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**Order 99-11-18**  
Served: November 30, 1999



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

Issued by the Department of Transportation  
on the 26<sup>th</sup> day of November, 1999

Complaint of

**AMERICAN TRANS AIR, INC.**

against

**THE GOVERNMENT OF TRINIDAD AND  
TOBAGO AND BWIA INTERNATIONAL  
AIRWAYS LIMITED**

under 49 U.S.C. Sections 41310 and 41304

**Docket OST-99-6515 - 2**

**ORDER INSTITUTING PROCEEDING**

On November 17, 1999, American Trans Air, Inc. (ATA) filed a complaint under 49 U.S.C. § 41310 and § 41304 against the Government of Trinidad and Tobago and BWIA International Airways Limited (BWIA). ATA alleges that the Civil Aviation Division of the Republic of Trinidad and Tobago imposed certain restrictions on its charter operations between the United States and the Port of Spain, forcing ATA's tour operator, Unlimited Travel and Tours (Unlimited Travel), to cancel its charter program with ATA. ATA maintains that the action of the Republic of Trinidad and Tobago constitutes an unjustifiable and unreasonable discriminatory, predatory, or anti-competitive practice against ATA, in violation of the U.S.-Trinidad and Tobago aviation agreement. ATA urges the Department to take action to enforce the Air Transport Aviation Agreement and to eliminate the discriminatory and anticompetitive practices of the Government of Trinidad and Tobago.

In support of its complaint, ATA states that on February 15, 1999, ATA entered into an Aircraft Charter Agreement with Unlimited Travel wherein ATA agreed to charter an L 1011 aircraft to Unlimited Travel for charter flights between New York's JFK International Airport and Port of Spain, Trinidad, starting on or about June 15, 1999, and concluding on or about April 25, 2000. The charter flights were designed such that 60% of the passengers would originate from Port of

Spain during the summer portion of the program, and 50% of the passengers would originate from Port of Spain during the fall and winter portions of the program.

ATA states that it had operated almost 60 flights for Unlimited Travel, from June 15, 1999, through September 28, 1999, but that on September 20, 1999, the Civil Aviation Division of the Republic of Trinidad and Tobago issued Journey Permit No. 174/99 to ATA for flights between New York and Port of Spain for the period October 5 to December 7, 1999. ATA states that this new Journey Permit contained several conditions, including passenger uplift restrictions (Port of Spain-New York passenger lift was restricted to 15% of aircraft capacity), and frequency limitations. ATA states that these restrictions made the charters uneconomical and that Unlimited Travel was forced to cancel its October and November charter flights. ATA further states that although Unlimited Travel appealed for reconsideration to the Trinidad and Tobago Civil Aviation Division, arguing that the cancelled flights would result in stranded passengers, the Civil Aviation Division refused to lift the restrictions imposed on ATA's permit.

ATA maintains that the Journey Permit issued ATA contains conditions that violate both the express terms and spirit of the U.S.-Trinidad and Tobago Aviation Agreement. Specifically, ATA contends that Annex II, Section 2 of that Agreement permits ATA to operate its charter program under U.S. charter laws, regulations, and rules. It further states that Article 11 of the Agreement (Fair Competition) prohibits the type of capacity and frequency restrictions contained in the Journey Permit. ATA argues that the actions of the Government of Trinidad and Tobago constitute an unjustifiable and anticompetitive practice against ATA and unreasonably restrict ATA's access to a foreign market, warranting immediate action under the statute and countermeasures against the flag carrier, BWIA.

ATA urges the Department to issue a show-cause order providing that, unless the Government of Trinidad and Tobago issues an unconditional permit to ATA in this matter, BWIA's U.S. authority will be suspended. It further argues that the Department should deny any applications that would benefit BWIA until this matter is resolved satisfactorily.

Section 41310 provides that the Department shall approve, deny, dismiss, or set a complaint for hearing, or institute other procedures proposing remedial action, within 60 days after receipt of the complaint. We may extend the period for taking action up to 90 days from the date of the complaint if we conclude that it is likely that the complaint can be resolved satisfactorily through negotiations. We may further extend the action deadline up to 180 days from receipt of the complaint, in 30-day increments, if we find that intergovernmental negotiations have progressed to a point that a satisfactory resolution of the complaint appears imminent.

In order to develop the record for our consideration of this matter, we invite interested persons to answer ATA's complaint in Docket OST-99-6515 within seven calendar days from the service date of this order.<sup>1</sup> Answers filed should include all data, evidence, and arguments upon which

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<sup>1</sup> While ATA had sought a more expedited procedural schedule, specifically with answers due by November 25, we believe that the schedule established properly balances our desire to consider this matter expeditiously and to provide all interested parties a reasonable opportunity to respond to the issues raised in ATA's complaint.

the respondents rely to support their positions, and should cover all substantive and procedural issues that they wish the Department to consider. Replies to any answers should be filed no later than three calendar days thereafter.

After receipt and consideration of responsive pleadings and any supporting evidence submitted, we will issue a further order in this proceeding.

**ACCORDINGLY,**

1. We invite interested persons to file answers to the complaint of American Trans Air, Inc., in Docket OST-99-6515, no later than seven calendar days from the service date of this order; and if answers are filed, replies to those answers should be filed no later than three calendar days thereafter.<sup>2</sup> Answers to the complaint and replies, if any, should be served upon the persons named in ordering paragraph 4, below;
2. If timely and properly supported answers are filed, we will give full consideration to the matters and issues raised by the answers before we take further action;
3. We dismiss the request of American Trans Air, Inc., to the extent it sought a more expedited procedural schedule in this matter; and
4. We will serve this order on all parties served with ATA's complaint; the Ambassador of the Government of Trinidad and Tobago in Washington, D.C.; the U.S. Department of State (Office of Aviation Negotiations); the Assistant U.S. Trade Representative (Office of the United States Trade Representative); the U.S. Department of Commerce (Office of Service Industries); and the Air Transport Association.

By:

**A. BRADLEY MIMS**  
Deputy Assistant Secretary for Aviation  
and International Affairs

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<sup>2</sup> In light of the expedited procedural schedule, we will authorize service by facsimile. We also encourage parties to use the electronic submission capability through the Dockets DMS Internet site (<http://dms.dot.gov>) by following the instructions at the web site. Parties should include their fax numbers on their submissions and should indicate on the certificates of service the methods of service used.

(SEAL)

*An electronic version of this notice is available on the World Wide Web at  
[http://dms.dot.gov/reports/reports\\_aviation.asp](http://dms.dot.gov/reports/reports_aviation.asp).*