

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

Order 96-12-17
Served 12/19/96

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

Agreements adopted by the Tariff :
Coordinating Conferences of the : Docket OST-96-1631
International Air Transport Association : R-1 through R-31
relating to transatlantic passenger fares : Docket OST-96-1877

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 at either a TC12 North Atlantic Passenger Tariff Coordination Conference held in Montreal during June 24-28, 1996, or at a TC12/TC123 Resolution 015n meeting held in Geneva during October 7-9, 1996. The agreements are proposed for effectiveness on April 1, 1997, and January 1, 1997, respectively. ^{1/}

The agreements:

The agreement in Docket OST-96-1631 proposes a new U.S.-Europe fare structure applicable through March 31, 1998, except for certain "alliance" markets.^{2/} Normal first and intermediate (business)

^{1/} IATA memorandum TC12 Reso/P 1764, Docket OST-96-1631; and IATA memorandum PTC12 COMP Fares 0028, Docket OST-96-1877.

^{2/} 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 (Denmark, Norway and Sweden) be removed from this meeting's agenda since it had submitted an alliance agreement to the Department for approval and immunization. That

class fares **from the United States to Europe** increase between one and seven percent, with most increases in the area of three percent, while most normal economy fares remain unchanged due to Standard Foreign Fare Level (SFFL) constraints. Most 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. ^{3/}

In general, normal and promotional fares **from Europe to the United States** increase two to ten percent, depending upon market and fare type, with Hungary and Poland generally taking greater increases of eight to ten percent. Normal economy fares, however, remain at existing levels in many markets, due to SFFL constraints, as do promotional fares from Albania, France, Italy, Poland, Romania and Turkey.

The agreement in Docket OST-96-1631 also proposes a variety of structural changes, including the introduction of fares for travel between Belgrade and Chicago, Philadelphia and points in Italy, and San Diego and London, as well as fares (except for inclusive tours) for travel from Tunis to New York; and the deletion of all fares for travel from Prague and Bratislava to Chicago. In addition, it cancels existing U.S.-Ireland unrestricted normal economy fares; converts existing U.S.-Ireland restricted fares into unrestricted fares, resulting in 25-35 percent fare decreases for such travel; and specifies new normal fares between Chicago and points in Ireland. Finally, the agreement revises a number of conditions governing the use of promotional fares, most notably minimum/maximum stay requirements and seasonal definitions, to reflect market conditions and carrier needs.

The agreement in Docket OST-96-1877 revises the proportional fares used to construct through fares between various interior U.S. cities and points in Europe (except to/from the U.K.), the Middle East, Africa and Asia via transatlantic routings in order to reflect changes in U.S. domestic fare levels that have occurred since the last Resolution 015n meeting was held in January 1995.

alliance was ultimately approved and immunized by the Department on November 1, 1996 by Order 96-11-1. Consequently, the agreement also does not affect U.S.- Scandinavia travel.

^{3/} Exceptions include peak and shoulder promotional fares to Ireland, which increase \$38, with off-peak fares increasing \$28; shoulder and basic season fares to Greece, which increase \$20 and \$10, respectively; and weekend peak and off-peak fares to the U.K., which increase \$50 and \$20, respectively, with all shoulder season fares increasing \$40.

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.

We continue our regulatory supervision over direct-service normal economy fares.^{4/} The agreement proposes to maintain or increase normal economy fares in some direct-service markets at levels that exceed the Department's regulatory ceilings as formed by the Standard Foreign Fare Level (SFFL) plus upward fare flexibility.^{5/} The carriers have not furnished any economic justification in support of the proposed levels. Under these circumstances, we will condition our approval of the agreement to require that such 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, must provide a comparison of its proposed direct-service normal economy fare against the Department's SFFL base 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-96-1631 and OST-96-1877 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 direct-service markets filed by each IATA carrier in tariffs with the Department

^{4/} 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.

^{5/} For example, the agreement re-establishes the New York-Madrid normal economy fare at \$851 one way, whereas the current regulatory ceiling is \$631.

pursuant to these resolutions shall not exceed the applicable regulatory ceilings in effect 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>OST-96-1631</u> <u>Application</u> | <u>IATA</u> <u>No</u> | <u>Title</u> | |
|---|--------------------------|--|-----|
| R-1 | 005m | TC12 North Atlantic Special | 1/2 |
| | | Implementation Provisions between USA and Europe (Except Austria, Belgium, Germany, Netherlands, Scandinavia, Switzerland) | |

| <u>Docket</u> <u>OST-96-1631</u> <u>Application</u> | <u>IATA</u> <u>No</u> | <u>Title</u> | |
|---|--------------------------|---|-----|
| R-2 | 001a | TC12 North Atlantic Special | 1/2 |
| | | Applicability Resolution between USA and Europe (Except Austria, Belgium, Germany, Netherlands, Scandinavia, Switzerland) | |
| R-3 | 002 | TC12 North Atlantic Standard Revalidating/Amending Resolution, USA-Europe (Except Austria, Belgium, Germany, Netherlands, Scandinavia, Switzerland) | 1/2 |
| R-4 | 006ss | TC12 North Atlantic Conditions of Service between USA and Europe (As per Resolution 002 above) | 1/2 |
| R-5 | 012a | TC12 North Atlantic Glossary of Terms USA-Europe | 1/2 |
| R-6 | 015h | TC12 North Atlantic, USA Add-on Amounts between USA and UK | 1/2 |
| R-7 | 015n | TC12 and T C123 North Atlantic, USA Add-on Amounts | 1/2 |

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|------|-------|------------|--|-----|
| R-8 | 015v | TC12 North | Atlantic Add-on Amounts (except in USA) USA-Europe | 1/2 |
| R-9 | 044ss | TC12 North | Atlantic Intermediate Class Fares between USA and Europe (As per Resolution 002 above) | 1/2 |
| R-10 | 054s | TC12 North | Atlantic Concorde Fares between USA and Europe (As per Resolution 002 above) | 1/2 |
| R-11 | 054ss | TC12 North | Atlantic First Class Fares between USA and Europe (As per Resolution 002 above) | 1/2 |
| R-12 | 064ss | TC12 North | Atlantic Economy Class Fares between USA and Europe | 1/2 |
| R-13 | 072ss | TC12 North | Atlantic Excursion Fares from Europe to USA | 1/2 |
| R-14 | 072xx | TC12 North | Atlantic Excursion Fares from USA to Europe | 1/2 |
| R-15 | 073qq | TC12 North | Atlantic Advance Purchase Excursion Fares from USA to Europe | 1/2 |

| Docket | IATA | | | |
|--------------------|-----------|--------------|--|-----|
| <u>OST-96-1631</u> | <u>No</u> | <u>Title</u> | | |
| <u>Application</u> | | | | |
| R-16 | 075LL | TC12 North | Atlantic Special Advance Purchase Excursion Fares from USA to Europe | 1/2 |
| R-17 | 075ss | TC12 North | Atlantic Advance Purchase Excursion Fares from Europe to USA | 1/2 |
| R-18 | 077kk | TC12 North | Atlantic Special Advance Purchase Excursion Fares from USA to Europe | 1/2 |
| R-19 | 077ss | TC12 North | Atlantic Special Advance Purchase Excursion Fares from Europe to USA | 1/2 |
| R-20 | 077zz | TC12 North | Atlantic Special Advance Purchase Excursion Fares from United Kingdom to USA | 1/2 |
| R-21 | 078jj | TC12 North | Atlantic Special Excursion | 1/2 |

(PEX) Fares from USA to Europe

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|------|-------|------------|---|-----|
| R-22 | 078ss | TC12 North | Atlantic Special Excursion (PEX) Fares from Europe to USA | 1/2 |
| R-23 | 078zz | TC12 North | Atlantic Super PEX Fares from Italy, Portugal, Spain, Turkey to USA | 1/2 |
| R-24 | 081hh | TC12 North | Atlantic IIT Fares from USA to Hungary, Morocco, Portugal, Spain | 1/2 |
| R-25 | 081ss | TC12 North | Atlantic IIT Fares from Europe to USA | 1/2 |
| R-26 | 088gg | TC12 North | Atlantic Incentive Group Fares from USA to Europe | 1/2 |
| R-27 | 088ss | TC12 North | Atlantic Incentive Group Fares from Portugal, Spain to USA | 1/2 |
| R-28 | 090ss | TC12 North | Atlantic Military Fares between USA and Europe | 1/2 |
| R-29 | 092ss | TC12 North | Atlantic Youth Fares from Europe to USA | 1/2 |
| R-30 | 092zz | TC12 North | Atlantic Youth Fares from USA to Europe | 1/2 |

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| Docket | IATA | | | |
| <u>OST-96-1631</u> | <u>No</u> | | <u>Title</u> | |
| <u>Application</u> | | | | |
| R-31 | 210ss | TC12 North | Atlantic Charge for PTA Services between USA and Europe (As per Resolution 002 above) | 1/2 |

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| | <u>IATA</u> | | | |
| <u>Docket</u> | <u>Reso</u> | | <u>Title</u> | <u>Application</u> |
| OST-96-1877 | 015n | TC12/TC123 North | Atlantic, USA Add- on Amounts (Amending) | 1/2;1/2/3 |

2. These agreements are products 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 agreements in Dockets OST-96-1632 and OST-96-1877 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-96-1631 and OST-96-1877, 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

(SEAL)