BEFORE THE
DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.

TACA INTERNATIONAL AIRLINES, S.A.
LINEAS AEREAS COSTARRICENSES S.A.
AVIATECA S.A.
NICARAGUENSE DE AVIACION, S.A.
TACA DE HONDURAS S.A. DE C.V.
TRANS AMERICAN AIRLINES, S.A.

for registration of trade name under 14 C.F.R. 215

Docket OST-04-17355

SURREPLY OF
CONTINENTAL AIRLINES, INC.
AND MOTION FOR LEAVE TO FILE

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The six Latin American airlines proposing to conduct all their operations under a single brand name using the code of what appears to be their controlling member, TACA,\(^1\) have submitted an unauthorized, late-filed reply\(^2\) to Continental’s answer which requires a further response by Continental to ensure the record in

\(^1\) Common names are used for airlines.

\(^2\) Although the Department’s rules require responsive documents to be submitted within seven days of the document responded to, the six-carrier reply was submitted 24 days after Continental’s answer with no explanation whatever for the delay. Thus, the six carriers’ motion for leave to file should be denied.
this proceeding is complete. The six carriers’ reply provides no justification for
grant of the extraordinary relief sought by the “real” TACA and its partners, and
the Department should deny their application. Continental responds as follows to
the surreply:

1. Both Continental and Delta have demonstrated that the precedent set
by allowing a group of airlines from different countries to hold their services out
under a code used historically by only one of those carriers raises significant issues,
including reciprocal treatment by foreign governments and the requirement that
other carrier groups, including alliances among U.S. airlines and immunized
alliances between U.S. and foreign airlines, be permitted to use their own “common
branding” if the “real” TACA and its partners are permitted to do so. If common
branding truly reduces costs, increases recognition among consumers and creates
more effective competition, as the applicants claim, the Department must be
prepared to permit common branding by all airline alliances. Moreover, both U.S.
carriers have raised significant IASA safety and consumer disclosure issues which
the surreply has not addressed adequately. Continental’s objection is indeed
serious, despite the surreply’s claim to the contrary, and the same concerns about
common branding have been raised in the context of bilateral air transport
negotiations, where these issues should be addressed with each of the countries
involved to ensure reciprocal treatment and evaluate consumer and safety issues.
2. The "real" TACA and its partners concede that they want to compete with alliances but are unwilling to observe the rules applicable to them. Nonetheless, they seek extraordinary relief based on complaints about problems caused by their own actions or those of their sponsoring governments. The surreply argues that the "real" TACA and its partners should be able to operate under their own unique set of rules because Continental has benefited from "extensive codeshare services and antitrust immunity" while the "real" TACA and its partners have not. The only reason the "real" TACA and its partners have not benefited from "extensive codeshare services and antitrust immunity" is their collective decision to reach a codeshare agreement with a U.S. carrier which produced far and away the most anticompetitive effects and the fewest public benefits of any other alliance they might have entered.\(^3\) If the "real" TACA and its partners want to "realize the benefits of the open skies agreements negotiated by their homelands" through an alliance with a U.S. airline, all they need to do is negotiate an alliance agreement which is not so clearly anticompetitive as their current alliance agreement.

Similarly, the fact that the home countries of half of the airline applicants have been placed in Category 2 pursuant to the Federal Aviation Administration's IASA

\(^3\) See, e.g., Order 97-12-35 at 26-35; Comments of the Department of Justice, Docket OST-96-1700, January 28, 1998; and Order 98-5-6 at 20-21 regarding codesharing between the "real" TACA and its partners and American. In apparent recognition of even greater concerns about antitrust immunity for American and the TACA Group, the applicants moved to dismiss their application for antitrust immunity in Docket OST-2000-7088 on March 4, 2002.
program does not justify extraordinary relief for their alliance, and the applicants would do better to work with their home countries to achieve Category 1 status than to seek exceptions to the rules normally applied to alliances.

3. The “real” TACA and its partners claim that their application “raises no antitrust or competitive issues,” despite their attempt to combine under one code the operations of the primary airlines in five Central American countries, because they have “no unlawful agreements among the TACA Carriers related to travel to or from the United States” and despite their claim that approval will make the six carriers “a greater competitive force” and “increase consumer awareness of their services”4 with “no change in the way the TACA Carriers currently operate.” This response begs for a review of how the “real” TACA and its partners today decide on schedules and fares offered for their services between the U.S. and Central America.

4. Clearly, the “real” TACA and its partners intend to place their common code on carriers of Category 2 countries – including TACA Ecuador – operating their own aircraft on flights between their joint Central American hubs and points throughout Latin America. Contrary to assertions in the surreply, U.S. carriers are not permitted to place their codes on flights operated by carriers of Category 2

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4 The “real” TACA and its partners claim the use of one code with multiple explanations “will lower their costs,” but they never explain what efficiencies will result or how those cost reductions will be accomplished. Similarly, they fail to explain how using a single code will increase consumer awareness of services offered today using the codes of each of the carriers.
countries beyond a foreign gateway. Allowing foreign airlines to do so raises both consumer disclosure and unfair competition concerns which must be addressed.

5. The applicants disclaim any intention of offering seventh-freedom services or carrying cabotage traffic, although their common branding proposal would facilitate such carriage. Mere assertions that such traffic will not be carried does not make the problem meaningless, and the more common branding permitted the greater the risk that such carriage would occur.

6. If the applicants' late-filed motion for leave to file is granted, Continental's timely motion for leave to file this surreply should also be granted to ensure a complete record in this proceeding and to air issues raised in the reply. Continental therefore requests leave to file this surreply with the Department.

For the reasons demonstrated in Continental's answer and this surreply, Continental urges the Department to deny the application by the "real" TACA and five of its affiliated airlines for authority to turn name registration into common branding and de facto antitrust immunity, to consider fully the implications of common branding proposals before authorizing any such activities by multiple
airlines of various countries and to grant Continental’s motion for leave to file this surreply if TACA’s late-filed motion for leave to file its reply is granted.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that I have this date served the foregoing document on counsel for TACA and all parties served with its joint application in accordance with the Department’s Rules of Practice.

Johnnie Jackson

April 23, 2004

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