



Order 97-11-15
Served: November 14, 1997

Posted: November 7, 1997 10:30 a.m.

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

Issued by the Department of Transportation
on the 7th day of November, 1997

Agreement adopted by the Tariff :
Coordinating Conferences of the : Docket OST-97-2889
International Air Transport Association :
relating to passenger fares :

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 for effectiveness on October 1, 1997.^{1/}

The agreement aligns IATA agreed fares from India to reflect recent action by the Indian government. IATA had originally proposed a ten percent increase in fares from India to offset fuel price increases.^{2/} However, the Indian government has only approved a five percent increase. In view of this action, the agreement cancels the remaining five percent.

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 agreement, as conditioned below, will not result in fares that are unlawful or injurious to competition in the markets at issue.

^{1/} IATA COMP Telex Mail Vote 889, filed with the Department on September 10, 1997.

^{2/} Order 96-12-32, December 24, 1996, conditionally approved these fuel-related increases for U.S. points.

In particular, our approval of the levels proposed for 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 levels for 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.^{1/} The agreement proposes new levels for normal economy fares in direct-service markets from India to the United States. Our review indicates that at this time these revisions will not cause normal economy fares to be above the Department's regulatory ceilings as formed by the Standard Foreign Fare Level (SFFL) plus upward fare flexibility; thus it is not necessary to impose our standard condition holding these fares to the SFFL ceiling. However, for administrative purposes, we will require 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 base levels.

Pursuant to authority assigned by the Department's Regulations, 14 CFR 385.13:

1. We do not find the following resolution, which is incorporated in the agreement in Docket OST-97-2889 and which has direct application in foreign air transportation as defined by the Code, to be adverse to the public interest or in violation of the Code, provided that approval is subject, where applicable, to previously imposed conditions; and provided further that 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 Resolution</u>
OST-97-2889	PTC3, PTC23, PTC31, PTC123 (Mail Vote 889) 010z

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 section 41308 of the 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-97-2889 as set forth in finding paragraph 1 above, subject, where applicable, to the conditions imposed therein.

^{1/} 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.

ACCORDINGLY,

We approve and grant antitrust immunity to the agreement contained in Docket OST-97-2889, as set forth in finding paragraph one above, subject, where applicable, to the conditions imposed therein.

Persons entitled to petition the Department for review of this order, under 14 CFR 385.50, 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 Policy and International Affairs gives notice that he will review this order on his own motion.

By:

Paul L. Gretch
Director, Office of International Aviation

(SEAL)

*An electronic version of this document is available
on the World Wide Web at
<http://dms.dot.gov/dotinfo/general/orders/>*