

America are prohibited from pricing practices which constitute unfair competitive practices violating the letter or spirit of the antitrust laws.

This prohibition is found in Section 5 of the Federal Trade Commission Act, governing industry generally, and in former Section 411 of the Federal Aviation Act, which is now 49 U.S.C. 41712, which applies specifically to airlines.

Since 1938 airlines have been exempt from Section 5 of the Federal Trade Commission Act, and subject to a provision specifically prohibiting unfair competitive practices by airlines administered by CAB's predecessor, and then by CAB, and since 1985, by DOT. This is the prohibition on which DOT's guidelines are based, historically established in law for the benefit and protection of air travelers.

Congress has made it absolutely clear that we expect the U.S. Department of Transportation to prohibit unfair competitive practices by airlines. In 1984 when we passed legislation terminating the Civil Aeronautics Board and giving its remaining responsibilities to the U.S. Department of Transportation, we explained that, "There is also a strong need to preserve the Board's authority under Section 411 to ensure fair competition in air transportation. Again, this is the same authority which the Federal Trade Commission exercises over other industries under Section 5 of the Federal Trade Commission Act.

Although the airline industry has been deregulated, this does not mean that there are no limits to competitive practices. As in the case with all industry, carriers must not engage in practices which would destroy the framework under which fair competition operates.

Air carriers are prohibited, as are firms in other industries, from practices which are inconsistent with the antitrust laws or the somewhat broader prohibitions of Section 411 of the Federal Aviation Act (corresponding to Section 5 of the Federal Trade Commission Act) against unfair competitive practices. Source, House Committee Report on CAB Sunset Act, H.R. 98-793, 98th Congress, Second Session.

I cite this to be perfectly precisely clear about the legal basis for the authority that the DOT seeks now to exercise.

The principal architect of deregulation, Dr. Alfred Kahn, has confirmed that the DOT proposal is not reregulation. Dr. Kahn said:

The entry of these new low-fare carriers keeps the industry honest. I'm a strong advocate of competition and I don't want to go back to regulation. But you've got to distinguish legitimate competition from what is intended to drive competitors out and exploit consumers.

That is Alfred Kahn, as quoted in USA Today, April 6, 1998.

Dr. Kahn further says, "When I hear 'vigorous competitive' responses to describe a situation in which, within a space of a year, fares started at \$260, went down to \$100 in two quarters, and

then back up to \$270, I want to retch," said Dr. Kahn in the hearing on Aviation Competition of the Subcommittee on Aviation, the Senate Committee on Commerce, Science, and Transportation, April 23, 1998.

Strong language from a man who knows what "deregulation" means and what "fair competition" is.

Two other issues need to be clarified. First, the prohibition against unfair competitive practices is related to but is broader than the prohibitions of the antitrust laws. As the court ruled in United Airlines against CAB, 766 F.2d 1107, 7th Circuit, 1985, "We know from many decisions under both this section, (Section 411 of the Federal Aviation Act prohibiting unfair competitive practices)," and its progenitor, Section 5 of the Federal Trade Commission Act, "that the Board can forbid anti-competitive practices before they become serious enough to violate the Sherman Act."

Secondly, DOT has authority to issue general rules determining that specific practices constitute unfair competitive practices. DOT is not limited to enforcing the prohibition against unfair practices through a case-by-case determination.

This was the issue in the 7th Circuit Court case of United Airlines against CAB, in which United Airlines challenged the CAB's authority to issue rules determining that various practices in the operation of computer reservation systems would be unfair competitive practices.

After analyzing the background of the reenactment of Section 411 in 1984, the court concluded,

Congress, looking forward to the period after abolition of the Board, was very concerned to preserve in the Department of Transportation authority to enforce Section 411 . . . It is too late to inquire whether, as an original matter of interpretation of Sections 204(a) and 411, rulemaking can be used to prevent unfair or deceptive practices or unfair methods of competition. To hold that it cannot be so used would pull the rug out from under Congress's restructuring of airline regulation.

Wise words rightly said by the court.

There have been some proposals for legislation to stop the DOT rule-making. I am pleased that the Committee on Transportation and Infrastructure has rejected these proposals, and instead has reported legislation to ensure that the final guidelines will include a full analysis of relevant issues, and that Congress will have an opportunity to legislate before final guidelines become effective.

I agreed to this legislation as a compromise, making it clear that my support should not be construed as indicating doubts about DOT's proposal, but rather, as a means of moving the issue forward. The Secretary of Transportation has pledged to give serious open-minded consideration to all comments filed, and I am confident that final guidelines will reflect any legitimate problems which may be raised.

I believe the basic approach proposed by DOT is sound. It is inconsistent

with deregulation for established airlines to respond to low fare competition by adopting pricing and scheduling policies which lose money, and then when the new entrant leaves the market, raising fares to prior levels.

I respect the rights of established airlines to oppose the DOT proposal, but I urge them to contest the proposal by responding to the real issue with real case studies and honest facts, rather than using their fictitious strawman claim of "reregulation" in their rush to ban all low-fare service.

LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted to:

Ms. KILPATRICK (at the request of Mr. GEPHARDT) for today after 3:30 p.m. on account of official business.

Ms. HARMAN (at the request of Mr. GEPHARDT) for today on account of illness in the family.

Mr. MARTINEZ (at the request of Mr. GEPHARDT) for today on account of personal business.

Mr. PITTS (at the request of Mr. ARMEY) for today after 1:00 p.m. on account of his son's wedding.

Mr. CALLAHAN (at the request of Mr. ARMEY) for September 26 through October 2 on account of personal reasons associated with Hurricane Georges.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Mr. OBERSTAR) to revise and extend their remarks and include extraneous material:)

Mr. CONYERS, for 5 minutes, today.

Mr. SKAGGS, for 5 minutes, today.

Mr. DAVIS of Illinois, for 5 minutes, today.

Ms. NORTON, for 5 minutes, today.

(The following Members (at the request of Mr. WELLER) to revise and extend their remarks and include extraneous material:)

Mr. SCARBOROUGH, for 5 minutes, today.

Mr. WELLER, for 5 minutes, today.

Mr. SHIMKUS, for 5 minutes, today.

Mr. RIGGS, for 5 minutes, today.

EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

(The following Members (at the request of Mr. OBERSTAR) and to include extraneous material:)

Mr. HAMILTON in two instances.

Mr. TAYLOR of Mississippi.

Ms. DELAURO.

Mr. STARK.

Mr. TOWNS in two instances.

Mr. BENTSEN.

Mr. NEAL of Massachusetts.

Mr. MILLER of California.