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Order 99-11-13

11:15 a.m.



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

SERVED NOV 24 1999

Action on IATA Agreement
Issued by the Department of Transportation
on the 22nd day of November, 1999

Agreements adopted by the Tariff	: Docket OST-99-5963 - 3
Coordinating Conferences of the	: R-1 through R-29
International Air Transport Association	: Docket OST-99-6027 - 2
relating to transatlantic passenger fares:	: R-1 through R-24
-----	: Docket OST-99-6423 - 2

ORDER

Various members of the International Air Transport Association (IATA) have filed three 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 at the PTC12 Passenger Tariff Coordinating Conference held in Geneva, during June 7-12, 1999, or by mail vote.1/

The agreements are comprised of resolutions affecting travel between the United States and Austria/Belgium/Germany/Netherlands/Scandinavia/Switzerland (the "alliance" countries) in Dockets OST-99-6027 and OST-99-6423, and similar resolutions between the United States and the rest of Europe in Docket OST-99-5963.2/ Both agreements are discussed separately below.

Alliance Countries:

Fare structure: The agreements commonrate fares to/from Munich and other German points with Frankfurt; realign normal first, intermediate [business] and normal economy class fares from Amsterdam, Brussels, Frankfurt and Paris by establishing new round trip levels at twice the current one way levels plus an eight percent increase, with the new one way levels set at 60 percent of the new round trip levels; and simplify

1/ IATA memorandum PTC12 USA-EUR 0079, Docket OST-99-5963; IATA memorandum PTC12 USA-EUR 0080 (Mail Vote 020), Docket OST-99-6027; and IATA memorandum PTC12 USA-EUR 0089 (Mail Vote 042).

2/ In Orders 96-5-27, May 21 1996; 96-6-33, June 17, 1996; and 96-11-1, November 1, 1996, the Department granted antitrust immunity to certain carrier alliances, subject to the condition that each alliance carrier is precluded from participating in IATA tariff coordination for markets covered by the antitrust immunity. The two instant agreements for U.S. -Europe reflect the exclusion of alliance carriers from IATA tariff coordination in markets covered by the immunity.

military fares by replacing the current midweek/weekend levels with all week levels based upon the old weekend levels.

Conditions of Travel: The agreements adjust seasonal definitions, to reflect next year's calendar; and amend conditions and/or charges relating to the use of promotional fares, most notably minimum/maximum stay restrictions, ticketing requirements, and stopover charges, to reflect market conditions and carrier needs.

Fare Levels: The agreements increase normal fares to Belgium and the Netherlands by five percent and those to Austria, Germany, Scandinavia and Switzerland by eight percent; and increase eastbound excursion fares by amounts necessary to maintain a \$350 differential over the peak weekend level of the next lower fare type. Most other eastbound discount fares remain unchanged, except for a \$20 increase to weekend peak season levels. Normal fares to the United States generally increase between five and eight percent with numerous adjustments made to fares in individual city-pair markets in order to maintain differentials, while westbound discount fares increase by three percent. Finally, the agreements increase the level of children's fare from 67 percent to 75 percent of the applicable adult fare.

Non-Alliance Countries:

Fare structure: The agreement deletes Chicago-Belgrade fares, Washington-Paris Concorde fares and fares for all points in Portugal, except Lisbon. In addition, it introduces fares from Athens and Milan to Atlanta; realigns normal first and intermediate [business] class fares from the Czech Republic, France (also includes normal economy), Italy, Slovakia, and Ireland (first class only) generally by setting new round trip levels at twice the current one way levels plus the agreed percentage increase, which ranges between five and ten percent, for the country in question, with the new one way levels established at 60 percent of the new round trip levels; simplifies military fares by replacing the current midweek/weekend levels with all week levels based upon the old weekend levels; and amends the number of seasons applicable to discount (special) fare travel from Poland from three to four and from Finland from four to three.

Conditions of Travel: The agreement adjusts seasonal definitions to reflect next year's calendar; and amends conditions and/or charges relating to the use of promotional fares, most notably minimum/maximum stay restrictions, ticketing requirements, minimum tour prices, stopover charges, fees for rebooking and rerouting, transfers and cancellation penalties, to reflect market conditions and carrier needs.

Fare Levels: Depending upon the fare type and country involved, the agreement increases most eastbound normal fares by amounts ranging between two and ten percent; increases eastbound excursion fares by amounts necessary to maintain \$200-350 differentials over the peak

weekend level of the next lower fare type; increases weekend peak and shoulder season levels of other discount fare types by \$10 one way and \$20 round trip, except for Ireland where all peak and shoulder season fares increase by \$20; and makes other minor adjustments to maintain differentials between certain markets and between other fare types. It increases most westbound normal fares by amounts ranging between two and twelve percent; and maintains most westbound discount fares at existing levels except those from France, Greece and Hungary which increase eight, ten and twelve percent, respectively, (with the Hungarian increases delayed until April 1, 2000), and peak and shoulder season fares from Ireland which increase by 15 Irish pounds. Finally, the agreement increases the level of children's fare from 67 percent to 75 percent of the applicable adult fare.

Disposition:

We have decided to approve the agreements, subject to conditions. Based on our review of the information submitted and other relevant material, we conclude that the agreements, as conditioned, will not result in fares that are unlawful or injurious to competition in the markets at issue.

In particular, our approval of the proposed premium and promotional fares is consistent with Department policy as stated in Order 85-3-8, March 4, 1985. We allow carriers wide latitude in establishing these types of fares, which are generally sensitive to market demand and other competitive pressures that obviate the need for regulatory intervention in most cases.

Several resolutions containing changes to normal fares for U.S. points have been submitted to us for approval where there are no direct services in any of the affected U.S. markets. For these markets, we will not impose our standard conditions holding the proposed normal economy fares to regulatory ceilings based the Standard Foreign Fare Level (SFFL).^{4/}

We do, however, continue our regulatory supervision over direct-service normal economy fares.^{5/} The agreements propose to maintain or increase normal economy fares that are above the Department's regulatory ceilings as established by the SFFL plus upward fare

^{3/} The conference was unable to finalize eastbound basic season fare levels. Accordingly, these have been deleted from the agreement, pending further conference action.

^{4/} See, for example, Orders 89-4-42, April 18, 1989; and 88-4-5, April 1, 1988.

^{5/} We exercise regulatory control over point-to-point economy fares, generally defined as "unbundled" or "restricted" fares and, in markets where they are unavailable, the "unrestricted" economy fares.

flexibility.⁶ The carriers have not furnished any economic justification in support of these fare levels. Under these circumstances, we will condition our approval of the agreement to require that direct-service economy fares shall be no higher than the Department's applicable regulatory ceilings, and that each carrier, when filing tariffs implementing the agreement, provide a comparison of its proposed direct-service normal economy fares against the Department's SFFL ceiling levels.

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

1. We do not find that the following resolutions, which are incorporated in the agreements in Dockets OST-99-5963, OST-99-6027 and OST-99-6423 as indicated and which have direct application in foreign air transportation as defined by the Code, are adverse to the public interest or in violation of the Code, provided that approval is subject, wherever applicable, to previously imposed conditions; and provided further that a) normal economy fares for U.S.-Europe direct service markets filed by each IATA carrier in tariffs with the Department or otherwise implemented pursuant to these resolutions shall not exceed the regulatory ceilings at the time of filing; and b) each IATA carrier submits, at the time of any required filing and for comparative purposes, its SFFL base fares, proposed direct-service normal economy fares, and the percentages by which its proposed direct-service normal economy fares differ from the SFFL base levels for each market for which it files revised direct-service normal economy fares:

<u>Docket</u>	<u>IATA</u>	<u>Title</u>	<u>Application</u>
<u>OST-99-5963</u>	<u>No</u>		
R-1	001a	Special Applicability Resolution between USA and Europe (Except Austria, Belgium, Germany, Netherlands, Scandinavia, Switzerland)	1/2
R-2	002	TC12 North Atlantic Revalidating/ Amending Resolution between USA and Europe (Except Austria, Belgium, Germany, Netherlands, Scandinavia, Switzerland)	1/2
R-3	006ss	TC12 North Atlantic Conditions of Service between USA and Europe (As per Resolution 002 above)	1/2
R-4	015n	TC12 North Atlantic USA Add-on Amounts between USA and Europe	1/2

⁶/ For example, the agreement in Docket OST-99-5963 would increase the New York-Madrid economy fare to \$975, whereas the current regulatory ceiling is \$611.

<u>Docket</u>	<u>IATA</u>	<u>Title</u>	<u>Application</u>	
<u>OST-99-5963</u>	<u>No</u>			
R-5	015v	TC12 North Atlantic Add-on Amounts (Except in USA) between USA and Europe	1/2	
R-6	044ss	TC12 North Atlantic Intermediate Class Fares between USA and Europe	1/2	
R-7	054s	TC12 North Atlantic Concorde Fares between USA and Europe (As per Resolution 002 above)	1/2	
R-8	054ss	TC12 North Atlantic First Class Fares between USA and Europe	1/2	
R-9	064ss	TC12 North Atlantic Economy Class Fares between USA and Europe	1/2	
R-10	090ss	TC12 North Atlantic Military Fares between USA and Europe	1/2	
R-11	210ss	TC12 North Atlantic Charge for PTA Services between USA and Europe (As per Resolution 002 above)	1/2	
R-12	072xx	TC12 North Atlantic Excursion Fares from USA to Europe	1/2	
R-13	073qq	TC12 North Atlantic APEX Fares from USA to Europe	1/2	
R-14	075LL	TC12 North Atlantic Super APEX Fares from USA to Europe	1/2	
R-15	075kk	TC12 North Atlantic Super APEX Fares from USA to Europe	1/2	
R-16	078jj	TC12 North Atlantic PEX Fares from USA to Czech Republic, Hungary, Iceland, Ireland, Slovakia	1/2	
R-17	081hh	TC12 North Atlantic IIT Fares from USA to Hungary, Morocco, Portugal, Spain	1/2	0
R-18	088gg	TC12 North Atlantic Incentive Group Fares from USA to France, Hungary, Morocco, Portugal, Spain	1/2	0
R-19	092zz	TC12 North Atlantic Youth Fares from USA to Europe	1/2	

<u>Docket</u>	<u>IATA</u>	<u>Title</u>	<u>Application</u>
<u>OST-99-5963</u>	<u>No</u>		
R-20	072ss	TC12 North Atlantic Excursion Fares from Europe to USA	1/2
R-21	075ss	TC12 North Atlantic APEX Fares from Europe to USA	1/2
R-22	077ss	TC12 North Atlantic Super APEX Fares from Europe to USA	1/2
R-23	077zz	TC12 North Atlantic Super APEX Fares from UK to USA	1/2
R-24	078fd	TC12 North Atlantic PEX Fares from Czech Republic, Slovakia to USA	1/2
R-25	078ss	TC12 North Atlantic PEX Fares from Europe to USA	1/2
R-26	078zz	TC12 North Atlantic Super PEX Fares from Italy, Portugal, Spain, Turkey to USA	1/2
R-27	081ss	TC12 North Atlantic IIT Fares from Europe to USA	1/2
R-28	088ss	TC12 North Atlantic Incentive Group Fares from Portugal, Spain, to USA	1/2
R-29	092ss	TC12 North Atlantic Youth Fares from Europe to USA	1/2
<u>Docket</u>	<u>IATA</u>		
<u>OST-99-6027</u>	<u>N o</u>	<u>Title</u>	<u>Application</u>
R-1	001a	TC12 North Atlantic Special Applicability Resolution between USA and Austria, Belgium, Germany, Netherlands, Scandinavia, Switzerland	1/2
R-2	002	TC12 North Atlantic Revalidation/ Amending Resolution between USA and Austria, Belgium, Germany, Netherlands, Scandinavia, Switzerland	1/2
R-3	006ss	TC12 North Atlantic Conditions of Service between USA and Europe (As per Resolution 002 above)	1/2
R-4	015n	TC12 North Atlantic USA Add-on Amounts between USA and Europe	1/2
R-5	015v	TC12 North Atlantic Add-on Amounts (Except in USA) between USA and Europe	1/2

<u>Docket</u> <u>OST-99-6027</u>	<u>IATA</u> <u>No</u>	<u>Title</u>	<u>Application</u>
R-6	044vv	TC12 North Atlantic Intermediate Class Fares between USA and Austria, Belgium, Germany, Netherlands, Scandinavia, Switzerland	1/2
R-7	054vv	TC12 North Atlantic First Class Fares between USA and Austria, Belgium, Germany, Netherlands, Scandinavia, Switzerland	1/2
R-8	064vv	TC12 North Atlantic Economy Class Fares between USA and Austria, Belgium, Germany, Netherlands, Scandinavia, Switzerland	1/2
R-9	090nn	TC12 North Atlantic Military Fares between USA and Belgium, Germany, Netherlands	1/2
R-10	210ss	TC12 North Atlantic Charge for PTA Services between USA and Europe (As per Resolution 002 above)	1/2
R-11	072cc	TC12 North Atlantic Excursion Fares from USA to Austria, Belgium, Germany, Netherlands, Scandinavia, Switzerland	1/2
R-12	073a	TC12 North Atlantic Apex Fares from USA to Austria, Belgium, Germany, Netherlands, Switzerland	1/2
R-13	073dd	TC12 North Atlantic Apex Fares from USA to Scandinavia	1/2
R-14	075bb	TC12 North Atlantic Super Apex Fares from USA to Austria, Belgium, Germany, Netherlands, Switzerland	1/2
R-15	077oo	TC12 North Atlantic Super APEX Fares from USA to Austria, Belgium, Germany, Netherlands, Scandinavia, Switzerland	1/2
R-16	088dd	TC12 North Atlantic Incentive Group Fares from USA to Austria, Switzerland	1/2
R-17	092x	TC12 North Atlantic Youth Fares from USA to Austria, Belgium, Germany, Netherlands, Scandinavia, Switzerland	1/2

<u>Docket</u>	<u>IATA</u>	<u>Title</u>	<u>Application</u>
<u>OST-99-6027</u>	<u>N o</u>		
R-18	071ss	TC12 North Atlantic Excursion Fares from Austria, Belgium, Germany, Scandinavia, Switzerland to USA	1/2
R-19	075ee	TC12 North Atlantic APEX Fares from Austria, Belgium, Scandinavia to USA	1/2
R-20	077yy	TC12 North Atlantic Super APEX Fares from Scandinavia to USA	1/2
R-21	078pp	TC12 North Atlantic PEX Fares from Austria, Belgium, Germany, Netherlands, Switzerland to USA	1/2
R-22	078uu	TC12 North Atlantic Super PEX Fares from Austria, Netherlands, Switzerland to USA	1/2
R-23	078ww	TC12 North Atlantic Super PEX Fares from Germany to USA	1/2
R-24	092aa	TC12 North Atlantic Youth Fares from Belgium, Scandinavia to USA	1/2

<u>Docket</u>	<u>Title</u>
<u>OST-99-6423</u>	<u>PTC12 (Mail Vote 042) 010L</u>

2. These agreements are 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, 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 the Code. Consequently, we will grant antitrust immunity to the agreements in Dockets OST-99-5963, OST-99-6027 and OST-99-6423 as set forth in finding paragraph 1 above, subject, wherever applicable, to conditions previously imposed or imposed therein.

ACCORDINGLY,

We approve and grant antitrust immunity to the agreements contained in Dockets OST-99-5963, OST-99-6027 and OST-99-6423 as set forth in finding paragraph one above, subject, where applicable, to conditions previously imposed or imposed therein.

By:

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

(SEAL)

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