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U.S. DEPARTMENT OF TRANSPORTATION  
WASHINGTON, D.C.

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International Air Transport :  
Association: Agreement Relating :  
to Liability Limitations of the :  
Warsaw Convention :

Docket

49152

APPLICATION FOR APPROVAL OF, AND  
ANTITRUST IMMUNITY FOR, DISCUSSION AUTHORITY

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U.S. DEPARTMENT OF TRANSPORTATION  
Washington, D.C.

International Air Transport )  
Association: Agreement Relating ) Docket  
to Liability Limitations of the ) Agreement CAB 18900  
Warsaw Convention )

APPLICATION FOR APPROVAL OF, AND  
ANTITRUST IMMUNITY FOR, DISCUSSION AUTHORITY

The International Air Transport Association (**IATA**) hereby requests, pursuant to sections 412 and 414 of the Federal Aviation Act of 1958, as amended (Act), and 14 CFR Part 303, that the Department grant its approval of, and antitrust immunity for, intercarrier discussions concerning the limits and conditions of passenger liability established by the Warsaw Convention, including specifically Articles 22(1) and 20(1) of the Convention, or the Convention as amended by the Hague Protocol. The intercarrier discussions may include possible amendments to, or replacements for, the Montreal intercarrier agreement (CAB 18900) which is subject to a grant of antitrust immunity by the Civil Aeronautics Board dated May 13, 1966.

Air carriers operating under the Warsaw Convention require the flexibility necessary to consider options that would update the operation of the Convention, pending entry into force of the amendments to the Convention incorporated in Montreal Protocols 3 and 4, which are pending advice and consent to ratification in the United States Senate. This authority is necessary to address the concerns of the travelling public and foreign governments that

support interim action to develop national or regional remedies to the existing low limits of liability. As set forth below, the approval and immunity requested here is in the public interest, and is necessary to secure important public benefits.

I. Background

The Convention for the Unification of Certain Rules Relating to International Transportation by Air (the Warsaw Convention) was signed in 1929. The United States became a party in 1934. Currently at least 117 countries are parties to the Convention. The Warsaw Convention establishes uniform rules as to the rights and obligations between air carriers and users of international air transportation and creates uniformity with respect to transportation documentation such as passenger tickets, baggage checks, and air way-bills. Included in the uniform rules established by the Convention are those which set forth the liability of an air carrier to its passengers in cases of death or injury from an accident. Article 22 of the Convention provides that the liability of the air carrier for passenger injury or death is limited to approximately \$10,000, which applies absent a finding of willful misconduct.

Since the 1950s, the United States has taken the lead in efforts to modernize the Warsaw Convention's liability rules. In the Hague Protocol of 1955, the passenger limitation set forth in Article 22 of the convention was doubled, but this Protocol was never ratified **by** the United States Senate. In 1965, following the

failure of the United States to ratify the Hague Protocol, the carriers serving the United States agreed to adopt a special contract under Article 22 of the Warsaw Convention for transportation to, through, or from the United States, establishing a liability limit of \$75,000 for passenger injury and death. Further, the carriers agreed not to avail themselves of the defense of non-negligence under Article 20(1) of the Convention for claims within that limit. This agreement was originally conceived as a temporary measure pending negotiation of revisions to the Warsaw Convention now incorporated in Montreal Protocols Nos. 3 and 4. This agreement, known as the Montreal intercarrier agreement, remains in force today.'

Recently the United States Government has been engaged in an effort to ratify Montreal Protocols Nos. 3 and 4 to the Convention and to establish a supplemental compensation system consistent with Article 35A thereof. However, the delay in U.S. ratification and the entry into force of the Montreal Protocols, which were negotiated in 1975, is a matter of concern to the international aviation community, including the governments of many of the aviation partners of the United States. While IATA remains firmly committed to U.S. ratification of the Montreal Protocols, it must also take steps to maintain the viability of the Convention's passenger liability rules pending such ratification and, **thereaf-**

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<sup>1</sup> Agreement CAB 18900, approved by order E-23680, May 13, 1966 (docket 17325).

ter, the entry into force of the Montreal Protocols.\* Further, that action must be consistent with framework of the Warsaw Convention, including the recent amendments reflected in those Protocols.

The enhanced limitation set forth in the Montreal intercarrier agreement is considered today to be inadequate to the standards of compensation for many countries. Japanese-flag airlines have applied for and obtained U.S. approval of modifications to their tariffs and conditions of carriage to implement a new special contract under Article 22 of the Convention. In effect, Japanese air carriers applied for strict but limited liability up to 100,000 SDRs, and thereafter for unlimited liability on the basis of presumed, but rebuttable, **fault**.<sup>3</sup> The application of the Japanese airlines required an exemption from 14 CFR Part 203. That regulation requires adherence to the Montreal intercarrier agreement by all airlines serving the United States as a condition of their operating authority.

Initiatives are also underway in Europe to address the question of airline liability under the Warsaw system. In October, 1992, the European Community circulated a consultation paper on

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<sup>2</sup> The authority requested here is for the discussion of special contracts that would remain in effect for a contracting party until the amendments included in Montreal Protocol No. 3 become effective for that party, which necessarily could be after the Montreal Protocols enter into force for the United States.

<sup>3</sup> See, e.g., Application of All Nippon Airways Co. Ltd. for an exemption under section 416(b) of the Federal Aviation Act of 1958, as amended, Order 92-12-43 (December 31, 1992).

passenger liability under the Warsaw Convention.<sup>4</sup> Thereafter, the Economic Committee of ECAC commenced a study of the operation of the Warsaw system with a view toward developing practical solutions to the problems of the current system. There appears to be a consensus among all parties to these efforts -- airlines, insurers, governments and other interested persons -- that interim action to increase the existing limits may be required and that voluntary action by carriers is the preferred approach. There is also general agreement, however, that this action should not destabilize the Warsaw system itself.

It was precisely this same concern in the United States that led to the adoption of the Montreal intercarrier agreement in 1966. That agreement was intended to constitute an interim measure pending negotiation and U.S. ratification of amendments to the Warsaw Convention that are now included in the Montreal Protocols. The liability limit of \$75,000, absent willful misconduct, is now itself outdated and insufficient. For example, if adjusted for inflation, that amount would be over \$300,000 in today's dollars. Nevertheless, the Montreal intercarrier agreement continues to operate under a grant of antitrust immunity from the Civil Aeronautics Board, and air carriers with authority to operate to the United States are required to be a party to the agreement as a condition of that authority. It is now necessary, therefore, to give the air carriers party to the agreement the authority to consider bringing it up to date pending the entry into force of

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<sup>4</sup> See Attachment A.

Montreal Protocols Nos. 3 and 4. In response to requests from its member airlines, IATA recently filed a request for Commission authority for intercarrier discussions on the passenger liability limits.<sup>5</sup> These discussions were approved by the Commission by letter dated September 1, 1993.<sup>6</sup> Similar authority is required from the U.S. Department of Transportation, however, before these discussions can proceed.

The international airline community will continue to strongly support U.S. efforts to obtain ratification of the Montreal Protocols and adoption of a supplemental compensation system which the United States Government has proposed as a condition of its ratification of the Protocols. The National Commission to Ensure a Strong Competitive Airline Industry has recommended ratification of the Protocols and approval of a supplemental compensation plan to bring the Warsaw system up to date in a manner which adequately serves the interests of both airlines and the users of their **services.**<sup>7</sup> Article 35A of the Convention, as it would be amended by the Protocols, gives each contracting state the right to ensure compensation for its own passengers commensurate with its economic standards in excess of the carriers' limit of liability under the Convention. Any discussion of possible amendments to or replacements for the Montreal intercarrier agreement would take place in

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<sup>5</sup> See Attachment B.

<sup>6</sup> See Attachment C.

<sup>7</sup> Change, Challenge and Competition, A Report to the President and Congress, The National Commission to Ensure a Strong Competitive Airline Industry, August 1993.

full recognition of the objectives and likely operation of Article 35A once it enters into force.

It is generally recognized that contracting states party to the Warsaw Convention may develop different policies concerning the appropriate levels of, and standards for, compensation for international airline passengers. In this regard, the framework of Article 35A of the Convention, as amended by Montreal Protocol No. 3, allows each state to develop a supplemental compensation system consistent with its own policies, since it generally would apply to transportation sold within its own territory. That framework by its terms also tends to avoid conflicts between contracting states in the implementation of supplemental compensation systems.

It will therefore be necessary for the airlines to consider whether a framework for potentially different special contracts under Article 22 would also be appropriate. This issue would necessarily involve consideration of the potential effect of such contracts on interline arrangements and other industry practices in order to ensure that each passenger purchases a ticket for transportation with liability rules that are as consistent and predictable as possible.

Airlines intend to consider in the near future these framework issues on an informal basis and no Department authority is requested or required for this preparatory work. The framework issues that will be considered involve legal considerations relating to the administration of the Convention, and the form of potential submissions to contracting states for approval of any new special contracts that may be developed. Pending Department action

on this application, therefore, airlines will limit their consideration of special contracts and avoid any discussion of the potential limits of, and conditions for, their liability to passengers.

The fact that preliminary discussions can take place without special discussion authority does not in any way diminish the urgency of Department action on this application. On the contrary many carriers, and a number of governments, are anxious to see substantive discussions on liability issues by carriers begin soon, and carriers cannot do so without DOT approval of this application.

II. Discussion Authority is  
Appropriate Under Section 412 of the Act

Section 412 of the Act empowers the Department to grant authority for intercarrier discussions concerning matters relating to foreign air transportation provided that such discussions are not contrary to the public interest or in violation of the Act. Section 412(a)(2)(A); Joint Application of Northwest Airlines, Inc. and KLM Royal Dutch Airline, Order 93-1-11 (January 11, 1993) (Order 93-1-11); Agreement Among Members of the International Air Transport Association Concerning Passenger Services Matters, Order 90-1-41 (January 22, 1990) (Order 90-1-41). Discussions regarding the adequacy of existing liability **limits** for passenger injury or death are intended, among other things, to provide greater protection to the travelling public and will not substantially reduce or eliminate competition. Accordingly, the Department

should grant the discussion authority requested in this application.

Even if discussions concerning the adequacy of existing liability limits could be perceived as adversely affecting competition, such discussions should nonetheless be approved in view of the important public benefits they will confer and the lack of reasonable alternative means for accomplishing these benefits. See, Section 412(a) (2)(A)(i); Order 93-1-11 at 10 ("**The Department may not approve an intercarrier agreement that substantially reduces or eliminates competition unless the Department finds that the agreement is necessary to meet an important transportation need or secure important public benefits that cannot be met or secured by reasonably available alternative means having materially less anticompetitive effects**") (emphasis in the original). In addition to establishing a framework for providing greater protection to the travelling public, such discussions advance international comity and important foreign policy goals that cannot be met or secured by reasonably alternative means having materially less anticompetitive effects. Quite simply, no alternative forum exists in which these issues may be addressed.

Discussion authority will advance important foreign policy and comity considerations. The modernization of the Warsaw Convention's liability limits, as discussed above, has been a consistent policy goal of the United States Government, and the discussion authority and antitrust immunity requested here is clearly in the public interest. Action by air carriers to review the operation of the Warsaw and Warsaw/Hague limits pending entry into force of the

Montreal Protocols will further the realization of the important benefits to the travelling public that are the foundation of the Warsaw Convention and U.S. efforts to amend it. Moreover, the benefits derived from increased liability limits will flow not only to individual members of the travelling public, but also to the signatories to the Warsaw Convention.

In addition to providing greater protection to the travelling public and furthering U.S. foreign policy goals, discussion authority will promote international comity by affirming the importance of the Warsaw Convention and the need for international cooperation and uniformity. The Warsaw system is one of the most widely adhered to multilateral treaty systems in effect in the world today. It establishes many of the uniform rules that make an integrated international aviation system possible. Included in these rules are provisions related to the liabilities of airlines to passengers; matters of direct concern to the governments whose citizens utilize international air transportation services. **Many** of those governments now favor interim action to review the limitations of liability reflected in those rules.

Discussion authority should be granted under section 412. Discussion of these matters is not adverse to the public interest, is not in violation of the Act, and is not likely to substantially reduce competition. Moreover, even if such discussions could be perceived as adversely affecting competition, discussion authority is nevertheless appropriate in view of the important public benefits that will result from such discussions.

III. Antitrust Immunity for Discussions  
is Proper Under Section 414 of the Act

Section 414 of the Act provides in pertinent part:

In any order made under section . . . 412 of this Act, the Board may, as part of such order, exempt any person effected by such order from the operations of the "antitrust laws" . . . to the extent necessary to enable such person to proceed with the transaction specifically approved by the Board in such order and those transactions necessarily contemplated by such order, except that the Board may not exempt such person unless it determines that the exemption is required in the public interest. Notwithstanding the preceding sentence, on the basis of the findings required by subsection (a) (2)(A) (i) of section 412, the Board shall, as part of any order under such section which approves any . . . request . . . exempt any person affected by such order from the operations of the "antitrust laws" . . . to the extent necessary to enable such person to proceed with the transaction specifically approved by the Board in such order and with those transactions necessarily contemplated by such order.'

49 App. USC 1384. (emphasis added). Thus, where discussion authority is granted under subsection (a) (2) (A) of section 412 the Department may, at its discretion, grant antitrust immunity.' See also Order 93-1-11. Where discussion authority is granted under subsection (a)(2)(A)(i), however, such authority must be accompa-

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<sup>8</sup> On January 1, 1985, the Board's authority under sections 412 and 414 was transferred to the Department of Transportation. 49 U.S.C. App. § 1551(b) (C).

<sup>9</sup> Section 412 (a) (2) (A) provides in pertinent part: "The Board . . . shall by order approve any contract, agreement, or request, or any modification or cancellation thereof, that it does not find to be adverse to the public interest, or in violation of this Act."

nied by section 414 antitrust immunity." ~~See also Agreement Among Members of the International Air Transport Association Cargo Services Matters~~, Order 89-10-52 (October 27, 1989) (Order 89-10-52).

- i. Antitrust Immunity is appropriate for Discussions Approved Under Subsection (a) (2) (A) of Section 412 of the Act

The Department will not grant immunity for transactions that do not substantially reduce competition absent a strong showing that antitrust immunity is required in the public interest, and that the parties will not proceed with the transaction without such immunity. Order 93-1-11. The antitrust immunity requested here should be granted because the proposed discussions are in the public interest and will not proceed absent such immunity.

The analysis for determining whether antitrust immunity is in the public interest is similar to the public interest analysis conducted in connection with section 412 of the Act. Id at 11. Specifically, in determining whether antitrust immunity should be granted, the Department considers the interests of the travelling public, the foreign policy goals of the United States, and the

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<sup>10</sup> Section 412 (a) (2) (A) (i) provides in pertinent part:

The Board may not approve or, after periodic review, continue its approval of any such contract, agreement, or request, or any modification or cancellation thereof, which substantially reduces or eliminates competition, unless it finds that the contract, agreement, or request is necessary to meet a serious transportation need or to secure important public benefits including international comity or foreign policy consideration, and it does not find that such need can be met or such benefits can be secured by reasonably available alternative means having materially less anticompetitive effects.

advancement of international comity. See e.g., Order 93-1-11. As discussed more fully above, an examination of each of these factors dictates in favor of granting antitrust immunity for discussions concerning liability limits for passenger injury or death. Antitrust immunity for, and agreements arising from, such discussions will further U.S. foreign policy goals, advance international comity and benefit the travelling public.

Although discussions concerning liability limits are not likely to "substantially reduce competition," the Department should nevertheless approve this application because such discussions are in the public interest and will not proceed absent antitrust immunity. The Montreal intercarrier agreement continues to operate under a grant of antitrust immunity under section 414 of the Act. Given the fact that any discussion of these issues will inevitably include modifications to that agreement, participants to such discussions may risk a general antitrust challenge. Consequently, IATA members are unwilling to proceed with discussions absent antitrust immunity.

If discussion authority is granted under subsection (a) (2) (A) of section 412 of the Act, antitrust immunity should be granted under section 414 in view of the fact that discussions are in the public interest and will not proceed absent such immunity.

- ii. Antitrust Immunity is appropriate for Discussions Approved Under Subsection (a) (2) (A) (i) of Section 412 of the Act

Where discussion authority is approved pursuant to subsection (a) (2)(A) (i) of section 412 of the Act, such approval must be accompanied by antitrust immunity. Section 414; Order 89-10-52 at 7 ("[W]here an anticompetitive agreement is approved in order to attain other objectives, the conferral of antitrust immunity is mandatory under the Federal Aviation Act, as amended."). Accordingly, if the discussion authority requested here is granted under subsection (a)(2)(A)(i) of section 412, such authority must be accompanied by antitrust immunity pursuant to section 414.

#### IV. Conditions

If discussion authority is granted under section 412, the Department **may** include the standard conditions relating to government observers and the requirements that all agreements must be filed for prior approval. It should not, however, contain any conditions that would restrict the ability of airlines to consider all possible options relating to the implementation of Articles 22 and 35A of the Convention. Notwithstanding its mandatory incorporation into 14 CFR Part 203, the Montreal intercarrier agreement is, in its conception and character, a voluntary agreement, consistent with the operation of Article 22 itself. Accordingly, carriers must be free under IATA auspices to consider various options relating to the implementation of Article 22 to develop recommendations that will satisfy the concerns of all governments.

This flexibility, of course, would be subject to the requirement that any agreement be submitted to the Department for review and approval prior to implementation.

V. Conclusion

For the foregoing reasons, the International Air Transport Association respectfully requests that its application for discussion authority be approved under section 412 of the Act, and that member activities constituting participation in such discussions, whether in person or by any other means, be immunized from application of the antitrust laws under section 414 of the Act.

Respectfully submitted,

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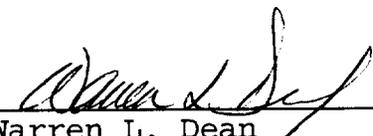
September 24, 1993

CERTIFICATE OF SERVICE

A copy of the International Air Transport Association's Application for Approval of, and Antitrust Immunity for, Discussion Authority has been served on this 24th day of September 1993, by first-class mail, postage, prepaid on the following persons:

Mr. James Tarrant  
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\_\_\_\_\_  
Warren L. Dean

VII.C.1 - 174/92-8

3.10.1992

Es/LC/mgt

Consultation PaperPASSENGER LIABILITY IN AIRCRAFT ACCIDENTS -  
WARSAW CONVENTION AND INTERNAL MARKET REQUIREMENTS1. INTRODUCTION

In 1929 the Warsaw Convention was established in order to provide a worldwide system of standards and rules (referring to procedures and compensation amounts) for liability of passengers and cargo in the event of an accident, loss of baggage and delay for international air transport.

Over time the Warsaw Convention developed towards the so-called Warsaw system. It includes :

- the Warsaw Convention of 1929 adhered to by some 123 states which established inter alia rules and procedures for compensation in the event of an aircraft accident including the very basic provision that the airline is presumed to be liable for damage but that liability is generally limited (about U.S.\$ 10.000 as a maximum).
- the Hague Protocol of 1955 adhered to by 108 states which updated the maximum limit of compensation to about U.S.\$ 20.000.
- the Montreal Intercarrier Agreement of 1966 raising limits further for journeys involving the U.S. to U.S.\$ 75.000 and making the airline liability "strict".
- Contractual Commitments by individual carriers which are, to some extent necessitated by domestic law in application of the "special contract"-concept of Warsaw-Hague Art.22.1

In addition to these basic instruments further elements based on the Warsaw-system have been established. However, their practical meaningfulness would be none if they fail to attract the number of ratifications that are necessary for entry into force. These are :

- the Quarante Protocol of 1971 ratified by only 11 states and the
- Montreal Protocol No. 1 of 1975 ratified by 19 states.

Both instruments deal with further increases in limits (100.000 special drawing rights = U.S.\$ 133.000), the effects of currency fluctuations, more precise rules to the concept of strict liability and additional options for supplementary schemes.

The list of parties to these instruments is as annexed. It is worth noting that there are still more than 30 states that have not accepted any part of the Warsaw system.

Damage to third parties involved in air accidents is ruled by the Convention of Rome, as lastly amended in 1978. However, the Convention is lacking general world-wide recognition and can hardly be seen as an instrument providing sufficient compensation levels. Therefore, this area is ruled by a wide range of different national rules.

The purpose of this paper is to assess briefly the fragmentation of liability rules in an intra- and extra-context (chapter 2). On this basis policy requirements at Community level will be identified (chapter 3) before outlining basic options for improving the present system (chapter 4). These options will be further discussed with Member States, air carriers, consumer organizations, insurance organizations and other interested parties.

## 2. THE PRESENT SITUATION

### 2.1 General

The Warsaw Convention basically aims at balancing the trade-off between the interests of passengers for a maximum compensation in the event of an accident and the interests of air carriers to restrict their liability payments (and insurance premiums) at reasonable levels. Further general aims refer to establishing simple and clear procedures for the settlement of claims and the interests of states in safeguarding equitable protection for its citizens and avoiding distortions of competition (caused by different liability limits) to the detriment of "their" airline industry.

### 2.2 The key problem : Lack of worldwide uniform understanding on objectives

The history of the Warsaw system demonstrates quite clearly that a uniform worldwide understanding on the relative importance of all these criteria so far has been impossible to attain.

It is today more or less generally accepted that even the maximum compensation amounts as established in the Montreal Protocol No. 3 (which is not yet formally approved) are too low for industrialized countries.

This is particularly visible in the United States where victims have (successfully) sought to obtain considerably higher damage compensation. This is possible because of the legal principle of joint responsibility in the US. Most aircraft and engines are manufactured in the U.S.

The lack of uniformity, however, is only one part of the problem. Compensation amounts fixed in nominal terms are conceptually unsuitable for meeting the impact of inflation. Assuming for simplicity's sake a constant annual inflation rate of 5% from 1966-1992 the real value of the limit set by the intercarrier agreement of 1966 (US\$75.000) would only amount to US\$20.000 i.e. a loss of 75% in purchasing power. During the same period (1967-1992) the per capita GNP of EC-countries has increased - in real terms - by 85%.

The problems of setting uniform compensation limits at worldwide level have over time increasingly been recognized. The Montreal Protocols are therefore intended to create flexibility in the form of a possibility for governments of the signatory states to impose mandatory, passenger paid "supplemental compensation schemes".

However, the Montreal Protocols have gained little support and do, therefore, not (yet) provide a generally recognized frame for the flexibility required. In this context continued reluctance of the U.S. to commit itself to the Montreal Protocols has contributed to an increasing fragmentation and even confusion over ways how to reinforce the Warsaw system to make it compatible with today's economic, social and financial circumstances. Such fragmentation for international flights is increased by a number of specific schemes for domestic flights.

Similar problems exist in relation to the transportation of freight by air - where a uniform world-wide understanding on principles liability limits to be applied is largely lacking.

### 2.3 The E.C.-context

It follows from the foregoing that present mandatory compensation limits as laid down in the Hague Protocol are totally insufficient against welfare standards of today.

From this background it must be concluded that - on the eve of the achievement of the internal market - mandatory compensation limits inside the relatively homogenous E.C.-area differ considerably and that any of them in view of today's economic and social standards is inacceptably low in terms of reasonable income consumer protection standards.

At present, the rights of passengers differ from state to state depending on departure point, the air carrier involved, type of

service (domestic Or international) etc. Consequently air carrier's insurance costs differ thereby creating distortions of intra-E.C. competition and uncertainty and a lack of transparency in relation to the mandatory obligations of air carriers. (see annex to this paper)

Third party liability differs substantially to national rules. The Rome convention is completely out of date.

On this background, the Commission has reached the conclusion that a basic re-assessment of the present situation is urgently required. To this end it commissioned studies on the possibilities of community action to harmonize limits of liability and third party damage. The final report of the studies is annexed to this consultation paper (see Annexes)

### 3. RATIONALE OF AN E.C. SYSTEM OF PASSENGER LIABILITY

Any decision on an E.C.-wide system of rules on passenger and third party liability necessitates a common understanding of the main objectives to be achieved and the legal and procedural requirements to be fulfilled.

The following elements are suggested for inclusion in an in-depth discussion on the structure and substance of a Community system on passenger liability :

#### 3.1 Interests from the point of view of users and third parties

- Fair compensation amounts should probably be at least the same as the levels of compensation to victims in non-aviation accidents in industrialized countries and should not be lower than amounts paid to victims in aviation accidents in other industrialized regions.
- Simple and speedy procedures .It is basically unacceptable if victims (or their relatives) must wait for the results of a lengthy litigation or claims process. Any voluntary supplemental scheme based on the decision of individual passengers must be based on simple rules. In this context discussion will have to focus on the question to what extent can or should the procedures in the Warsaw convention be maintained
- Transparency  
Passengers must be fully aware of their statutory rights in order to be able to assess quickly an eventual need for supplementary insurance on an individual basis.

### 3.2 Interests of air carriers and/or aeronautical manufacturers

- Controllable/acceptable compensation/insurance costs

The financial risks attached to any Community scheme must be foreseeable and acceptable. The scheme should be based on a stringent liability concept and effectively guarantee avoidance of additional claims. The risk of public litigation processes on individual cases of responsibility for accidents.

- Equal treatment between different carriers and types of operations

Effective harmonization must be in the absence of distortions of competition based on different regulatory requirements, be it between states or between different types of operations should be avoided.

- Efficient insurance system

The system should facilitate an efficient organisation of the relevant insurance markets.

### 3.3 Aeropolitical and general public policy considerations

An E.C. system of common rules on passenger and third party liability must in a procedural sense at least fit with existing obligations and procedures at bilateral and multilateral level. It should safeguard the option of developing over time a broader regional coverage at whatever level and hamper clear enforcement possibilities across the Community.

## 4. BASIC POLICY OPTIONS FOR A COMMUNITY SYSTEM OF PASSENGER LIABILITY

### 4.1 Mandatory versus optional rules

In theory the elements as outlined above can be addressed by mandatory or by optional systems. Mandatory rules would commit air carriers by law to make sure the fulfilment of certain compensation standards. Optional systems can be air carrier oriented (inter-carrier self-regulatory agreement) and/or passenger-oriented by providing a simple procedure for increasing mandatory compensation limits via individual decisions of passengers for which a contractual frame with the insurance sector would be required.

### 4.2 Unlimited versus limited compensation limits

The second main question to be addressed refers to the question of imposing limits for maximum compensation or not.

The concept of unlimited liability would safeguard any system against being weakened overtime by macroeconomic developments and ensure a high degree of consumer protection. Its implications on the level of insurance premiums to be paid (and by whom) require further study.

4.3 Solution inside or outside the Warsaw system

In principle, a solution could be found inside or outside the Warsaw system. An E.C. approach outside the Warsaw-system could have the advantage of improving coherency with other sectors and of including areas falling outside the Warsaw approach (0.9. third party damages).

These aspects need to be assessed against the undisputable elements of the Warsaw system in terms of providing broadly standardised procedures and a reasonable basis for broader regional coverage. A Warsaw-oriented schema has to recognise continuous uncertainties in relation to broad acceptance of the Montreal Protocol for which ratification in the U.S. is widely seen as an essential but still uncertain prerequisite. Under circumstances reliance on the Hague Protocol, in combination with contractual commitments prompted by licensing requirements may be the only feasible way to apply improved compensation rules throughout the E.C. without weakening further the Warsaw-system. It might also be considered to preserve parts of the Rome convention.

5. FINAL REMARKS

The present passenger and third party liability systems do not meet basic requirements in terms of establishing fair compensation limits and harmonised standards throughout the European Community. A search for more appropriate common E.C. standards is necessary in order to fulfil basic needs of the travelling public, the airline industry and other interested parties.

The Commission invites interested parties to present their views on this Low., in particular in relation to the elements to be considered for an E.C. system of passenger and third party liability (chapter 3) and the basic options as outlined in this paper (chapter 4). These are:

- mandatory rules or optional (contractual commitments)
- limited or unlimited compensation amounts
- solution inside or outside the Warsaw-system

Annexes



COMMISSION  
OF THE EUROPEAN  
COMMUNITIES

Brussels,  
BVE/bvds

DIRECTION-GENERAL  
FOR CONSUMER PROTECTION

DG IV/D-3

IATA  
Attn. Mr. Pierre J. Jeanniot  
Director General  
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P.O.Box 672

CH - 1215 Genève 15 Airport

Dear Mr. Jeanniot,

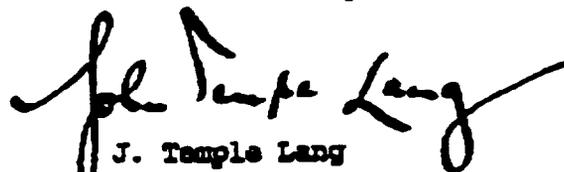
Re : Discussions on passengers liability limits

Frederik Seransen passed me a copy of the IATA comments on the Commission's consultation paper, which you sent him on 3 March.

I understand that members of your organisation envisage a possible increase in the limitation of liability provided in the Warsaw Convention by means of an inter-carrier agreement consistent with Article 22(1) of that convention. I also understand from your comments that your organisation would in due course be making the necessary application to us, seeking an exemption for inter-carrier discussions for this purpose.

I would encourage you to make this application at the earliest opportunity. From our side, we would endeavour to react quickly to your application.

Yours sincerely,



J. Temple Lang  
Director

IATA 9/24/93



## International Air Transport Association

PIERRE J. JEANNIOT, O.C.  
DIRECTOR GENERAL

MONTREAL/GENEVA

DG 1200

13 August 1993

Dr. John Temple Lang  
Directorate-General for Competition - DG IV  
Commission of the European Communities  
150, Avenue de Cortenberg  
B-1049 Brussels  
Belgium

Dear Dr. Temple Lang,

I have the honour, on behalf of the International Air Transport Association and on behalf of its Member Airlines as listed in Annex I, hereby to apply for negative clearance for inter-carrier consultations on passenger liability limits, as explained in more detail in Annex II, and, to the extent that such negative clearance cannot be granted, for an exemption under Article **85(3)** of the Treaty establishing the European Economic Community.

I also enclose in Annex II the standard information required by the Commission. I remain at your disposal to provide any further information you might request.

In view of the large number of parties, acknowledgement of receipt to IATA can be considered acknowledgement of receipt to its co-applicant Members.

Sincerely ,

A handwritten signature in dark ink, appearing to read "Jeannot", written over a faint circular stamp.

## ANNEX I

This form must be accompanied by an annex containing the information specified in the attached Complementary Note.

The form and annex must be supplied in fourteen copies (two for the Commission and one for each Member State). Supply three copies of any relevant agreement and one copy of other supporting documents.

Please do not forget to complete the Acknowledgement of Receipt annexed.

If space is insufficient, please use extra pages, specifying to which item on the form they relate.

FORM AER

## TO THE COMMISSION OF THE EUROPEAN COMMUNITIES

Directorate-General for Competition  
200, rue de la Loi  
B-1049 Brussels

- A. Application for negative clearance pursuant to Article 3 (2) of Council Regulation No 3975/87 of 14 December 1987 relating to implementation of Article 85 (1) or of Article 86 of the Treaty establishing the European Economic Community.
- B. Application under Article 5 of Council Regulation No 3975/87 of 14 December 1987 with a view to obtaining a decision under Article 85 (3) of the Treaty establishing the European Economic Community.

## Identity of the parties

## 1. Identity of applicant

Full name and address, telephone, telex and facsimile numbers, and brief description of the undertaking(s) or association(s) of undertakings submitting the application.

For partnerships, sole traders or any other unincorporated body trading under a business name, give, also, the name, forename(s) and address of the proprietor(s) or partner(s).

Where an application is submitted on behalf of some other person (or is submitted by more than one person) the name, address and position of the representative (or joint representative) must be given, together with proof of his authority to act. Where an application or notification is submitted by or on behalf of more than one person they should appoint a joint representative. (Article 2 (2) and (3) of Commission Regulation No 4261/88).

International Air Transport Association  
IATA Centre  
P.O. Box 672, Route de l'Aéroport 33  
CM-1215 Geneva 15 Airport, Switzerland  
Tel: (41 22) 799 2525  
Fax: (41 22) 798 3553  
Telex: 415586

188 Active and 128 Associate Members of IATA listed in Annex I to this Application

Proof of authority of IATA to act on behalf of its Members is on file with the Commission

2. Identity of any other parties

Full name and address and brief description of any other parties to the agreement, decision or concerted practice (hereinafter referred to as 'the arrangements').

not applicable

State what steps have been taken to inform these other parties of this application.

(This information is not necessary in respect of standard contracts which an undertaking submitting the application has concluded or intends to conclude with a number of parties.)

Purpose of this application (see Complementary Note)

(Please answer yes or no to the questions)

Are you asking for negative clearance alone? (See Complementary Note — Section IV, end of first paragraph — for the consequence of such a request.)

No

Are you applying for negative clearance, and also applying for a decision under Article 85 (3) in case the Commission does not grant negative clearance?

Yes

Are you only applying for a decision under Article 85 (3)

No

Would you be satisfied with a comfort letter? (See the end of Section VII of the Complementary Note).

Yes

Write nothing in this margin

The undersigned declare that the information given above and in the 8 pages annexed hereto is correct to the best of their knowledge and belief, that all estimates are identified as such and are their best estimates of the underlying facts and that all the opinions expressed are sincere. They are aware of the provisions of Article 12 (1) (a) of Regulation (EEC) No 3975/87 (see attached Complementary Note).

Place and date Geneva, 12 August 1993

Signatures: [Handwritten Signature]

Pierre J. Jeannot, O.C.

Director General

COMMISSION  
OF THE  
EUROPEAN COMMUNITIES

Brussels .....

Directorate-General for Competition

To

The Director General  
International Air Transport Association  
IATA Centre  
P.O. Box 672, Route de l'Aéroport 33  
CH-1215 Geneva 15 Airport, Switzerland

ACKNOWLEDGEMENT OF RECEIPT

(This form will be returned to the address inserted above if the top half is completed in a single copy by the person lodging it)

Your application dated: 12 August 1993

concerning: Inter-carrier consultations on passenger liability limits

Your reference: .....

Parties:

1. IATA and its 126 Members listed in Annex I to the Application
2. dated 12 August 1993 and others

(There is no need to name the other undertakings party to the arrangement)

(To be completed by the Commission.)

was received on: .....

and registered under No IV/AER/

Please quote the above number in all correspondence

216 Members (188 Active and 28 Associate) on 22nd July 1993

- \* Tariff Coordination Members (97)  
 \*\* Non-voting Tariff Coordination Members

ACTIVE MEMBERS

ZY	ADA-Air	TI	Baltic International Airlines
JP'	Adria Airways	BG	Biman Bangladesh Airlines
EI*	Aer Lingus p.l.c.	VB	Birmingham European Airways Ltd.
SU*	Aeroflot - Russian International Airlines	BU	Braathens S.A.F.E.
AR*	Aerolineas Argentinar	BA*	British Airways p.l.c.
AM	Aerovias de Mexico S.A. de C.V. (AEROMEXICO)	BD	British Midland Airways Ltd.
AV*	Aerovias Nacionales de Colombia S.A. (AVIANCA)	BC	Brynmor Airways
VE	Aerovias Venezolanas S.A. (AVENSA)	II	Business Air Ltd.
ZL	Affretair (PVT) Ltd.	UY*	Cameroon Airlines
RK*	Air Afrique	CP*	Canadian Airlines International Ltd.
AH*	Air Algérie	cx	Cathay Pacific Airways Ltd.
uu	Air Austral	OK''	Ceskoslovenske Aerolinie (CSA)
BP	Air Botswana Corporation	MN	Commercial Airways (Pty.) Ltd. (COMAIR)
SB	Air Caledonie International	MX	Compañía Mexicana de Aviación S.A. de C.V. (MEXICANA)
AC*	Air Canada	00	Conti-Flug
AF''	Air France	co	Continental Airlines Inc.
GN*	Air Gabon	OU*	Croatia Airlines
IT=	Air Inter (Lignes Aériennes Intérieures)	LX*	Crossair
JM	Air Jamaica Ltd.	CY*	Cyprus Airways Ltd.
VO	Air Liberte S.A.	DA	Dan-Air Services Ltd.
Fu	Air Littoral	DL*	Delta Air Lines Inc.
MD	Air Madagascar	01	Deutsche BA Luftfahrtgesellschaft mbH
QM*	Air Malawi Ltd.	LH*	Deutsche Lufthansa A.G. (LUFTHANSA)
KM'	Air Malta Company Ltd.	MS=	Egyptair
cw	Air Marshall Islands	LY*	El Al Israel Airlines Ltd.
NN	Air Martinique	EK	Emirates
MK	Air Mauritius	CU*	Empresa Consolidada Cubana de Aviación (CUBANA)
SW	Air Namibia	PL	Empresa de Transporte Aéreo del Peru (AEROPERU)
NZ*	Air New Zealand Ltd.	EU*	Empresa Ecuatoriana de Aviación S.A. (ECUATORIANA)
PX*	Air Niugini	ov	Estonian Air
FJ	Air Pacific Ltd.	ET*	Ethiopian Airlines Corporation
HM	Air Seychelles Ltd.	RN	Euralair International
TC*	Air Tanzania Corporation	QY	European Air Transport
VK	Air Tugaru Corporation	NS	Eurowings AG
UK*	Air U.K.	FM*	Federal Express Corporation
PS	Air Ukraine International	AY*	Finnair Oy
NF	Air Vanuatu	GA*	Garuda Indonesia
QC*	Air Zaire	GT	GB Airways
UM	Air Zimbabwe Corporation	GH*	Ghana Airways Corporation
AI''	Air-India	GF	Gulf Air Company G.S.C.
UL	AirLanka Ltd.	KA	Hong Kong Dragon Airlines Ltd. (DRAGONAIR)
AS	Alaska Airlines Inc.	AG	Hunting Cargo Airlines
AZ*	Alitalia - Linee Aeree Italiane S.p.A.	IB*	IBERIA (Líneas Aéreas de España S.A.)
NH*	All Nippon Airways Co., Ltd.	FI*	Icelandair
LM	ALM (Antillean Airlines)	IC*	Indian Airlines
DY*	ALYEMDA - Yemen Airlines	IR*	Iran Air, The Airline of the Islamic Republic of Iran
HP*	America West Airlines, Inc.	IA	Iraqi Airways
AA*	American Airlines Inc.	LN	Jamahiriya Libyan Arab Airlines
IW	AOM Merve S.A. d.b.a. AOM French Airlines		
FG*	Ariana Afghan Airlines Co. Ltd.		
OS''	Austrian Airlines		
AO	Aviación y Comercio, S.A. (AVIACO)		
LZ*	Balkan Bulgarian Airlines		

JD	Japan Air System Co. Ltd.	SD'	Sudan Airways Company Ltd.
JL*	Japan Airlines Co. Ltd.	SR*	Swiss Air Transport Co. Ltd. (SWISSAIR)
JY	Jersey European Airways	RB*	Syrian Arab Airlines
JU	Jugoslovenski Aerotransport (JAT)	DT*	TAAG - Linhas Aéreas de Angola (ANGOLA AIRLINES)
KQ*	Kenya Airways Ltd.	TA	TACA International Airlines S.A.
KL*	KLM Royal Dutch Airlines	TP*	TAP - Air Portugal
KE*	Korean Air	IJ*	TAT European Airlines
KU'	Kuwait Airways Corporation	TG*	Thai Airways International Ltd.
7Z	Laker Airways (Bahamas) Ltd.	FF	Tower Air Inc.
TM*	LAM - Linhas Aéreas de Moçambique	TL*	Trans-Mediterranean Airways S.A.L. (TMA)
NG*	Lauda Air Luftfahrt AG	TW*	Trans World Airlines Inc. (TWA)
QL	Lesotho Airways Corporation	HV	Transavia Holland B.V. d/b/a Transavia Airline
UC	LAOECO S.A.	TR*	Transbrasil S.A. Linhas Aéreas (Trans Brasil)
LA*	Linea Aérea Nacional-Chile S.A. (LAN-CHILE)	GD	Transportes Aereos Ejecutivos S.A. de C.V. (TAESA)
LR	Líneas Aéreas Costarricenses S.A. (LACSA)	GM	Trek Airways (Pty) Ltd. d.b.a Flitestar
PZ	Líneas Aéreas Paraguayas - LAP	BW	Trinidad & Tobago (BWIA International) Airways Corp.
TE	Lithuanian Airlines	TU*	Tunis Air
LB	Lloyd Aéreo Boliviano S.A. (LAD)	TK''	Turkish Airlines Inc.
LC	Loganair Ltd.	UA*	United Airlines
IT	LTU - Lufttransport-Unternehmen GmbH & Co. KG.	5X	United Parcel Service
LG*	Luxair	us	USAir, Inc.
DM	Maersk Air	RG*	VARIG S.A. (Viagao Aérea Rio-Grandense)
MH	Malaysian Airline System Berhad	VA''	Venezolana Internacional de Aviación S.A. (VIASA)
6E	Malmö Aviation AD	VP*	Viagao Aérea Sao Paulo' S.A. (VASP)
MA*	MALEV - Hungarian Airlines Public Ltd. Co. (MALEV p.l.c.)	VS*	Virgin Atlantic Airways
JE	Manx Airlines Ltd.	Fv	Viva Air
IG	Meridiana S.p.a.	IY*	YEHENIA Yemen Airways
ME''	Middle East Airlines Airliban (MEA)	QZ*	Zambia Airways Corporation Ltd.
Nx	Nationair Canada	ZA	ZAS Airline of Egypt
WT*	Nigeria Airways Ltd.		
KZ*	Nippon Cargo Airlines (NCA)		
NW*	Northwest Airlines Inc.		
OA*	Olympic Airways, S.A.		
PK''	Pakistan International Airlines Corp. (PIA)		
PR''	Philippine Airlines Inc.		
PU*	PLUNA - Primeras Linear Uruguayas de Navegación Aérea		
LO*	Polskie Linie Lotnicze (LOT)		
PH*	Polynesian Airlines Ltd.		
NI*	Portugalia S.A.		
Mz	P.T. Herpati Nusantara Airlines		
SG	P.T. Sempati Air		
QF*	Qantas Airways Ltd.		
RO	Romanian Air Transport S.a., TAROM		
AT*	Royal Air Maroc		
BI	Royal Brunei Airlines		
RJ*	Royal Jordanian		
zc	Royal Swazi National Airways Corp. Ltd.		
VR	Royal Tongan Airlines		
FR	Ryanair Ltd.		
SN''	SABENA		
SV*	Saudi Arabian Airlines Corp. (SAUDIA)		
SK-	Scandinavian Airlines System (SAS)		
SQ	Singapore Airlines Ltd.		
JZ	Skyways AR		
EY*	Société Nouvelle Europe Aero Service		
IE	Solomon Airlines		
HH	Sonali Airlines		
SA*	South African Airways (SAA)		

ASSOCIATE MEMBERS

HS Air North  
VT Air Tahiti  
AQ Aloha Airlines, Inc.  
AN" Ansett Australia  
ZQ Ansett New Zealand  
AU Austral Líneas Aéreas S. A.  
TN\*\* Australian Airlines Ltd.  
YM Compass Airlines  
EW Eastwest Airlines (Operations) Ltd.  
4S East West Airlines  
IH Falcon Aviation AB  
YC Flight West Airlines Pty. Ltd.  
ZL Hazelton Airlines  
KD Kendell Airlines  
TH LAR Transregional (Linhas Regionais S.A.)  
LF Linjeflyg AD  
DW Lufthansa CityLine GmbH  
NM Munt Cook Airlines  
2W Pacific Midland Airlines Ltd.  
FA Safair Freighters (Pty.) Ltd.  
SP SATA Air Acores  
6J Southeast European Airlines  
PI Sunflower Airlines Ltd.  
OF Sunstate Airlines (Qld) Pty. Ltd.  
JQ Trans-Jamman Airlines Ltd.  
RL Ulttair, Inc. d.b.a. Airline of the  
Americas  
PF Vayudoot Ltd.  
WF Wideroe Flyveselskap A/S

## Further Information

1. Brief description of the intended activity

1.1 In October 1992, the EC Commission sent a consultation paper to interested parties, including IATA, inviting airline views and comments on possible Community regulatory action to improve and harmonise for aircraft accidents the airline liability limits for death or personal injury of passengers (Warsaw Convention).

1.2 In the comments which were submitted to the Commission, IATA acknowledged the need for increased liability limits, which currently are too low for **industrialised** countries in respect of death or personal injury of passengers in aircraft accidents. Nevertheless, IATA Member carriers remain committed to the Warsaw Convention instruments, in the framework of which a permanent solution should be sought.

1.3 In the meantime, and as a result of discussions within the industry as well as with governments, Member carriers of IATA believe that inter-carrier discussions should be held in order to consider the possibility of reaching inter-carrier agreement on voluntary higher liability limits by way of special contracts in the sense of Article 22 of the Warsaw Convention.

1.4 It is considered that such inter-carrier discussions, which could be held under the auspices of IATA and which would be open to all interested Member carriers on a worldwide basis, would, if successful, address an important concern of the **travelling** public, governmental authorities as well as of the industry itself, namely to achieve an adequate increase of liability limits in the near future, while retaining the possibility of formal amendment of the Warsaw system by governmental action in the medium term.

2. Market

- not applicable.

3. Full details of the parties

3.1 IATA is a trade association composed of 188 Active and 28 Associate Members, which are listed in Annex I to this application. While the Active Members operate international scheduled services, the Associate Members operate domestic

scheduled services. Despite a significant increase in recent years in the number of Member airlines that are privately-owned in whole or in part, it is still the case that a majority of Members are wholly or partly-owned by governments, including those of member States of the European Community. Details on ownership of each Member can be provided upon request.

4. Full details of the arrangements

- 4.1 The Warsaw Convention of 1929 (Convention for the Unification of Certain Rules Relating to International Carriage by Air, LNTS Volume 137, page 11) provides in its Article 22 that the liability of the air carrier for injury or death of a passenger is limited to 125,000 **Poincaré** gold francs, which is equivalent to approximately 8,300 USD. This limitation was raised in the so-called Hague Protocol of 1955 to the sum of 250,000 **Poincaré gold francs**, equivalent to approximately 16,600 USD. However, the Hague Protocol has **not** been ratified by the same number of States which had signed and ratified the Warsaw Convention. Important aviation nations, such as the United States, have remained party to the original Warsaw Convention only. Subsequent attempts to raise the liability limit in order to keep in step with inflation, while maintaining **uniformity** among States, have failed: the Guatemala City Protocol of 1971 has remained a dead letter, the Montreal Protocols Nos. 3 and 4, signed in 1975, have been the subject of on-going efforts to achieve the necessary number of ratifications throughout the **1980's** up to the present day. In particular, the United States Senate continues to have this matter on its agenda, with presently unclear prospects as to whether the required two-thirds majority in the Senate can be achieved.
- 4.2 The delay in U.S. action to ratify to Montreal Protocols Nos. 3 and 4 to the Warsaw Convention has effectively delayed ratification action also in other countries including major aviation partners of the United States. As a result, various parties have considered alternative action to achieve an adequate update of passenger liability limits. For example, in 1992, Japanese air carriers have proceeded to modify their tariffs and conditions of carriage to implement a new special contract under Article 22 of the Warsaw Convention, after having applied for and obtained governmental approval. The new special contract provides for strict but limited liability up to 100,000 **SDRs** and thereafter for unlimited liability on the basis of presumed, but rebuttable fault.
- 4.3 The Japanese carrier agreement is not the first precedent of this type. All major international air carriers operating to and from the United States agreed in the so-called Montreal Agreement of 1966 (CAB Agreement 18900) by way of a special contract under Article 22 of the Warsaw Convention to

voluntarily raise applicable liability limits to 75,000 USD for passenger injury and death. Further, the carriers agreed not to avail themselves of the defense of non-negligence under Article 20, paragraph 1 of the Warsaw Convention for claims within the Montreal Agreement limit.

- 4.4 This Agreement was prepared and finalised with the approval of the U.S. authorities, including the competent antitrust authorities, and was thereafter made a requirement for each international air carrier serving the United States in order to obtain a license from the U.S. authorities.
- 4.5 Although at that time the Montreal Agreement was intended to be an interim measure pending negotiation and U.S. ratification of the amendments to the Warsaw Convention, which were later included in the Montreal Protocols of 1975, the Agreement has effectively continued to be in force due to the failure of subsequent efforts to update the Warsaw system. The Montreal Agreement continues to operate under the grant of antitrust immunity from the former Civil Aeronautics Board (CAB), now the U.S. Department of Transportation (DOT).
- 4.6 The international airline community has supported strongly all efforts to obtain ratification of the Montreal Protocols, and has actively assisted in the preparation of a Supplemental Compensation Plan which the U.S. has proposed as a condition of its ratification of the Protocols. The Plan, which is generally consistent with Article 35a of the Convention as it would be amended by the Montreal Protocols, gives each Contracting State the right to provide compensation for its own passengers in accordance with its own economic standards over and above of the carriers\* limit of liability under the Convention.
- 4.7 As IATA has indicated in its comments on the Consultation Paper of the EC Commission, mentioned above, there is general consensus that the limits of liability incorporated in the Warsaw system are seriously out of date. There also seems to be now a consensus that the Warsaw system should be preserved as an appropriate framework for the settlement of claims arising from airline accidents. However, further delay in government action on the ratification of the Protocols has prompted the airline community to consider the solution of a voluntary interim agreement on higher limits, possibly along the lines of the Montreal Agreement of 1966, either by modifying its geographical scope and the amounts of its liability limits, or by way of a new agreement. As an alternative, combination of the above with a supplemental system under Article 35a of the Convention could also be considered.

4.8 As explained above, since the framework of liability limits already exists, the principal purpose of the notified discussions is to raise such limitations. In view of this fact, carriers which decide to participate in the notified discussions will, if such discussions are successful, be less restricted in their ability to compensate airline accident victims than at present. Furthermore, it should be emphasised that airline participation in the notified discussions will be entirely voluntary.

5. **Reasons for negative clearance**

5.1 It is submitted that inter-carrier discussions on passenger liability limits would have no restrictive effects on competition within the common market in the sense of Article 85, paragraph 1 of the Treaty of Rome. As explained above, the main objective would be to raise the liability limits and therefore to ease presently existing restrictions. Furthermore, the discussions deal with a subject which does not constitute a commercial factor in the services which airlines provide for their passengers. Carriers do not compete on the basis of passenger liability limits and passengers do not make a choice in the airline on which they wish to fly on the grounds of the passenger liability limit. Finally, it must be emphasised that the notified discussions will not extend beyond the subject matter described above.

5.2 **The nature** and the subject of the notified inter-carrier discussions is therefore not capable of producing effects which may prevent, restrict or distort competition within the common market to any appreciable extent.

5.3 It is further submitted that in any event, in view of the above, the notified discussions will not affect trade between Member States to any appreciable extent.

6. **Reasons for exemption under Article 85, paragraph 3**

6.1 The principal objective of inter-carrier discussions on passenger liability limits would be to achieve an appropriate increase in such liability limits for the benefit of victims of airline accidents. Consistent with the desire of the industry to achieve an updated system which would allow the rapid and fair compensation of air accident victims, inter-carrier discussions would also consider possible mechanisms to achieve those objectives. It is therefore submitted that such inter-carrier discussions would contribute to improving the distribution of the air transport product.

- 6.2 Such discussions would also allow consumers a fair share of the resulting benefit. Since the object of the discussions is to increase passenger liability limits to the obvious benefit of consumers, this requirement is certainly met.
- 6.3 It is clear that such discussions would not impose on the parties concerned restrictions which are not indispensable to the attainment of these objectives, since participation would be voluntary, and participants would be free to seek individual solutions if they so wish. Moreover, as stated above, the discussions will be limited to the subject of passenger liability limits and the mechanisms necessary to achieve rapid and fair compensation of air accident victims.
- 6.4 It would also appear obvious that the notified discussions would not afford the parties the possibility of eliminating competition in respect of a substantial part of the air transport market in question.

**7. Other information**

- 7.1 A similar application for authority to hold inter-carrier discussions will also shortly be filed with the responsible U.S. antitrust authorities, the Department of Transportation (DOT).
- 7.2 Furthermore, an exchange of correspondence between Mr. **John** Temple Lang, Directorate General for Competition, EC Commission and Mr. Pierre Jeannot, IATA Director General took place on 25 June and 02 July 1993. In his letter, Mr. Temple Lang gave IATA assurances that an application for inter-carrier discussions would be considered expeditiously.
- 7.3 We are **at** your disposal to provide any further information you might request.



Brussels,

IV-D-3

International Air Transport Association  
Attn. Mr Pierre J. Jeanniot,  
Director general  
Route de l'Aéroport 33  
B.P. 672  
CH - 1215 Genève 15 Aéroport

Dear Sir,

Re: Case IV/34829  
Discussions on airline liability limits for death or personal injury of passengers.

I refer to your letter dated 13 August 1993 and the enclosed form AER, by which you applied for negative clearance and exemption in respect of inter-carrier consultations on passenger liability limits.

I should first advise you that, since the subject-matter of the application is not directly related to the provision of air transport services but extends to the ancillary area of liability for the provision of such services, and in accordance with Article 3(B) of Regulation No 4261/88, it appears appropriate to examine your application on the basis of Regulation No 17 rather than Regulation No 3975/87. This will not affect the substantive assessment of your application but merely modifies the procedures to be followed. In particular, under Regulation No 17 there is no need to publish a summary of your application and invite comments from third parties. I trust this re-qualification of your application meets with your approval.

On the basis of the information provided in your application, we have now completed a preliminary examination of this case. This assessment has not revealed the existence of any grounds under Article 85(1) for further action on the part of the Commission in respect of the subject-matter of the application.

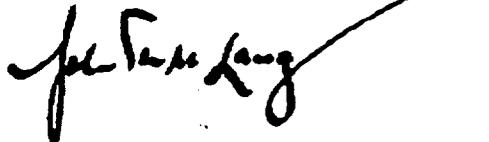
That view is taken particularly on account of the fact that discussions on liability are unlikely to have a significant impact on competition in air transport markets, and in consideration of the temporary nature of any inter-carrier agreement on liability pending amendment of the Warsaw Convention. It is also understood that participation in the discussions is voluntary and that the outcome of the discussions will not be binding on participants.

IATA 9/24/93

I should be grateful if you could keep us informed of progress made during those discussions.

You have indicated that you can agree to the application under consideration being dealt with by means of a comfort letter. The file will thus be closed. However, the case could be reconsidered if the factual or legal situation undergoes substantial changes. Naturally, any reopening of the file would be without prejudice to the legal consequences of the application, particularly as regards the immunity from fines provided by Article 15(5) of Regulation No 17.

Yours faithfully,

A handwritten signature in cursive script, appearing to read "John Temple Lang", with a long, sweeping horizontal line extending to the right.

John Temple Lang  
Director