

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.

[FR Doc. 03-8288 Filed 4-4-03; 8:45 am]

BILLING CODE 4910-62-P

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