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Order 98-12-11

Served Dec 14, 1998



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

Issued by the Department of Transportation
on the 10th day of December, 1998

Agreements adopted by the Tariff :
Coordinating Conferences of the : Docket OST-98-4638
International Air Transport Association : R-1 and R-2
relating to passenger fares : Docket OST-98-4728

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 either at a TC123 Passenger Tariff Coordinating Conference held in Montreal during October 12-14, 1998, or by mail vote.^{1/}

The agreement in Docket OST-98-4638 revises existing fares between points in the Indian Subcontinent and North America (via North Atlantic routings). Changes affecting travel to/from U.S. points include a ten percent rollback to previously agreed fares from Sri Lanka to reflect Sri Lankan disapproval of an IATA-agreed increase; establishment of one-way normal first, intermediate [business] and unrestricted economy fares from Bangladesh at levels equal to those from Calcutta; cancellation of restricted normal economy fares from Bangladesh; and revision of excursion fares from Bangladesh to reflect levels approved by the government of Bangladesh.

The agreement in Docket OST-98-4728 withdraws currency-related increases of ten to fifteen percent in fares from Pakistan that were proposed in Docket OST-98-4638, above, as well as in Dockets OST-98-4649, OST-98-4712 and OST-98-4713. IATA submitted these

^{1/} IATA memorandum PTC123 0049, Docket OST-98-4638; and IATA memorandum PTC123/PTC31 Mail Vote 971, Docket OST-98-4728. The agreements were filed with the Department on October 22, 1998, and November 9, 1998, respectively.

currency-related increases to the Department in a separate agreement in Docket OST-98-4656 which the Department approved on November 16, 1998, in Order 98-11-17.

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

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.^{2/} Although the agreement establishes a new level for the normal economy fare in the direct service Dhaka-New York market, we will not attach our usual condition regarding adherence to Standard Foreign Fare Level criteria since no IATA member carrier provides direct service in that market.

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

1. We do not find the following resolutions, which are incorporated in the agreement in Dockets OST-98-4638 and OST-98-4728 and which have 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:

<u>Docket</u>	<u>IATA</u>	<u>Title</u>	<u>Application</u>
<u>OST-98-4638</u>	<u>No.</u>		
R-1	002gg	TC123 North Atlantic Special Amending Resolution (Expedited)	1/2/3
R-2	067m	TC123 North Atlantic Economy Class Fares (Expedited)	1/2/3

<u>Docket</u>	<u>IATA Resolution</u>
<u>OST-98-4728</u>	<u>PTC31, PTC123 (Mail Vote 971) 010w</u>

^{2/} 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.

2. These agreements are 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 agreements in Dockets OST-98-4638 and OS-98-4728 as set forth in finding paragraph 1 above, subject, where applicable, to the conditions imposed therein.

ACCORDINGLY,

We approve and grant antitrust immunity to the agreements contained in Dockets OST-98-4638 and OST-98-4728, 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 385.30, 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 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)

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