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Posted: 8/19/99

Order 99-8-18



4:50 p.m.

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

SERVEL AUG 23 1999

Action on IATA Agreement
Issued by the Department of Transportation
on the 19th day of August, 1999

Agreements adopted by the Tariff	:	Docket OST-99-5870-3
Coordinating Conferences of the	:	R-1 through R-14
International Air Transport Association	:	Docket OST-99-5902-2
relating to U.S.-Europe passenger	:	R-1 through R-3
fares and conditions	:	

ORDER

Various members of the International Air Transport Association (IATA) have filed agreements with the Department under section 41309 of Title 49 of the United States Code (Code) and Part 303 of the Department's regulations. The agreements were adopted at the PTC12 Passenger Tariff Coordinating Conference held in Geneva, Switzerland, June 7-12, 1999, and by mail vote, for effectiveness August 1, 1999. 1/

The agreements are comprised of resolutions affecting travel between the United States and Austria/Belgium/Germany/Netherlands/Scandinavia/Switzerland (the "alliance countries") in Docket OST-99-5902, and similar resolutions between the United States and the rest of Europe (the "non-alliance countries") in Docket OST-99-5870. 2/ Significant changes to fare structure, conditions of travel, and fare level are discussed separately below.

1/ IATA memoranda PTC12 USA-EUR 0076 and PTC12 USA-EUR 0077, filed with the Department June 22, 1999 (Docket OST-99-5870), and PTC12 USA-EUR 0078, filed with the Department June 29, 1999 (Docket OST-99-5902). The agreement in Docket OST-99-5902 was actually adopted by mail vote 016, June 28, 1999, as a quorum was not present at the meeting on June 12, 1997.

2/ In Orders 96-5-27, May 21, 1996, 96-6-33, June 17, 1996, and 96-11-1, November 1, 1996, the Department granted antitrust immunity to certain carrier alliances, subject to the condition that each alliance carrier is precluded from participating in IATA tariff coordination for markets covered by the antitrust immunity. The two instant agreements for U.S.-Europe reflect the exclusion of alliance carriers from IATA tariff coordination in markets covered by the immunity.

Fare Structure, Alliance Countries: No fare structure changes were made between the U.S. and the Alliance Countries. **Non-Alliance Countries:** Fares were introduced between Miami and Istanbul at levels matching Chicago-Istanbul, except for normal fares, which were established at New York levels plus applicable add-ons. Special fares from San Francisco to Milan were specified at current levels from Los Angeles.

Conditions of Travel, Alliance and Non-Alliance Countries: The October 30, 1999 expiry date was deleted from selected excursion fares from the Czech Republic, France, Luxembourg, Austria, Belgium, Germany, and the Netherlands to certain secondary interior **U.S.** gateways, and from zonal add-on amounts constructed over such gateways.

Fare Levels, Alliance Countries: Intermediate class fares to Belgium and the Netherlands are increased to equal new levels to Luxembourg, an increase of about three percent; and intermediate class fares to Austria, Germany, Scandinavia, and Switzerland are increased to new levels to Milan, with increases ranging from three to ten percent.

Fare Levels, Non-Alliance Countries: Intermediate class fares were increased between one and ten percent eastbound and one and five percent westbound, with isolated westbound increases up to twenty-three percent. Selected excursion fares from New York were increased up to nine percent.

We will 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.

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 pricing these types of fares, which are generally sensitive to market demand and other competitive pressures that obviate the need for regulatory intervention in most circumstances.

Several resolutions containing changes to normal fares and conditions for U.S. points have been submitted to us for approval where there is no direct service in any of the affected U.S. markets. 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). 3/

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

We do, however, continue our regulatory supervision over direct-service normal economy fares. 4/ The agreement in Docket OST-99-5870 proposes to establish economy fares between Miami and Istanbul. Our review indicates the fares are not above SFFL plus upward fare flexibility; thus it is not necessary to impose our standard condition holding the fares to the SFFL ceiling. However, for administrative purposes, we will require that each carrier, when filing tariffs implementing the agreement, shall 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 resolutions in Docket OST-99-5870 and Docket OST-99-5902, as set forth in the Attachment to this order 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 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;

2. These agreements are a product of the IATA tariff conference machinery, which the Department found to be anticompetitive but nevertheless accepted on foreign policy and comity 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 anti-competitive agreement is approved in order to attain other objectives, such conferral is mandatory under 49 U.S.C. 41308.

Order 85-5-32 contemplates that the products of 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-99-5870 and OST-99-5902, as set forth in finding paragraph 1 above, subject to the conditions imposed therein.

4/ We generally 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,

1. We approve and grant antitrust immunity to the agreements contained in Dockets OST-99-5870 and OST-99-5902, as set forth in finding paragraph 1, above, subject to the conditions imposed therein and to previous conditions imposed.

By:

A. BRADLEY WIMS
Acting Assistant Secretary for Aviation
and International Affairs

(SEAL)

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on the World Wide Web at
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**Resolutions With Direct Application In
Foreign Air Transportation, Docket OST-99-5870**

**PTC12 USA-EUR 0076- USA-Europe (Except between USA and Austria,
Belgium, Germany, Netherlands, Scandinavia, Switzerland)**

<u>Reso.</u>	<u>Description</u>	<u>No.</u>
002kk	Special Amending Resolution Between USA And Europe (Except Austria, Belgium, Germany, Netherlands, Scandinavia, Switzerland) (New)	R-1
044ss	Intermediate Class Fares Between USA And Europe (Amending)	R-2
072xx	Excursion Fares From USA To Europe (Amending)	R-3
073qq	APEX fares From USA To Europe (Amending)	R-4
075LL	Special APEX Fares From USA To Europe (Amending)	R-5
077kk	Special APEX Fares From USA To Europe (Amending)	R-6
09222	Youth Fares From USA To Europe (Amending)	R-7
072ss	Excursion Fares From Europe To USA (Amending)	R-8
075ss	APEX Fares From Europe To USA (Amending)	R-9
078fd	PEX Fares From Czech Republic, Slovakia To USA (Amending)	R-10
078ss	PEX Fares From Europe To USA (Amending)	R-11
078zz	Super APEX Fares From Italy, Portugal, Spain, Turkey To USA (Amending)	R-12
092ss	Youth Fares From Europe To USA (Amending)	R-13
015n	Add-On Amounts Between USA And Europe (Amending)	R-14

**Resolutions With Direct Application In
Foreign Air Transportation, Docket OST-99-5902**

**PTC12 USA-EUR 0078- USA-Austria, Belgium, Germany, Netherlands,
Scandinavia, Switzerland**

<u>Reso.</u>	<u>Description</u>	<u>No.</u>
002n	Special Amending Resolution Between USA And Austria, Belgium, Germany, Netherlands, Scandinavia, Switzerland) (New)	R-1
044vv	Intermediate Class Fares Between USA And Austria, Belgium, Germany, Netherlands, Scandinavia, Switzerland) (Amending)	R-2
015n	Add-On Amounts Between USA And Europe (Amending)	R-3

Note: Resolution 002n was an administrative resolution denoting the changes to the fares tables offered in Resolutions 044vv and 015n.