

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²¹

Margaret H. McFarland,

Deputy Secretary.

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DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Review Under 49 U.S.C. 41720 of United/US Airways Agreements

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Notice requesting comments.

SUMMARY: United Air Lines and US Airways have submitted agreements to the Department for review under 49 U.S.C. 41720. That statute requires certain types of agreements between major U.S. passenger airlines to be submitted to the Department at least thirty days before the agreements' proposed effective date but does not require Department approval for the agreements. The Department may extend the waiting period for either or both of the United/US Airways agreements at the end of the thirty-day period or take other appropriate action. The Department is inviting interested persons to submit comments that would assist the Department in determining whether further action should be taken.

DATES: Any comments should be submitted by August 15, 2002.

ADDRESSES: Comments must be filed with Randall Bennett, Director, Office of Aviation Analysis, Room 6401, U.S. Department of Transportation, 400 7th St. SW., Washington, DC 20590. Late filed comments will be considered to the extent possible. To facilitate consideration of comments, each commenter should file three copies of its comments.

FOR FURTHER INFORMATION CONTACT: Thomas Ray, Office of the General Counsel, 400 Seventh St. SW., Washington, DC 20590, (202) 366-4731.

SUPPLEMENTARY INFORMATION: Congress enacted a provision, 49 U.S.C. 41720, that requires certain kinds of joint venture agreements among major U.S. passenger airlines to be submitted to the Department at least thirty days before they can be implemented. This requirement covers code-sharing agreements, long-term wet leases involving a substantial number of aircraft, and agreements concerning

frequent flyer programs. The requirement would also cover certain other significant cooperative working arrangements designated by regulation. By publishing a notice in the **Federal Register**, we may extend the waiting period by 150 days with respect to a code-sharing agreement and by sixty days for the other types of agreements covered by the advance-filing requirement. At the end of the waiting period (either the thirty-day period or any extended period implemented by us), the parties are free to implement their agreement. We may also allow the joint venture agreement to be implemented before the thirty-day waiting period expires.

The statute does not require the parties to obtain our approval before they implement an agreement. To block two airlines from implementing an agreement, we would normally need to issue an order under 49 U.S.C. 41712 (formerly section 411 of the Federal Aviation Act) in a formal enforcement proceeding that determines that the agreement's implementation would be an unfair or deceptive practice or unfair method of competition that would violate that section.

We have not adopted regulations expanding the scope of the filing requirement or establishing procedures for our review of agreements submitted under 49 U.S.C. 41720.

In the past we have informally conducted the reviews authorized by 49 U.S.C. 41720. The airline parties to a joint venture agreement have filed the agreement directly with the Department staff that reviews them, we have not established a docketed proceeding on any such agreement, and we have not sought comments from other parties. In determining whether to extend the waiting period (or start a formal proceeding under section 41712), we have focused on whether the agreement would reduce competition. Our review is analogous to the review of major mergers and acquisitions conducted by the Justice Department and the Federal Trade Commission under the Hart-Scott-Rodino Act, 15 U.S.C. 18a, since we are considering whether we should institute a formal proceeding for determining whether an agreement would violate section 41712. We consult the Justice Department as part of our review, and we avoid unnecessary duplication of efforts by the Justice Department and this Department. If an agreement appears to violate the antitrust laws, the Justice Department may file suit and seek injunctive relief against the parties to the agreement.

On July 25 United and US Airways submitted code-share and frequent flyer

program reciprocity agreements for review under 49 U.S.C. 41720. We still intend to conduct an informal review, but, due to the public interest in these agreements, we want to give interested persons an opportunity to submit comments. The views of outside parties may assist us in determining whether to extend the waiting period and whether either agreement presents serious issues under section 41712.

Since the statute requires us to decide within thirty days of filing to determine whether to extend the waiting period, we request that any comments be filed by August 15. To assist the commenters, United and US Airways have prepared a redacted copy of the agreements that will be available for review and copying in room PL-401 of the Nassif Building, located in the northeast corner on the Plaza level, 400 7th St. SW., Washington, DC. We are making the copy available there, even though this case is not docketed, because it is readily accessible to the public and has a copying machine for public use.

Issued in Washington, DC on August 1, 2002.

Read C. Van de Water,

Assistant Secretary for Aviation and International Affairs.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Notice For Waiver Of Aeronautical Land-use Assurance Capital Airport, Springfield, IL

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of intent of waiver with respect to land.

SUMMARY: The Federal Aviation Administration (FAA) is considering a proposal to change a portion of airport land from aeronautical use to non-aeronautical use and to authorize the sale/exchange of the airport property. The proposal consists of Parcel 16-3-F1, a 3.169 acre portion of Parcel 16-3-F, and Parcel 14-1, a 0.636 acre portion of Parcel 14. Presently the land is vacant and used as open land for control of FAR Part 77 surfaces and compatible land use and is not needed for aeronautical use, as shown on the Airport Layout Plan. Parcel 16-3-F (57.17 acres) was acquired in 1970 with partial Federal participation. Of the original 57.17 acres, 44.46 acres was purchased with Federal Participation. 12.71 acres of the original 57.17-acre parcel have been

²¹ 17 CFR 200.30-3(a)(12).