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FROM: Dick Cheney
TO: Don Rumsfeld
For the President
INFO: Atlanta

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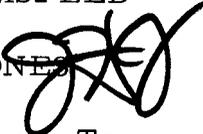
WHITE HOUSE
SITUATION ROOM

THE WHITE HOUSE

WASHINGTON

February 3, 1975

MEMORANDUM FOR THE PRESIDENT

THROUGH: DONALD RUMSFELD
FROM: JERRY H. JONES 
SUBJECT: CAB Decision re: Transportes
Aereos Portugueses Docket 27437

The CAB, in a 4-0 vote, supported suspension of a fare which the Government of Portugal ordered the airline in the above-mentioned matter to submit. That fare is somewhat lower than the fares recently agreed upon by the International Air Transportation Association (IATA).

Among the executive agencies, State, NSC and CIEP agree with the CAB position. Those opposing the CAB position include Transportation, Justice, OMB, Office of Counsel to the President, and Council on Wage and Price Stability. The Justice Department further advises that disapproval of the order would be within the President's power under Section 801(b) of the Federal Aviation Act.

CIEP believes that Presidential approval is appropriate for two main reasons. First, a disapproval would constitute a departure from the US policy of reliance on the IATA rate-setting process. No policy decision to cease this reliance has been made. Second, in spite of the Justice opinion that such an action would be based largely on economic grounds. The legislative history of Section 801(b), however, indicates that disapproval is to be based on foreign policy considerations. A continued use of this provision would likely stimulate further Congressional scrutiny of existing Presidential authority under Section 801.

If you decide to let the CAB order stand, no further action is required. If you decide to overturn the CAB's decision, you should sign the letter at Tab A. If you do sign the letter, please note the time and date of your action as the final day for your decision is tonight, February 3.

COUNCIL ON INTERNATIONAL ECONOMIC POLICY

WASHINGTON, D.C. 20500

February 3, 1975

MEMORANDUM FOR

THE PRESIDENT

SUBJECT: CAB Decision re: Suspension of
Certain Fares Proposed by
Transportes Aereos Portugueses

The Civil Aeronautics Board has decided to suspend a fare proposal by the Portugese airline TAP which would continue the fare for 7/8 day group inclusive tours from its expiration date of March 31, 1975, to the periods April 16 - June 15 and August 1 - October 31, 1975.

Under Part 213 of the Federal Aviation Act of 1958 you have the authority to disapprove the Board's order by so notifying the Board on or before February 3, 1975 (today). If you wish to approve the order, you need take no further action.

Agreeing with the CAB order are the Department of State, NSC and CIEP, which believe that disapproval of this order would impair the present system for reaching agreement on international fares. Opposing the CAB order are: Department of Transportation, Department of Justice, Council on Wage and Price Stability, Office of the Counsel to the President and OMB. The Justice Department has advised that disapproval of this case would be within the President's power under Section 801(b) of the Federal Aviation Act.

There are two caveats related to disapproval, of which you should be aware. First, your disapproval of the CAB order could be seen as a departure from the IATA rate-setting process. Present US policy voices support for the IATA mechanism. Second, in spite of the Justice opinion that disapproval in this case is within the President's power, such an action would be based largely on economic grounds. The legislative history of Section 801(b), however, indicates that disapproval is to be based on foreign policy considerations. A continued use of this provision would likely stimulate further Congressional scrutiny of existing Presidential authority under Section 801.

Recommendation:

That you approve the proposed CAB order, with no further action being required.



J. M. Dunn
Acting
Executive Director





EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

FEB 2 1975

MEMORANDUM FOR: THE PRESIDENT

SUBJECT: Civil Aeronautics Board Decision:
TRANSPORTES AEREOS
PORTUGUESES
(Docket 27437)

The Civil Aeronautics Board has unanimously found it in the public interest to suspend a fare proposal by Transportes Aereos Portugueses, S.A.R.L. The Government of Portugal ordered the airline to submit the proposal which would continue the fare for 7/8 day group inclusive tours (GIT) from its normal expiration date of March 31, 1975 to the periods April 16 - June 15 and August 1 - October 31, 1975. The order by the CAB suspending the fare stated that it would result in significant dilution of carrier yield, and could precipitate competitive filings in other North Atlantic markets and further deteriorate the financial position of International Air Transportation Association (IATA) carriers.

The Departments of Justice and Transportation raise strong objections to the Board's methodology in deciding to suspend this fare. They maintain the Board did not judge whether or not the fare was compensatory but were supporting the system in effect for setting international fares which is agreement among the association of international air carriers. DOT and DOJ reject this criteria and believe that all fares should be judged on the basis of whether or not they are compensatory. The Council on Wage and Price Stability states the CAB order is devoid of economic analyses and should be disapproved. In a separate legal opinion Department of Justice states that disapproval of the case would be within the President's power under Section 801(b) of the Federal Aviation Act.

The Department of State has no objections to the Board's order, and after being made aware of other agency positions, expressed concern that overturning the Board's decision would impair the present system for reaching agreement on international air fares. In general, international air fares for scheduled airlines are set by rate conferences convened by IATA. Meeting as a group, the air carriers decide on a fare level, and it is submitted to the aviation authorities of the governments involved. State thinks that letting the



TAP fare go into effect would invite other airlines to seek fare changes outside the IATA framework. DOT points out that the IATA charter specifically provides for government ordered fare requests to be submitted separately from the IATA process and sees no problems with this procedure.

Although the considerations are complex, the Office of Management and Budget, on balance, agrees with the Departments of Justice and Transportation and the Council on Wage and Price Stability that the order should be disapproved. The methodology used by the Board in deciding international rate cases has serious shortcomings and disapproval will indicate that more emphasis on the economic aspects of a fare proposal is desired. A letter to the Board disapproving the order is attached for your signature. The final day for action is February 3. If you disagree with the recommendation above the order will automatically go into effect if you take no action.


Walter D. Scott
Associate Director for
Economics and Government

Attachments
Table of Board and Agency
recommendations
CAB letter of transmittal
CAB order
Letter to Chairman of CAB



CIVIL AERONAUTICS BOARD

Transportes Aereos Portugueses (TAP): Docket 27437

Issue	Civil Aeronautics Board	Department of State	Department of Transportation	Department of Justice	Council on Wage and Price Stability	OMB
Should TAP be allowed to adopt a 7/8 day GIT fare for the periods April 16 - June 15 and August 1 - October 31, 1975 which is below rates previously approved by the Board.	NO	NO	YES	YES	YES	YES

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CIVIL AERONAUTICS BOARD

WASHINGTON, D.C. 20428

IN REPLY REFER TO: B-1-63c

January 24, 1975

The President
The White House
Washington, D. C. 20500

Dear Mr. President:

There are transmitted for your review copies of the Board's order suspending passenger fares proposed by Transportes Aereos Portugueses, S.A.R.L. in foreign air transportation. This order is submitted pursuant to section 801(b) of the Federal Aviation Act of 1958 (P. L. 92-259).

This order institutes an investigation, pursuant to section 1002(j) of the Federal Aviation Act of 1958, into the lawfulness of these fares proposed for use between the United States and Portugal, and suspends the charges, pursuant to section 1002(j), for a period of three hundred and sixty-five days, pending hearing and final decision by the Board. Under the Federal Aviation Act of 1958, the Board's order is final unless the President disapproves the order not later than 10 days following its submission by the Board. No action is necessary if you do not wish to disapprove this order.

Insofar as the carrier argues that suspension is inappropriate and that the matter should be resolved through intergovernmental negotiations, the bilateral air transport agreement between the United States and Portugal does not include provisions dealing with fares. The Board has also in the past made clear that the fact that a fare may be ordered by a foreign government does not in and of itself immunize that fare from review by the Board under the applicable statutory provision. Furthermore, the Board has never approved a peak-season fare of the kind here proposed and the fare is not included in the new carrier agreement that the Board understands will soon be filed for summer 1975 application.

Finally, we believe it would be most unfortunate if we were to accede to the proposition of a foreign government by the expedience of ordering its carrier of filing a particular rate and depriving this government of the generally recognized right to take unilateral action to suspend rates deemed unreasonable.

Respectfully yours,

Richard J. O'Melia
Acting Chairman

Enclosure

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UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

Adopted by the Civil Aeronautics Board
at its office in Washington, D. C.
on the 24th day of January, 1975

Transatlantic passenger fares proposed by :
: Docket 27437
TRANSPORTES AEREOS PORTUGUESES, S.A.R.L. :
: :
: :

ORDER OF INVESTIGATION AND SUSPENSION

By tariff revisions filed January 8, 1975 for effect February 7, 1975, Transportes Aereos Portugueses, S.A.R.L. (TAP) proposes extension of the current 7/8-day winter group inclusive tour (GIT) fares between the United States and Portugal into the shoulder and peak seasons.^{1/} The present winter GIT, at \$329 round trip New York-Lisbon, is marked to expire March 31, 1975 with the rest of the IATA North Atlantic fare structure, but presumably will be extended through April 15 by IATA agreement as in past years. TAP now proposes to apply this GIT fare, with the same conditions of travel, during the periods April 16-June 15, 1975 and August 1-October 31, 1975, at a New York-Lisbon level of \$409. The TAP filing was made pursuant to a directive of the Government of Portugal.

Complaints requesting suspension and investigation of the TAP filing have been filed by Trans World Airlines, Inc. (TWA) and Pan American World Airways, Inc. (Pan American). The complainants assert that TAP's proposal should not be approved at this time since the IATA 1975 fare structure for the shoulder and peak seasons is still under negotiation, and that the impact of the TAP filing cannot be evaluated in isolation; that approval of TAP's filing would seriously complicate the problem of reaching an agreement in IATA, and could lead to competitive filings to/from other countries. It is further contended that, although the present 7/8-day GIT has been successful in alleviating the seasonality problem on the North Atlantic by promoting traffic during the winter, extension of this fare into the peak season would only intensify that problem; that the peaking problem would be particularly severe with regard to westbound-originating travel since the fare would be available in August which is the most intense peak period in that direction; that the peak season 7/8-day GIT would represent a greater discount vis-a-vis the regular 14/21-day GIT than is the case during the winter; and that the extended 7/8-day GIT would aggravate day-of-week peaking problems during the summer season

^{1/} Air Tariffs Corporation, Agent, Tariff C.A.B. No. 44, 2nd Revised Pages 24-C and 24-D, and 6th Revised Page 274-A.

since it incorporates no weekend surcharge. Finally, it is argued that, although a modified extension of the 7/8-day GIT may prove to be economically sound, the fare should be developed through the IATA negotiating process, with appropriate safeguards, and should not be introduced at this time as a measure geared to the interests of only one country.

TAP, in an answer to the complaints, states that even if the fares were shown to be unreasonable or otherwise unlawful, the fares were filed pursuant to a Portuguese government order, and established practice dictates that the matter be resolved through intergovernmental negotiation rather than by suspension action; but that in any event the complainants have not provided facts sufficient to support suspension. TAP contends further that no economic evidence has been submitted which demonstrates unreasonableness; that if the current, Board-approved 7/8-day GIT fares are lawful, then their extension is lawful; that the fares would maintain the same general relationship exhibited between the present, approved 7/8-day GIT fares and other IATA fares; and finally, that preservation of the IATA ratemaking machinery should not take precedence over the action of a sovereign and friendly nation which directs its national carrier to apply fares not part of a currently effective IATA agreement.

Upon full consideration of the tariff filing, the complaint, and all other relevant factors, the Board has determined that the proposed fares may be unjust, unreasonable, unjustly discriminatory, unduly preferential, unduly prejudicial, or otherwise unlawful, and should be suspended pending investigation. The proposed \$409 fare represents a significant reduction from the present GIT peak season fare.^{2/} Moreover, it is \$26 below the \$435 peak APEX fare approved by the Board in Order 74-10-106, despite much more liberal conditions than the APEX. In these circumstances, there seems little doubt that it would result in a significant dilution of carrier yield, a result which runs counter to the Board's recently stated policy on transatlantic fares (Order 75-1-24, January 7, 1975). We recognize Portugal's legitimate interest in promoting tourism; however, no purpose is served by pursuing this objective on an uneconomic basis. The winter GIT was introduced for a specific purpose - to strengthen off-season traffic when load factors are historically low. We have no evidence which suggests that carrier costs differ significantly for the 7/8-day GIT as compared with the 14/21-day GIT. Moreover, it is not unlikely that an extension of this fare to Portugal would precipitate competitive filings in other North Atlantic markets and further deteriorate the financial position of IATA carriers.

Accordingly, pursuant to the Federal Aviation Act of 1958, as amended, and particularly sections 204(a), 403, 801 and 1002(j) thereof,

^{2/} The all-year 14/21-day GIT: \$366 basic, \$462 peak. The peak season fare is not presently on file in the carriers' effective tariffs, but is included in the Montreux package now under consideration by the IATA North Atlantic Traffic Conference in Geneva, and may reasonably be expected to be adopted as part of the new IATA structure for effect April 1, 1975.

O'MEY, Vice Chairman, GILLILLAND, MINEY, and TIMM, Members, concurred in the adoption of this order. WEST, Member, was not here.

IT IS ORDERED THAT:

1. An investigation be instituted to determine whether the fares and provisions in Tariff C.A.B. No. 44, Air Tariffs Corporation, Agent, on 2nd Revised Pages 24-C and 24-D, and 6th Revised Page 274-A, and rules, regulations and practices affecting such fares and provisions, are or will be unjust, unreasonable, unjustly discriminatory, unduly preferential, unduly prejudicial, or otherwise unlawful, and if found to be unlawful, to take appropriate action to prevent the use of such fares and provisions or rules, regulations, or practices;

2. Pending hearing and decision by the Board, the fares and provisions on the tariff pages specified in paragraph 1 above are suspended and their use deferred to and including February 6, 1976 unless otherwise ordered by the Board, and that no changes be made therein during the period of suspension except by order or special permission of the Board;

3. This order shall be submitted to the President^{3/} and shall become effective February 7, 1975;

4. Except to the extent granted herein, the complaints in Dockets 27387 and 27410 be and hereby are dismissed;

5. The investigation ordered herein be assigned for hearing before an Administrative Law Judge of the Board at a time and place hereafter to be designated; and

6. Copies of this order be served upon Transportes Aereos Portugueses, S.A.R.L., Trans World Airlines, Inc., and Pan American World Airways, Inc., which are hereby made parties to this proceeding.

This order will be published in the Federal Register.

By the Civil Aeronautics Board:

Edwin J. Hallanda
Secretary

(SEAL)

3/ This order was transmitted to the President on January 24, 1975.



THE WHITE HOUSE

WASHINGTON

Dear Mr. Chairman:

I have reviewed the Civil Aeronautics Board's proposed order in the matter of Transportes Aereos Portugueses, S.A.R.L., Docket 27437 and have decided to disapprove those portions of the order relating to the suspension of the proposed fare.

I disapprove of the policy stated in the CAB's order to the effect that it would be undesirable to precipitate competitive filings by other North Atlantic carriers. In these inflationary times we should encourage legitimate competitive actions that result in lower prices. Since the Board made no finding that the fares in question are not compensatory, and acted in furtherance of a policy contrary to my foreign policy objectives, I hereby disapprove it and recommend that this and future cases be decided in a way that reflects my foreign policy decision to encourage legitimate price competition at compensatory levels.

Sincerely,

The Honorable Richard J. O'Melia
Acting Chairman
Civil Aeronautics Board
1825 Connecticut Avenue, N.W.
Washington, D. C. 20428