



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

SERVED JUL 19 1995

QA-2742

Issued by the Department of Transportation  
on the 12th day of July, 1995

OST-95-232-5

International Air Transport Association

**AGREEMENT RELATING TO LIABILITY**

**LIMITATIONS OF THE WARSAW CONVENTION**

**Docket OST-95-232  
(49152)**

**ORDER EXTENDING DISCUSSION AUTHORITY**

By Order 95-2-44 the Department granted 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, pending the entry into force of amendments to the Convention to establish an acceptable level and regime of liability for airline passengers. Our Order set forth guidelines as to the expectation of the Department as to the nature of passenger liability coverage.<sup>1</sup>

IATA convened an Airline Liability Conference in Washington, D.C. from June 19-23, 1995. The Report of the Conference proposes the establishment of two working groups to further study and prepare drafts for a proposed intercarrier agreement, as follows:

1. To urgently assess and report on the cost impact on airlines of the recommended enhanced liability package and, as a matter of urgency, make specific proposals as to how small and medium size airlines can be assisted to meet additional costs resulting from possible increased liability.

<sup>1</sup> Order 95-2-44, at p. 3.

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2. To further consider and report on appropriate and effective means to secure complete compensation for passengers, including the Japanese Initiative and the U.S. Supplemental Compensation Plan, in light of discussions at the Conference, and taking particular account of the circumstances of small and medium-size airlines and any submissions made to the working group by 31 July 1995.

The IATA Secretariat, in consultation with the Legal Advisory Group, and taking account of the Reports of the Working Groups, is to prepare and circulate draft texts of an intercarrier agreement and a plan for an appropriate and effective means to secure complete compensation by August 31, 1995, for consideration at the 1995 IATA Annual General Meeting scheduled for October 30-31, 1995, in Kuala Lumpur.

The discussion authority and anti-trust immunity granted by Order 95-2-44 expired July 6, 1995. By application filed June 26, IATA requests extension of the discussion authority and antitrust immunity to December 31, 1995. IATA also requests that the conditions of Order 95-2-44 be modified to permit meetings at locations other than Washington, D.C., with the assurance that a U.S. carrier would be included in each working group, and that an advance notice of the discussions would be furnished to DOT and DOJ. However, IATA requests that it be relieved of the burden of continuing notice to all air carriers and foreign air carriers, because the notice already given, the further distribution of its Report, and the widespread publicity given the Airline Liability Conference, suffice to give any interested airline the opportunity to be heard in the ongoing agreement process.

No answers to IATA's Petition have been filed.<sup>2</sup>

We have decided to grant IATA's petition for extension of discussion authority and antitrust immunity, and for modifications of the conditions of Order 95-2-44, to the extent noted below.

The Report of the IATA Conference indicates that IATA will be able to formulate agreements that will be consistent with the Guidelines specified in Order 95-2-44. However, in order to be able to formulate such agreements; present them for consideration at the IATA General Meeting in

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<sup>2</sup> By Notice dated and served June 28, 1995, the Department shortened the period for answers to IATA's extension Petition to five days after the date of the Notice (July 6).

October; and, if successful, to submit such agreements for consideration and approval by Governments, IATA requires an extension of discussion authority and antitrust immunity to December 31, 1995.

We are somewhat concerned as to the request for modification of the conditions to permit discussions outside Washington, D.C., since we believe close monitoring of these discussions is important to avoid significant deviation from our guidelines. However, we believe that we can rely on U.S. carrier participants to report fully to us on the progress and directions of the discussions prior to completion of the drafts for presentation to the IATA annual general membership meeting in October. In this respect, we will require that a U.S. carrier be included in all working groups, drafting sessions, or other discussions, and be authorized to report fully on the progress of such discussions, including the transmittal of preliminary drafts or working papers, and we will anticipate that the U.S. carriers will so report. We believe this notification will be sufficient to protect U.S. Government interests. Therefore, we will grant IATA's request to modify the conditions, to the extent set forth in this order. Moreover, in order to help enhance the development of a liability scheme which can be accepted by the U.S. Government, without substantial modification, 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 December 31, 1995, to the extent indicated, the request filed by IATA in this docket for extension of discussion authority directed toward producing an acceptable passenger liability regime under the Warsaw Convention, subject to the restrictions listed below;

2. The Department exempts 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, the Air Transport Association of America, 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) The U.S. carrier representatives 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 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 this proceeding, and on the Departments of State and Justice.

By:

PATRICK V. MURPHY  
Acting Assistant Secretary for  
Aviation and International Affairs

(SEAL)

