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Order 2002-9-8



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

Issued by the Department of Transportation
on the 11th day of September, 2002

Served: September 16, 2002

Agreement adopted by the Tariff :
Coordinating Conferences of the : Docket OST-2002-12312
International Air Transport Association : R-1 through R-22
Relating to Passenger Fares :

ORDER

Various members of the International Air Transport Association (IATA) have filed an agreement with the Department under section 41309 of Title 49 of the United States Code (the Code), and Part 303 of the Department's regulations. The agreement was adopted by mail vote, for effectiveness May 15, 2002. 1/

The agreement is comprised of resolutions affecting travel between Libya and various points, including the United States. The agreement makes changes to fare levels to/from Libya, and establishes children's fares from Libya at 67% of the adult fare, to reflect disapprovals by the Libyan Government of previous IATA agreements.

We will approve those portions of the agreement that do not involve U.S. points, subject to all conditions that we have imposed previously. 2/ We will disapprove those portions of the agreement that involve U.S. points. IATA typically excludes U.S. points from any agreements involving Libya, and we do not understand why it did not do so here. Including U.S. points in agreements involving Libya and other countries that are subject to Department restrictions on transportation to/from the United States places an administrative burden on the Department, and we are putting IATA on notice that in the future, such agreements will be disapproved in their entirety. 3/

Pursuant to authority assigned by the Department's Regulations, 14 CFR 385.13:

1/ IATA Telex Mail Vote 222, filed with the Department on May 13, 2002.

2/ In approving the non-U.S. portions of the agreement, we note that all the conditions set forth in Order 86-2-23 (January 30, 1986) regarding transactions relating to transportation between the U.S. and Libya remain in effect.

3/ See Orders 98-2-5, February 12, 1998; 90-8-16, August 8, 1990; and 86-2-23, January 30, 1986.

1. We do not find that the following resolutions, which are incorporated in the agreement in Docket OST 2002-12312 as indicated and which have either direct or indirect application in foreign air transportation as defined by the Code, are adverse to the public interest or in violation of the Code, provided that approval is subject, wherever applicable, to previously imposed conditions:

<u>Docket</u> <u>2002-12312</u>	<u>IATA</u> <u>No.</u>	<u>Title</u>	<u>Application</u>
R-1	062c	Economy Class Fares Within Africa	2
R-2	090qq	Senior Citizen Fares Within Africa	2
R-3	093cc	Youth Fares Within Africa	2
R-4	064c	Economy Class Fares between Canada, Mexico, USA and Africa (to the extent that it does not establish fares between the U.S. and Libya)	1/2
R-5	070dd	Excursion Fares between Canada Mexico, USA and Africa (to the extent that it does not establish fares between the U.S. and Libya)	1/2
R-6	064f	Economy Class Fares between Mid Atlantic and Africa	1/2
R-7	070xx	Excursion Fares between Mid Atlantic and Africa	1/2
R-8	044i	Intermediate Class Fares between South Atlantic and Africa	1/2
R-9	054i	First Class Fares between South Atlantic and Africa	1/2
R-10	064i	Economy Class Fares between South Atlantic and Africa	1/2
R-11	071j	Excursion Fares from Africa to South Atlantic	1/2

<u>Docket</u> <u>2002-12312</u>	<u>IATA</u> <u>No.</u>	<u>Title</u>	<u>Application</u>
R-12	045n	Intermediate Class Fares between Africa and TC3 via EH (to the extent that it does not establish fares between the U.S. and Libya)	2/3;1/2/3
R-13	048L	Intermediate Class Fares between Africa and Japan, Korea (Dem. Rep. of), Korea (Rep. of) via TS	2/3;1/2/3
R-14	055n	First Class Fares between Africa and TC3 via EH (to the extent that it does not establish fares between the U.S. and Libya)	2/3;1/2/3
R-15	058L	First Class Fares between Africa and Japan, Korea (Dem. Rep. of), Korea (Rep. of) via TS	2/3;1/2/3
R-16	065n	Economy Class Fares between Africa and TC3 via EH (to the extent that it does not establish fares between the U.S. and Libya)	2/3;1/2/3
R-17	068 L	Economy Class Fares between Africa and Japan, Korea (Dem. Rep. of), Korea (Rep. of) via TS	2/3;1/2/3
R-18	071r	Excursion Fares between Africa and South East Asia via EH (to the extent that it does not establish fares between the U.S. and Libya)	2/3;1/2/3
R-19	071t	Excursion Fares between Africa and South Asian Subcontinent Via EH	2/3;1/2/3
R-20	072aa	Excursion Fares between Central Africa, Indian Ocean Islands, Libya, Southern Africa and Australia, New Zealand via EH	2/3;1/2/3

<u>Docket</u> <u>2002-12312</u>	<u>No.</u>	<u>Title</u>	<u>Application</u>
R-21	072r	Excursion Fares from Ethiopia, Libya to Japan, Korea (Dem. Rep. of), Korea (Rep. of) via EH, TS	2/3;1/2/3
R-22	010u	TC2/12/23/123 Special Passenger Amending Resolution from Libya (to the extent that it does not establish fares between the U.S. and Libya)	2;1/2;2/3; 1/2/3

2. We find that the following resolutions, which are incorporated in the agreement in Docket OST-2002-12312 as indicated and which have direct application in foreign air transportation as defined by the Code, are adverse to the public interest and in violation of the Code:

<u>Docket</u> <u>2002-12312</u>	<u>No.</u>	<u>Title</u>	<u>Application</u>
R-4	064c	Economy Class Fares between Canada, Mexico, USA and Africa (to the extent that it establishes fares between the U.S. and Libya)	1/2
R-5	070dd	Excursion Fares between Canada Mexico, USA and Africa (to the extent that it establishes fares between the U.S. and Libya)	1/2
R-12	045n	Intermediate Class Fares between Africa and TC3 via EH (to the extent that it establishes fares between the U.S. and Libya)	2/3;1/2/3
R-14	055n	First Class Fares between Africa and TC3 via EH (to the extent that it establishes fares between the U.S. and Libya)	2/3;1/2/3
R-16	065n	Economy Class Fares between Africa and TC3 via EH (to the extent that it establishes fares between the U.S. and Libya)	2/3;1/2/3

Docket 2002-12312	No.	Title	Application
R-18	071r	Excursion Fares between Africa and South East Asia via EH (to the extent that it establishes fares between the U.S. and Libya)	2/3;1/2/3
R-22	010u	TC2/12/23/123 Special Passenger Amending Resolution from Libya (to the extent that it establishes fares between the U.S. and Libya)	2;1/2;2/3; 1/2/3

3. This agreement is a product of the IATA tariff conference machinery, which the Department found to be anticompetitive but nevertheless accepted on foreign policy grounds by Order 85-5-32, (May 6, 1985). The Department found that important transportation needs were not obtainable by reasonably available alternative means having materially less anticompetitive effects. Antitrust immunity was automatically conferred upon these conferences because, where an anticompetitive agreement is approved in order to attain other objectives, the conferral of antitrust immunity is mandatory under Title 49 of the United States Code.

Order 85-5-32 contemplates that the products of the fare and rate conferences will be subject to individual scrutiny and will be approved, provided they are of a kind specifically sanctioned by Order 85-5-32 and are not adverse to the public interest or in violation of the Code. As with the underlying IATA conference machinery, upon approval of a conference agreement, immunity for that agreement must be conferred under the Code. Consequently, we will grant antitrust immunity to the agreement in Docket OST 2002-12312 as set forth in finding paragraph 1 above, subject, wherever applicable, to conditions previously imposed.

ACCORDINGLY,

1. We approve and grant antitrust immunity to those portions the agreement contained in Docket OST-2002-12312, as set forth in finding paragraph 1 above, subject, where applicable, to conditions previously imposed or imposed therein; and
2. We disapprove those portions of the agreement in Docket OST 2002-12312 as set forth in finding paragraph 2 above.

By:

Paul L. Gretch
Office of International Aviation

(SEAL)