

111TH CONGRESS
1ST SESSION

H. R. 831

To direct the Comptroller General to conduct a study of the legal requirements and policies followed by the Department of Transportation in deciding whether to approve international alliances between air carriers and foreign air carriers and grant exemptions from the antitrust laws in connection with such international alliances, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 3, 2009

Mr. OBERSTAR introduced the following bill; which was referred to the Committee on Transportation and Infrastructure, and in addition to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To direct the Comptroller General to conduct a study of the legal requirements and policies followed by the Department of Transportation in deciding whether to approve international alliances between air carriers and foreign air carriers and grant exemptions from the antitrust laws in connection with such international alliances, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. ANTITRUST EXEMPTIONS.**

2 (a) STUDY.—The Comptroller General shall conduct
3 a study of the legal requirements and policies followed by
4 the Department in deciding whether to approve inter-
5 national alliances under section 41309 of title 49, United
6 States Code, and grant exemptions from the antitrust laws
7 under section 41308 of such title in connection with such
8 international alliances.

9 (b) ISSUES TO BE CONSIDERED.—In conducting the
10 study under subsection (a), the Comptroller General, at
11 a minimum, shall examine the following:

12 (1) Whether granting exemptions from the anti-
13 trust laws in connection with international alliances
14 has resulted in public benefits, including an analysis
15 of whether such benefits could have been achieved by
16 international alliances not receiving exemptions from
17 the antitrust laws.

18 (2) Whether granting exemptions from the anti-
19 trust laws in connection with international alliances
20 has resulted in reduced competition, increased prices
21 in markets, or other adverse effects.

22 (3) Whether international alliances that have
23 been granted exemptions from the antitrust laws
24 have implemented pricing or other practices with re-
25 spect to the hub airports at which the alliances oper-
26 ate that have resulted in increased costs for con-

1 sumers or foreclosed competition by rival (nonalli-
2 ance) air carriers at such airports.

3 (4) Whether increased network size resulting
4 from additional international alliance members will
5 adversely affect competition between international
6 alliances.

7 (5) The areas in which immunized international
8 alliances compete and whether there is sufficient
9 competition among immunized international alliances
10 to ensure that consumers will receive benefits of at
11 least the same magnitude as those that consumers
12 would receive if there were no immunized inter-
13 national alliances.

14 (6) The minimum number of international alli-
15 ances that is necessary to ensure robust competition
16 and benefits to consumers on major international
17 routes.

18 (7) Whether the different regulatory and anti-
19 trust responsibilities of the Secretary and the Attor-
20 ney General with respect to international alliances
21 have created any significant conflicting agency rec-
22 ommendations, such as the conditions imposed in
23 granting exemptions from the antitrust laws.

24 (8) Whether, from an antitrust standpoint, re-
25 quests for exemptions from the antitrust laws in

1 connection with international alliances should be
2 treated as mergers, and therefore be exclusively sub-
3 ject to a traditional merger analysis by the Attorney
4 General and be subject to advance notification re-
5 quirements and a confidential review process similar
6 to those required under section 7A of the Clayton
7 Act (15 U.S.C. 18a).

8 (9) Whether the Secretary should amend, mod-
9 ify, or revoke any exemption from the antitrust laws
10 granted by the Secretary in connection with an
11 international alliance.

12 (c) REPORT.—Not later than one year after the date
13 of enactment of this Act, the Comptroller General shall
14 submit to the Secretary of Transportation, the Committee
15 on Transportation and Infrastructure of the House of
16 Representatives, and the Committee on Commerce,
17 Science, and Transportation of the Senate a report on the
18 results of the study under subsection (a), including any
19 recommendations of the Comptroller General as to wheth-
20 er there should be changes in the authority of the Sec-
21 retary under title 49, United States Code, or policy
22 changes that the Secretary can implement administra-
23 tively, with respect to approving international alliances
24 and granting exemptions from the antitrust laws in con-
25 nection with such international alliances.

1 (d) ADOPTION OF RECOMMENDED POLICY
2 CHANGES.—Not later than one year after the date of re-
3 ceipt of the report under subsection (c), and after pro-
4 viding notice and an opportunity for public comment, the
5 Secretary shall issue a written determination as to wheth-
6 er the Secretary will adopt the policy changes, if any, rec-
7 ommended by the Comptroller General in the report or
8 make any other policy changes with respect to approving
9 international alliances and granting exemptions from the
10 antitrust laws in connection with such international alli-
11 ances.

12 (e) SUNSET PROVISION.—

13 (1) IN GENERAL.—An exemption from the anti-
14 trust laws granted by the Secretary on or before the
15 last day of the 3-year period beginning on the date
16 of enactment of this Act in connection with an inter-
17 national alliance, including an exemption granted be-
18 fore the date of enactment of this Act, shall cease
19 to be effective after such last day unless the exemp-
20 tion is renewed by the Secretary.

21 (2) TIMING FOR RENEWALS.—The Secretary
22 may not renew an exemption under paragraph (1)
23 before the date on which the Secretary issues a writ-
24 ten determination under subsection (d).

1 (3) STANDARDS FOR RENEWALS.—The Sec-
2 retary shall make a decision on whether to renew an
3 exemption under paragraph (1) based on the policies
4 of the Department in effect after the Secretary
5 issues a written determination under subsection (d).

6 (f) DEFINITIONS.—In this section, the following defi-
7 nitions apply:

8 (1) EXEMPTION FROM THE ANTITRUST
9 LAWS.—The term “exemption from the antitrust
10 laws” means an exemption from the antitrust laws
11 granted by the Secretary under section 41308 of
12 title 49, United States Code.

13 (2) IMMUNIZED INTERNATIONAL ALLIANCE.—
14 The term “immunized international alliance” means
15 an international alliance for which the Secretary has
16 granted an exemption from the antitrust laws.

17 (3) INTERNATIONAL ALLIANCE.—The term
18 “international alliance” means a cooperative agree-
19 ment between an air carrier and a foreign air carrier
20 to provide foreign air transportation subject to ap-
21 proval or disapproval by the Secretary under section
22 41309 of title 49, United States Code.

23 (4) DEPARTMENT.—The term “Department”
24 means the Department of Transportation.

1 (5) SECRETARY.—The term “Secretary” means
2 the Secretary of Transportation.

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