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DEPARTMENT OF TRANSPORTATION
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BEFORE THE
UNITED STATES DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.

~~DOCKET-SECTION~~-----
INTERNATIONAL AIR TRANSPORT ASSOCIATION:

AGREEMENT RELATING TO
LIABILITY LIMITATIONS OF
THE WARSAW CONVENTION

Docket OST 95-232 - 39

AIR TRANSPORT ASSOCIATION OF AMERICA:

AGREEMENT RELATING TO
LIABILITY LIMITATIONS OF
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Docket OST 96-1607 - 9

**OBJECTIONS AND COMMENTS OF FINNAIR OY
REGARDING DEPARTMENT OF TRANSPORTATION (DOT)
ORDER TO SHOW CAUSE (ORDER 96-10-7)**

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**OBJECTIONS AND COMMENTS OF FINNAIR OY
REGARDING DEPARTMENT OF TRANSPORTATION (DOT)
ORDER TO SHOW CAUSE (ORDER 96-10-7)**

FINNAIR OY ("Finnair") respectfully objects to the conditions proposed to be imposed on the IATA Inter-carrier Agreement ("IATA") and Measures to Implement Agreement ("MIA") by the DOT in Order 96-10-7 ("Order"). Finnair also objects to the short time period allowed for comment, and suggests the DOT extend that period to allow foreign airlines to submit more comprehensive comments. Negotiations between governments and by airlines regarding the Warsaw Convention liability limits have been ongoing for decades. The DOT itself took over a year to grant antitrust immunity for carriers to negotiate an agreement. A scant period of 17 day to comment on the substantive and substantive changes the DOT proposes to make is clearly inadequate.

As a general comment, Finnair believes that the conditions proposed by the Order are ill-advised and may in fact undermine or considerably delay implementation of the various historic agreements reached by the IATA carriers. Airlines have worked out an agreement that is clearly in the public interest and the DOT should not now effectively abandon the agreements and seek to impose unilateral requirements. The DOT itself recognized that imposition of conditions by the U.S. unilaterally would be contrary to the U.S. Government's interests. See DOT Order 95-2-44 (Feb. 22, 1995):

A final approach would be for the United States to unilaterally establish a regime that all carriers operating in the United States would have to abide by. This approach, however, could engender such significant opposition from our trading partners that our ability to implement the plan unilaterally could very well be jeopardized.

I. DOT LACKS AUTHORITY TO IMPOSE THESE ADDITIONAL CONDITIONS ON ALL CARRIERS THROUGH SHOW CAUSE ORDER

A. The DOT lacks statutory authority to impose the conditions set forth in the Order. DOT review of the Agreements is limited in scope by 49 U.S.C. § 41308 and § 41309 to the transactions and parties involved in the agreement. The proper focus of DOT review in this regard is for possible antitrust implications.

Although the DOT has, in the past, imposed conditions on various agreements prior to approval, those conditions have been related to the perceived anti-competitive effects of those agreements. The Show Cause Order goes far beyond

competitive questions and proposes to change the very essence of the agreement itself.

B. The DOT Order is inconsistent with the Administrative Procedure Act, 5 U.S.C. § 551 et seq, in that it seeks to unilaterally regulate all international flights to and from the United States (and any connecting carrier) without adherence to notice and comment rulemaking through issuance of an Order addressed to specific parties. This is particularly true with respect to the proposed "optional" provisions relating to systemwide implementation of the agreement.

C. To the extent that the Order would modify air carrier and foreign air carrier permits, it violates 49 U.S.C. § 41304(a) requiring DOT to give adequate notice and opportunity for a hearing before modifying such permits. The DOT has allowed only 14 working days in which to comment and has not provided the opportunity for hearings, with respect to Finnair's and other carriers' permits, thus ignoring due process under the Transportation Laws, international law, and the Constitution. The comment time provided is inadequate. The Administrative Procedure Act requires that an affected party be provided a reasonable opportunity to comment on governmental proposals.

D. DOT lacks jurisdiction to require implementation of DOT's conditions unless the transportation is in "air transportation" as defined by the Transportation Laws. To the

extent airlines are required to adhere to a modified agreement on a systemwide basis, and flights are not in "foreign air transportation", the DOT has exceeded its statutory authority and has violated international law.

E. Under Article 32 of the Warsaw Convention, 49 Stat. 3000 TS 876, any agreement that alters the rules relating to jurisdiction is null and void. As the U.S. is a party to the Convention, it is U.S. law and under 49 U.S.C. § 40105(b) (A) the Secretary of Transportation must act "consistent[ly] with obligations of the United States under an international agreement." Hence, the Order's attempt to prescribe a fifth jurisdiction in an airline agreement is violative of the Warsaw Convention and U.S. law.

II. ADDITIONAL OBJECTIONS AND COMMENTS

F. Finnair objects to the condition relating to proposed European Union regulations. The United States should not base its policy on proposed regulations that have not and may not ever be adopted by the European Union.

G. Finnair objects to the condition imposing liability on the airline operating to or from the United States for the entire journey, including those portions of the journey on a different air carrier (which may not even provide service to the United States).

III. REQUEST FOR EXTENSION OF TIME PERIOD IN WHICH TO FILE COMMENTS

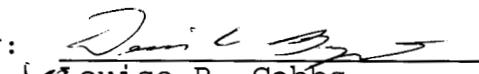
Even though IATA has called for implementation by November 1, 1996, the 14 working days given by the DOT to submit comments is clearly inadequate under 49 U.S.C. § 41309 and the Administrative Procedure Act and the period should be extended by at least 30 days to allow adequate time to comment. The time period provided was especially inadequate time for foreign carriers. For example, the DOT Order proposes a number of alternatives to fifth jurisdiction for foreign air carriers and foreign air carriers should be given adequate time to evaluate the alternatives, all of which raise significant and complex questions relating to insurance, interline agreements, and liability.

In the alternative, Finnair requests an extension of 30 days in order to supplement these objections and comments.

IV. REQUEST FOR HEARING

FINNAIR requests that DOT schedule a hearing at which parties in interest may address concerns.

Respectfully Submitted,
HAIGHT, GARDNER POOR & HAVENS

By: 
Louise B. Cobbs


Dennis L. Bryant

CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of October 1996, I deposited in the United States mail, first class postage prepaid, a true and correct copy of the foregoing comments and objections, addressed as follows:

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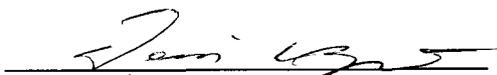
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