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Order 95-12-14



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

SERVED DEC 11 1995

Issued by the Department of Transportation
on the 11th day of December, 1995

Air Transport Association of America

AGREEMENT RELATING TO LIABILITY

LIMITATIONS OF THE WARSAW CONVENTION

Docket OST-95-860 - 5

International Air Transport Association

AGREEMENT RELATING TO LIABILITY

LIMITATIONS OF THE WARSAW CONVENTION

Docket OST-95-232 - 13
(49152)

ORDER GRANTING CONTINUED DISCUSSION AUTHORITY

By Orders 95-2-44, and 95-7-15, Docket OST 95-232 (49152), the Department granted and extended discussion authority and antitrust immunity to IATA for the purpose of reaching an Agreement among carriers to waive the liability limits of the Warsaw Convention. Order 95-2-44 set forth guidelines as to the expectations of the Department on the nature of passenger liability coverage which should be effected by the Agreement.¹ Order 95-7-15 incorporated the same guidelines. The discussion authority expires on December 31, 1995.

As a result of the IATA discussions, an Agreement was unanimously endorsed at the IATA Annual General Meeting in

¹ Order 95-2-44, at p. 3.

Kuala Lumpur on October 31, 1995, which requires signatory carriers to take action, by November 1, 1996, to waive the Convention's limitation of passenger liability, "so that recoverable compensatory damages may be determined and awarded by reference to the law of the domicile of the passenger," and to encourage other carriers to do the same.² The Agreement leaves the technical details of implementation to the carriers, subject to requirements of their Governments in connection with approval of the Agreement and other implementing Agreements.

On November 22, 1995, the Air Transport Association of America (ATA) filed an application for further discussion authority and antitrust immunity to develop a uniform intercarrier agreement for carriers to use in implementing the October 31 IATA Intercarrier Agreement (IIA) for services affecting the United States. The intercarrier discussions will consider possible amendments to, or replacements for, the 1966 Montreal Intercarrier Agreement (CAB 18900). ATA also requests explicit authority to include foreign air carriers and other air carriers that are not members of the ATA in the discussions, and that they be granted antitrust immunity as well.³ It also requests clarification that discussions can proceed under either ATA or IATA auspices.

An answer to ATA's application was filed by the Association of European Airlines (AEA). AEA supports ATA's application provided that the Department grants approval and immunity for similar discussions for AEA and other international airline organizations, if they so request.

We have decided to grant ATA's petition for continued discussion authority and antitrust immunity.⁵

² IATA has provided the Department with copies of the final resolution and the Intercarrier Agreement in a letter dated November 27, 1995.

³ ATA suggests that the same conditions adopted in Order 95-7-15 be continued, modified only to permit ATA, in lieu of, or in addition to, IATA, to sponsor the discussions.

⁴ AEA has applied for discussion authority and immunity in Docket OST-95-860. The Asociacion Internacional de Transporte Aereo Latinoamericano (AITAL), the Orient Airlines Association (OAA) and the International Air Carrier Association (IACA) have applied for discussion authority and immunity in Dockets OST-95-887, OST-95-888 and OST-95-912, respectively. ATA filed an answer to these applications.

⁵ As ATA suggests, we will incorporate the same conditions attached to Order 95-7-15, but with authority for ATA, IATA, or both, to sponsor the discussions.

We agree with ATA that a further implementing Agreement applicable for transportation with an origin or destination in the United States will be necessary to build on the progress achieved to date in the IIA. We believe that IATA has made remarkable progress toward achieving a liability system that will benefit passengers and carriers alike by removing artificial liability limitations which have been a constant source of litigation, and have deprived international airline passengers of full recoveries for their proven damages.

Nevertheless, the details of implementation of the Agreement must still be worked out. If incessant litigation is to be avoided, and passengers are to be granted full recoveries under a simplified liability regime, in accordance with the objectives of the IIA, it will be necessary to ensure that a single liability regime which adequately meets the Department's Guidelines be in effect for all passengers on flights to and from the United States, and hopefully for most flights throughout the world.

We had anticipated that IATA would continue sponsoring discussions leading to this objective, and for that reason we are granting ATA's request that our immunity order extend to IATA, as well as ATA. Certainly discussions under IATA auspices would best enhance the likelihood of achieving the common goal of a uniform world-wide liability system that is fair to all international passengers, and it is our strong preference that implementation discussions continue under IATA auspices. However, IATA has not yet requested continued immunity, and we believe that the necessity for a uniform standard of liability applicable to and from the United States requires that ATA be given independent discussion authority and immunity, so as to enable it to fulfill a sponsorship role with respect to operations to and from the United States, if, for whatever reason, IATA should be unable or unwilling to assume, or to accomplish, that requirement.⁶

⁶ Under the auspices of the immunity granted in Order 95-7-15, ATA has held meetings of its Law Council, and smaller more informal discussions and drafting groups among its members, some of whom are also members of the IATA LAG Working Group, to consider proposals for implementing the IIA that might be acceptable to U.S. authorities. The Department considers that these discussions are in the public interest and should continue.

Regardless of sponsorship of the discussions, we expect that U.S. and foreign carriers from all parts of the world will work together to develop a regime that conforms to the Department's guidelines.

We reject AEA's suggestion that our grant of immunity to ATA necessarily requires grant of immunity to AEA and other regional trade associations. While we have expressed a strong preference for a worldwide uniform solution that will satisfactorily meet DOT Guidelines, under the auspices of IATA, our immediate concern is the question of the liability regime that will be applicable on flights to and from the United States. In this respect ATA's interests are clearly distinct from those of other Regional Trade Organizations which may have other solutions to be applied between their territories and countries other than the United States. We will therefore separately consider the questions of immunity for other Regional Trade Organizations in the Dockets where their applications are pending.⁷

We therefore find that the discussion authority granted here is necessary to meet a serious transportation need and will provide important public benefits which cannot be met by reasonably available and materially less anticompetitive alternatives. Since implementation of the discussion authority and Agreements will be dependent on the grant of antitrust immunity, we also find that grant of such immunity meets the standards of the Act, and will be in the public interest. As ATA requests, our discussion authority, and the antitrust immunity granted by this Order, will extend to all carriers participating in the discussions or approved agreements, regardless of whether they are members of IATA or ATA.

We will reserve the right to modify this order, and its conditions, at any time as may be required in the public interest.

ACCORDINGLY:

1. The Department approves, under section 41308 of Title 49 of the United States Code, until November 1, 1996, the request filed by ATA in this Docket OST-95-860 for continued discussion authority for itself and IATA to develop an intercarrier agreement for implementation of the

⁷ See Note 4, *supra*.

IATA Intercarrier Agreement in a manner which adequately meets the Department's guidelines as specified in Order 95-2-44, and to encourage widespread adherence to the respective Agreements, subject to the restrictions listed below;

2. The Department exempts IATA, ATA and any other persons participating in the discussions approved by this order from the operation of the antitrust laws under section 41309 of Title 49 of the United States Code;

3. The Department's approval is subject to the following conditions:

(a) Advance notice of any meeting for discussions covered by this order shall be given to all U.S. carriers participating in the meeting, and the U.S. Departments of Transportation, State and Justice;

(b) Representatives of the entities listed in subparagraph (a) above shall be permitted to attend all meetings authorized by this order:

(c) A U.S. air carrier representative shall be in attendance at all meetings, discussions, working groups, drafting groups, or other discussions covered by this order, to the extent that the discussions may have any bearing on matters within the scope of the Guidelines set forth in Order 95-2-44;

(d) A U.S. carrier representative attending all such discussions shall report fully and continually to the Department on the substance, nature and progress of such discussions, by telephone or otherwise, within 24 hours after any such discussion, and shall submit all drafts, working papers or other documentation to the Department by facsimile, or otherwise;

(e) IATA or ATA shall file within 14 days with the Department a report of each meeting, discussion, working group or drafting session held, including *inter alia* the date, place, attendance, a copy of any information submitted to the meeting or other discussion by any participant, and a summary of the discussions, any drafts or preliminary drafts prepared, and any proposed agreements;

(f) Any agreement reached must be submitted to the Department for approval and must be approved before its implementation;

(g) Attendees at such meetings must not discuss rates, fares or capacity, except to the extent necessary to discuss ticket price additions reflecting the cost of any passenger compensation plan;

(h) This order may be amended, revoked or further conditioned, at any time, without a hearing, as the Department may find to be consistent with the public interest; and

(i) The Department retains jurisdiction over the discussions to take such further action at any time, without a hearing, as it may deem appropriate; and

5. We will serve a copy of this order on all parties in the above-titled dockets, and on the Departments of State and Justice.

By:

MARK L. GERCHICK
Acting Assistant Secretary for
Aviation and International Affairs

(SEAL)