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

**Action on IATA Agreement
Issued by the Department of Transportation
on the 19th day of October, 2004**

Agreement Adopted by the Traffic
Conferences of the International Air
Transport Association relating to
passenger baggage matters

Docket OST-2003-16020
Docket OST-2003-16021

ORDER

Various members of the International Air Transport Association (IATA) have filed agreements with the Department under section 41308 and 41309 of Title 49 of the United States Code (the Code), and Part 303 of the Department's regulations. The agreements were adopted at the Composite Passenger Tariff Coordinating Conference in Geneva, Switzerland, July 14-18, 2003, and were proposed for effectiveness April 1, 2004.¹

Weight Baggage System (Resolution 300)

Under the weight-based baggage system that applies between most foreign points, economy passengers are allowed up to 20 kgs. (44 pounds) of free checked baggage, and first and business class passengers are allowed 40 and 30 kgs. (88 and 66 pounds), respectively.² Each kilogram of excess baggage is charged at 1.5 percent of the normal economy fare, with the exception of a few markets where the charge is 1.0 percent of the normal economy fare. The agreement in Docket 16020 would remove a number of the exceptions to the generally applicable 1.5 percent figure. We will approve this change to the weight system, which does not apply to/from U.S. points. However, we remind IATA and its member carriers that we have conditioned our approval of the weight system between foreign points to preclude its application to passengers whose ultimate origin or destination is a U.S. point, in order to ensure that U.S. passengers have the benefit of the piece system throughout their journeys, including travel beyond the U.S.-foreign gateway leg.³

¹ IATA memoranda PTC COMP 1082 and 1083, filed with the Department August 25, 2003.

² A similar system applied to/from the United States until the Civil Aeronautics Board disapproved it in 1976. See Order 76-3-81, March 12, 1976.

³ See Order 95-2-7, February 3, 1995, Docket 49758.

Piece Baggage System (Resolution 301)

The “piece” baggage system applies to international passengers traveling to/from the United States, as well as to/from Canada and on most routes between IATA Traffic Conference 3 (Asia/Australasia) and IATA Traffic Conference 1 (Western Hemisphere). Under the piece system, which is generally comparable to the U.S. domestic baggage system, economy class passengers are allowed two free checked bags, but each checked bag is subject to a 70-lb. limit “for handling purposes.”⁴ Each excess bag is charged at a fixed amount that varies by route, although most of these charges are set by carriers individually rather than by IATA agreement.⁵

The agreement in Docket 16021 would amend the piece system by reducing the maximum weight of each of the two free pieces that may be checked by economy class passengers, from 70 pounds to 50 pounds. First and business class passengers could still check bags of up to 70 pounds each without charge. The agreement does not fix charges for overweight bags to/from the U.S., but on most non-U.S. routes it adopts a charge of \$25 or the local currency equivalent for overweight bags of up to 70 pounds⁶; on most non-U.S. routes, the charge for bags of more than 70 pounds would continue to be three times the ordinary excess baggage charge.

In its filing, IATA states that for many years a solution has been sought to bring the piece and weight systems more in line. The primary difference is in the amount of weight allowed without charge under the piece system, and IATA states that it has been difficult in the past to reduce the weight of the free pieces due to different strategies applied by member airlines. Now, however, according to IATA, virtually all U.S. carriers operating within the United States and between the United States and Canada have individually reduced their free weight allowances from 70 to 50 pounds, and some airlines have expanded this reduction to some international routes.⁷

IATA contends that its proposal for a general reduction in free weight under the international piece system is justified on two broad grounds: to reduce on-the-job injuries; and to promote consistent handling worldwide and avoid passenger inconvenience, especially in cases of interline transportation involving different aircraft types. However, the IATA conference acknowledged that it would be difficult to expect regulatory approval of a reduction in free weight if every bag over 50 pounds were subject to the triple excess charge that currently applies to bags over 70 pounds on many routes, hence the conference adopted a \$25 standardized charge for overweight bags of up to 70 pounds.

⁴ First and business class passengers have a somewhat greater size allowance for their checked bags.

⁵ For example, excess baggage charges on Atlantic and Pacific routes generally range from \$63 to \$210 per piece.

⁶ From Europe the charge would be 25 euros.

⁷ A few U.S. carriers apply the 50-lb. limit for online baggage on their Mexican and Caribbean routes, and on Hawaii-South Pacific routes.

No responses to IATA's application have been received.

Disposition

This is not IATA's first attempt to reduce the maximum weight for each piece of free checked baggage from 70 to 50 pounds. In disapproving an agreement proposing such a reduction in 1989, the Department stated that the available evidence indicated that very few travelers checked such extraordinarily heavy baggage as to create handling problems for carriers, and we could not find that any compelling need would be met by the proposed reduction.⁸

In the case of the similar proposal now before us, we are not convinced by IATA's assertions that the proposed change is needed to reduce baggage-handler injuries or to ensure smooth handling of interline baggage. IATA has provided no factual data on employee injury rates and the associated costs, baggage handling costs, average bag weights or the number of bags between 50 and 70 pounds, either online or interline.⁹ Nor is there any indication that the recent emergence of a difference in domestic and international free baggage weights has created confusion or any real-world interlining problems.

More fundamentally, we are not convinced that this agreement satisfies the statutory standard for approval. Under 41309 U.S.C., the Department may not approve an agreement that substantially reduces or eliminates competition unless it finds that it is necessary to meet an important transportation need or to achieve important public benefits (including international comity and foreign policy considerations) not obtainable by reasonably available alternative means having materially less anticompetitive effects. In Order 85-5-32, May 6, 1985, the Department found the entire IATA tariff conference machinery to be anticompetitive but nevertheless accepted it on the statutorily-sanctioned foreign policy and comity grounds. Under those terms, we scrutinize each individual IATA agreement, and approve it if we do not find it to be adverse to the public interest or in violation of [49 U.S.C.], or likely to lessen competition substantially.

We cannot make such findings here. The only claims of serious transportation needs or public benefits are IATA's vague, factually unsupported assertions that the agreement would reduce employee injuries and facilitate interlining. IATA has made no showing that the number of bags between 50 and 70 pounds checked by international economy

⁸ Order 89-10-15, October 6, 1989, Docket 46434. See also CAB Order 84-1-74, January 19, 1984.

⁹ When such supporting data was not supplied on previous occasions, the Department has disapproved IATA agreements to reduce free allowances or raise baggage charges. See Order 89-10-15, October 6, 1989, Docket 46434, and Order 89-2-48, February 27, 1989, Docket 46068.

class passengers has increased employee injury rates or carrier costs, or that there have been any serious interlining difficulties associated with different handling weights for U.S. domestic and international economy class baggage.¹⁰

Although we have accepted independent initiatives by individual carriers to raise international prices, including price increases implicit in reductions of service quality such as a lower free baggage weight, similar action by competitors acting in concert faces a much higher hurdle. IATA has not met its burden of proving the existence of a serious transportation need or public benefit to justify this agreement.¹¹ If such a need or benefit in fact existed, we see no reason why it could not be met by less anti-competitive alternatives. In disapproving an earlier IATA agreement to lower the free checked baggage allowance from the United States to the Philippines to one bag, the Department stated "Should an individual carrier encounter operational or other circumstances that require a lesser free allowance...it may make an appropriate unilateral tariff filing along with detailed justification for the difference."¹² Similarly, if a carrier now believes that reducing the free weight allowance for bags of 51-70 pounds is warranted [by real-world problems], it can do so independently, as most carriers have done domestically and as a few have done on some international routes. Where legitimate problems exist, we do not believe that solving them necessarily requires the kind of price fixing activity represented by this agreement.

Acting under Title 49 of the United States Code, and particularly sections 40101, 40103, 41300, and 41309:

1. We do not find Resolution 300 (Amending), incorporated in the agreement in Docket OST-2003-16020, to be adverse to the public interest, in violation of the Code, or likely to lessen competition substantially, provided that approval is subject to conditions previously imposed;
2. We find Resolution 301 (Amending), incorporated in the agreement in Docket OST-2003-16021, to be adverse to the public interest and in violation of the Code; and
3. These agreements are products of the IATA tariff conference machinery, which the Department found to be anticompetitive but nevertheless accepted on foreign policy and comity 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.

¹⁰ We note that IATA's argument based on reducing employee injuries is undermined by the fact that it would not reduce the free baggage weight in all classes of service. The IATA agreement retains the 70-lb. limit for premium class passengers, who already have a more generous free allowance and thus could logically be expected to burden handlers with more numerous and heavier bags, and consequently a greater risk of injury.

¹¹ See 49 U.S.C. 41309 (C)(2).

¹² Order 95-7-47, July 28, 1995, Docket 49759.

Order 85-5-32 contemplates that the products of 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-2003-16020, as set forth in finding paragraph 1 above, subject to conditions imposed.

ACCORDINGLY,

1. We approve and grant antitrust immunity to the agreement contained in Docket OST-2003-16020, as set forth in finding paragraph 1 above, subject to conditions imposed; and
2. We disapprove the agreement contained in docket OST-2003-16021.

By:

Karan K. Bhatia
Assistant Secretary for Aviation
and International Affairs

(SEAL)

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