

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

FILED

SEP 23 2004

NANCY MAYER WHITTINGTON, CLERK  
U.S. DISTRICT COURT

UNITED STATES OF AMERICA,  
  
Petitioner,  
  
v.  
  
AMERICAN AIRLINES, INC.,  
  
Respondent.

Supplemental to  
Civil Action No. 92-2854

Judge

**SETTLEMENT AGREEMENT AND ORDER**

The United States of America, having filed its Petition for an Order to Show Cause Why Respondent American Airlines, Inc. ("American") Should Not Be Found in Civil Contempt ("Petition to Show Cause"), on August --, 2004, and the Respondent, American, having consented to the entry of this Settlement Agreement and Order without trial or adjudication of any issue of fact or law herein and without this Settlement Agreement and Order constituting any evidence against or an admission by any party with respect to any allegation contained in the Petition to Show Cause:

NOW, THEREFORE, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein, and upon the consent of the parties hereto, it is hereby

ORDERED, ADJUDGED, AND DECREED as follows:

**I. JURISDICTION**

This Court has jurisdiction of the subject matter herein and of each of the parties consenting hereto. The Petition to Show Cause states a claim upon which relief may be granted against the Respondent under the Court's inherent power to enforce compliance with its orders and Section IX(D) of the Final Judgment.

**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. "cross market initiative" means a reduced or less restrictive fare filed by an airline in a city or airport pair important to a second airline in response to (1) the second airline having filed a reduced or less restrictive fare in a city or airport pair important to the first airline; or (2) the second airline having failed to match a fare increase filed by the first airline;
- C. "fare" means the price charged for domestic passenger transportation by any airline, and any ticket dates, travel 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;
- D. "fare increase" means a change or combination of changes by an airline that result in a fare (1) that is either higher in price or more restrictive with respect to restrictions, rules, terms or conditions than the airline's fare in the same airport or city pair that is replaced, supplanted or modified by the change or combination of changes, and (2) that American reasonably should know would result in a net loss of ticket sales to the airline absent other airlines matching it;

- E. "travel date" means a date that limits when a passenger may travel on a fare; and
- F. "travel between the same airport or city pair" shall include travel between (1) an airport or city pair served by another airline, and (2) an airport or city pair that American, in the ordinary course of business, common-rates with that airport or city pair or as to which American, in the ordinary course of business, bases its fares on its fares in that airport or city pair.

### **III. APPLICABILITY**

This Settlement Agreement and Order applies to American and each of its successors, assigns, and to all other persons in active concert or participation with it who shall have received actual notice of the Settlement Agreement and Order by personal service or otherwise.

### **IV. PROHIBITED FUTURE CONDUCT**

American is enjoined and restrained from:

- A. using travel dates to initiate or match a fare increase; and
- B. using travel dates in initiating or extending a cross market initiative.

### **V. LIMITING CONDITIONS**

- A. Nothing in this Settlement Agreement and Order shall prohibit American from using travel date(s) that correspond to travel date(s) placed by another airline on a published government or military contract or negotiated price where the American government or military fare and the other airline's contract or negotiated price are for travel between the same airport or city pair.
- B. Nothing in this Settlement Agreement and Order shall prohibit American from using travel dates to specify periods of differing demand, i.e., seasonality, holidays and special events.
- C. Nothing in this Settlement Agreement and Order shall prohibit American from using

travel dates in connection with (1) American or another airline beginning or ending nonstop or connect service in an airport or city pair or (2) American beginning or ending a class of service in an airport or city pair.

D. Nothing in this Settlement Agreement and Order shall prohibit American from using travel dates in matching for travel between the same airport or city pair a cross market initiative initiated by another airline.

#### **VI. RECORD KEEPING REQUIREMENT**

For each travel date American disseminates, American shall retain a record of the dates that such travel date was disseminated in the system and the specific fares and city or airport pairs to which the travel date was attached.

#### **VII. CIVIL PENALTY AND COSTS**

A. Within thirty (30) days of the entry of this Settlement Agreement and Order, American shall pay to the United States the sum of three million dollars (\$3,000,000.00) as a civil penalty, which includes reimbursement to the United States for its investigation of these alleged violations of the Final Judgment.

B. The payment specified above shall be made by wire transfer or cashier's check. If the payment is made by wire transfer, before making it, contact Janie Ingalls, of the Antitrust Division's Antitrust Documents Group at (202) 514-2481, for instructions. If the payment is made by cashier's check, the check should be made payable to the United States Department of

Justice and delivered to:

Janie Ingalls  
United States Department of Justice  
Antitrust Division, Antitrust Documents Group  
325 7th Street, NW  
Suite 215 North  
Washington, D.C. 20530.

C. In the event of a default in payment, interest at the rate of eighteen (18) percent per annum shall accrue thereon from the date of default to the date of payment.

#### **VIII. COMPLIANCE INSPECTION**

A. For purposes of determining or securing compliance with this Settlement Agreement and Order, or determining whether the Settlement Agreement and Order should be modified or vacated, and subject to any legally recognized privilege, from time to time duly authorized representatives of the United States Department of Justice, including consultants and other persons retained by the United States, shall, upon written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to American, be permitted:

1. access during American's office hours to inspect and copy, or at the United States' option, to require respondent to provide copies of, all books, ledgers, accounts, records and documents in the possession, custody, or control of American, relating to any matters contained in this Settlement Agreement and Order; and
2. to interview, either informally or on the record, American's officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without

restraint or interference by American.

B. Upon the written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, American shall submit written reports or interrogatory responses, under oath if requested, relating to any of the matters contained in this Settlement Agreement and Order as may be requested, subject to any legally recognized privilege.

C. No information or documents obtained by the means provided in this section shall be divulged by the United States to any person other than an 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 (including grand jury proceedings), or for the purpose of securing compliance with this Settlement Agreement and Order, or as otherwise required by law.

D. If at the time information or documents are furnished by American to the United States, American 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 American 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 the United States shall give American ten (10) calendar days notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

#### **IX. FURTHER ELEMENTS**

A. This Settlement Agreement and Order shall expire seven (7) years from the date of its entry.

B. This Settlement Agreement and Order shall not constitute a bar or estoppel with respect

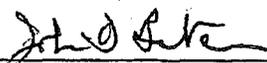
to any claims that the United States may have against Respondent other than those arising from the specific events giving rise to the allegations described in Paragraphs 9 through 11 of the Petition to Show Cause.

C. Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Settlement Agreement and Order 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 Settlement Agreement and Order, to modify or terminate any of its provisions, to enforce compliance, and to punish violations of its provisions.

D. Section VI of this Settlement Agreement and Order shall become effective 60 days from the date of entry of this Settlement Agreement and Order.

IT IS SO ORDERED

Dated: Sept. 23, 2004

  
United States District Judge