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December 19, 2008

The Honorable Michael B. Mukasey
Attorney General
United States Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

The Honorable Mary Peters
Secretary
United States Department of Transportation
1200 New Jersey Avenue, SE
Washington, D.C. 20590

Dear Mr. Attorney General and Madame Secretary:

We write to express our concern that the Department of Transportation (“DOT”) may grant further antitrust immunity, pursuant to 49 U.S.C. § 41308, to airline alliances. We understand that United Air Lines, Continental Airlines, Deutsche Lufthansa AG and seven other members of the Star Alliance have filed an application for antitrust immunity that would create the world’s largest airline immunized alliance and that another airline group, the One World Alliance, led by American Airlines and British Airways, is also seeking immunity. The DOT should exercise its statutory authority to grant antitrust immunity sparingly, and only in what we expect would be rare circumstances where parties seeking immunity have sustained their heavy burden of establishing that competition must be supplanted to serve some other public interest.

Where firms engage in conduct that delivers benefits to consumers and does not harm competition, they have nothing to fear from the antitrust laws. A grant of antitrust immunity, therefore, has the effect of enabling conduct that undermines free-market competition and can substantially harm consumer welfare, leading to higher prices, reduced output, lower quality, and reduced innovation for consumers. Given these substantial risks, immunity from the antitrust laws should be granted only in extraordinary circumstances.

The members of the alliances that have filed applications for antitrust immunity argue that these alliances can produce significant benefits. The DOT should consult with the Department of Justice (“DOJ”) and thoroughly investigate and examine all aspects of these proposed transactions to ensure that consumers will not be harmed.

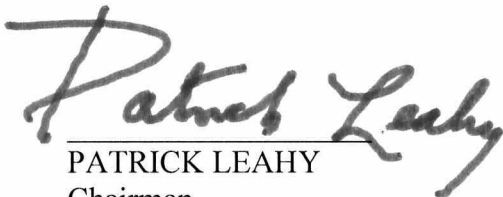
The Honorable Michael B. Mukasey
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Particular attention should be given, with respect to the Star Alliance proposal, to whether cross-ownership by an immunized carrier of a non-immunized domestic competitor will raise competition concerns in the domestic market, and the implications of granting immunity on routes to markets that do not have open skies agreements with the United States. We are also interested to learn what protocols would be in place to ensure that potentially anti-competitive conduct beyond the any immunized arrangement will not occur.

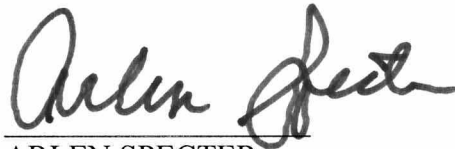
Any analysis of these proposals should be conducted using established principles of antitrust law to identify the air routes where competition may be harmed as a result of the expanded alliances. DOT should give substantial deference to any recommendations made by DOJ applying its antitrust analysis. Further, we recommend that DOT be cognizant of the joint study, currently being undertaken by the United States and the European Commission, on transatlantic aviation markets and competition. This study is scheduled for completion in mid-2009.

Thank you for your attention to these matters.

Sincerely,



PATRICK LEAHY
Chairman
Committee on the Judiciary



ARLEN SPECTER
Ranking Republican Member
Committee on the Judiciary



HERB KOHL
Chairman
Subcommittee on Antitrust,
Competition Policy and Consumer Rights



ORRIN HATCH
Ranking Republican Member
Subcommittee on Antitrust,
Competition Policy and Consumer Rights