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Order 99-10-8

Served: October 15, 1999

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



Issued by the Department of Transportation
on the

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Agreement Adopted by the Tariff :
Coordinating Conferences of the : Docket OST-99-5849
International Air Transport Association : R-1 through R-32
relating to TC31 Fares :
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ORDER

Various members of the International Air Transport Association (IATA) have filed agreements with the Department under section 41309 of Title 49 of the United States Code (Code) and Part 303 of the Department's regulations. The agreement was adopted at the TC31 Passenger Tariff Coordinating Conference held in Los Angeles May 11-14, 1999, for effectiveness October 1, 1999. 1/

The agreement is comprised of resolutions between the South West Pacific region of Area 3, and two sub-areas in Area 1, North America/Caribbean and South America. The agreement makes several minor structural changes and generally increases the level of fares.

Structural Changes: New six month, fourteen-day advance purchase fares are introduced from North America, with advance purchase deadlines on existing fares adjusted accordingly. Shoulder season excursion fares are introduced from Chile to meet market demands. Children's fares from South West Pacific are increased to 75% of the applicable adult fare to match similar fares to South West Pacific.

Fare Levels: For South America, first and business class fares from South America are increased up to four percent, depending on routing; economy fares are unchanged. Normal and excursion fares in both directions are unchanged, except excursion fares from Chile to French Polynesia, which are increased to existing market levels. First and business class fares were also increased up to four percent from Australia.

For North America, normal fares from North America are increased three to five percent; normal fares from the French Territories to North America are increased two to five percent; and first and business class fares from Australia to North America are increased up 1/ IATA memorandum PTC31 S/CIRC 0068, filed with the Department June 16, 1999, with technical correction filed June 28, 1999.

to ten percent. Excursion fares from North America are increased up to \$50, with similar increases from Australia only. Fares to and from Bermuda and Mexico City are set at fixed differentials over Los Angeles. Add-on amounts to or from the U.S. are increased five percent, except to/from points in Zone 23. Canadian add-ons in Zone 311 are increased four percent, and selected Australian add-ons are also increased.

We will approve the agreement. Based on our review of the information submitted and other relevant material, we conclude that the agreement will not result in fares that are unlawful or injurious to competition in the markets at issue. 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 pricing these types of fares, which are generally sensitive to market demand and other competitive pressures that obviate the need for regulatory intervention in most circumstances.

Several resolutions containing changes to normal fares and conditions for U.S. points have been submitted to us for approval where there is no direct service 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 our regulatory ceilings based on the Standard Foreign Fare Level (SFFL). 2/

We do, however, continue our regulatory supervision over direct-service normal economy fares. 3/ The agreement proposes to increase economy fares that are above the Department's regulatory ceilings as established by the SFFL plus upward fare flexibility. 4/ The carriers have not furnished any economic justification in support of these proposed fare levels. Under these circumstances, we will condition our approval of the agreement to require that direct-service normal 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:

2/ See, for example, Orders 89-4-42, April 18, 1989, and 88-4-5, April 1, 1988.

3/ We generally 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.

4/ For example, the agreement would increase the Los Angeles-Papeete economy fare to \$1,504 one-way, whereas the current regulatory ceiling is \$1,084.

1. We do not find that the resolutions set forth in Attachment A to this order, 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 (a) normal economy fares for U.S.-TC3 direct-service markets filed by each IATA carrier in tariffs filed with the Department 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 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;

2. We do not find that the resolutions set forth in Attachment B to this order, and which have indirect application in foreign air transportation as defined by the Code, are adverse to the public interest or in violation of the Code; and

3. This agreement is a product of the IATA tariff conference machinery, which the Department found to be anticompetitive but nevertheless accepted 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, such conferral is mandatory under 49 U.S.C. 41308.

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 the agreement in Docket OST-98-4408, as separately set forth in finding paragraphs 1 and 2 above, subject to the conditions imposed therein.

ACCORDINGLY,

We approve and grant antitrust immunity to the agreement contained in **Docket OST-99-5849**, as set forth in finding paragraphs 1 and 2 above, subject to the conditions imposed therein.

By:

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

(SEAL)

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Resolutions With Direct Application In
Foreign Air Transportation, Docket OST-99-5849
TC31 South Pacific

<u>Reso.</u>	<u>Description</u>	<u>No.</u>
001mm	Special Enabling Facility (Revalidating)	R-1
002	Revalidating/Amending Resolution Areawide (New)	R-2
002	Revalidating/Amending Resolution Between South West Pacific And North America, Caribbean (New)	R-4
015s	Add-on Amounts (In USA/US Territories) (Amending)	R-5
046d	Intermediate Class Fares Via PA/PN (Revalidating and Amending)	R-6
056d	First Class Fares Via PA/PN (Revalidating and Amending)	R-7
066d	Economy Class Fares Via PA/PN (Revalidating and Amending)	R-8
070nn	Excursion Fares Between French Polynesia, New Caledonia And North America, Caribbean Via PA (Revalidating and Amending)	R-9
070vv	Excursion Fares From Cook Islands, New Zealand To North America, Caribbean Via PA (Revalidating and Amending)	R-10
071w	Excursion Fares From North America, Caribbean To South West Pacific Via PA (Revalidating and Amending)	R-11
071xx	Excursion Fares From Australia, Fiji To North America, Caribbean Via PA (Revalidating and Amending)	R-12
073k	Advance Purchase Excursion Fares From North America, Caribbean To South West Pacific Via PA (Revalidating and Amending)	R-13
073mm	One Way Advance Purchase Excursion Fares From South West Pacific To North America, Caribbean Via PA (Revalidating and Amending)	R-14

Resolutions With Direct Application In
Foreign Air Transportation, Docket OST-99-5849
TC31 South Pacific

<u>Reso.</u>	<u>Description</u>	<u>No.</u>
073oo	APEX Fares From North America, Caribbean To South West Pacific Via PA (New)	R-15
073pp	APEX Fares Between French Polynesia, New Caledonia And North America, Caribbean Via PA (Revalidating and Amending)	R-16
073ww	One Way Advance Purchase Excursion Fares From North America, Caribbean To South West Pacific Via PA (Revalidating and Amending)	R-17
073xx	Super Advance Purchase Excursion Fares From North America, Caribbean To South West Pacific Via PA (Revalidating and Amending)	R-18
075c	APEX Fares From Australia To North America, Caribbean Via PA (Revalidating and Amending)	R-19
075yy	Super APEX Fares From Australia To North America, Caribbean Via PA (Revalidating and Amending)	R-20
077ff	Intermediate Class APEX Fares From USA To Cook Islands, Fiji, French Polynesia Via PA (Revalidating and Amending)	R-21
078ca	PEX Fares From Cook Islands, New Zealand To North America, Caribbean Via PA (Revalidating and Amending)	R-22
153k	Air-Sea Fares Between French Polynesia And USA Via PA (Revalidating and Amending)	R-23

Resolutions With Indirect Application In
Foreign Air Transportation, Docket OST-99-5849
TC31 South Pacific

<u>Reso.</u>	<u>Description</u>	<u>No.</u>
015v	Add-on Amounts (Except IN USA/US Territories) (Amending)	R-3
311s	Excess Baggage Charges (Revalidating and Amending)	R-24
002	Revalidating/Amending Resolution Between South West Pacific And Central America, South America (New)	R-25
046d	Intermediate Class Fares Via PA/PN (Revalidating and Amending)	R-26
056d	First Class Fares Via PA/PN (Revalidating and Amend- ing)	R-27
066d	Economy Class Fares Via PA/PN (Revalidating and Amending)	R-28
070yy	Excursion Fares Between South West Pacific And Cen- tral, South America Via PA/PN (Revalidating and Amending)	R-29
074m	PEX Fares From South America To Australia, New Zea- land Via PA/PN (Revalidating and Amending)	R-30
078mm	PEX Fares From Australia, New Zealand To Central America, South America Via PA/PN (Revalidating and Amending)	R-31
090g	Emigrant Fares From South America To South West Pacific Via PA/PN (Revalidating and Amending)	R-32