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INDEPENDENT AIR FARES COMMITTEE BILL 1981

Date Introduced: 28 May 1981
House: House of Representatives

Short Digest of Bill

Purpose

To repeal Air Navigation Regulation 106 and to establish, and define the functions and powers of, an Independent Air Fares Committee.

Background

The regulation of air fares and charges for the carriage of persons and cargo has been an integral part of Government policy designed to regulate the domestic airline industry. The authority for such price regulation has been Air Navigation Regulation 106 as amended. This Regulation has required all domestic airline operators engaged in a public transport service to furnish a schedule of all charges to the Minister for approval. The Minister is authorised to approve any charge conditionally or unconditionally, or to direct the adoption of a more appropriate tariff. At any time, an operator may apply to the Minister for approval of any variation of a currently applying tariff. The Minister is also empowered at any time to withdraw approval previously given.

These provisions would basically have continued under the terms of the Airlines Agreement signed in September 1980 (but subsequently renegotiated in May 1981). That Agreement set out certain procedures to be followed by the two major airlines in seeking Ministerial approval of their air fares. With the proposed deregulation of air freight, approval was, of course, only to be required for charges relating to airline passenger services.

Several groups in the community expressed considerable concern over a number of aspects of the September Agreement. On the matter of price regulation, many groups believed that any approval of tariff variations should be publicly justified. It was argued that the procedure of Ministerial approval could be subject to allegations of mere "rubber stamping" of the airlines'
tariff proposals. In its Report on Domestic Air Fares, the Holcroft Committee strongly recommended that financial and technical data relevant to the monitoring of costs and air fares in the industry should be open to public scrutiny. The Government subsequently announced, on 1 April 1981, its intention to establish an independent tribunal with powers to hear and make decisions upon proposals for changes in air fares.

The present Bill establishes a Committee, comprising a Chairman and two members (all part-time), which will determine or approve air fares charged by all domestic regular public air passenger transport operators. The Committee has five main functions. These are:-

i) to conduct cost allocation reviews, when directed to do so by the Minister, in order to determine how airline operators' costs shall be attributed to the flagfall and distance components of an economy fare pricing formula and to determine the percentage difference between economy fares and first-class fares where these are charged. These reviews are to be held in public unless the Committee thinks fit or is requested by an operator on commercial grounds, to hear part or all of the proceedings in private. These reviews will be held at intervals of 2 to 3 years for the trunk operators and at no less than 3-yearly intervals for other operators. The cost allocation reviews for the major trunk operators will occur concurrently. The Minister will direct that cost allocation reviews for non-trunk operators will begin to be conducted as soon as practicable after the commencement of this Act;

ii) to conduct major air fare reviews, when requested to do so by airline operators, to determine economy air fares that may be charged by those operators in respect of air services to which the request relates. The Committee may also initiate such a review in respect of any operator if at least 6 months has elapsed since the completion of a previous, comparable review. All such reviews shall be conducted in private. Reviews pertaining to the trunk operators will occur concurrently and the fares determined shall apply equally to T.A.A and Ansett;

iii) to conduct minor air fares reviews, when requested to do so by an airline operator, to determine economy fares where the proposed fares would not be more than 5 per cent greater than the economy fares determined at the previous major air fares review for that operator. These reviews will be held in private and
will take into account increases in labour costs, fuel costs and navigation charges. Equal determinations will apply to each of the trunk operators;

iv) to fulfil the Committee's responsibilities under the terms of the Airlines Agreement signed in May 1981. Sub-clause 7(10) of that Agreement provides that all consultations between T.A.A. and Ansett relating to the setting of fares must be held in the presence of a representative of the Committee. This consultation is compulsory in the setting of core fares, and the Committee may require the trunk operators to consult each other before applying to the Committee for approval of a new discount fare;

v) to approve discount fares proposed by an operator if the Committee is satisfied that the discount fare will augment that operator's profitability, will be applied in a non-discriminatory fashion and will not result in any increase in the economy fares charged by trunk operators over trunk routes. A discount fare, by definition, does not include fares charged in respect of travel by blind persons, children or students.

In carrying out cost allocation and air fares reviews, the Committee must ensure that the Two Airlines Policy prevails with respect to trunk routes, that fares are determined on a consistent, cost-related basis and that air services are operated on an economic and efficient basis. The Committee must also ensure that domestic air services are operated on a competitive basis, although the Holcroft Committee admitted that it faced difficulties in reconciling the promotion of competition with the maintenance of the Two Airline Policy.

The Committee could also face problems in determining equal, cost based fares for the trunk operators where those airlines operate different aircraft fleets. The Bill defines any two turbo-jet aircraft having a capacity exceeding 90 passengers as being "similar". On this basis, a Boeing 737 would be "similar" to an A300 Airbus. However, the fixed and variable costs of operating these aircraft probably differ significantly.

A major objection to the September Airlines Agreement, raised by the Chairman of East-West Airlines, related to a provision requiring third-party operators on routes between trunk centres to charge the same fare as the trunk operators. Under the present Bill, such third-party operators may propose a lower fare which will be approved by the Committee only if it meets the criteria applying generally to discount fares.
For further information see the Minister's Second Reading Speech, the Explanatory Memorandum to the Bill and the Digest of the Airlines Agreement Bill 1981.

Main Provisions

Clause 4 establishes the Independent Air Fares Committee comprising a Chairman and two other members (all part-time), while clauses 5 to 10 set out the terms and conditions on which these persons are appointed.

Part III of the Bill sets out the functions of and procedures to be followed by the Committee. Clause 12 summarises the functions of the Committee (to conduct cost allocation, major and minor air fares reviews, approve discount fares and perform duties required by the Airlines Agreement Act 1981) while specifying the limitations of the Committee's functions regarding fares on intra-State routes.

Clause 13 sets out in detail the procedure for conducting cost allocation reviews, while clause 14 lists the matters to which the Committee shall have regard in conducting such reviews. The Minister shall determine the duration of the review.

Clause 15 sets out the procedure to be followed in conducting major air fares reviews. Sub-clause 15(11) lists the matters to which the Committee shall have regard and sub-clause 15(12) provides that the determinations made for the trunk operators on trunk routes shall be the same. Where a review has been requested by an operator, the Committee shall make a determination within 35 days of the request being made or 28 days of receiving information relevant to the review, whichever is the sooner. Where the Committee has initiated the review, a determination must be made within 28 days of the receipt of information. Clause 16 details the procedure and conditions pertaining to a minor air fares review. A determination shall be made within 21 days of a request being received from an operator, or 14 days of receiving relevant information, whichever is the sooner.

Clause 17 relates to the approval of discount fares. Where a third-party operator provides services on a trunk route, the economy and first-class fares offered by that operator are, under the provisions of sub-clause 3 (6), defined as discount fares if they differ from the economy and first-class fares approved for the major trunk operators. Sub-clause 17 (4) lists the matters on which the Committee must be satisfied before approving a discount fare. A decision must be made within 7 days after the
receipt of information relevant to the request. Sub-clause 17 (5) allows the Committee, if it thinks fit or is requested to do so by any operator, to review the availability of a previously approved discount fare.

Clause 20 provides that the Committee may make an interim determination in respect of any economy fares prior to the completion of a major air fares review in respect of those fares. This determination may be revoked at any time during the review.

Sub-clause 21 (5) provides that the Committee shall conduct all proceedings (other than cost allocation reviews) in private. Paragraph 21 (2) (a), however, allows that if it thinks fit, the Committee may direct that a cost allocation review, or part of the review, shall take place in private. Moreover, sub-clause 21 (8) provides that where a party to the proceedings of the Committee requests the Committee to hold all or part of the review in private or to suppress the public disclosure of information presented to the Committee and that if this were not done the commercial operations of that party would be prejudiced, the Committee shall accede to this request.

Clause 26 contains enforcement provisions by which the Minister may direct the withdrawal of the use of any aerodrome or any air route facility, subject to the provisions of Air Navigation Regulation 82, by any operator who charges, or advertises that he will charge an economy, first-class or discount fare that has not been determined or approved by the Committee. Clause 26 also provides that where the Committee has approved a fare for an operator in respect of a route, that fare shall be regarded as approved for any other operator providing services on that route.

Clause 35 repeals Air Navigation Regulation 106.

For further information, if required, contact:

Finance, Industries, Trade & Development Group

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