

REASONS WHY DL/NW/JAL WOULD NOT BE GRANTED ATI:

- DOT would view a grant of antitrust immunity to DL/NW and JAL as defeating the essential purpose of Open Skies, which the U.S. sees as a way to increase competition in a market long dominated by NW, JAL, and UA -- not lessening it.
- If JAL were given ATI within SkyTeam, competition would be severely harmed whether one looks at heavily-traveled city pairs, total U.S. to Japan traffic or broader U.S. to Pan-Asia market traffic.
- DOT has never granted immunity to two carriers operating competing hubs and networks at the same airport.
- SkyTeam carriers would control 62% of the U.S.-Japan market; Star would have 31%, leaving **oneworld** with just 6%. Even that small share is likely to decrease as over time AA will be forced to draw down most of its services to Japan.
- A JAL/SkyTeam pact creates monopolies in most Hawaii-Japan markets. Neither the State of Hawaii, DOT nor the U.S. Department of Justice (DOJ) would favor such an outcome.
- SkyTeam already has a strong presence in NE Asia with DL's hub at NRT and KE's hub at Incheon International Airport. JAL joining SkyTeam reduces the number of global alliances with an effective N. Asia presence from three to two, leaving a SkyTeam/Star duopoly and ending robust inter-alliance competition.
- Giving up slots at Narita, as some have suggested that DL might do, does not remedy antitrust concerns. Practical constraints (such as length of haul and fleet requirements) would prevent **oneworld** from competing even if slots became available. In any case, unlike Heathrow, NRT slots can't be traded or sold.
- DOT is unlikely to view market "carve-outs" as a remedy, as they undermine a true joint venture and there is no evidence that they protect consumers
- A DL NW/JAL SkyTeam alliance would not meet the statutory requirements for a grant of anti-trust immunity. DOT *must* disapprove any agreement that substantially reduces or eliminates competition as a DL/NW/JAL SkyTeam alliance would do, unless they can prove that any public benefits to their alliance could not be achieved through other less anti-competitive means. They clearly won't be able to do that. JAL has the choice of working with AA together in the existing **oneworld** alliance to offer greater consumer benefits.
- The ATI process is adjudicatory, not political. DOT must follow its prior rulings in making its determinations. The process allows for appeals to the U.S. courts should DOT not follow precedent.
- The U.S. government does not pick winners and losers, nor does it have an industrial policy. It maintains a level playing field by blocking all anti-competitive actions. The suggestion that it is better to have competition between two "strong"

alliances is not plausible for DOT and DOJ. Rather, they would view it overall as worsening competition by reducing the number of competitors.

REASONS WHY AN AA/JAL JOINT VENTURE WOULD BE GRANTED ATI

- Because AA's share of the U.S.-Japan market is quite small, a combination with JAL should not raise serious competitive issues.
- All overlap markets between JAL and AA will remain competitive.
- The deal would be considered pro-competitive because it strengthens **oneworld** in Asia and offers consumers a choice in addition to Star and SkyTeam.
- JAL already is in **oneworld**; JAL remaining in an existing alliance thus preserves interalliance competition.
- Granting JAL and AA ATI leaves three alliances with roughly equal market shares at Narita to the benefit of consumers.