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Order 99-11-2

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

Issued by the Department of Transportation
on the 2nd day of November, 1999

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Agreements adopted by the Tariff           :
Coordinating Conferences of the           :      Docket OST-98-4339
International Air Transport Association :      R-1 through R-12
relating to passenger fare matters       :      Docket OST-98-4870
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ORDER

Various members of the International Air Transport Association (IATA) have filed two agreements with the Department under section 41309 of Title 49 of the United States Code (the Code), and Part 303 of the Department's regulations. The agreements were adopted either at a meeting of the IATA Composite Passenger Tariff Coordinating Conference held in Singapore during July 21-25, 1998, or by mail vote.^{1/}

Applicable on an area or worldwide basis, the agreement in Docket OST-98-4339 proposes a variety of amendments, most of which are technical, editorial or clarifying in nature, to existing resolutions applicable on an area or worldwide basis. These include resolutions that set forth procedures for converting fares into euros; govern the calculation of mileages and routes for tariff purposes; revise previously-approved fare construction practices; and establish fares for students.

In addition, the agreement in Docket OST-98-4339 introduces new provisions to facilitate notification by carriers of government approved fare levels affecting TC2 (Europe/Middle East/Africa)-South West Pacific, South Pacific and TC123 via Western Hemisphere markets; procedures governing the application of the higher intermediate point (HIP) checks to non-flown surface sectors that are included in a through fare; and new fare selection criteria to be used when constructing fares for complicated itineraries.

Finally, the agreement in Docket OST-98-4870 sets forth criteria to be used in selecting fares to be used in performing various fare construction checks, such as the HIP check noted above.

In supplemental material filed February 2, 1999, IATA states that the fare selection criteria, now being used by various computer reservations systems (CRSs) to select the carrier whose fares will be used to construct prices for complicated itineraries, were first introduced outside IATA because the Department required that all tariffs for direct service be filed in the carrier's name. Because these carriers often filed fares that differed from each other as well as from agreed IATA levels and conditions, it was necessary to determine how to price an itinerary when different carriers were involved

^{1/} IATA memorandum PTC COMP 0324, Docket OST-98-4339; and IATA memorandum COMP Telex Mail Vote 978, Docket OST-98-4870. IATA filed technical corrections to Docket OST-98-4870 in memorandum PTC COMP 0387.

and each had different fares filed for the same component. In cases where several carriers had transatlantic fares on file, the fare of the carrier that was the "overwater" carrier would be used, while the fare of the carrier operating on the sector into or out of the U.S. would be used for travel within the Western Hemisphere.^{2/} These principles were subsequently extended to transpacific and TC123 via transpacific fare components.

As carrier filings expanded in other parts of the world, individual CRSs applied different criteria, resulting in situations where different prices are quoted for the same routing and same carriers, leading to a perceived need for worldwide industry standards.^{3/} In addition, the European Commission complained that due to the criteria applied, CRSs were ignoring the lower fares of some carriers.

We have decided to approve most of the agreement in Docket OST-98-4339, subject to all conditions that we have imposed previously, including the one recently imposed in Order 99-07-08, (July 14, 1999) which ensures that agents and carriers retain maximum flexibility in constructing fares so that they may compete effectively and obtain the best deal for their customers. Based on our review of the information submitted and other relevant material, we conclude that approved portions of the agreement, as conditioned, will not result in fares or charges that are unlawful or injurious to competition in the markets at issue.

We will defer action on the fare selection criteria proposed in agreements OST-98-4339 (Resolution 017h) and OST-98-4870 (Resolution 017I). The resolutions would establish uniform, mechanistic default criteria for selecting the carrier whose fares would be used for certain fare construction purposes. Although there are some examples in the resolutions and in the conference minutes of how the selection criteria would be applied, IATA has not provided sufficient information for us to determine under section 41309 of the Code that approval of the proposed criteria is in the public interest.^{4/}

As noted above, the European Commission was concerned that due to the selection criteria applied by some CRSs, lower fares of some carriers were being ignored. Consequently, IATA adopted a separate resolution for travel within Europe under which two different selection criteria will be compared, and the lower fare selected.^{5/} We have similar concerns, and without more concrete information that would satisfactorily allay these concerns, we cannot conclude

^{2/} To illustrate, both BA and TW have NYC-ATH fares on file for a routing NYC-TW-LON-BA-ATH. In this example, TW's fare would be used since it is the "overwater" carrier.

^{3/} For example, there are three carriers on a LON-FRA-BOM-SYD itinerary: BA for LON-FRA; LH, FRA-BOM; and AI, BOM-SYD. Each of these have LON-SYD fares on file with different levels and conditions. Since to search through all possible carrier fares will overload the system, CRSs can select the fares of only one carrier based on their criteria. One will select BA's because it is the first international carrier. Another will select LH because it is the carrier crossing between TC2 and TC3.

Still another will select AI because it is the most significant carrier based on mileage flown. The result will be three different prices for the same itinerary.

^{4/} On February 2, 1999, IATA filed supplemental documentation in Dockets OST-99-4339 and OST-99-4870 which provides some additional explanation of the fare selection criteria. However, the material contains little additional information beyond that included in the conference minutes.

^{5/} We will approve Resolution 017hh establishing fare selection criteria for travel within Europe.

that the less flexible criteria adopted by IATA for the United States as well as for other world areas is appropriate.

In order for us to perform the requisite public interest analysis, we will need IATA to supply real-world comparisons, using published fare levels and plausible routings involving transportation to/from U.S. points, of results under the proposed fare selection criteria versus results under alternative criteria being used by CRSs. We would expect at least five examples for each of the following major IATA sub-areas: Mexico, Caribbean, Longhaul, Europe, Middle East, Africa, Asia via Atlantic routings, North/Central Pacific and South Pacific. In addition, each of these constructions should clearly explain how application of the fare selection criteria at issue has produced this fare level. Finally, each construction should also show what the fare would be if the European version were used.

Last, we will disapprove the HIP check proposed for application to non-flown surface sectors. Because a surface sector is not flown by air, we can see no reason why it should be subject to HIP check with the possible consequence to the passenger of being charged a higher fare.

Acting under Title 49 of the United States Code (the Code), and particularly sections 40101, 40103, 41300 and 41309:

1. We do not find the following resolutions, which are incorporated in the agreement in Docket OST-98-4339 as indicated and which have either direct or indirect application in foreign air transportation as defined by the Code, to be adverse to the public interest or in violation of the Code, provided that approval is subject, where applicable, to conditions previously imposed:

Docket OST-98-4339	IATA No	Title	Application	
R-1 Resolution	001o	Expedited Special Provisions	2/3;3/1	
R-2	002	Expedited Special Amending Resolution	1;2;3;1/2; 2/3;3/1;1/2/3	
R-3 Resolution	003	Expedited Standard Rescission 3/1;1/2/3	1;2;1/2;2/3;	
R-4	010h	Expedited Special Passenger Conversion Resolution-Euro	1;2;3;1/2; 2/3;3/1;1/2/3	
R-5	014a	Expedited Construction Rule for Passenger Fares	1;2;3;1/2; 2/3;3/1;1/2/3	
R-7	017hh	Expedited Fare Selection Criteria within Europe	2	
R-8 Currencies	024d	Expedited Currency Names, Codes, Rounding Units and Acceptability 3/1;1/2/3	2;3;1/2;2/3;	of
R-9 and 2)g)	024j	Expedited Special Construction Rules (Except for new paragraphs 2/3;3/1;1/2/3	1;2;3;1/2;	1)i)
R-10	092	Expedited Student Fares	3	
R-11	152d	Expedited Open Jaw-Special Fares 2/3;3/1;1/2/3	1;2;3;1/2;	
R-12 (Except to/from USA)	311w	Expedited TC31 North and Central Pacific Excess Baggage Charges	3/1	

2. We find that the following resolution, incorporated in the agreement in Docket OST-98-4339, as indicated, to be adverse to the public interest and in

violation of the Code.

Docket	IATA			
OST-98-4339	No	Title	Application	R-9
024j	Expedited	Special Construction	1;2;3;1/2;	
Rules (New paragraphs 1)i)		and 2/3;3/1;1/2/3		2)g)

3. These agreements are a product of the IATA tariff conference machinery, which the Department found to be anticompetitive but nevertheless approved on foreign policy and comity grounds by Order 85-5-32, 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 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 the Code. Consequently, we will grant antitrust immunity to those portions of the agreement in Docket OST-98-4339 as set forth in finding paragraph 1 above, subject, where applicable, to conditions previously imposed.

ACCORDINGLY,

1. We approve and grant antitrust immunity to those portions of the agreement contained in Docket OST-98-4339, as set forth in finding paragraph one above, subject, where applicable, to conditions previously imposed;

2. We disapprove that portion of the agreement in Docket OST-98-4339, as set forth in finding paragraph two above; and

3. We defer action on Resolution 017h (R-6) contained in the agreement in Docket OST-98-4339 and on Resolution 017I contained in the agreement in Docket OST-98-4870.

By:

A. BRADLEY MIMS
 Acting Assistant Secretary for Aviation
 and International Affairs

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