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Order 99-7-8  
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UNITED STATES OF AMERICA  
DEPARTMENT OF TRANSPORTATION  
OFFICE OF THE SECRETARY  
WASHINGTON, D.C.

Issued by the Department of Transportation  
on the 14<sup>th</sup> day of July, 1999

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Agreements adopted by the Tariff : **Docket** OST-96-1705  
Coordinating Conferences of the : R-1 through R-10  
International Air Transport Association : **Docket** OST-96-1972  
relating to passenger fare matters : R-1 through R-3  
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**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 the IATA Composite Passenger Tariff Coordinating Conference held in Geneva during July 17-20, 1996 or by mail vote.<sup>1/</sup>

The agreements propose a variety of changes to IATA's pricing unit fare construction rules, set forth in the 017 series of resolutions, for normal (first, intermediate [business] and economy fares. These rules, conditionally approved by the Department in Order 96-5-19, May 15, 1996, allow normal fares for international journeys involving multiple segments to be calculated as either a single pricing unit, in much the same manner as the traditional "journey" approach which treats the fare for a multiple-segment itinerary as a single unit; or as a combination of several "stand alone" pricing units. The amount quoted is the lower of the two prices resulting from the calculations.<sup>2/</sup>

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<sup>1/</sup> IATA memoranda COMP Reso/P 1120, Docket OST-96-1705; and IATA COMP Telex Mail Vote 840, OST-96-1972. Those portions of the agreement in Docket OST-96-1705 (IATA COMP Reso 1121 and 1122) dealing with general composite passenger fare issues were handled separately in Order 97-6-18, June 13, 1997.

<sup>2/</sup> To illustrate, the price for normal economy fare transportation over a Chicago-London-Frankfurt-Manchester itinerary is \$1964.60 under the journey concept, since the actual mileage

The rules, however, continue to apply many of the traditional fare controls used under the journey approach, such as the higher intermediate point check, to each pricing unit and to the total journey.<sup>3/</sup>

The proposed changes, mostly technical in nature, clarify, modify and refine the language of these pricing unit rules so as to insure their correct and uniform interpretation and so facilitate their smooth implementation by carriers and computer reservations systems (CRS) vendors in their computerized fare quotation programs. In addition, the agreements adopt numerous editorial changes to a large number of existing normal and special fare resolutions consequential to the conversion to the pricing unit concept.

On April 8, 1997, the United States Travel Agent Registry (USTAR) submitted a motion for leave to file an otherwise unauthorized document and comments in Docket OST-96-1705. IATA submitted a motion on May 7, 1997, for leave to file a response to USTAR's comments. Finally, USTAR submitted a motion on May 27, 1997, for leave to file a response/ rebuttal to IATA's reply.<sup>4/</sup>

USTAR requests the Department to assure that conditions concerning combinability and advertising/sales imposed on existing IATA resolutions are imposed on any new IATA resolutions that replace the old ones; to exercise its jurisdiction under 14 CFR Part 255 (Carrier-Owned Computer Reservations Systems) to make sure that these conditions override any fare construction rules in computer reservation systems (CRSs); and to require all publishers of fare tariff material to include in their publications a narrative or synopsis that highlights procedures affected by U.S. government conditions on fare construction or sales. In support, USTAR contends that IATA carriers frequently fail to observe many of the conditions the Civil Aeronautics Board (CAB) and the Department placed on various IATA fare construction practices, particularly those concerning fares sold in the United States for travel between foreign points and the general end-to-end

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flown exceeds the maximum permitted Chicago-Manchester mileage by 6 percent, resulting in a 10 percent surcharge to the unrestricted \$1786 Chicago-Manchester fare for the excess mileage. Under the pricing unit concept, however, the total price for the trip is the sum of the local Chicago-London restricted fare of \$813 plus the local London-Frankfurt-Manchester fare of \$819.68 for a total of \$1632.68, \$331.92 less than that under the journey concept.

<sup>3/</sup> Order 95-7-47 (July 28, 1995) approved pricing unit standards for discount (special) fare constructions. Order 96-5-19 (May 15, 1996) approved the Resolution 017 series of fare construction rules which established pricing unit standards for normal fares, and subsumed those for special fares. Replacing the traditional fare construction rules, these pricing unit rules are intended to govern all IATA normal and special fare constructions throughout the world and become the basis for programming all CRSs. Individual carriers, however, remain free to issue separate instructions to CRSs.

<sup>4/</sup> We will grant the motions of USTAR and IATA.

combination of fares;<sup>5/</sup> that this situation results from the lack of clear lines of responsibility for compliance among carriers, IATA, Tariff Publishers, CRS vendors and travel agents; and that this has resulted in fares for U.S. consumers that are higher than they should be.<sup>6/</sup>

In addition, USTAR asks the Department to disapprove a number of arbitrary, unjustifiable and discriminatory fare checks, relating to the pricing unit methodology for normal fares, so as to guarantee that existing requirements continue to offer fair, equitable and non-discriminatory access to international air fares.<sup>7/</sup> In support, USTAR asserts that while it takes no issue with IATA's rationale and methodology for the pricing unit system, it is concerned that carriers and CRSs will not apply the pricing unit methodology in a manner that is consistent with government-imposed conditions on ticketing and sales in the United States; that while seeming to permit a total journey based on the lowest combination of pricing units, IATA and the carriers undermine this approach by applying aggressive and complicated fare checks, intended to prevent revenue erosion, both to individual pricing units and to the entire journey; and that no fare of any type or construction should be raised to a higher applicable fare when a combination of applicable sector fares will produce a lower fare.

Finally, USTAR asks the Department to withdraw antitrust immunity for IATA to discuss charges for Prepaid Ticket Advices (PTAs) and to disapprove any agreement that permits U.S. carriers to impose PTA charges anywhere in the world or permits foreign carriers to impose them on U.S.-

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<sup>5/</sup> USTAR alleges that IATA and its members often ignore requirements in the following orders: Orders 78-7-113 and 85-3-79 prohibiting IATA-agreed advertising and sales (combinability) restrictions on discount fares between foreign points and between the U.S. and a foreign point; Orders 82-11-84 and 86-7-67 allowing any carrier to establish through fares based on the lowest combination of fares over any gateway point even if it undercuts IATA's agreed level and if the actual routing is not via the points of fare construction; Order 82-2-120 permitting the combination of fares to/from U.S. points with any other fares provided the passenger meets all requirements connected with use of the fares; and Order 89-7-52 requiring that fares sold in the U.S. for travel between foreign points be based on the actual direction of travel.

<sup>6/</sup> For example, USTAR claims that a New York-Madrid-Tokyo roundtrip journey should be priced at \$2749, under the pricing unit methodology, using a combination of excursion fares available over Madrid (\$956, New York-Madrid plus \$1793, Madrid-Tokyo). However, the Madrid-Tokyo roundtrip excursion fare filed by Iberia in Spain restricts combinations to local fares and certain fares for Scandinavia. Allegedly disregarding the Department's conditions, all four U.S. based CRSs default the Madrid-Tokyo segment to the normal economy class fare, bringing the total for a constructed New York-Madrid-Tokyo fare to \$5,451, representing an unauthorized increase of \$2702.

<sup>7/</sup> These include the following checks: 1) Country of Unit Origin Minimum; 2) Country of Payment; 3) Common Point Minimum; 4) One Way Subjourney; and 5) Return Subjourney Minimum. In addition, USTAR believes that the Circle Trip Minimum and Round the World Minimum checks are no longer valid under the pricing unit concept.

originating passengers.<sup>8/</sup> In support, it argues that while the charge has escalated from a nominal \$5.00 level in 1980 to \$35.00 now, carrier automation has almost entirely offset or eliminated the costs of PTA transactions; that carriers offer free services, such as credit card sales and ticket mailings, to passengers that are similar to those provided by PTAs; that most PTA transactions, being of an emergency nature, are at full normal fares, set at premium levels that should cover the costs of an ancillary service such as PTAs; that granting IATA antitrust immunity to discuss PTA charges is contrary to the public interest; and that PTA charges also raise issues of illegal price fixing, since the international PTA charges are similar to those imposed on domestic U.S. transportation.

In its response, IATA requests the Department to reject USTAR's comments as untimely and misdirected. It argues that the agreements now before the Department do not introduce a new fare construction methodology, but rather refine and clarify an existing one that has been approved for several years; that this is a "default" fare construction system, not binding on carriers acting unilaterally or bilaterally, used to handle the small number of passengers who travel over complex routings; that the pertinent DOT conditions remain effective, are published in IATA's governing resolution manuals, and figure in all IATA Tariff Coordinating Conference deliberations; and that IATA itself cannot enforce these resolutions since conference members are free to depart from their terms, including those on fare construction, to meet market conditions and competitive requirements.<sup>9/</sup>

IATA also contends that USTAR is using this unrelated proceeding to allege programming deficiencies in existing U.S. CRSs, over which IATA has no authority or control, to promote its own competing, agent-owned CRS, now under development, whose stated purpose is to preserve agents' customer bases by freeing them from existing CRS databases and programming; that travel agents are not required to use CRS fare construction algorithms, but rather are trained to pursue the lowest fare possible, consistent with government conditions;<sup>10/</sup> and that if USTAR's concerns regarding fare construction procedures in U.S. CRSs are valid, it should petition the Department for a rule-making to amend 14 CFR Part 255.

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<sup>8/</sup> PTAs are intended to compensate carriers for the additional costs of collecting payment for a ticket in one location while issuing the ticket in another location, often in a different country.

<sup>9/</sup> IATA points out that DOT's conditions do not apply to foreign-to-foreign fares that foreign air carriers have introduced outside of IATA.

<sup>10/</sup> To illustrate this point, IATA solicited quotes from two retail travel agents for USTAR's hypothetical roundtrip New York-Madrid-Tokyo fare construction. Based on non-IATA fares, the prices quoted were \$1895 and \$2047; based on IATA-agreed levels, the constructed fare was \$2552. It points out that in all cases, the constructed fares for this unusual itinerary were lower than USTAR's. However, in its rebuttal comments USTAR argues that these less expensive fares are misleading since consolidator or charter fares may have been used in the quotes.

Finally, IATA states that the issue of the PTA charges was settled two years ago by final order of the Department.

In its rebuttal comments, USTAR asserts that since the pricing unit will become the fare construction algorithm in all CRSs, IATA's claim that it is a default methodology for limited routings and not a requirement by U.S. airlines in U.S. markets is false; that IATA's claim that it has no control or influence over CRS pricing is ludicrous, since the major CRSs are owned by IATA members; that IATA's suggestion that its minimum fare checks are established requirements for complicated routings is misleading; that these minimum fare checks are inconsistent with the logic of segmentation and combination of fare components and violate DOT-imposed rules; that IATA's contention that USTAR is denigrating the present CRS pricing rules so as to advance its alternative CRS distribution system is not true; and that the issue of PTAs is one that needs to be reopened.

After consideration of the agreements, USTAR's comments and IATA responses, we have decided to approve the agreements, except as noted below, subject to all conditions that we have imposed previously or impose herein. 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.

As we stated in Order 86-9-33 (September 15, 1986), we understand the utility of a uniform set of fare construction rules to carriers participating in interline movements, although we have balanced that utility against retail competition policies by attaching procompetitive conditions to our approvals. In reviewing IATA's pricing unit approach in Order 96-5-19 (May 15, 1996), we also recognized that one of the main carrier objectives in moving to the pricing unit system was to develop a greater consistency in fare construction totals generated by different CRSs for travel on the same carriers over the same interline itinerary, while still taking a somewhat flexible approach to fare computation.

Nevertheless, we are concerned that the increasing use of automated systems to construct fares may diminish the ability of travel agents and carriers to offer lower fares through use of alternative fare construction methods. We realize that some common principles governing fare constructions are useful, particularly in interline situations, but we are apprehensive that our approval of IATA's system of fare construction rules might have the effect of locking all carriers, agents and, ultimately, CRS hardware/software options into that set of rules. Over the years, we have conditioned our approvals of IATA fare construction rules so as to preserve agent and carrier flexibility in constructing fares based on the belief that individual agents and carriers will try to construct the best possible fares for their customers. However, if there is only one agreed system for constructing fares, they may have little incentive or ability to do so, particularly if CRS providers narrow other options over time. Competition at the retail level means variability in choice, not uniformity. Indeed, in its response to USTAR, IATA states that its members are free to depart from the terms of any resolution, including fare construction resolutions, as warranted by market

conditions. Therefore, in order to make this understanding absolutely clear, we are attaching a condition to IATA's Permanent Effectiveness Resolution (Resolution 001), to ensure that agents and carriers will retain the ability to exercise maximum flexibility in constructing fares so that they may continue to respond to competitive forces and seek the best deal for their customers.

Turning to the issue of fare checks, which are part of the pricing unit methodology for normal fares, we have carefully weighed USTAR's comments relating to the various fare checks, but we are not convinced that they warrant our intervention at this time.<sup>11/</sup> Almost all of these checks are carryovers from the traditional journey approach and, as such, received early regulatory approval. The Department has permitted such checks as a provisional means to curtail abusive and fraudulent practices in the issuance and use of tickets, so long as the checks (1) act to ensure that passengers actually flying the same itineraries pay the same fares, (2) do not unjustly discriminate against U.S. passengers,<sup>12/</sup> and (3) do not prevent passengers from obtaining the best possible price for their transportation that does not involve fraudulent practices.<sup>13/</sup> As we noted in Order 96-5-19 (May 15, 1996), the pricing unit approach, including the fare checks challenged by USTAR, produces lower normal fares for passengers in certain instances, while application of the traditional fare checks leaves other passengers no worse off. As such, we found that conditional approval was in the public interest. The pricing unit fare construction rules apply only to a small number of passengers whose travel involves complicated, multiple segment itineraries, and offer one means for each CRS to speedily and uniformly price international air transportation for such complex itineraries.

USTAR's comments notwithstanding, we have already taken steps to assure that all relevant conditions that we have imposed on IATA's fare construction practices over the years will apply to the pricing unit methodology. Order 96-5-19 (May 15, 1996), dealing with the pricing unit concept, enumerated a number of long-standing conditions, including some cited by USTAR, that are attached to IATA Resolution 001, and it noted that all these conditions will automatically apply to the new pricing unit resolutions. In addition, that order specifically re-imposed several old conditions, not attached to Resolution 001, on the pertinent pricing unit resolutions. These

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<sup>11/</sup> Many of these are fundamentally akin to the higher-intermediate-point principle which states that the proper fare should be the fare to the highest-rated ticketed point on a passenger's itinerary, regardless of the fare to the passenger's ultimate destination. As noted in Order 88-8-52 (August 19, 1988), this principle has had long-standing acceptance.

<sup>12/</sup> See, for example, Order 89-7-52 (July 31, 1988), which conditioned Resolution 152a to require that fares sold in the United States for travel between foreign points be assessed in the direction of travel.

<sup>13/</sup> See, for example, Order 88-11-38 (November 22, 1988), which disapproved provisions which limited the ability of U.S. passengers to double ticket. See also, Order 89-2-26 (February 15, 1989), which approved provisions designed to counter fraudulent practices in certain Asian markets.

conditions, relating to the U.S. purchase of fares for travel between foreign points and changes in fares due to voluntary reroutings, were attached to Resolutions 017c and 017f, as appropriate.

We expect the IATA carriers to observe all of these conditions in order to avoid legal difficulties, including those involving participation in IATA traffic conferences noted in Order 88-6-9 (June 8, 1988). However, if a widespread pattern of ignoring our conditions becomes apparent, we may consider disapproving the relevant IATA resolutions, withdrawing anti-trust immunity for IATA to discuss these matters, and/or taking appropriate enforcement action.

We emphasize that our conditional approval of the pricing unit system reflects a careful weighing of the merits of the system as a whole. It may result in a significant departure from our traditional approach to fare construction, and as with many new approaches, unforeseen problems in its application may surface over time. If experience with the pricing unit approach convinces us that we should revisit our approval of any of its provisions, we will not hesitate to do so.

We will not approve revised paragraph two of Resolution 017d which contains the stipulation that a specified through fare shall not be undercut by a combination of fares. This provision is blatantly anticompetitive and directly violates the condition attached to IATA Resolution OO1 by Order 82-2-130 (February 26, 1982) which provides that all fares in foreign air transportation may be combined with any other fare so long as the passenger meets all other travel requirement affixed to use of the fares.

Finally, the PTA charge challenged by USTAR is not included in this agreement, but rather was approved almost three years ago in Docket 49759 by Order 95-7-47 (July 28, 1995). No comments from USTAR or any other party were received in that Docket, although our rules allow a 21-day period for comments. Our review of the level of the charge at that time indicated that it matched levels for PTA services offered in U.S.-Canada transborder and unregulated U.S. domestic markets, and accordingly, did not seem unreasonable on its face. In addition, as USTAR points out, many carriers offer free services, such as credit card sales and ticket mailings, to passengers that are similar to those provided by PTAs, so it appears that alternative means are available to many passengers who want to avoid PTA charges.

Acting under Title 49 of the United States Code (the Code), and particularly sections 40101, 40103, 41300 and 41309:

1. We do not find the following resolutions, which are incorporated in the agreements in Dockets OST-96-1705 and OST-96-1972 as indicated and which have either direct or indirect 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 conditions previously imposed:

<u>Docket</u>	<u>IATA</u>	<u>Title</u>	<u>Application</u>
OST-96-1705	No		

R-1 002ee Special Amending Resolution 1;2;3;1/2;  
2/3;3/1;1/2/3

R-2 012 Glossary of Terms 1;2;3;1/2;  
2/3;3/1;1/2/3

R-3 024e Rules for Payment of Local 1;2;3;1/2;  
Currency Fares 2/3;3/1;1/2/3

Docket IATA  
OST-96-1705 No Title Application R-4 017 Construction Rules  
1;2;3;1/2;

2/3;3/1;1/2/3

R-5 017a Construction Rules for Journeys 1;2;3;1/2;  
2/3;3/1;1/2/3

R-6 017b Construction Rules for Pricing 1;2;3;1/2;  
Units 2/3;3/1;1/2/3

R-7 017c Construction Rules for Fare 1;2;3;1/2;  
Components 2/3;3/1;1/2/3

R-8 017d Minimum Check for Consecutive 1;2;3;1/2;  
Normal Fare Pricing Units 2/3;3/1;1/2/3 (Except for paragraph 2)

R-9 017e Mixed Class 1;2;3;1/2;  
2/3;3/1;1/2/3

R-10 017f Reroutings and Refunds 1;2;3;1/2;  
2/3;3/1;1/2/3

Docket IATA  
OST-96-1972 No Title Application  
R-1 010e Special Amending Resolution, 1;2;3;1/2; Composite Fare  
Construction 2/3;3/1;1/2/3  
Resolutions

R-2 002ee Special Amending Resolution 1;2;3;1/2;  
2/3;3/1;1/2/3

R-3 017f Reroutings and Refunds 1;2;3;1/2;  
2/3;3/1;1/2/3

2. We find the following resolution, which is incorporated in the agreement in Docket OST-96-1705 as indicated and which has direct application in foreign air transportation as defined by the Code, to be adverse to the public interest and in violation of the Code:

Docket	IATA			
<u>OST-96-1705</u>	<u>No</u>	<u>Title</u>	<u>Application</u>	
R-8	017d	Minimum Check for Consecutive Normal Fare Pricing Units	1;2;3;1/2; 2/3;3/1;1/2/3	(Paragraph 2)

3. These agreements are a product of the IATA tariff conference machinery, which the Department found to be anticompetitive but nevertheless approved 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 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 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 those portions of the agreement in Docket OST-96-1705 and to the agreement OST-96-1972 as set forth in finding paragraph 1 above, subject, where applicable, to conditions previously imposed.

**ACCORDINGLY,**

1. We approve and grant antitrust immunity to those portions of the agreement in Docket OST-96-1705, and to the agreement in Docket OST-96-1972, as set forth in finding paragraph one above, subject, where applicable, to conditions previously imposed;
2. We disapprove that portion of the agreement in Docket OST-96-1705 set forth in finding paragraph two above; and
3. We condition IATA's Permanent Effectiveness Resolution (Resolution 001) as follows: Any carrier or travel agent may depart from the provisions of any IATA fare construction rule, including those in the Resolution 017 series, where a different methodology would produce a lower constructed fare.

**By:**

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

**(Seal)**

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