

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

Order 96-12-13  
Served 12/19/96

Action on IATA Agreement  
Issued by the Department of Transportation  
on the 13th day of December, 1996

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Agreement adopted by the Tariff :  
Coordinating Conferences of the : Docket OST-96-1628  
International Air Transport Association : R-1 through R-22  
relating to transatlantic passenger fares :  
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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 (the Code), and Part 303 of the Department's regulations. The agreement was adopted by mail vote and is proposed for effectiveness on April 1, 1997. <sup>1/</sup>

**The agreement:**

The agreement proposes a new fare structure applicable for travel in U.S.-European "alliance" (Austria, Belgium, Germany, the Netherlands, Scandinavia and Switzerland) markets through March 31, 1998.<sup>2/</sup> Normal first and intermediate [business] class fares

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<sup>1/</sup> IATA memorandum TC12 MV/P 0372.

<sup>2/</sup> In order to meet the conditions of Orders 96-5-27, May 21 1996, and 96-6-33, June 17, 1996, which in granting antitrust immunity to certain carrier alliances, precluded each alliance carrier from participating in IATA tariff coordination for certain markets covered by the immunity, the IATA TC12 North Atlantic Traffic Conference meeting did not address fares between the United States and Austria, Belgium, Germany, the Netherlands and Switzerland. In addition, SAS had requested that discussions affecting Scandinavia be removed from that meeting's agenda since it had submitted an alliance agreement to the Department for approval and immunization. That alliance was ultimately approved and immunized by the Department on November 1, 1996 by Order 96-11-1. Accordingly, SAS and the other IATA carriers who belong to immunized marketing alliances are not bound by the resolutions in this IATA agreement.

**from the United States to European alliance countries** increase between three and seven percent, with most increases in the area of seven percent. Eastbound normal economy fares increase three percent, except for those to Germany which remain unchanged. Promotional fares for midweek travel increase \$40 for the peak season, \$30 for the shoulder season and \$20 for the basic season with levels for weekend travel established at existing differentials over the new midweek levels.

Normal fares **from European alliance countries to the United States** increase five percent. Westbound promotional fares for midweek travel increase seven percent for the peak season and five percent for the shoulder and basic seasons with levels for weekend travel established at existing differentials over the new midweek levels.

Finally, the agreement amends conditions governing the use of promotional fares, most notably minimum/maximum stay requirements and seasonal definitions, to reflect market conditions and carrier needs.

**Disposition:**

We have decided to approve the agreement, 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.

We do, however, continue our regulatory supervision over direct-service normal economy fares.<sup>3/</sup> The agreement proposes to maintain or increase normal economy fares over the Department's regulatory ceilings as established by the Standard Foreign Fare Level (SFFL) plus upward fare flexibility. The carriers have not furnished any economic justification in support of these fare levels. Under these circumstances, we will condition our approval

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<sup>3/</sup> 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.

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 agreement in Docket OST-96-1628 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 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:

<u>Docket</u>	<u>IATA</u>	<u>Title</u>	
<u>OST-96-1628</u>	<u>No.</u>		
<u>Application</u>			
R-1	005k	TC12 North Atlantic Special	1/2
		Implementation Provisions between USA and Austria, Belgium, Germany, Netherlands, Scandinavia, Switzerland	
R-2	001a	TC12 North Atlantic Special	1/2
		Applicability Resolution between USA and Austria, Belgium, Germany, Netherlands, Scandinavia, Switzerland	
R-3	002i	TC12 North Atlantic Special Amending Resolution between USA and Austria, Belgium, Germany, Netherlands, Scandinavia, Switzerland	1/2
R-4	044wv	TC12 North Atlantic Intermediate	1/2

Class Fares between USA and Austria,  
Belgium, Germany, Netherlands,  
Scandinavia, Switzerland

R-5	054vv	TC12 North	Atlantic Concorde Fares between USA and Austria, Belgium, Germany, Netherlands, Scandinavia, Switzerland	1/2
R-6	064vv	TC12 North	Atlantic Economy Class Fares between USA and Austria, Belgium, Germany, Netherlands, Scandinavia, Switzerland	1/2
R-7	071ss	TC12 North	Atlantic Excursion Fares from Austria, Belgium, Germany, Netherlands, Scandinavia, Switzerland to USA	1/2
R-8	072cc	TC12 North	Atlantic Excursion Fares from USA to Austria, Belgium, Germany, Netherlands, Scandinavia, Switzerland	1/2

Docket	IATA			
<u>OST-96-1628</u>	<u>No</u>	<u>Title</u>		
<u>Application</u>				
R-9	072zz	TC12 North	Atlantic One Way Excursion Fares from Netherlands to USA	1/2
R-10	073dd	TC12 North	Atlantic APEX Fares from from USA to Scandinavia	1/2
R-11	075bb	TC12 North	Atlantic Special APEX Fares Excursion Fares from USA to Austria, Belgium, Germany, Netherlands, Switzerland	1/2
R-12	075ee	TC12 North	Atlantic APEX Fares from Purchase Excursion Fares from Austria, Belgium, Scandinavia to USA	1/2
R-13	075oo	TC12 North	Atlantic Special APEX Fares Purchase Excursion Fares from USA to Austria, Belgium, Germany, Netherlands, Scandinavia, Switzerland	1/2
R-14	077yy	TC12 North	Atlantic Special APEX Fares from Scandinavia to USA	1/2
R-15	078ii	TC12 North	Atlantic PEX Fares from	1/2

USA to Austria, Belgium, Germany,  
Netherlands, Switzerland

R-16	078pp	TC12 North	Atlantic PEX Fares from Austria, Belgium, Germany, Netherlands, Switzerland to USA	1/2
R-17	078uu	TC12 North	Atlantic Super PEX Fares from Austria, Netherlands, Switzerland to USA	1/2
R-18	078ww	TC12 North	Atlantic Super PEX Fares from Germany to USA	1/2
R-19	088dd	TC12 North	Atlantic Incentive Group Fares from USA to Austria, Switzerland	1/2
R-20	090nn	TC12 North	Atlantic Military Fares between USA and Belgium, Germany, Netherlands	1/2
R-21	092aa	TC12 North	Atlantic Youth Fares from Belgium, Scandinavia to USA	1/2

Docket	IATA			
<u>OST-96-1628</u>	<u>No</u>	<u>Title</u>		
<u>Application</u>				
R-22	092x	TC12 North	Atlantic Youth Fares from USA to Austria, Belgium, Germany, Netherlands, Scandinavia, Switzerland	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 a 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 agreement in Docket OST-96-1628 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 agreement contained in Docket OST-96-1628, as set forth in finding paragraph one above, subject, where applicable, to conditions previously imposed or imposed therein.

**By:**

CHARLES A. HUNNICUTT  
Assistant Secretary for Aviation  
and International Affairs

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