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Order 99-5-5



UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.

Served: May 7, 1999

Issued by the Department of Transportation
on the 5th day of May, 1999

Agreement adopted by the Tariff :
Coordinating Conferences of the : **Docket OST-99-5124**
International Air Transport Association :
relating to proportional fares :

ORDER

Various members of the International Air Transport Association (IATA) have filed an agreement with the Department under section 41309 of Title 49 of the United States Code, and Part 303 of the Department's regulations. The agreement was adopted at the TC12 Passenger Tariff Coordination Conference held in Geneva on February 4-6, 1999, for effectiveness on April 1, 1999.^{1/}

The agreement revises the proportional fares used to construct through normal fares between various interior U.S. cities and points in Africa over transatlantic routings in order to reflect current U.S. domestic fare levels.

We will approve the agreement. Based on the information submitted and other relevant material, we conclude that the agreement, as conditioned below, will not result in fares that are unlawful or injurious to competition in the markets at issue.

Our approval, however, will continue to carry the conditions that we have regularly placed on our approval of these IATA add-on fare agreements. These include observance of the Department's Standard Foreign Fare Level criteria in direct service markets; the obligation, in certain instances, to publish through fares constructed using these add-ons as single factor fares in Department tariffs; the freedom of each carrier to match a competitor's through fares even if that carrier does not serve the competitor's gateway; and the requirement that at the time they are agreed, no individual add-on fare should exceed the applicable U.S. domestic fare available between that interior U.S. point (or any other interior U.S. point included in the same arbitrary zone, where one exists) and the specified U.S. gateway point, or any

^{1/} IATA memorandum PTC12 NMS-AFR 0058, filed with the Department on February 19, 1999.

other competitive U.S. gateway point, for the comparable fare class.^{2/}

In addition, the United States Government, as a matter of policy, has consistently held that carriers must be free to implement, at any gateway, through fares that represent a combination of local fares over any other gateway, even though such fare combinations undercut the agreed through fares.^{3/}

Furthermore, in Order 82-11-84, November 18, 1982, the Civil Aeronautics Board noted that an agreed through fare should not take precedence when some other combination of local fares can secure a better price for travelers. Any carrier wishing to match the lowest combination may undercut the through fares prescribed by an intercarrier agreement. U.S. Government approvals of previous IATA fare agreements have been conditioned to ensure such flexibility in pricing.^{4/} These conditions apply equally and by reference to the present proposal.^{5/}

Pursuant to authority assigned by the Department's Regulations, 14 CFR 385.13:

1. We do not find that the following resolution, which is incorporated in the agreement in Docket OST-99-5124 and which has direct application in foreign air transportation as defined by the Code, is adverse to the public interest or in violation of the Code, provided that approval is subject to conditions previously imposed:

<u>Docket</u>	<u>IATA Reso</u>	<u>Title</u>	<u>Application</u>
OST-99-5124	015n	TC12 and TC123 North Atlantic USA Add-on Amounts, North Atlantic-Africa (Expedited)(Amending)	1/2

2. This agreement is a product of the IATA tariff conference machinery, which the Department found to be anticompetitive but nevertheless approved on foreign policy grounds by Order 85-5-32,

2/ See, for example, Orders 92-9-41, September 21, 1992; and 93-3-12, March 9, 1993.

3/ In this case, the "agreed through fare" is the sum of the transatlantic fare to/from the U.S. gateway plus the agreed add-on fare between that gateway and the U.S. interior point.

4/ See also Orders 82-2-130, February 26, 1982 (Resolution 001); and 82-9-11, September 3, 1982, which further address the issue of combinations.

5/ IATA represents that the discussions leading to the agreed add-on fares were based on previously established and publicized U.S. domestic fares. The antitrust immunity conferred here does not extend to any discussions among carriers designed to affect, or which result in an effect upon, the level of any U.S. domestic fares.

May 6, 1985. The Department found that important transportation needs were not obtainable by reasonably available alternative means having materially less anticompetitive effects. Antitrust immunity was automatically conferred upon these conferences because, where an anticompetitive agreement is approved in order to attain other objectives, the conferral of antitrust immunity is mandatory under Title 49 of the United States Code.

Order 85-5-32 contemplates that the products of the fare and rate conferences will be subject to individual scrutiny and will be approved, provided they are of a kind specifically sanctioned by Order 85-5-32 and are not adverse to the public interest or in violation of the Code. As with the underlying IATA conference machinery, upon approval of a conference agreement, immunity for that agreement must be conferred under 49 U.S.C. 41308. Consequently, we will grant antitrust immunity to the agreement in Docket OST-99-5124 as set forth in finding paragraph 1 above, subject, where applicable, to conditions previously imposed.

ACCORDINGLY,

We approve and grant antitrust immunity to the agreement contained in Docket OST-99-5124, as set forth in finding paragraph one above, subject, where applicable, to conditions previously imposed.

Persons entitled to petition the Department for review of this order, under 14 CFR 385.50, may file such petitions within ten days after the date of service of this order.

This order shall be effective and become the action of the Department of Transportation upon expiration of the above period, unless within such period a petition for review is filed or the Assistant Secretary for Aviation and International Affairs gives notice that he will review this order on his own motion.

By:

Paul L. Gretch
Director, Office of International Aviation

(SEAL)

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