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RECENT DEVELOPMENTS

The International Air Transportation Competition Act of 1979

Congress recently enacted the International Air Transportation Competition Act of 1979 (IATCA or the Act).¹ Like its domestic counterpart, the Airline Deregulation Act of 1978,² the IATCA contains several provisions which codify a policy favoring reduced fares for consumers and promoting competition in international air transportation. The Act amends many provisions of the Federal Aviation Act of 1958 (FAA)³ and consists of four key elements.

First, the IATCA sets forth a clear procompetitive policy statement to guide the Civil Aeronautics Board (CAB) as well as negotiators in the Departments of State and Transportation. While the Deregulation Act of 1978 amended general policy provisions of the FAA to place domestic emphasis on "competition to provide efficiency, innovation, and low prices, and to determine the variety, quality, and price of air transportation services,"⁴ it left the policy that applied to international air transportation unchanged. The IATCA adopts this new standard for foreign air transportation and thereby establishes a clear congressional mandate encouraging new entries in international, domestic, and overseas markets.⁵ The Act also sets forth a needed procompetitive aviation policy to guide negotiators in the Departments of State and Transportation.⁶ In 1977 the United States negotiated an air services agreement with the United Kingdom known as Bermuda II.⁷ The agreement has been called a major step backward by many of its critics because of concessions made by the United States in a last-minute effort to avoid interruption of air services

1. International Air Transportation Competition Act of 1979, Pub. L. No. 96-192, 94 Stat. 35 (1980) (to be codified in scattered sections of 49 U.S.C.) [hereinafter cited as IATCA]; *reprinted in* [1980] U.S. CODE CONG. & AD. NEWS.

2. Airline Deregulation Act of 1978, Pub. L. No. 95-504, 92 Stat. 1705 (1978) (codified in scattered sections of 49 U.S.C. (1976)).

3. The Federal Aviation Act of 1958, Pub. L. No. 85-726, 72 Stat. 731 (1958) (codified in scattered sections of 49 U.S.C. (1976)).

4. Section 2 of the IATCA (to be codified in 49 U.S.C. § 1302(a)).

5. S. REP. No. 329, 96th Cong., 2d Sess. 3 (1980), *reprinted in* [1980] U.S. CODE CONG. & AD. NEWS 356, 368.

6. Section 17 of the IATCA (to be codified in 49 U.S.C. § 1502).

7. Air Services Agreement, July 23, 1977, United States-United Kingdom, 28 U.S.T. 5367, T.I.A.S. No. 8641.

between the two countries.⁸ Attempting to avoid similar occurrences, Congress has clearly set out guidelines for future bilateral negotiators and international policymakers.

Second, the IATCA strengthens the United States' ability to respond to discriminatory acts by foreign governments. The Act grants the CAB the power to summarily suspend the license of a foreign carrier or of a third party country with whom it has pooling arrangements for impairing operating rights of any United States carrier.⁹ This authority may be exercised if approved by the President and to the extent such authority is consistent with treaty obligations of the United States and principles of international law.¹⁰ Additionally, the IATCA amends the Fair Competitive Practices Act of 1974¹¹ so that the CAB or any United States carrier may initiate proceedings for "discriminatory, predatory, or anti-competitive" acts.

Third, the Act permits domestic carriers to lease foreign crafts and allows foreign carriers to carry domestic traffic under special circumstances. Currently the CAB is precluded from authorizing a foreign carrier to operate between two points in the United States.¹² This prevents a domestic carrier from leasing a foreign craft even where the service is essentially on behalf of a United States carrier.¹³ The IATCA removes this obstacle and allows a domestic carrier to lease a foreign craft when it is determined by the CAB that a flexible lease exchange will serve the public interest (that is, to obtain maximum operational efficiency).¹⁴ The Act further authorizes a foreign carrier to fly between two points in the United States when domestic carrier resources are unable to meet the needs of the traveling public,¹⁵ as was the case in the grounding of the DC-10.¹⁶

Finally, the IATCA parallels domestic provisions closely in establishing a "zone of reasonableness" so that fares falling within this zone are exempt from suspension by the CAB.¹⁷ The zone creates a five percent upward and fifty percent downward pricing flexibility in the standard foreign fare level,¹⁸ eliminating the current case-by-case method of resolving

8. See Comment, *Bermuda II: The British Revolution of 1976*, 44 J. AIR L. & COM. 111 (1978).

9. Section 9 of the IATCA (to be codified in 49 U.S.C. § 1372).

10. 49 U.S.C. § 1502.

11. International Air Transportation Fair Competitive Practices Act of 1974, Pub. L. No. 93-623, 88 Stat. 2102 (codified in scattered sections of 49 U.S.C. (1976)).

12. 49 U.S.C. § 1508(b).

13. See S. REP. No. 329, *supra* note 5, at 8.

14. Section 13 of the IATCA (to be codified in 49 U.S.C. § 1386).

15. *Id.*

16. For hundreds of thousands of air travelers, the grounding of the DC-10 meant cancelled, delayed, or rerouted flights and crowded planes. U.S. NEWS & WORLD REP., Apr. 21, 1980, at 60.

17. Section 24 of the IATCA (to be codified in 49 U.S.C. § 1482(j)).

18. Generally, the "standard foreign fare level" is any fare filed with the CAB within

disputed prices and vesting in carriers substantial pricing discretion.¹⁹

While Congress enacted the IATCA to reduce consumer fares and promote competition in international air transportation, whether it can achieve these goals is a question largely dependent on the willingness of other countries with restrictive agreements to approve proposed fares.²⁰ Several countries have argued that anticompetitive measures are necessary to protect their national aviation resources.²¹ On the other hand, recent bilateral agreements between the United States and the Netherlands, Belgium, the Federal Republic of Germany, Israel, Korea, and Singapore²² indicate a desire to promote an international aviation system based on competition among airlines. The attractiveness of lower consumer fares resulting from these bilateral agreements²³ should induce many countries who were reluctant to do so in the past to enter into comparatively more flexible agreements with the United States.

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certain time limitations as provided in the IATCA for the same or essentially similar class of service. See section 24(a) of the IATCA (to be codified in 49 U.S.C. § 1482).

19. S. REP. No. 329, *supra* note 5, at 13.

20. BUS. WEEK, Apr. 21, 1980, at 61.

21. After World War II, several countries possessing obsolete aircraft and related equipment believed that a competitive market would be detrimental to their national aviation resources. Consequently, they adopted anticompetitive measures as a method of protecting their national interests. The British, for example, have insisted on regulatory authority over the control of routes and rates. See Sims, *International Air Transportation: The Effect of the Airline Deregulation Act of 1978 and the Bermuda II Agreement*, 10 TRANSP. L.J. 239, 241 (1978). This argument loses much of its impact, however, due to changed circumstances. Today the British, for instance, are significant competitors in international aviation. *Proposed Amendments to the Federal Aviation Act of 1958: Hearings on H.R. 5481 Before the Subcomm. on Aviation of the House Comm. on Public Works and Transportation*, 96th Cong., 1st Sess. 175 (1969) (statement of James Ferrer). And European manufacturers continue to develop competitive lines of aircrafts to cover the market adequately for the coming 20 to 30 years. AV. WEEK & SPACE TECH., Oct. 23, 1978, at 51. Nevertheless, markets in international aviation have remained structurally noncompetitive. S. REP. No. 329, *supra* note 5, at 13.

22. S. REP. No. 329, *supra* note 5, at 13.

23. The impressive effects of competition in international markets, particularly the Netherlands, Belgium, West Germany, and the United Kingdom, have been realized. Prices dropped dramatically while many carriers maintained profits at high levels due to the load factors produced by record traffic levels. *Hearings on H.R. 5481, supra* note 21, at 43.

