



**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.**

Issued by the Department of Transportation
on the 23rd day of September, 2013

Application of

**VIRGIN ATLANTIC AIRWAYS, LTD.
DELTA AIR LINES, INC.
SOCIÉTÉ AIR FRANCE
KONINKLIJKE LUCHTVAART MAATSCHAPPIJ N.V.
ALITALIA COMPAGNIA AEREA ITALIANA S.P.A.**

Docket DOT-OST-2013-0068

under 49 U.S.C. §§ 41308 and 41309 for approval of
and antitrust immunity for alliance agreements

FINAL ORDER

I. SUMMARY

By this order, the Department of Transportation (the “**Department**”) grants approval of, and antitrust immunity for, the application of Virgin Atlantic Airways, Ltd. (“**Virgin Atlantic**”), Delta Air Lines, Inc. (“**Delta**”), Société Air France (“**Air France**”), Koninklijke Luchtvaart Maatschappij N.V. (“**KLM**”), and Alitalia Compagnia Aerea Italiana S.P.A. (“**Alitalia**”).¹

The applicants (collectively, the “**ATI Applicants**”) have requested a grant of immunity from the U.S. antitrust laws to allow Delta and Virgin Atlantic to operate a joint venture (“**Joint Venture**” or “**Delta-Virgin Atlantic Joint Venture**”) between North America and the United Kingdom. We have concluded that, overall, the alliance and Joint Venture will be procompetitive and are likely to generate substantial public benefits to the traveling public.

II. SUMMARY OF THE RECORD

On April 8, 2013, Virgin Atlantic, Delta, Air France, KLM, and Alitalia filed a joint application requesting approval of and antitrust immunity for alliance agreements covering foreign air transportation between North America and the United Kingdom. The ATI Applicants argued that a grant of antitrust immunity would not reduce competition in any relevant market and would lead to substantial consumer benefits through new services and increased competition.

¹ See Docket DOT-OST-2013-0068, “Joint Application for Approval of and Antitrust Immunity for Alliance Agreements,” hereinafter “**Joint Application**.”

On August 30, 2013, we issued a Show Cause Order with our tentative decision to grant the request for antitrust immunity, subject to conditions, and provided an opportunity for public comments.² Comments were due on August 13, 2013, and replies on August 20, 2013. The Show Cause Order indicated that, in the event that no objections were filed by August 13, 2013, all further procedural steps would be deemed waived, and we would enter an order making final our tentative findings and conclusions. Because there were no responsive pleadings filed after the issuance of the Show Cause Order, we are proceeding to make final our tentative findings and conclusions.

III. DECISION

The underlying request for antitrust immunity covers a series of alliance agreements between Virgin Atlantic, Delta, Air France, KLM, and Alitalia (the “**ATI Alliance Agreements**”). The ATI Alliance Agreements include a Joint Venture Agreement between Delta and Virgin Atlantic, a five-way Coordination Agreement among Virgin Atlantic, Delta, Air France, KLM, and Alitalia, and several implementing agreements between Delta and Virgin Atlantic, including a Codeshare Agreement, a Special Prorate Agreement, a Lounge Agreement, and a Frequent Flier Program Agreement.³

We have decided to approve the application, permitting the ATI Applicants to implement the ATI Alliance Agreements, subject to conditions. As explained in detail in the Show Cause Order, we have applied the relevant legal and policy standards carefully. No party has opposed the ATI Applicants’ request during the proceeding, and the facts and circumstances remain unchanged since the issuance of the Show Cause Order.

Against this background, we are today making final our tentative findings and conclusions.

ACCORDINGLY:

1. We approve and grant antitrust immunity to the ATI Alliance Agreements between Virgin Atlantic Airways, Ltd., Delta Air Lines, Inc., Société Air France, Koninklijke Luchtvaart Maatschappij N.V., Alitalia Compagnia Aerea Italiana S.P.A., and the majority-owned corporate affiliates of the aforementioned carriers, in so far as such agreements relate to foreign air transportation. Subject to the terms and conditions described in the ordering paragraphs below, the approval and grant of antitrust immunity shall remain in effect indefinitely, provided that the ATI Applicants:

- a. Submit for prior approval subsequent subsidiary agreements implementing their most recent ATI Alliance Agreements⁴;

² See DOT Order 2013-8-21.

³ See Joint Application, at 12 and 19.

⁴ Regarding this requirement, we do not expect the ATI Applicants to provide the Department with minor technical understandings that are necessary to implement fully their day-to-day operations but that have no additional substantive significance. We do, however, expect and direct them to provide the Department with all unredacted contractual instruments that implement or materially alter, modify, or amend the cooperation agreements, joint ventures, or confidentiality/antitrust guidelines.

- b. Resubmit the ATI Alliance Agreements, including the Joint Venture Agreement and the five-way Coordination Agreement, before five years from the date of issuance of this order; and
- c. Obtain prior approval if they choose to hold out service under a common name or use common brands;

2. We direct Virgin Atlantic Airways, Ltd., Delta Air Lines, Inc., Société Air France, Koninklijke Luchtvaart Maatschappij N.V., and Alitalia Compagnia Aerea Italiana S.P.A. to file with the Director, Office of Aviation Analysis, verified statements by Virgin Atlantic Airways, Ltd. and Delta Air Lines, Inc. attesting that the Joint Venture Agreement has been implemented pursuant to the terms described in the Joint Application, and a complete and unredacted copy of the most recent Joint Venture Agreement and any appendices. We determine that, unless the ATI Applicants make the filings described in this ordering paragraph within twelve months from the date of issuance of this order, the authority herein shall expire and the grant of antitrust immunity shall be automatically withdrawn from the non-compliant ATI Applicants;

3. We direct Virgin Atlantic Airways, Ltd., Delta Air Lines, Inc., Société Air France, Koninklijke Luchtvaart Maatschappij N.V., and Alitalia Compagnia Aerea Italiana S.P.A. to submit annual progress reports to the Office of Aviation Analysis, beginning one year from the date of issuance of this order, and continuing each year thereafter while their respective ATI Alliance Agreements are effective⁵;

4. We direct Virgin Atlantic Airways, Ltd., Delta Air Lines, Inc., Société Air France, Koninklijke Luchtvaart Maatschappij N.V., and Alitalia Compagnia Aerea Italiana S.P.A. to withdraw, or to remain withdrawn, from participation in any International Air Transport Association tariff coordination activities that discuss any proposed through fares, rates, or charges applicable between the United States and any countries whose airlines have been or are subsequently granted antitrust immunity, or renewal thereof, to participate in similar alliance activities with a U.S. airline(s);

5. We delegate to the Director, Office of International Aviation, the authority to determine the applicability of the directive set forth in Ordering Paragraph 4 as to specific prices, markets, and tariff coordination activities, consistent with the scope and purpose of the condition, as previously described;

6. We direct Virgin Atlantic Airways, Ltd., Delta Air Lines, Inc., Société Air France, Koninklijke Luchtvaart Maatschappij N.V., and Alitalia Compagnia Aerea Italiana S.P.A. to begin or to continue to report full-itinerary Origin-Destination Survey of Airline Passenger Traffic for all passenger itineraries that include a U.S. point⁶;

⁵ We expect the ATI Applicants to deliver the progress report by the close of business on the anniversary date. If that date falls on a weekend or federal holiday, the ATI Applicants may deliver the report by the close of business on the following business day.

⁶ We treat the foreign airlines' O&D data as confidential, do not allow U.S. airlines any access to the data, and do not allow foreign airlines any access to U.S. airline O&D Survey data. We use these data only for internal analytical purposes.

7. We may amend, modify, or revoke this authority at any time without hearing;
8. We will not entertain petitions for reconsideration of this Order; and
9. We will serve this Order on all parties on the service list in this docket.

By:

SUSAN L. KURLAND
Assistant Secretary for Aviation
and International Affairs

(SEAL)

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