

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

PAN AMERICAN WORLD AIRWAYS,
INC.; TRANS WORLD AIRLINES,
INC.; and LUFTHANSA GERMAN
AIRLINES (Deutsche Lufthansa
Aktiengesellschaft),

Defendants.

Civil Action No. 77-197

FINAL JUDGMENT

Filed: December 9, 1977

Entered: March 9, 1978

Re: DEFENDANT LUFTHANSA GERMAN AIRLINES

Plaintiff, United States of America, having filed its complaint herein on February 3, 1977, and the Plaintiff and the Defendant Lufthansa German Airlines (Deutsche Lufthansa Aktiengesellschaft) by their respective attorneys, having consented to the entry of this Final Judgment, prior to the taking of any testimony, without trial or adjudication of any issue of fact or law herein and without this Final Judgment constituting any evidence against or admission by either party with respect to any issue of fact or law herein:

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

ORDERED, ADJUDGED and DECREED, as follows:

I.

This Court has jurisdiction of the subject matter herein and the parties consenting hereto. The complaint states a claim upon which relief may be granted against

the Defendant under Section 1 of the Sherman Act (15 U.S.C. §1).

II.

As used in this Final Judgment:

(a) "CAB" means the Civil Aeronautics Board.

(b) "Domestic air carrier" means any person directly engaged in international air transportation who is a citizen of or is created or organized under the laws of the United States or of any state, territory, or possession thereof.

(c) "Foreign air carrier" means any person directly engaged in international air transportation who is a citizen of or is created or organized under the laws of any country other than the United States or any state, territory, or possession thereof.

(d) "International air transportation" means the carriage by aircraft of persons or property as a common carrier for compensation or hire or the carriage of mail by aircraft, in commerce between a place in the United States and any place outside thereof; whether such commerce moves wholly by aircraft or partly by aircraft and partly by other forms of transportation.

(e) "Person" means any natural person, firm, partnership, association, corporation, or any other business or legal entity.

III.

The provisions of this Final Judgment are applicable to the Defendant herein and shall also apply to each of

Defendant's officers, directors, agents, employees, successors, and assigns, and to all other persons in active concert or participation with them who shall have received actual notice of this Final Judgment by personal service or otherwise.

IV.

The Defendant is enjoined and restrained from directly or indirectly engaging or participating in, entering into, adhering to, implementing, maintaining, enforcing, or claiming any right under any contract or agreement with any domestic or foreign air carrier to raise, fix, determine, maintain, stabilize, or adhere to any fare level or tariff condition for international air transportation:

Provided, however, that this Section IV shall not apply to any person affected by any order made by the CAB pursuant to Sections 408, 409 or 412 of the Federal Aviation Act (49 U.S.C. §§ 1378, 1379, 1382) insofar as may be necessary to enable such person to do anything authorized, approved, or required by such order.

V.

The Defendant is ordered and directed:

(a) To establish a reasonable program for dissemination of, education as to, and compliance with this Final Judgment, involving each corporate officer, director, employee and agent having responsibilities in connection with or authority over the establishment of international air transportation fare levels or tariff conditions, advising them of its and their obligations under this Final Judgment. This program

shall include, but is not necessarily limited to, the inclusion, in an appropriate company manual or internal memorandum, of this Final Judgment in whole or in part or an explanation thereof, and a statement of corporate compliance policy thereunder;

(b) To undertake a good faith effort to cause to be established a reasonable program for dissemination of and education as to this Final Judgment, involving each corporate officer, director, employee and agent of its subsidiary Condor Flugdienst G.m.b.H. having responsibilities in connection with or authority over the establishment of international air transportation fare levels or tariff conditions; and

(c) To furnish to Plaintiff within one hundred and twenty (120) days of the entry of this Final Judgment, and thereafter upon request by Plaintiff, on or about the anniversary date of this Final Judgment for a period of five (5) consecutive years from the date of its entry, an account of all steps Defendant has taken during the preceding year to discharge its obligations under subparagraphs (a) and (b) of this Section V and to include with said account copies of all written directives issued during the prior year with respect to compliance with the terms of this Final Judgment.

VI.

The Defendant is ordered and directed within sixty (60) days after the entry of this Final Judgment to send by certified mail a copy of this Final Judgment to the Condor Flugdienst G.m.b.H. agent designated by appointment or law

to receive service of process, and within ten (10) days thereafter to furnish Plaintiff with the certified mail receipt which represents compliance with this provision.

VII.

For the purpose of determining or securing compliance with this Final Judgment and subject to any legally recognized privilege, from time to time:

(a) Duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to Defendant made to its principal office, be permitted:

(1) Access during office hours of Defendant, which may have counsel present, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Defendant relating to any of the matters contained in this Final Judgment; and

(2) Subject to the reasonable convenience of Defendant, and without restraint or interference from it, to interview its officers, directors, employees and agents, each of whom may have counsel present, regarding any such matters:

Provided, however, that subparagraph (a) of this Section VII shall not apply when:

(1) The sources of information described in this subparagraph (a) are located within the Federal Republic of Germany;

(2) Compliance with this subparagraph (a) is prohibited by the laws of the Federal Republic of Germany; and

(3) Defendant has exercised good faith efforts to obtain permission of the appropriate authorities but such permission has not been secured.

(b) Upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division made to the Defendant's principal United States office, Defendant shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested.

No information or documents obtained by the means provided in this Section VII shall be divulged by any representative of the Department of Justice 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.

If at the time information or documents are furnished to Plaintiff, 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 Defendant marks each pertinent page of such material, "Subject to claim of protection under the Federal Rules of Civil Procedure," then ten (10) days notice shall be given by Plaintiff to Defendant prior to divulging such material in any legal proceeding

(other than a grand jury proceeding) to which Defendant is not a party.

VIII.

Jurisdiction is retained by this Court for the purpose of enabling either of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the amendment or modification of any of the provisions thereof, for the enforcement of compliance therewith, and for punishment of violations thereof.

IX.

Entry of this Final Judgment is in the public interest.

March 9, 1978

Date

/s/ Thomas A. Flannery

UNITED STATES DISTRICT JUDGE