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Order 99-3-23
Served: March 29, 1999

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

Issued by the Department of Transportation
on the 24th day of March, 1999

Agreement adopted by the Tariff :
Coordinating Conferences of the : Docket OST-99-5089
International Air Transport Association : R-1 through R-53
relating to TC3 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 at the TC3 Passenger Tariff Coordination Conference held in Bangkok during November 18-27, 1998, and is proposed for effectiveness on April 1, 1999.^{1/}

The agreement is comprised of resolutions for travel within Area 3 (Asia/Australasia/Pacific Islands) to and from U.S. points, grouped into seven categories: Areawide, within South East Asia, within South West Pacific, between South East Asia and the South Asian Subcontinent, between South East Asia and the South West Pacific, between Japan/Korea and South East Asia, and between Japan/Korea and the South West Pacific.

With the exception of amending the level of spouse fares from Japan so that the accompanying spouse pays 50 percent of the applicable one way normal economy or intermediate class fare, and some other minor changes to standardize wording, **Areawide** resolutions are simply revalidated. Significant changes in the remaining sub-areas are discussed below:

Within South East Asia: For U.S. South East Asia points (Guam and Saipan), the agreement increases first and intermediate [business] class fares from Hong Kong and all normal fares from Malaysia and Thailand to Guam/Saipan by five percent to

^{1/} IATA memoranda PTC3 0269, 0272, 0274, 0276, 0279, 0283, 0287 and 0290, filed with the Department on February 8, 1999.

compensate for increased costs; adjusts fares to/from Macau to equal fares to/from Hong Kong so as to maintain existing relationships; and increases children's fares to 75 percent of the applicable adult fare, except from Indonesia and Russia where the discount remains at 67 percent.

Between South East Asia and the South Asian Subcontinent: The agreement increases all fares from Guam by five percent.

Between South East Asia and the South West Pacific: The agreement increases fares to American Samoa by five percent, except for economy class fares from Hong Kong and all fares from Indonesia which remain at existing levels, with one-way levels generally set at 52.5 percent of the new round-trip levels; and increases children's fares to 75 percent of the applicable adult fare, except from Indonesia.

Between South East Asia and Japan/Korea: The agreement increases first and intermediate class fares to Japan by seven percent with economy class fares remaining at existing levels; increases normal and excursion fares from Korea by ten percent and PEX fares by five percent with group fares unchanged; and increases children's fares from Guam to 75 percent of the applicable adult fare. In addition, it introduces midweek/weekend levels for PEX, IIT and spouse fare travel from Japan with midweek fares set at current levels and weekend fares \$3000 higher; reduces seasonal periods for these three fare types by two and adjusts the dates of those remaining to the 1999-2000 calendar; introduces one day reservation and ticketing deadlines on IIT fares from Japan with an optional three day deadline if required; reduces the maximum stay on PEX fare travel from Korea from one month to 15 days; and establishes charges for excess baggage to/from Korea in line with existing charges for Japan.

Within South West Pacific: For U.S. South West Pacific points (American Samoa), the agreement revalidates existing fares without change, except for children's fares which are increased to 75 percent of the applicable adult fare for travel from Australia, Papua New Guinea and the Solomon Islands.

Between South West Pacific and Japan/Korea: The agreement revalidates existing fares without change, except for children's fares which are increased to 75 percent of the applicable adult fares.

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, 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.

Several resolutions containing changes to normal fares and conditions for U.S. points where there is no direct service in any of the affected U.S. markets have been submitted to us for approval. For these markets we will not impose our standard conditions holding the proposed normal economy fares to regulatory ceilings based on the Standard Foreign Fare Level (SFFL).^{2/}

We continue our regulatory supervision over direct-service normal economy fares.^{3/} The agreement proposes 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.^{4/} 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 fares 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 agreement in Docket OST-99-5089 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 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

2/ See, for example, Orders 89-4-42, April 18, 1989; and 88-4-5, April 1, 1988.

3/ 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.

4/ For example, the agreement re-establishes the restricted Saipan-Tokyo normal economy fare at \$341 one way, whereas the current regulatory ceiling is \$276.

direct-service normal economy fares differ from the SFFL base levels for each market for which it files revised direct-service normal economy fares:

| Docket OST-99-5089 | IATA No | Title | |
|-----------------------|------------|---|---|
| <u>Application</u> | | | |
| R-1 | 001g | TC3 Special Provisions Resolution, between Japan and TC3 (As per Resolution 002 below) | 3 |
| R-2 | 001j | TC3 Special Effectiveness Resolution (to/from US Territories) (As per Resolution 002 below) | 3 |
| R-3 | 001L | TC3 Special Provisions Resolution (except to/from US Territories) (As per Resolution 002 below) | 3 |
| R-4 | 001m | TC3 General Escape Resolution, Areawide (As per Resolution 002 below) | 3 |
| R-5 | 002 | TC3 Revalidating Resolution, Areawide | 3 |
| R-6 | 006r | TC3 Conditions of Service, Areawide (As per Resolution 002 above) | 3 |
| R-7 | 014oo | Construction Rules for TC3 (As per Resolution 002 above) | 3 |
| R-8 | 091w | TC3 Spouse Fares from Japan (As per Resolution 002 above) | 3 |
| R-9 | 115f | TC3 Meeting Competition, Areawide (As per Resolution 002 above) | 3 |
| R-10 | 001b | TC3 Special Effectiveness Resolution (Tie-in), within South East Asia (As per Resolution 002 below) | 3 |
| R-11 | 002 | TC3 Revalidating Resolution within South East Asia | 3 |
| R-12 | 043b | TC3 Intermediate Class Fares within South East Asia | 3 |

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|------------------------------|-------------------|---|---|
| R-13 | 053b | TC3 First Class Fares within South East Asia | 3 |
| R-14 | 063b | TC3 Economy Class Fares within South East Asia | 3 |
| R-15 | 070uu | TC3 Excursion Fares within South East Asia | 3 |
| R-16 | 085ku | TC3 GIT Fares within South East Asia | 3 |
| <u>Docket</u> OST-99-5089 | <u>IATA</u> No | <u>Title</u> | |
| <u>Application</u> | | | |
| R-17 | 087rr | TC3 Non-Affinity Group Fares between Philippines and Guam | 3 |
| R-18 | 001b | TC3 Special Effectiveness Resolution (Tie-in) between Australia and New Zealand (As per Resolution 002 below) | 3 |
| R-19 | 002 | TC3 Revalidating Resolution within South West Pacific | 3 |
| R-20 | 043c | TC3 Intermediate Class Fares within South West Pacific | 3 |
| R-21 | 053c | TC3 First Class Fares within South West Pacific | 3 |
| R-22 | 063c | TC3 Economy Class Fares within South West Pacific | 3 |
| R-23 | 078 | TC3 Promotional Fares within South West Pacific (As per Resolution 002 above) | 3 |
| R-24 | 002 | TC3 Amending Resolution between South East Asia and South Asian Subcontinent | 3 |
| R-25 | 043e | TC3 Intermediate Class Fares between South East Asia and South Asian Subcontinent | 3 |
| R-26 | 053e | TC3 First Class Fares between South East Asia and South Asian Subcontinent | 3 |
| R-27 | 063e | TC3 Economy Class Fares between South East Asia and South Asian | 3 |

| | | Subcontinent | |
|--------------------|-------|---|---|
| Docket | IATA | | |
| OST-99-5089 | No | Title | |
| <u>Application</u> | | | |
| R-28 | 001t | TC3 Special Applicability Resolution between South East Asia and South West Pacific (As per Resolution 002 below) | 3 |
| R-29 | 002 | TC3 Revalidating/Amending Resolution between South East Asia and South West Pacific | 3 |
| R-30 | 043h | TC3 Intermediate Class Fares between South East Asia and South West Pacific | 3 |
| R-31 | 053h | TC3 First Class Fares between South East Asia and South West Pacific | 3 |
| R-32 | 063h | TC3 Economy Class Fares between South East Asia and South West Pacific | 3 |
| R-33 | 001b | TC3 Special Effectiveness Resolution (Tie-in) between Japan, Korea and South East Asia | 3 |
| R-34 | 002 | TC3 Amending Resolution between Japan, Korea and South East Asia | 3 |
| R-35 | 043i | TC3 Intermediate Class Fares between Japan, Korea and South East Asia | 3 |
| R-36 | 053i | TC3 First Class Fares between Japan, Korea and South East Asia | 3 |
| R-37 | 063i | TC3 Economy Class Fares between Japan, Korea and South East Asia | 3 |
| R-38 | 063ii | TC3 Restricted Economy Class Fares from Japan to South East Asia | 3 |
| R-39 | 072a | TC3 Excursion Fares between Korea and Guam, Saipan | 3 |
| R-40 | 072f | TC3 Excursion Fares from Guam, Saipan to Japan | 3 |
| R-41 | 074h | TC3 PEX Fares from Japan to Guam, Saipan | 3 |

| R-42 | 078k | TC3 PEX Fares from Korea to Guam, Saipan | 3 | | | | | | | | | | | | | | | | | | | | |
|---|-------|--|---|--------|------|-------|--|-------------|----|--|--|-------------|--|--------------------------------------|--|---------|---|------------------------|--|--------|--|--|--|
| R-43 | 081ww | TC3 IIT Fares from Japan to Guam, Saipan | 3 | | | | | | | | | | | | | | | | | | | | |
| R-44 | 085t | TC3 GIT Fares from South East Asia to Japan, Korea; from Korea to South East Asia | 3 | | | | | | | | | | | | | | | | | | | | |
| R-45 | 090L | TC3 Kaisuken Fares from Japan to Guam, Saipan | 3 | | | | | | | | | | | | | | | | | | | | |
| R-46 | 091f | TC3 Family Fares from Japan to Guam, Saipan | 3 | | | | | | | | | | | | | | | | | | | | |
| R-47 | 091mm | TC3 Intermediate Class Spouse Fares from Japan to Guam, Saipan | 3 | | | | | | | | | | | | | | | | | | | | |
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| Docket | IATA | Title | | | | | | | | | | | | | | | | | | | | | |
| OST-99-5089 | No | | | | | | | | | | | | | | | | | | | | | | |
| Application | | R-48 311m TC3 Excess Baggage Charges | | | | | | | | | | | | | | | | | | | | | |
| between | 3 | Japan, Korea and Guam, | | | | | | | | | | | | | | | | | | | | | |
| Saipan | | | | | | | | | | | | | | | | | | | | | | | |
| R-49 | 001b | TC3 Special Effectiveness Resolution (Tie-in) between Japan and South West Pacific (Except Australia, New Zealand) | 3 | | | | | | | | | | | | | | | | | | | | |
| R-50 | 001b | TC3 Special Effectiveness Resolution (Tie-in) between Korea and South West Pacific | 3 | | | | | | | | | | | | | | | | | | | | |
| R-51 | 043j | TC3 Intermediate Class Fares between Japan, Korea and South West Pacific | 3 | | | | | | | | | | | | | | | | | | | | |
| R-52 | 053j | TC3 First Class Fares between Japan, Korea and South West Pacific | 3 | | | | | | | | | | | | | | | | | | | | |
| R-53 | 063j | TC3 Economy Class Fares between Japan, Korea and South West Pacific | 3 | | | | | | | | | | | | | | | | | | | | |

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 the Code. Consequently, we will grant antitrust immunity to the agreement in Docket OST-99-5089 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-99-5089, as set forth in finding paragraph one above, subject, where applicable, to conditions previously imposed or imposed therein.

By:

A. Bradley Mims
Acting Assistant Secretary for Aviation
and International Affairs

(SEAL)

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