide the Department with at least 180 days advance notice and with such information as the Department shall request with respect to such additional codeshare services.

4. 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, following the date of this agreement the Alliance Carriers shall not offer a joint bid for domestic travel, or for a combination of domestic travel linked with international travel, to any corporation or travel agency that at the time of the bid has a principal place of business or headquarters in a city⁸ listed in Exhibit A, except that a joint bid may be submitted to such corporation or travel agency for travel originating from cities other than their principal place of business or headquarters city. The list of cities in Exhibit A will be revised every three years during the term of the Marketing Agreement beginning August 2006 to include only cities where all three carriers (themselves or through regional affiliates) operate scheduled service and their combined market share⁹ exceeds 50%, based on schedules published in the Official Airline Guide for the August of that year. 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 O&D city pair markets offered by one of the Alliance Carriers unless the corporation or travel agent has stated in writing that it desires such a specific domestic O&D city-pair offer in order to compare it to a competitive bid from one of the largest seven carriers¹⁰ or a carrier alliance (excluding any bid involving an Alliance Carrier) that contains a specific

enough Category I flights being available, that carrier may substitute Category II flights for Category I flights, provided that the substituted Category II flights are over and above the separate requirement for Category II flights.

⁷ This percentage may be adjusted due to the circumstances set forth in footnote 6.

⁸ For the purposes of this condition, "city" is defined as a primary metropolitan statistical area with the exception of New York City, which is defined as including Newark.

⁹ For the purposes of this condition, "market share" is determined by scheduled departing seats on flights within the 50 United States.

¹⁰ For the purposes of this condition, the largest seven carriers will be determined by system scheduled passenger revenue for the latest twelve-month period as reported to the Department of Transportation (14 CFR Part 241, Section 24).

¹ Terminal E, Gates 1A and 1B with the related support space (including overnight positions) shown on Exhibit 1.

² Central Terminal Building, Gates A1 and B2 with the related support space (including overnight positions) shown on Exhibit 2.

³ Marine Air Terminal, Gates 5 and 6 with the related support space (including overnight positions) shown on Exhibit 3.

⁴ For the purposes of this condition, "other hub airports" are defined as Atlanta (ATL), Cleveland (CLE), Memphis (MEM), Minneapolis/St. Paul (MSP), Newark (EWR), and Salt Lake City (SLC).

⁵ For the purposes of this condition, "small hub" and "non-hub" airports are defined by the Airport Activity Statistics published by the Department of Transportation, Bureau of Transportation Statistics.

⁶ If any Alliance Carrier is unable to meet the requirements for Category I flights due to not