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Order 2000-2-22

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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 16th day of February, 2000

Agreement adopted by the Tariff Coordinating Conferences of the International Air Transport Association relating to passenger fares	Docket OST-2000-6839 -2

Served: February 18, 2000

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 is proposed to become effective on April 1, 2000.1/

The agreement concerns proportional fares, established under the provisions of Resolution 015h, which are used to construct through fares between interior U.S. points and the United Kingdom. As part of an automated biannual review process under that resolution, the agreement revises add-on fare levels for approximately 360 U.S. cities to be used in constructions over a total of 22 U.S. gateways to reflect changes in U.S domestic fares.2/ While the specific gateway for each interior point is named in the agreement, through fares constructed using the revised add-on fares are available for travel via any gateway. A carrier may also amend the add-on amounts at any time. The proposed add-on fares reflect current U.S. domestic fares between each U.S. interior point and the named U.S. gateway.

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

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1/ IATA memorandum PTC12 USA-EUR Fares 0043, filed with the Department on January 29, 2000.
2/ Order 92-2-17, February 11, 1992, requires that agreements containing new add-on fare levels established under this automatic review process be filed with and approved by the Department before coming into effect.

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 other competitive U.S. gateway point, for the comparable fare class.3/

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.4/

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.5/ These conditions apply equally and by reference to the present proposal.6/

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-2000-6839 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:

3/ See, for example, Orders 92-9-41, September 21, 1992; and 93-3-12, March 9, 1993.
4/ 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.
5/ 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.
6/ 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.

Docket	IATA Reso	Title	Application
OST-2000-6839	015h	PTC12 North Atlantic, USA-UK, USA Add-on Amounts (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, 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-2000-6839 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-2000-6839, 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 385.30, 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

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