

REPUBLICA DE CHILE			
PRESIDENCIA			
REGISTRO Y ARCHIVO			
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M.Z.C.	<input type="checkbox"/>		<input type="checkbox"/>



Av. Libertador
Bernardo O'Higgins 107
Fono: 6395053
Fax: 6397277
Telex: 240116
LADEC CL
Casilla 333-22
Santiago Chile

Santiago, 2 de noviembre de 1993

Señor
Carlos Bascuñán
Jefe de Gabinete Presidente de la República
Palacio de la Moneda
Presente

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Muy señor nuestro :

Adjuntamos a Ud. con la presente, respuesta de la compañía United Airlines frente al reclamo presentado por American Airlines ante el Departamento de Transporte de USA, en contra de las empresas aéreas nacionales y el Gobierno de Chile.

El escrito de United Airlines constituye una muestra de sensatez y de voluntad para acercar posiciones en la relación bilateral sobre transporte aéreo con los Estados Unidos.

Sin otro particular, saludamos atentamente a usted,

LADECO S.A.
Pablo Montero Bellalta
Asesor Jurídico
Coordinador Política Aérea

BEFORE THE
DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.

Complaint of

AMERICAN AIRLINES, INC

against

LINEA AEREA NACIONAL-CHILE, S.A. (LAN-CHILE),
LADECO, S.A., LADECO CARGO, S.A., FAST AIR
CARRIER, S.A., AND THE GOVERNMENT OF CHILE

under section 2(b) of the International Air
Transportation Fair Competitive Practices
Act, as amended

Docket 49161

ANSWER OF UNITED AIR LINES, INC.

Communications with respect to this document should be sent
to:

LAWRENCE M. NAGIN
Executive Vice President -
Corporate Affairs and
General Counsel

JONATHAN A. KNEE
Senior Staff Executive

UNITED AIR LINES, INC.
P. O. Box 66100
Chicago, Illinois 60666
(708) 952-5871

CYRIL D. MURPHY
Vice President - International
and Governmental Affairs

UNITED AIR LINES, INC.
1707 L Street, N.W.
Suite 300
Washington, D.C. 20036
(703) 892-7513

JOEL STEPHEN BURTON
GINSBURG, FELDMAN and BRESS,
CHARTERED
1250 Connecticut Avenue, N.W.
Suite 800
Washington, D.C. 20036
(202) 637-9130

Counsel for
UNITED AIR LINES, INC.

DATED: October 13, 1993

BEFORE THE
DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.

Complaint of

AMERICAN AIRLINES, INC

against

LINEA AEREA NACIONAL-CHILE, S.A. (LAN-CHILE),
LADECO, S.A., LADECO CARGO, S.A., EAST AIR
CARRIER, S.A., AND THE GOVERNMENT OF CHILE

under section 2(b) of the International Air
Transportation Fair Competitive Practices
Act, as amended

Docket 49161

ANSWER OF UNITED AIR LINES, INC.

By the above-captioned Complaint, American Airlines, Inc. (American) adds Chile to a long list of foreign governments which it believes have acted unfairly toward the carrier. The crux of this complaint is that Chile will not allow American to take action that could jeopardize future competition in the Chile-U.S. market, pending a review of the proposed action by the Chilean Anti-Monopoly Commission.

The position of the Chilean government, on its face, seems neither unreasonable nor unjustifiable. In the schedule now being considered by the Chile Anti-Monopoly Commission, American proposes to maintain its daily one-stop MD-11 service in the Miami-Santiago market, and to double its daily B-767 non-stop frequency in that same market.

The Government of Chile has calculated that American's capacity increase would drive the industry load factor down to

approximately 40 percent. United conducted its own analysis and confirmed that with American's proposed schedule in place, the average industry load factor in the market would be depressed to levels approximating those in Chile's forecast; levels at which competition could not be sustained.

American apparently believes that it can attract sufficient traffic to its new services to generate a profit. If so, that confirms both American's domination of the market and the risk to the future of competition which that level of domination creates.

The competitive situation in Latin America is tenuous. Unlike the North Atlantic, the U.S.-South American market is not characterized by the presence of multiple strong U.S. and foreign air carriers. There are few large foreign carriers in the region and United's efforts to restore the competitive presence of a second major U.S. carrier have been difficult and frustrating. The market remains firmly controlled by American.^{1/}

In Chile, the competitive situation is particularly threatened. United is struggling to maintain a one flight per day presence in the market. LAN Chile is forecasting a \$14.5 million annual loss, and is reported to be seeking relief from certain creditors in order to avoid possible bankruptcy.^{2/} The fact is that with American's entrenched position in Latin America

^{1/} American's 1992 Latin American operating revenues were more than four times larger than United's and exceed by a very wide margin the total Latin American operating revenues of all other U.S. carriers combined. Aviation Latin America & Caribbean, August 1993, p. 2.

^{2/} Id.

and its overwhelming control of traffic feed at the critical Miami gateway, no U.S. carrier and no foreign carrier is able to provide an effective competitive check on American's Chile services.

Chile has been one of our most liberal aviation partners. U.S. and Chilean carriers operating between the two countries enjoy a broad range of economic rights. Those opportunities do not include, however, an exemption from national antitrust or anti-monopoly laws. Nor does the governing agreement require Chile to stand idle in the face of the possible destruction of competition over one of its most important international air routes.

The Chilean Anti-Monopoly Commission has issued an order temporarily restraining any carrier (not simply American) from increasing frequencies over the route pending its investigation into the matter.^{3/} American has not alleged that either the order or the investigation is inconsistent with Chilean law. Nor does it assert that it is being denied due process by the Commission or by Chilean courts. Indeed, American does not offer any persuasive reason why this matter should be escalated to an international confrontation between Governments before it has run its course in the Chilean Administrative and Judicial systems.^{4/}

^{3/} United, consistent with that order, has been allowed to convert its four weekly one-stop services to non-stop because no change in frequencies was involved.

^{4/} It may be possible, of course, that American is not confident of the merits of its case under applicable law, and seeks to avoid an official decision of the Anti-Monopoly Commission.

Under the circumstances, a finding that Chile is engaged in an unfair, competitive practice against American would seem, at best, premature.

American's Complaint presents a policy matter for the U.S. that transcends the proposed schedules. At issue is whether the U.S. can afford to be perceived as indifferent to the fate of the national carriers of our trading partners. If foreign carriers can characterize U.S. aviation policy not as "open skies" but as "laissez faire", progress toward liberal agreements such as we enjoy with Chile will certainly be frustrated. A premise of international aviation negotiations is that governments will act in a manner consistent with the overall best interests of their citizens and their economy. Governments cannot be expected to accept air services agreements which they believe could produce an unconstrained assault on the ability of their flag carrier to compete. Nor can they be expected to welcome arrangements which they believe could jeopardize their citizens' opportunities to enjoy the fruits of an open marketplace.

United urges the Department to use this Complaint as an opportunity to demonstrate that its international aviation policy is pro-competitive not laissez faire; that its commitment to a competitive international route structure is as strong as its commitment in the domestic marketplace;^{1/} and that it does not

^{1/} In the Reno Air matter and elsewhere the Department has made clear that while it would not shield carriers from competition, it would likewise not tolerate anti-competitive scheduling by the dominant carrier. It would be incongruous for
(continued...)

view a liberal agreement as a license for destroying foreign competitors. The Department should make it apparent that its appreciation of the legitimate national concerns of its aviation partners is consistent with respect to major European countries and smaller Latin American nations alike.

United therefore urges the Department to dismiss American's Complaint and, if deemed appropriate, to meet with the Government of Chile to discuss ways in which the substantial benefits of the current U.S.-Chile air transportation relationship can be preserved and expanded under a truly competitive environment. Those discussions should proceed in a spirit of mutual respect and understanding for each other's positions, not under the threat of sanctions and countersanctions.

The U.S. has just entered into a Transitional Agreement with Germany that recognizes the short-term needs of the German flag carrier in order to enhance that carrier's long-term position as a meaningful competitor in the North Atlantic. That Transitional Agreement also guarantees that, after four years, there will be a complete restoration of one of the most liberal air transport

^{5/} (...continued)
the Department to punish Chile for evidencing the same type of concern for competition.

agreements that the U.S. has been able to secure. Chile is entitled to similar consideration.

Respectfully submitted,

/s/ Joel Stephen Burton
JOEL STEPHEN BURTON
GINSBURG, FELDMAN and BRESS,
CHARTERED
1250 Connecticut Avenue, N.W.
Suite 800
Washington, D.C. 20036
(202) 637-9130

Counsel for
UNITED AIR LINES, INC.

DATED: October 13, 1993

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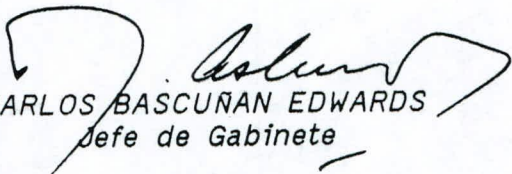
Señor
Pablo Montero Bellalta
Asesor Jurídico
LADECO S.A.
Presente

De mi consideración:

Por medio de la presente, me refiero a su carta de fecha 2 de Noviembre en la que adjunta respuesta de la compañía United Airlines, referente al reclamo presentado por American Airlines ante el Departamento de Transportes de Estados Unidos, en contra de las empresas aéreas nacionales y del Gobierno de Chile.

Mucho le agradezco el envío de este importante material que, tal como usted lo manifiesta, representa una visión bastante razonable de la posición de Chile al respecto.

Sin otro particular, lo saluda atentamente,


CARLOS BASCUÑAN EDWARDS
Jefe de Gabinete

Santiago, Noviembre 8 de 1993

CBE/psa