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June 12, 1989

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BY HAND DELIVERY

The Honorable Michael Boudin
Acting Assistant Attorney General
Antitrust Division
U.S. Department of Justice
Washington, D.C. 20530

Dear Mr. Boudin:

We hereby request on behalf of The AirPlus Company Limited ("AirPlus") that the Antitrust Division issue a statement of its enforcement intention, pursuant to the Department of Justice Business Review Procedure, 1/ with respect to the proposed AirPlus conduct described below.

AirPlus was formed in 1986 by thirteen Western European air carriers in order to provide a business-oriented travel expense charge card. 2/ AirPlus is incorporated in the United Kingdom and maintains its business headquarters in London, England.

Air carrier members of AirPlus issue a charge card called the "AirPlus Card," which is utilized to purchase hotel, car rental, air transportation, and other travel-related services. As detailed below, the AirPlus Card is issued by individual air carrier members to subscribers (who can be individual cardholders or businesses that distribute cards for use by their employees). Presently, the AirPlus Card has a European focus: it is issued by the European air carriers primarily to European subscribers. AirPlus seeks the advice of the Antitrust Division

1/ 28 C.F.R. § 50.6 (1987).

2/ The air carriers were Aer Lingus, Air France, Alitalia, Austrian Airlines, British Airways, Finnair, Iberia, Icelandair, K.L.M. Royal Dutch Airlines, Lufthansa, Sabena, Swissair, and TAP Air Portugal. The thirteen air carriers are all members of the Association of European Airlines. Since its creation, Air France, Icelandair, K.L.M. Royal Dutch Airlines, and TAP Air Portugal have withdrawn.

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under the Business Review Procedure because it wishes to offer its merchant program broadly in the United States and allow United States air carriers to become card-issuing members of AirPlus under a proposed reorganization. ^{3/}

1. The AirPlus Card Concept

A successful and efficient card program requires the aggregation of substantial numbers both of cards in consumers' hands and of outlets at which the consumers can use the cards. AirPlus sought to meet this challenge by dividing the responsibilities for the two sides of its program somewhat differently than other prior joint venture card creators. The air carrier members of AirPlus are responsible for merchandising and servicing the cards and attracting new cardholders to the program. This is consistent with the objectives of each air carrier to develop enhanced relationships with its best customers through promotion of the AirPlus Card.

On the other hand, air carriers have no special experience on merchant acquisition or servicing. ^{4/} Since the AirPlus Card is aimed at international travellers, it had to offer access to merchants in the most frequently-travelled parts of the world in order to be successful. Because some of the merchants that are particularly critical to the success of the program are themselves international, it is difficult to assure effective merchant solicitation, servicing, and related transaction processing by any individual carrier. Accordingly, AirPlus decided at the outset that the joint venture would handle merchant acquisition and related transaction processing. The AirPlus organization solicits merchants throughout the world and negotiates the discount fees with individual merchants. It operates a central clearing house to accept and process paper, handle data processing, and prepare data for settlement. Thus, the AirPlus organization serves at least three roles: (a) the creator of the service mark and the basic concept, (b) the network switch between the merchant acceptors and the issuing air carriers, and (c) the acquirer processor which deals directly with merchants.

^{3/} AirPlus' business activity in the United States to date has been limited to soliciting merchants who will accept the AirPlus card for non-air travel related services and goods.

^{4/} As used here, "merchant" refers to a business entity which provides any goods or services other than air transportation (and services related thereto).

2. Current Organization and Governance

AirPlus, which is incorporated in the United Kingdom, is owned by its shareholders. Initially, funding for AirPlus was provided by thirteen European air carriers, each of which provided capital and issued loans to the corporation for start-up expenses. ^{5/} AirPlus then issued shares to each air carrier based on a formula that took into account each member's total revenue passenger kilometers ("RPKs"). ^{6/} The Shareholders Agreement and Articles of Association of AirPlus ("Shareholders Agreement") provide that no individual carrier may hold more than a twenty-five percent (25%) ownership interest. The current membership and ownership interests are shown on Attachment A.

AirPlus is administered by a ten-member Board of Directors, which includes its Managing Director and the Secretary General of the Association of European Airlines (a non-voting member). Prior to 1992, each member (which owned shares prior to March 3, 1988) is represented by one director. In 1992 the Board representation will change. The members holding the three largest shareholdings will nominate one director each; three directors will be nominated by the members holding the next four largest shareholdings; and two directors will be nominated by the remaining members. There is a one-year waiting period before new members can become members of the Board. The Board may delegate any or all of its powers to the Managing Director, to the extent permitted by the United Kingdom Companies Act.

3. Responsibilities of the Members

AirPlus has only one class of membership -- that of a card-issuing "contractor." ^{7/} Any air carrier licensed to engage

^{5/} AirPlus will not distribute any profits or create any reserves until the shareholder loans have been repaid.

^{6/} For the original European members the formula for allocating shares is: twenty-five percent (25%) distributed equally among all members; fifty percent (50%) distributed based on RPKs within Europe; and twenty-five percent (25%) on RPKs outside Europe. For non-European members the formula is based on total RPKs.

^{7/} AirPlus has expanded participation by allowing air carriers to issue AirPlus cards under a non-exclusive license. Air carriers that become licensees are not required to become share-

(continued...)

in air passenger transportation may become a member of AirPlus if it is certified by the Board as a scheduled airline, acquires shares, and issues loans to the corporation. A new member is not entitled to receive distributions until after the end of the third financial year of its membership. ^{8/}

The Contractor Agreement does not prohibit any member/contractor from competing for subscribers in any country in which it can legally issue the card. The member/contractor has the primary relationship with the subscriber and owns the receivables. The member/contractor solicits subscribers, establishes subscriber accounts, and embosses, encodes, and distributes AirPlus Cards to subscribers. AirPlus Cards are printed with the name "AirPlus," the contractor's name, and the Air Travel Card name and logo.

Annually, each member/contractor pays AirPlus a fee of 50 European Currency Units ("ECU") (approximately \$57.00) for each subscriber agreement, and 5 ECU (approximately \$5.70) for each card issued. ^{9/} Each member/contractor pays AirPlus a service fee based on the value of airline ticket purchases with its AirPlus Card. Finally, each member/contractor is obligated to pay AirPlus the face value of any authorized merchant transactions.

A member/contractor may withdraw from AirPlus upon a 90-day notice period. Upon its withdrawal the member/contractor must sell its shares to the remaining AirPlus members. If a

^{7/} (...continued)

holders, but must become contractors of the Universal Air Travel Plan. In addition, licensees pay a service fee based upon projections of card issuance. To date, one AirPlus member, Alitalia, has converted its equity interest and a portion of the Shareholder loan advanced to AirPlus into a non-exclusive license.

^{8/} When an air carrier joins or withdraws as a member, the shares are reallocated according to the formula described in Footnote 6.

^{9/} An "ECU" is an amount equal in value to the unit of account used in the European Monetary System (pursuant to Regulation No. 3180/78 of December 18, 1978, as subsequently amended), the valuation thereof is periodically adjusted by the European Economic Community. As of May 24, 1989, the ECU exchange rate was 1 ECU = \$1.14.

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member/contractor withdraws prior to March 1990, a withdrawal fee is incurred, the amount of which is based on the size of its shareholdings. The withdrawal fee may be waived or adjusted by the other shareholders. ^{10/}

4. Reorganization of AirPlus

The AirPlus Board is currently considering a reorganization of the AirPlus program. At this time, not all the details of the reorganization have been finalized, but the concept has been established. The proposed reorganization will not occur until AirPlus achieves the size necessary for the structure to be successful. ^{11/} Under this proposed reorganization, two levels of entities will be formed: an International Governing Body, which will perform a limited number of functions performed by the current AirPlus organization, and at least three Regional Organizations of individual air carrier members (in Europe, North and South America, and Asia).

An important goal of the proposed reorganization is that the AirPlus program become a significant competitive force in the United States; and it is because of this fact that a Business Review clearance covering the reorganization is being requested at this time.

a. International Governing Body

The International Governing Body will be a business corporation. It will own the AirPlus trade marks and service marks, enter into contractor and merchant agreements and issue licenses to air carriers and Regional Organizations. The International Governing Body will prepare and ensure implementation of operating regulations, interchange agreements, licensing agreements and system rules. The International Governing Body will be funded wholly through a discount fee from merchant purchases (which currently averages 3.1%), and a discount fee from airline ticket purchases (0.2% for tickets purchased with cards issued by non-U.S. air carriers; 0.1% for tickets purchased with cards issued by U.S. air carriers).

^{10/} To date four members have withdrawn. The withdrawal fee was waived for each member.

^{11/} The reorganization will not occur until AirPlus achieves a base of 250,000 cardholders and at least one AirPlus member from each proposed region. AirPlus currently has 60,000 cardholders.

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The International Governing Body will be owned by each Regional Organization, whose share will be based on the total RPKs of the air carrier members of the Regional Organization. There is no limit to the number of shares any one Regional Organization can hold. However, no individual Regional Organization will have more than 50% of the total number of voting rights in the International Governing Body.

The International Governing Body will be administered by a Board of Directors. Each director will have one vote. Each Regional Organization will have at least one director on the Board of the International Governing Body; and it may appoint additional Board member(s) for each 7.5% of the global volume of AirPlus sales it accounts for, in excess of 10%. Finally, the chief executive officer of the International Governing Body will be a member of the Board.

There will be several limits to representation on the Board. The Board cannot include more than one director from any airline. No Regional Organization may have: (1) more than 50% of the total number of directors or (2) a larger Board representation than the Regional Organization with the greatest sales volume. Finally, the composition of the Board of Directors will be revised at the beginning of each fiscal year, based on the past year's AirPlus sales.

b. Regional Organizations

Each Regional Organization will be a corporation owned by two or more participating air carriers operating in the same region. Ownership interests will be based on the RPKs of each member. Currently, AirPlus plans to form three Regional Organizations: in Europe (including the Middle East and Africa), in Asia (including the Pacific), and in North and South America. There is no limit to the number of Regional Organizations that may be formed. Any air carrier that is a member of AirPlus can become a member of a Regional Organization or can, with another member, form a Regional Organization. ^{12/}

Each Regional Organization will have a Board of Directors, consisting of one representative from each participating air carrier. The Regional Organization's chief executive officer will be a voting member of the Board. In addition, the Board may

^{12/} If only one air carrier in a geographic area wishes to be a member, it can form an interim Regional Organization.

include as non-voting members, officials of regional and international airline industry bodies.

AirPlus will grant each Regional Organization an exclusive territorial AirPlus license. This license will permit the Regional Organization to provide, on behalf of the International Governing Body, merchant acquisition, servicing, payment and data processing and authorization services. The Regional Organization will act as a clearinghouse between its own air carrier members and other Regional Organizations. The Regional Organization will have additional flexibility to provide, if required, cardholder acquisition and servicing tasks on behalf of its participants.

5. Relationship with the Air Travel Card

In 1986, AirPlus entered into a licensing agreement with the Universal Air Travel Plan ("UATP"). The air carrier members of the UATP issue a charge card known as the "Air Travel Card," which is used exclusively for purchases of airline transportation. Approximately 30 foreign and domestic air carriers issue the Air Travel Card, which is accepted by 200 air carriers and more than 40,000 travel agencies.

The license grants AirPlus the right to use the "Air Travel Card" name and logo without charge. ^{13/} The license only allows solicitation of subscribers outside of North America, but permits issuance of AirPlus cards worldwide. It also provides that each UATP contractor ^{14/} which also issues the AirPlus Card will devote its primary marketing efforts on behalf of the AirPlus merchant program to soliciting merchants outside of the United States. The license provides that if North American air carriers become AirPlus members and develop a European subscriber base, AirPlus members may solicit subscribers in the country of those North American air carriers.

^{13/} In addition, through an assignment agreement AirPlus, as a company, acquired the right to use the "AirPlus" mark. The UATP acquired the trademark on behalf of the AirPlus air carriers prior to the formation of AirPlus.

^{14/} A UATP "contractor" is an air carrier which issues the Air Travel Card.

Since the creation of AirPlus, all AirPlus members have become UATP contractors. ^{15/} Thus, AirPlus card-holders can purchase tickets from any UATP member air carrier or travel agency which issues tickets on behalf of UATP members.

6. Competitive Analysis

The entry of the AirPlus program into the United States would enhance consumer welfare by offering both consumers and merchants a new payment alternative. AirPlus currently has a very small market share in terms of cardholders worldwide. In the United States, AirPlus will compete with a variety of payment mechanisms including cash, checks, and several card systems including VISA, MasterCard, Discover, American Express, and Diners Card.

AirPlus' arrangements with merchants and contractors are non-exclusive. Merchants are not restricted to accepting only AirPlus Cards. AirPlus members are not restricted in their role as ticketors or their affiliation with other credit systems. Moreover, AirPlus members are not restricted from issuing their own credit card (e.g., in association with a bank system).

Finally, the AirPlus Contractor Agreement imposes relatively few restrictions on the issuer-subscriber relationship. The Contractor Agreement does not obligate a member contractor to impose any minimum deposit for subscribers or an annual fee. Each member/contractor is responsible for establishing its own monthly billing procedure. Member/contractors are not restricted from issuing cards to subscribers having delinquent accounts with other contractors. The Contractor Agreement does not require a specific interest charge or conditions for termination of delinquent subscriber accounts.

* * *

^{15/} Aer Lingus, Alitalia, British Airways, Lufthansa, Iberia, and Swissair were UATP contractors prior to the creation of AirPlus. Each AirPlus member/contractor which currently issues the Air Travel Card may offer its subscribers the opportunity to switch to the AirPlus Card.

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We believe that the reorganization of AirPlus and its entry into the United States would not adversely affect competition in any relevant market. Therefore, we request that the Antitrust Division issue a letter stating its current intention not to bring an enforcement action if AirPlus carries out the activities described herein. Attached as exhibits are copies of the AirPlus Articles of Association, Shareholder Agreement, Contractor Agreement, and the license agreement with the UATP. Please do not hesitate to contact me if any additional information is needed.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Baker", written over a horizontal line.

Donald I. Baker

Attachments

CURRENT AIRPLUS MEMBERS AND SHAREHOLDINGS

<u>Shareholder</u>	<u>Share</u>
Aer Lingus	4.40
Alitalia */	13.20
Austrian Airlines	5.03
British Airways	25.00
Finnair	5.03
Iberia	9.60
Lufthansa	20.28
Sabena	4.10
Swissair	13.36

*/ As of April 1, 1989, Alitalia converted its equity interest and part of its loans to AirPlus into a non-exclusive license. Its shares were placed in escrow for future members.