

**BEFORE THE
U.S. DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.**

Applications of)	
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)	
CONTINENTAL AIRLINES, INC.,)	
CONTINENTAL MICRONESIA, INC.,)	
ALITALIA-LINEE AEREE ITALIANE-S.p.A.)	Docket OST-2004-19210
AND ALITALIA EXPRESS S.p.A.)	
)	
For statements of authorization pursuant to)	
Part 212 to engage in codesharing)	
)	

ANSWER OF UNITED AIR LINES, INC.

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Counsel for
UNITED AIR LINES, INC.

DATED: October 5, 2004

**BEFORE THE
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ANSWER OF UNITED AIR LINES, INC.

United Air Lines, Inc. ("United") submits the following answer to the September 24, 2004, application of Alitalia, Continental Airlines, and certain of their respective affiliated carriers for blanket statements of authorization to provide reciprocal code-share services between the United States, Italy, and third countries.

Under normal circumstances, United would not take issue with an application filed by U.S.- and Italian-flag carriers for authority to implement a cooperative marketing arrangement utilizing valuable service rights provided for by the U.S.-Italy Open Skies Agreement. United is constrained to object to the Alitalia/Continental application, however, because the Italian government continues to deny United (and possibly other U.S. carriers) a fair and equal opportunity to utilize similar rights under the same Agreement. Specifically, the Italian government has refused to authorize United to hold out service to Milan's convenient Linate Airport on a code-share basis with Lufthansa or

any of United's other European carrier partners,^{1/} yet allows Alitalia to continue to hold out U.S.-Italy service at Linate, both in its own right and in conjunction with code-share partners.^{2/} The Italian government's exclusion of United from the more conveniently located Linate Airport places United at an unfair competitive disadvantage relative to Alitalia (and other European carriers), particularly for local U.S.-Milan business passengers.^{3/}

As Alitalia/Continental noted, the U.S.-Italy Open Skies Agreement "authorizes liberal codesharing"—both same-country and third-country code sharing.

Alitalia/Continental Application, at 4, citing U.S.-Italy Open Skies Agreement, art. 9 bis (6). That article affords designated U.S. carriers (including United) the right to engage in

^{1/} For example, United would like to have the opportunity to hold out code-share service between the United States and Linate in conjunction not only with Lufthansa via Frankfurt, but also with bmi via London and SAS via Copenhagen. As explained in footnote 5 below, due to the intervention of the European Commission, United's European partners (and other EU carriers, e.g., Air France, KLM, British Airways) are able to serve Linate from their European hubs, but the Italian government prohibits United from code sharing on its European partners' Linate services, presumably to protect Alitalia from competition.

^{2/} Alitalia holds out service between Linate and the United States by code sharing with Air France to and from Los Angeles and San Francisco via Paris (CDG). (Both Alitalia and Air France operate flights between Linate and Paris.) In addition, Alitalia holds out service on its own flights between Linate, on the one hand, and New York (JFK and EWR) and Boston, on the other, via Rome (FCO), as well as code-share services between Linate and the United States by connecting its own Linate-Rome flights with Delta's Rome-Atlanta flights. In the instant application, Alitalia proposes to code share on Continental's Rome-Newark flights, which would provide yet more connecting service opportunities for Alitalia between Linate and the United States. However, due to the Italian government's discriminatory exclusion of U.S. carriers from holding out service to Linate, U.S. carriers are prohibited from offering a competitive alternative for passengers that prefer Milan's close-in Linate Airport instead of the far more remote and inconvenient Malpensa Airport.

^{3/} Milan's Malpensa Airport is located approximately 53 kilometers from Milan's city center. Linate, by contrast, is located approximately 15 kilometers from the city center, close to the business district, with superior local accessibility by road and rail. Although United previously operated service in its own aircraft to Malpensa, it was forced to suspend that service, due in large part to the difficulty it faced in competing for business passengers with carriers such as British Airways, Air France, and KLM that were able to offer convenient online connections to the more attractive Linate Airport. United's competitive problem is exacerbated by Alitalia's ability to offer code-share services with its partners in the SkyTeam alliance, including Air France, KLM, Delta, and now Continental.

code-share and other cooperative marketing arrangements with Italian and third-country carriers.^{4/} The Open Skies Agreement, however, prohibits the Italian government from denying designated U.S. carriers the right to serve an international airport in Italy that Italian carriers are using to hold out service to/from the United States, or to otherwise discriminate against U.S. carriers. To the contrary, the Agreement requires each Party to “allow a fair and equal opportunity for the designated airlines of both Parties to compete in the international air transportation covered by this Agreement.” U.S.-Italy Open Skies Agreement, art. 9(1). The Italian government’s policy of granting Alitalia (and, at the European Commission’s direction, other EU carriers^{5/}) access to Linate, while denying such access to United, contravenes both the Agreement’s letter and spirit.

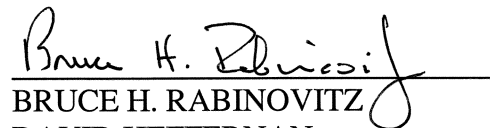
In conclusion, United requests either that the Department defer action on the pending Alitalia/Continental application until Italy authorizes United (and other U.S. carriers) to serve Milan’s Linate Airport by code sharing on flights operated by partners authorized to serve Linate, or, alternatively, to approve the application subject to a condition precedent that the parties may not implement the proposed code-share services

^{4/} Article 9 bis (6)(b) requires the Italian government to allow U.S. carriers to engage in third-country code sharing at points in Italy “provided that such third country authorizes or allows comparable arrangements between the airlines of either Party and other airlines on services to, from and via such third country.” Because Germany, Lufthansa’s homeland, has authorized comparable arrangements involving U.S. and Italian carriers on a nondiscriminatory basis, United/Lufthansa’s third-country code-share services to and from Italy satisfy this provision.

^{5/} Initially, the Italian government effectively sought to prohibit all non-Italian carriers (both EU and non-EU carriers) from serving Linate, but, in response to a complaint filed by a group of European carriers, the European Commission ruled that “the Italian government’s planned shareout of airline traffic between Milan’s two airports is discriminatory, disproportionate, and therefore illegal.” “Commission Declares Italian Government’s Planned Airline Shareout at Milan Airport Illegal,” EU Press Release, Sept. 16, 1998 (available at <http://www.lex.unict.it/cde/documenti/affari_italiani/98_99/traffico_aereo.htm>). In response, the Italian government loosened its planned operating restrictions to allow EU carriers to serve Linate, but the revised restrictions continue to prohibit United and other non-EU carriers from holding out service to the airport. (The Commission’s decision did not address the legality of the Italian government’s discriminatory treatment of non-EU carriers.)

until United (and other U.S. carriers) are permitted to hold out service at Linate on a nondiscriminatory basis. The Italian government's discriminatory policy is a direct, unambiguous, and indefensible violation of the express terms of the U.S.-Italy Open Skies Agreement, and one that affords Alitalia and its partners an unfair and unjustifiable competitive advantage. United's position is straightforward: Until the Italian government honors its obligations under the Open Skies Agreement by allowing United to hold out service at Linate, the Department may authorize, but should not allow Alitalia to implement, its proposed code-share services.

Respectfully submitted,



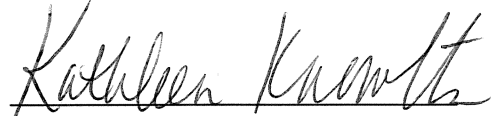
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DATED: October 5, 2004

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Answer of United Air Lines, Inc. via electronic mail on each person named on the attached service list.


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