FILED

AUG 10 1994

CLERK, U.S. DISTRICT COURT
DISTRICT OF COLUMBIA

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, Plaintiff, v. AIRLINE TARIFF PUBLISHING COMPANY, et al., Defendants.	))))))))))	Civil Action No. 92-2854 SSH

ORDER

This matter is before the Court for a determination of whether the proposed final judgment is in the "public interest," and thus should be entered by the Court as a final judgment with respect to the seven defendants that remain in the case. These remaining defendants consent to entry of final judgment. Upon consideration of the entire record, the Court finds that the proposed final judgment is in the "public interest" as contemplated by the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)-(h) (the "Tunney Act").

This antitrust action originated on December 21, 1992. Simultaneously with the filing of the complaint, the United States filed a proposed final judgment with respect to two of the named defendants -- United Air Lines, Inc., and USAir, Inc.. After a thorough examination of the record, including review of the over 700 comments submitted by the public, the Court concluded that the proposed final judgment was in the public interest. See United States v. Airline Tariff Publishing Co., 836 F. Supp. 9 (D.D.C. 1993). Judgment with respect to United Air Lines and USAir became final on November 1, 1993.

On March 17, 1994, the United States and the remaining defendants -- Airline Tariff Publishing Company, Alaska Airlines, Inc., American Airlines, Inc., Continental Airlines, Inc., Delta Air Lines, Inc., Northwest Airlines, Inc., and Trans World Airlines, Inc., filed a stipulation consenting to the entry of a new proposed final judgment. In addition, the parties filed the new proposed final judgment and a competitive impact statement.[1] The proposed final judgment is substantially identical to the final judgment entered on November 1, 1993.

The Court finds that the government has complied with all of the procedural requirements of the Tunney Act. See 15 U.S.C. § 16(b)-(d). The Court also finds that entry of the proposed final judgment is in the public interest. The proposed relief effectively will foreclose the possibility that antitrust violations will occur or recur, without unduly impinging upon other aspects of the public interest. See Airline Tariff Publishing Co., 836 F. Supp. at 12-14; see also United States v. American Tel. and Tel. Co., 552 F. Supp. 131, 150-51 (D.D.C. 1982), aff'd sub. nom., Maryland v. United States, 460 U.S. 1001 (1982). Accordingly, it hereby is

ORDERED, that the proposed final judgment shall be entered with respect to defendants Airline Tariff Publishing Company, Alaska Airlines, Inc., American Airlines, Inc., Continental Airlines, Inc., Delta Air Lines, Inc., Northwest Airlines, Inc.,

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[1] An amended proposed final judgment was filed on March 21, 1994.

and Trans World Airlines, Inc..

SO ORDERED.

Stanley S. Harris
United States District Judge

Date: AUG 10 1994

FILED
MAR 21 1994
CLERK, U.S. DISTRICT COURT
DISTRICT OF COLUMBIA

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, Plaintiff, v. AIRLINE TARIFF PUBLISHING COMPANY, *et al.* Defendants.	Civil Action: No. 92-2854 (SSH)

FILED
AUG 10 1994
CLERK, U.S. DISTRICT COURT
DISTRICT OF COLUMBIA

FINAL JUDGMENT

Plaintiff, United States of America, filed its Complaint on December 21, 1992. Plaintiff and defendants, by their respective attorneys, have consented to the entry of the Final Judgment without trial or adjudication of any issue of fact or law. This Final Judgment shall not be evidence against or an admission by any party with respect to any issue of fact or law. Therefore, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties, it is hereby

ORDERED, ADJUDGED, AND DECREED, as follows:

I.

JURISDICTION

This Court has jurisdiction of the subject matter of this action and of each of the parties consenting hereto. The

Complaint states a claim upon which relief may be granted against the defendants under Section 1 of the Sherman Act, 15 U.S.C. § 1.

II.

DEFINITIONS

As used herein, the term:

(A) "airline" means any scheduled air passenger carrier as defined in 49 U.S.C. § 1301(3), its officers, directors, employees, agents, and any other persons acting on its behalf;

(B) "ATP" means the Airline Tariff Publishing Company;

(C) "change" means abandon, add, alter, modify, discontinue, drop, exchange, replace, substitute, switch, or transform;

(D) "coupon" means a coupon or similar voucher offering either a discount off existing fares or a special fare not otherwise available;

(E) "CRS" means computer reservation system;

(F) "defendant airlines" means Alaska Airlines, Inc., American Airlines, Inc., Continental Airlines, Inc., Delta Air Lines, Inc., Northwest Airlines, Inc., and Trans World Airlines, Inc.;

(G) "defendants" means ATP, Alaska Airlines, Inc., American Airlines, Inc., Continental Airlines, Inc., Delta Air Lines, Inc., Northwest Airlines, Inc., and Trans World Airlines, Inc.;

(H) "document" means all "writings and recordings" as that phrase is defined in Rule 1001(1) of the Federal Rules of Evidence;

(I) "fare" means the price charged for domestic U.S. passenger transportation by any airline, and any ticket dates, restrictions, rules, terms or conditions governing the availability or use of any such price, but does not include any contract or other negotiated price or any coupon;

(J) "fare class" means a group of fares treated similarly for seat allocation purposes;

(K) "first ticket date" means the first date that a fare is available for sale;

(L) "footnote" means the mechanism used by ATP to store and transmit first ticket dates, last ticket dates, and other limitations on the use of a fare;

(M) "footnote designator" means an alphanumeric designator used to identify a footnote;

(N) "including" means including but not limited to;

(O) "last ticket date" means the last date that a fare is available for sale;

(P) "matching city or airport pair" means a city or airport pair whose origin and destination points, respectively, are the same or within 100 miles of the origin and destination points, respectively, of the city or airport pair as to which the other airline's fare is applicable;

(Q) "new fare" means a fare that is different from an airline's existing fares in regard to price or any restrictions, rules, terms or conditions;

(R) "person" means any natural person, corporation, firm, company, sole proprietorship, partnership, association, institution, governmental unit, or other legal entity;

(S) "promotional fare" means a new fare that, in conjunction with its first being offered for sale, is advertised as being available for purchase for a specified and limited period of time;

(T) "relate to" means discuss, refer to, reflect, evidence, concern, or pertain to, in whole or in part;

(U) "sale fare" means a new fare that has a last ticket date at the time it is first offered for sale;

(V) "tag" means a code used by an airline solely to identify a group of fares for similar processing by ATP; and

(W) "travel date" means a date that limits when a passenger may travel on a fare.

III.

APPLICABILITY

(A) This Final Judgment applies to the defendants and to each of their successors, assigns, and to all other persons in active concert or participation with any of them who shall have received actual notice of the Final Judgment by personal service or otherwise.

(B) Nothing herein contained shall suggest that any portion of this Final Judgment is or has been created for the benefit of any third party and nothing herein shall be construed to provide any rights to any third party.

IV.

PROHIBITED CONDUCT

(A) Each of the defendant airlines is enjoined and restrained from:

(1) agreeing with any other airline to fix, establish, raise, stabilize, or maintain any fare;

(2) disseminating any first ticket dates, last ticket dates, or any other information concerning the defendant's planned or contemplated fares or changes to fares;

(3) making visible or disseminating its own tags or any other similar designating mechanism to any other airline;

(4) making visible or disseminating to any other airline any fare that is intended solely to communicate a defendant's planned or contemplated fares or changes to fares;

(5) making visible or disseminating two or more footnote designators that identify footnotes that contain identical information, or making visible or disseminating any footnote designator that identifies a footnote that contains no information; and

(6) using fare codes that convey information other than fare class or terms and conditions of sale or travel.

(B) ATP is enjoined and restrained from:

(1) disseminating or conveying any fare with a first ticket date;

(2) making visible or disseminating an airline's tags or any other similar designating mechanism to any person other than that airline;

(3) making visible or disseminating two or more footnote designators for any airline that identify footnotes that contain identical information, or making visible or disseminating any footnote designator that identifies a footnote that contains no information;

(4) making visible or disseminating to any airline changes to any other airline's fares prior to disseminating or conveying such changes to the domestic CRSs; and

(5) after reasonable inquiry, knowingly making visible or disseminating any changes to fares more frequently than the number of times a day that at least one domestic CRS updates its fare data base with such changes to fares.

V.

LIMITING CONDITIONS

(A) Nothing in this Final Judgment shall prohibit any defendant airline from submitting its fare changes to ATP for

processing, or disseminating to CRSs or other reservations systems rules that do not contain or describe any first ticket date, last ticket date, or planned or contemplated fare level.

(B) Nothing in this Final Judgment shall prohibit any defendant airline from engaging in communications with another airline when such communications are reasonably necessary to establish, implement, or modify: (i) a joint, code share, commuter, or other interline fare with that airline; or (ii) an otherwise lawful transaction involving the provision of management services which may include pricing and yield management services.

(C) (1) Nothing in this Final Judgment shall prohibit any defendant airline from advertising that a promotional fare shall cease to be available for purchase on a specified date or after a specified period of time, or that a last ticket date on a fare shall be extended to a later date, and in conjunction therewith otherwise disseminating such information, provided that such advertising occurs (i) in media of general circulation or through mass mailings, and (ii) in a manner designed to directly reach a meaningful number of potential consumers likely to purchase such fare, provided further that, where a group of fares is being so advertised, it shall be sufficient to provide a general description of included city or airport pairs and fare levels without specifically identifying each city or airport pair and fare level.

(2) After any defendant airline, United Air Lines, Inc. or USAir, Inc. has disseminated a fare with a last ticket date or extended a last ticket date, or any non-defendant airline has disseminated a sale fare or extended the last ticket date on a sale fare, in any city or airport pair, nothing in Section IV(A)(1)-(3) and (5)-(6) of this Final Judgment shall prohibit a defendant airline from promptly thereafter, in matching city or airport pairs, (i) disseminating a new fare with the same price, restrictions, and last ticket date as that airline's fare, or (ii) extending to the same date, the last ticket date on a fare with the same price and restrictions as that airline's fare, provided that no defendant airline shall extend the last ticket date on any fare more than one time pursuant to Section V(C)(2).

(3) The dissemination of a last ticket date in accordance with Section V(C), in and of itself, does not constitute a violation of this Final Judgment.

(D) Nothing in this Final Judgment shall prohibit any defendant airline from disseminating public statements regarding contemplated changes in fares, provided such statements describe neither effective dates nor the particular amounts or rules relating to particular city or airport pairs or sets of city or airport pairs.

(E) Nothing in this Final Judgment shall prohibit any defendant from advocating or discussing, in accordance with the doctrine established in Eastern Railroad Presidents Conference

v. Noerr Motor Freight, Inc., 365 U.S. 127 (1961), and its progeny, legislative, judicial or regulatory actions, or governmental policies or actions.

(F) The dissemination of travel dates, in and of itself, does not constitute a violation of this Final Judgment.

(G) Nothing in this Final Judgment shall be construed to prohibit any defendant airline, in unilaterally determining its own fares, from considering all publicly available information relating to the fares of other airlines.

(H) Regardless of what fares any airline offers in any city or airport pair, offering any fare in the same or any other city or airport pair, in and of itself, does not constitute a violation of this Final Judgment.

VI.

COMPLIANCE PROGRAM

(A) Each defendant is ordered to maintain an antitrust compliance program which shall include designating, within 30 days of entry of this Final Judgment, an Antitrust Compliance Officer with responsibility for accomplishing the antitrust compliance program and with the purpose of achieving compliance with this Final Judgment. The Antitrust Compliance Officer shall, on a continuing basis, supervise the review of the current and proposed activities of his or her defendant company to ensure that it complies with this Final Judgment.

(B) The Antitrust Compliance Officer for a defendant airline shall be responsible for accomplishing the following activities:

(1) distributing, within 60 days from the entry of this Final Judgment, a copy of this Final Judgment to all officers and employees who have any responsibility for approving, disapproving, analyzing, monitoring, studying, recommending, or implementing any fares, or disseminating any fares to ATP, CRSs or any airlines;

(2) distributing in a timely manner a copy of this Final Judgment to any officer or employee who succeeds to a position described in Section VI(B)(1);

(3) briefing annually those persons designated in Section VI(B)(1) on the meaning and requirements of this Final Judgment and the antitrust laws and advising them that the defendant's legal advisors are available to confer with them regarding compliance with the Final Judgment and the antitrust laws;

(4) obtaining from each officer or employee designated in Section VI(B)(1) an annual written certification that he or she: (1) has read, understands, and agrees to abide by the terms of this Final Judgment; and (2) has been advised and understands that his or her failure to comply with this Final Judgment may result in conviction for criminal contempt of court; and

(5) maintaining a record of recipients to whom the Final Judgment has been distributed and from whom the certification in Section VI(B)(4) has been obtained.

(C) The Antitrust Compliance Officer for ATP shall be responsible for accomplishing the following activities:

(1) distributing, within 60 days from the entry of this Final Judgment, a copy of this Final Judgment to all officers of ATP;

(2) distributing in a timely manner a copy of this Final Judgment to any person who succeeds an officer;

(3) briefing annually all officers on the meaning and requirements of this Final Judgment and the antitrust laws and advising them that the defendant's legal advisors are available to confer with them regarding compliance with the Final Judgment and the antitrust laws;

(4) obtaining from each officer an annual written certification that he or she: (1) has read, understands, and agrees to abide by the terms of this Final Judgment; and (2) has been advised and understands that his or her failure to comply with this Final Judgment may result in conviction for criminal contempt of court; and

(5) maintaining a record of recipients to whom the Final Judgment has been distributed and from whom the certification in Section VI(C)(4) has been obtained.

(D) At any time, if a defendant's Antitrust Compliance Officer learns of any past or future violations of Section IV

of this Final Judgment, that defendant shall, within 45 days after such knowledge is obtained, take appropriate action to terminate or modify the activity so as to comply with this Final Judgment.

(E) For each last ticket date a defendant airline disseminates through ATP or a CRS pursuant to Section V(C), that defendant airline (1) shall retain a record of the dates that such last ticket date was disseminated in the system and the specific fares and city or airport pairs to which the last ticket date was attached, and (2) shall retain either (a) a representative copy or transcript of its advertisement that was used in conjunction with any such last ticket date and a record of the use of any such advertising or (b) a representative record of the fare to which the defendant was responding. Such records and representative copies or transcripts shall be maintained in a manner that facilitates prompt retrieval and review of the documentation required by this section. These documents shall be retained for a period of three years from the first date any such advertising appeared or the first date any such last ticket date appeared in ATP or a CRS.

VII.

CERTIFICATION

(A) Within 75 days after the entry of this Final Judgment, each defendant shall certify to the plaintiff whether it has designated an Antitrust Compliance Officer and has distributed the Final Judgment in accordance with Section VI above.

(B) For 10 years after the entry of this Final Judgment, on or before its anniversary date, each defendant shall file with the plaintiff a statement as to the fact and manner of its compliance with the provisions of Section VI.

VIII.

PLAINTIFF ACCESS

(A) To determine or secure compliance with this Final Judgment and for no other purpose, duly authorized representatives of the plaintiff shall, upon written request of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to any defendant made to its principal office, be permitted, subject to any legally recognized privilege:

(1) access during such defendant's office hours to inspect and copy all documents in the possession or under the control of such defendant, who may have counsel present, relating to any matters contained in this Final Judgment; and

(2) subject to the reasonable convenience of such defendant and without restraint or interference from it, to interview officers, employees or agents of such defendant, who may have counsel present, regarding such matters.

(B) Upon the written request of the Assistant Attorney General in charge of the Antitrust Division made to any defendant's principal office, such defendant shall submit such

written reports, under oath if requested, relating to any matters contained in this Final Judgment as may be reasonably requested, subject to any legally recognized privilege.

(C) No information or documents obtained by the means provided in Section VIII shall be divulged by the plaintiff to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

(D) If at the time information or documents are furnished by any defendant to plaintiff, such defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and such defendant marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then 10 days notice shall be given by plaintiff to such defendant prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which that defendant is not a party.

IX.

FURTHER ELEMENTS OF THE FINAL JUDGMENT

(A) This Final Judgment shall expire ten years from the date of its entry.

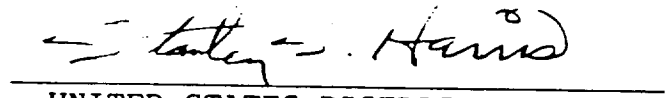
(B) Section IV(B) of this Final Judgment shall become effective three months from the date of entry of this Final Judgment.

(C) If, subsequent to the entry of this Final Judgment, it or a previously entered stipulated final judgment in this matter is modified in any respect, any defendant, in its sole discretion, may move this Court, and the Court shall grant such a motion, to substitute such modified stipulated final judgment for this Final Judgment.

(D) Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify or terminate any of its provisions, to enforce compliance, and to punish violations of its provisions.

(E) Entry of this Final Judgment is in the public interest.

DATED: AUG 10 1994



UNITED STATES DISTRICT JUDGE