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October 14, 1975

MEMORANDUM FOR:

JAMES CONNOR

FROM:

RODERICK HILLS

Phil has asked that I stay on top of the 801 matter with regard to the publication of the Saipan decision. For your reading interest I am attaching some papers which I recently gave Phil on Section 801. Until he has a chance to digest and make his own decisions, I do not think they should be staffed, but I did think you should know the extent of the work we have done with respect to 801.



THE WHITE HOUSE

WASHINGTON

October 15, 1975

MEMORANDUM FOR: PHILIP BUCHEN

FROM: RODERICK HILLS

The attached memorandum from Jon Rose provides a good discussion of the role of the Antitrust Division in Section 801 matters. It also provides a useful criteria for resolving the ultimate issues in the White House as to the President's Section 801 authority.

I suggest that many of the thoughts be incorporated in the memorandum that Dudley has prepared on Section 801 and that it be staffed at an early date for presentation to the President.

cc: Dudley Chapman



THE WHITE HOUSE
WASHINGTON

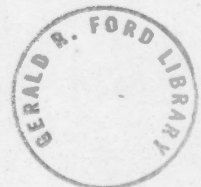
October 15, 1975

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FROM: RODERICK HILLS

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cc: Dudley Chapman





UNITED STATES DEPARTMENT OF JUSTICE

WASHINGTON, D.C. 20530

Address Reply to the
Division Indicated
and Refer to Initials and Number

October 14, 1975

MEMORANDUM FOR: Roderick M. Hills
Counsel to the President

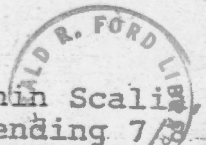
FROM: Jonathan C. Rose, Acting
Deputy Assistant Attorney General
Antitrust Division

SUBJECT: Presidential Review of CAB Proposed
Orders Suspending International Fares

On October 8, 1975, you raised several questions concerning our recommendation that the President disapprove a proposed CAB order suspending certain tariffs of Korean Air Lines. It is the purpose of this memorandum to elaborate on the reasons for our recommending Presidential disapproval of that order.

We have pointed out in several memoranda concerning proposed Board suspension orders ^{1/} that the Federal Aviation Act does not authorize the Board to suspend a decreased rate under Section 1002(j) of the Act merely because it disagrees with the filing carrier's calculation of its costs. Rather, subsection (F) of Section 1002(j) mandates that the Board take into consideration in exercising its authority to suspend international rates the issue of "whether such rates will be predatory or tend to monopolize competition among air carriers and foreign air carriers in foreign air transportation." While there are other factors included within Section 1002(j) of the Act which the Board is required to consider in determining whether to suspend a rate, the legislative history surrounding the consideration of subsection (F) indicates that it was included in the Act to give the Board authority to disapprove predatory or monopolistic rates only. Neither the Act nor its legislative history indicates that the CAB was given a mandate to disapprove low fares for the purpose of guaranteeing a carrier a certain rate of return or a certain level of yield. However, that is the goal which the Board

^{1/} E.g., Memorandum from Thomas E. Kauper to Antonin Scalia, dated January 29, 1975, re Proposed CAB Order Suspending 7/3 Day Summer GIT Transatlantic Fare Proposal of Transportes Aereos Portugueses.



nevertheless sets out for itself in suspension order after suspension order including the order here under review. Contrary to what the Board has been recommending, and recommends here, the Report of the Senate Committee on Commerce, S. Rep. No. 92-593, January 24, 1972, p. 7, states that:

"Price competition in itself is not prohibited by this provision. On the contrary, the intent of the amendment is to encourage healthy price competition by requiring the Board to consider the effect of rates on the continued existence of alternative, competitive air transport suppliers." [Emphasis added]

We think it is wrong for the CAB to send orders to the President for his approval which do not comport with the law. We also think that when such orders have the effect of raising or keeping unnecessarily high international transportation costs, thereby fueling international inflation, the President is entirely justified in terms of his foreign policy review authority to disapprove such orders.

With respect to the specific order here under review, we recommended Presidential disapproval for virtually all of the reasons outlined above. Thus, at pp. 4-5 of our memorandum, we pointed out that the Board is authorized to suspend and investigate only those decreased rates which may be predatory or monopolistic or threatening the provision of needed air transportation. However, in our view the Board had not suggested any credible connection between these proposed rates and the evils which it is supposed to guard against.

Most importantly, we found support in the President's foreign policy for reducing worldwide inflation by reducing international air transportation costs (specifically enunciated on March 8, 1975, when the President wrote a letter to the Board disapproving a proposed order suspending and investigating new general commodity tariffs filed by Seaboard and Lufthansa--Appendix A). While our memorandum might have been clearer in this respect, it is our position that neither the Board's order, nor the rationale attached to it, presents a credible distinction between the fares proposed by KAL, on the one hand, and the fares proposed by Seaboard/Lufthansa, on the other, which the President had ordered not be suspended. Therefore, we urged Presidential disapproval of the instant Board order, both to prevent erosion of the previously established policy (in Seaboard) and also to extend the benefits of the policy to other markets.



We believe that the President's foreign policy of combatting worldwide inflation by trying to reduce transportation costs is a good one. Our recommendation in this particular case reflects our desire to preserve and extend the policy whenever possible.

Nevertheless, we recognize that there may be instances in which the President's policy of combatting worldwide inflation by permitting nonpredatory price cuts to become effective may well have to yield to other more important and pressing foreign policy goals. Of course, only the President has the ultimate responsibility for resolving all conflicts between antitrust and foreign policy. Nevertheless, to the extent that foreign policy considerations are part of the record of CAB proceedings, or are otherwise made known to us, we do attempt to take them into account.

In addition, we try our best within the statutory time constraints to make a balanced analysis of any particular Board order and to recommend appropriate action by the President. 2/ We certainly have not recommended Presidential disapproval of every CAB order proposing to suspend a lower fare. For example, on August 29, 1975, the CAB transmitted an order proposing to suspend tariff revisions of Aeronaves de Mexico, S.A. The staff reviewed this order in the ordinary course of business and wrote me a memorandum on September 2, 1975, recommending that the President not be urged to overturn

2/ Section 801(b) of the Federal Aviation Act accords the President ten days only within which to disapprove a proposed Board order suspending an international air fare. This obviously presents us with serious time problems. Because OMB and the White House staff need time no less than our staff needs time to review these matters, our staff attempts to review fare suspension orders of the Board and prepare a memorandum recommending Presidential action or inaction within 24 to 48 hours after receipt of the Board order. The staff has actually been rather successful in adhering to this schedule and in fact did adhere to such a schedule in this particular case. Thus, the CAB transmitted its proposed order to the Department on October 2; the staff transmitted its recommendation in the form of a proposed memorandum to Mr. Kauper on Friday, October 3; Mr. Kauper approved and transmitted the memorandum to Mr. Scalia on Monday, October 6; and Mr. Scalia in turn transmitted Mr. Kauper's memorandum to OMB on October 6.



this particular order. 3/ As you can see by reading this memorandum, the staff recommended Presidential inaction in respect to an order suspending decreased fares because of the Board's judgment that such decreased fares might be predatory or monopolistic. This is the type of Board action we have previously argued would be entirely proper (indeed required) by the Federal Aviation Act. Both I and Mr. Kauper concurred in the staff's recommendation. No one to our knowledge urged Presidential disapproval of this particular Board order and in fact Aeronaves' fares were suspended.

In conclusion, we adhere to our view that the President should disapprove the Board's proposed order suspending KAL's tariffs. They are neither predatory nor monopolistic, and they would tend to reduce Transpacific transportation costs. Presidential disapproval would be a reaffirmation of his intention to fight worldwide inflation which we believe is an important goal. Presidential inaction would inevitably be perceived as a backing away from this policy. This perception would discourage other carriers from attempting to compete on price, a result which we assume the President wishes to avoid. As long as the CAB continues to ignore the applicable statutory standard, and as long as the President's policy of reducing worldwide inflation remains constant, we will continue to make recommendations of this nature.

Attachments

3/ A copy of this memorandum is attached hereto as Appendix B.



THE WHITE HOUSE

WASHINGTON

March 8, 1975

Dear Mr. Chairman:

I have reviewed pursuant to Section 801(b) of the Federal Aviation Act the Board's proposed Order in Docket 27557 suspending and investigating tariff revisions filed by Seaboard World Airlines, Inc. and Deutsche Lufthansa Aktiengesellschaft to establish new, lower, one-way general commodity rates from the United States to the Federal Republic of Germany.

I am disapproving your Order for foreign policy reasons, insofar as it suspends these rates pending the outcome of a formal investigation. The current international economic situation calls for the cooperation of all nations in reducing world-wide inflation. The Federal Republic of Germany has approved these rates, and the United States Government should demonstrate a comparable willingness to reduce international transportation costs. While I have no objection to the Board's further investigation of these rates, I have determined that they are to be available to the shipping public during the pendency of any such investigation.

Respectfully,

Ronald R. Ford

Honorable Richard J. O'Melia
Acting Chairman
Civil Aeronautics Board
Washington, D.C. 20428



UNITED STATES GOVERNMENT

Memorandum

TO : Jonathan Rose
Acting Deputy Assistant Attorney General

DATE: SEP 2 1975

FROM : Joseph J. Saunders, Chief
Public Counsel and Legislative Section

File No. 60-228-100

SUBJECT: Civil Aeronautic Board's Proposed
Order Suspending Fares of Aeromexico

On August 29, 1975, the Civil Aeronautics Board submitted to the President pursuant to Section 801(b) of the Federal Aviation Act an order proposing to suspend and investigate tariff revisions of Aeronaves de Mexico, S.A. (Aeromexico), proposing to reduce all passenger fares between Miami, Philadelphia, and New York on the one hand, and nine Mexican cities on the other hand, to the level of corresponding fares between the United States and Mexico City. 1/ The staff has concluded that the President should not be urged to overturn this proposed Board order because the Aeromexico fares can be viewed as predatory vis a vis U.S. flag carriers (Pan American, Eastern, and American).

This follows from the facts that (1) Aeromexico demands its full local fare on prorates of interline transportation where a U.S. carrier transports a passenger to Mexico City and Aeromexico carries him to his ultimate destination; and (2) U.S. carriers' traffic rights in U.S.-Mexico markets are largely limited to Mexico City. In these circumstances, implementation of Aeromexico's proposal would have a severe impact on any U.S. carrier which participates in this interline traffic. Our carriers might have no choice but to turn down passengers wishing to interline with Aeromexico over Mexico City to one of the beyond Mexico City points, since to do otherwise might prevent the U.S. carrier from recovering the costs of carrying that passenger over the U.S.-Mexico City sector.

1/ This pricing device is known as "common-rating." The common-rate points extend as far from Mexico City as 780 miles. Common-rated fares thus differ from ordinary transportation tariffs which are customarily based upon mileage, with the long trips costing more.



We believe that the Civil Aeronautics Board is correct when it states that "the end result may be that Aeromexico would succeed in reserving to itself the preponderance of traffic destined to points other than Mexico City." We have previously taken the position that the Board is authorized under Section 1002(j) of the Act to suspend international rates if they are predatory or monopolistic. 2/ Here, the Board's finding that the Aeromexico fares may force U.S. carriers out of the market meets this standard.

Thus, this particular order satisfies our view of what the Federal Aviation Act authorizes the Civil Aeronautics Board to do and, therefore, we do not recommend that the President overrule the Board.



2/ The Board is authorized to suspend international fares if it finds that the proposed fare may be "coercive or designed to force weaker rivals out of business on a particular market." Report of Senate Committee on Commerce, S. Rep. No. 92-593, Jan. 24, 1972, p.7.

ROUTING AND TRANSMITTAL SLIP

1	TO (Name, office symbol or location)	INITIALS	CIRCUL
		DATE	COOR
1	<i>FEK</i>		
2	<i>Saunders</i>		FILE
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3	<i>Seiden 6611*</i>		NOTE
		DATE	PERC
			VERS
4			SEE
		DATE	SIGN

REMARKS

*I agree with the staff -
 this needs a decision by
 9:30 a.m. today according
 to Seiden*

*I concur with the
 views in your memo of
 9/3/55. FEK 9/3/55*

Do NOT use this form as a RECORD of approvals, concurrences, disapprovals, clearances, and similar actions

FROM (Name, office symbol or location)

AS

DATE

PHONE





EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

OCT 10 1975

MEMORANDUM FOR: HONORABLE PHILLIP W. BUCHEN
Counsel to the President

SUBJECT: "Rules of Conduct" Regarding Executive
Handling of CAB International Air Cases

I am concerned with the way in which executive agencies are handling the review process for these CAB international aviation cases. I believe that we seriously need some clear-cut "rules of conduct" for dealing with the public and affected parties. My staff advises me that Rod Hills has looked into this situation as well as options to deal with outside contacts but that no White House or executive agency guidelines have yet been established. I recommend that we establish review criteria, develop an executive policy on outside contacts and implement appropriate procedures as rapidly as possible.

In view of OMB's pivotal role in the international aviation case review process, we have adopted our own interim policy with regard to our handling of air case matters. Effective immediately we will: (1) no longer publicly acknowledge receipt, general status, etc. of any air cases and simply respond "no comment" to public inquiries, (2) no longer meet with persons outside of the executive reviewing agencies on any pending air cases nor permit any "general" discussions with the industry to address pending or prospective air cases, (3) we will, however, receive written input and will not accept other communications on pending cases.

I view these guidelines as necessary to preserve OMB's objectivity and to increase our capability to process these cases expeditiously until we can implement more formal procedures.

Calvin J. Collier
Associate Director for
Economics and Government



THE WHITE HOUSE

WASHINGTON

October 15, 1975

CAB

MEMORANDUM FOR: CAL COLLIER
FROM: PHIL BUCHEN *P.W.B.*
SUBJECT: Iran National Airlines

The President's authority under section 801 is to disapprove the Board's decision if he objects to it on grounds of defense or foreign policy. Since the State Department has raised serious foreign policy questions, he should disapprove the decision if he finds these persuasive. The recommendations of the other departments, which have not addressed the State Department's views on the merits, should not be considered.

My special concern is that the recommendation to the President should be framed in terms of his foreign policy role and not based on a "vote" of agencies having no responsibility in this area.



72

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CIVIL AERONAUTICS BOARD

WASHINGTON, D.C. 20428



B-1-63c

IN REPLY REFER TO:

10 OCT 1975

Mr. David M. Bray
Deputy Associate Director for
Economics and General Government
Office of Management and Budget
Washington, D. C. 20503

Dear Mr. Bray:

There is enclosed a letter of transmittal to the President together with the Board's order in the matter of the investigation and suspension of passenger fares proposed by Iran National Airlines Corporation between the United States and Iran.

Additional copies of the letter and order are enclosed for your convenience. Except as noted below, no distribution of copies of these documents has been made by the Board. In connection with any distribution which the Office of Management and Budget may find necessary and desirable, it is suggested that the recipients' attention be invited to the fact that until action is taken by the President, the document is confidential in nature and should be treated accordingly.

Sincerely,

[(Signed)] John E. Robson
John E. Robson
Chairman

Enclosures

- cc: Honorable Robert H. Binder, Department of Transportation
- Mr. Michael E. Styles, Department of State
- Mr. Carl T. Ball, Council on International Economic Policy
- Mr. Robert D. Linder, The White House
- Mr. Harrell E. Altizer, Department of Defense
- Mr. Antonin Scalia, Department of Justice
- Miss Joanne Davis, National Security Council
- Mr. George Hads, Council on Wage and Price Stability
- Mr. Dudley Chapman, Office of Counsel to the President
- Mr. Peter Klarfeld, Department of Justice

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FOR OFFICIAL USE ONLY

CIVIL AERONAUTICS BOARD

WASHINGTON, D.C. 20428



3-1-61c

IN REPLY REFER TO:

10 OCT 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 Iran National Airlines Corporation in foreign air transportation. This order is submitted pursuant to section 601(b) of the Federal Aviation Act of 1958 (P.L. 85-259). The bases for the Board's recommendation are set forth in the attached memorandum.

This order institutes an investigation, pursuant to section 1062(j) of the Federal Aviation Act of 1958, into the lawfulness of those fares, proposed for use between the United States and Iran, and suspends the fares, pursuant to section 1062(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 15 days following its submission by the Board. No action is necessary if you do not wish to disapprove this order.

Respectfully yours,

[(Signed)] John E. Robson

John E. Robson
Chairman

Enclosure

See letter to OMB



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CIVIL AERONAUTICS BOARD

IRAN NATIONAL AIRLINES: Docket _____

Issue	CAB	DOT	State	Justice	COWPS	CIEP	NSC	OMB
Should special discount fares for Iranian government personnel and their families be suspended & investigated?	yes	yes	No - see letter	yes	yes	yes	will either defer to state or 2) have no objection.	yes



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U.S.-Iran Discount Fares Filed By Iran National Airlines Corporation (Iran Air)

On May 15, 1975, Iran Air introduced a special discount of 40 percent from the normal first-class and economy fares for active and retired personnel of the Iran government and their immediate families and for Iranian students between the ages of 12 and 30 enrolled in an educational institution in the United States and their immediate families. Immediate families are defined to include spouse, children, parents, brothers, sisters, dependent relatives and servants.

The Board, in consultation with the Department of State, decided against recommending suspension of the fares when they were first filed due to the imminent state visit of the Shah (May 15-18). However, on April 30 the Department of State informed the Government of Iran of this Government's dissatisfaction with the fares, and requested consultation under the terms of the U.S./Iran Air Transport Agreement. Consultations were held June 16-17, 1975, but proved unsuccessful. The U.S. delegation presented a compromise proposal which would have limited the discount to students in recognition of the "brain drain" alleged by Iran to be resulting from the expense to students of visiting Iran and maintaining contact with the home country. However, Iran has stated that there is no possibility of accepting this compromise, and that they have no counterproposal.

While the level of the fares is not out of line with various discount fares available to the general public and approved by the Board, the fares offer a substantial discount, without any distinguishing restrictions on travel, to selected segments of the population based on the occupational status of the individual.

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The Board and the courts have held such fares to be unjustly discriminatory, and the Board has denied their availability within the United States and between the United States and other countries. Although the Federal Aviation Act provides for limited departures from this basic "rule of equality," none is set forth for students, active or retired government employees, or their immediate families. Moreover, Iran has refused to permit Pan American access to this substantial body of traffic. Since the bilateral requirement for consultation has been satisfied and Iran indicates no possibility of compromise, it is now appropriate to move forward with suspension of the fares.

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 10th day of October, 1975

Reduced Fares proposed by: :

IRAN NATIONAL AIRLINES :
CORPORATION :

Docket

ORDER OF INVESTIGATION AND SUSPENSION

By tariff revisions filed April 15, 1975, effective May 15, 1975, pursuant to an order of the Government of Iran, Iran National Airlines Corporation (Iran Air) established special discounts 1/ for travel between the United States and Iran for active and retired personnel of the Iranian Government and their immediate families and for Iranian students between the ages of 12 to 30 enrolled in an educational establishment in the United States and their immediate families.2/ Immediate families are defined to include spouse, children, parents, brothers, sisters and dependent relatives and servants living in the household.

Upon consideration of all relevant matters, the Board has concluded that the subject rule granting discounts of 40 percent to selected segments of the flying public, may be unjust, unreasonable, unjustly discriminatory, unduly preferential, or otherwise unlawful, and should be investigated. The Board further concludes that this rule should be suspended pending investigation.

The Board has in the past honored foreign government directives pertaining to travel by foreign government officials on official business and will continue to do so in proper circumstances. However, Iran Air's tariff rule goes far beyond this purpose, involving as it does special fares for selected segments of the population and based on the occupational status of the individual.

The Board has previously found discount fares limited to students to be unjustly discriminatory.3/ Further, as the United States Court of Appeals has

1/ 40 percent of the normal first-class and economy fares.

2/ Air Tariffs Corporation, Agent, Tariff C.A.B. No. 44, 7th Revised Page 82-E. On July 30, 1975, Pan American World Airways, Inc. filed to match the fares effective October 1, 1975 (Air Tariffs Corporation, Agent, Tariff C.A.B. No. 44, 8th Revised Page 82-E.)

3/ Capital Group Student Fares, 25 C.A.B. 280 (1957). See also Orders 70-7-129, July 29, 1970, and 74-5-145, May 31, 1974, wherein the Board suspended student fare proposals which were subsequently canceled by the carriers.



stated "the rule of equality is the very core and essence of the fare structure in the transportation industry." Thus, "equality of treatment is paramount" and, the factors alleged to justify departure from the rule of equality "are to be weighed in light of that pervasive requirement."^{4/} In this regard the Board has found that special discount fares based on the particular status or age of an individual are unjustly discriminatory, Domestic Passenger-Fare Investigation, Phase 5 - Discount Fares, Order 72-12-18, December 5, 1972.^{5/}

Although the Federal Aviation Act provides limited departures from the basic "rule of equality" none is set out for students, or active and retired government employees, and their immediate families. Iran Air has presented no unique or extraordinary circumstances, or developmental need which would justify resort to these discriminatory fares.^{6/}

Accordingly, pursuant to the Federal Aviation Act of 1958, as amended, and particularly sections 204(a), 404, 801 and 1002(j) thereof,

IT IS ORDERED THAT:

1. An investigation be instituted to determine whether the provisions in Rule 295, on 7th and 8th Revised Pages 82-E, to Passenger Fares Tariff No. PF 4, C.A.B. No. 44, issued by Air Tariffs Corporation, Agent, and practices affecting such 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 provisions or rules, regulations, or practices;

2. Pending hearing and decision by the Board, the provisions on the tariff pages specified in paragraph 1 above are suspended and their use deferred to and including October 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^{7/} and shall become effective

4. 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

^{4/} Transcontinental Bus System, Inc., vs. C.A.B., 383 F.2d 466 (C.A. 5, 1967).

^{5/} The Board has permitted certain youth fares to become effective on the North Atlantic. However, there were competitive considerations requiring such action, but here such considerations are not present. Order 75-3-101, March 27, 1975.

^{6/} See Order 74-3-2 dated February 12, 1974, issued pursuant to Presidential approval, suspending special fares for veterans in foreign air transportation.

^{7/} This order was submitted to the President on October 10, 1975.

5. Copies of this order shall be served upon Iran National Airlines Corporation 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. Hallander
Secretary

(SEAL)



Mr. Chapman



DEPARTMENT OF STATE
Washington, D.C. 20520

October 14, 1975

Mr. David M. Bray
Deputy Associate Director for
Economics and General Government
Office of Management and Budget
Washington, D. C. 20503

Dear Mr. Bray:

I refer to the proposed order of the Civil Aeronautics Board (CAB) suspending certain passenger fares of Iran National Airlines Corporation (Iran Air) in foreign air transportation.

The Department of State has sought in consultations with the Government of Iran to find a negotiated solution to the problem of the discount fares offered by Iran Air, since it appears that these fares are unjustly discriminatory and therefore unlawful. Such a solution has not been found.

The Iranian authorities attach considerable importance to the Iran Air discount fare and have clearly intimated that, should the fare be suspended, they may be forced to act against Pan American's services to Tehran. They have also requested further negotiations on the matter. Although the United States has already complied with the terms of the bilateral air transport agreement and is therefore not obliged to refrain from suspending the discount fare pending further negotiations, the United States has agreed to hold further talks with the Iranian Government.

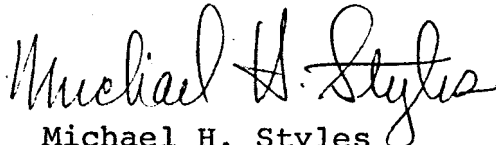
The Department believes that, as a matter of principle, Iran Air should not be allowed to offer indefinitely fares which so clearly appear to be contrary to US law. However, in view of serious consequences which could result from immediate suspension of the fare, and the entailing adverse impact on US foreign policy interests, the Department strongly recommends that the effective



date of the suspension be deferred for about 60 days to allow time for further negotiations with the Government of Iran.

A suggested letter from the President to the CAB to this effect is enclosed.

Sincerely,



Michael H. Styles
Director
Office of Aviation

Enclosure:

Suggested letter.



SUGGESTED LETTER

Dear Mr. Chairman:

I have reviewed pursuant to Section 801(b) of the Federal Aviation Act the Board's proposed order suspending certain passenger fares proposed by Iran National Airlines Corporation in foreign air transportation.

While I have no objection to the purpose of the proposed order and agree that fares which are unlawful should not be countenanced, I desire that every possible attempt be made to reach a negotiated solution with the Iranian authorities. In order to provide a conducive climate for further negotiations, which the Government of Iran has requested and to which the United States Government has agreed, the fares in question should continue to be allowed for the time being.

I am accordingly disapproving the Board's proposed order for reasons of foreign policy insofar as the order would become effective immediately, and I request that the order be resubmitted to me for my review if further negotiations, which should be held within 60 days, do not resolve the matter.

Sincerely,

Gerald Ford



THE WHITE HOUSE
WASHINGTON

file

October 15, 1975

MEMORANDUM FOR: PHILIP BUCHEN
FROM: RODERICK HILLS *RH*

The attached memorandum from Jon Rose provides a good discussion of the role of the Antitrust Division in Section 801 matters. It also provides a useful criteria for resolving the ultimate issues in the White House as to the President's Section 801 authority.

I suggest that many of the thoughts be incorporated in the memorandum that Dudley has prepared on Section 801 and that it be staffed at an early date for presentation to the President.

cc: Dudley Chapman





UNITED STATES DEPARTMENT OF JUSTICE

WASHINGTON, D.C. 20530

Address Reply to the
Division Indicated
and Refer to Initials and Number

October 14, 1975

MEMORANDUM FOR: Roderick M. Hills
Counsel to the President

FROM: Jonathan C. Rose, Acting
Deputy Assistant Attorney General
Antitrust Division

SUBJECT: Presidential Review of CAB Proposed
Orders Suspending International Fares

On October 8, 1975, you raised several questions concerning our recommendation that the President disapprove a proposed CAB order suspending certain tariffs of Korean Air Lines. It is the purpose of this memorandum to elaborate on the reasons for our recommending Presidential disapproval of that order.

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^{1/} E.g., Memorandum from Thomas E. Kauper to Antonin Scalia, dated January 29, 1975, re Proposed CAB Order Suspending 7/8 Day Summer GIT Transatlantic Fare Proposal of Transportes Aereos Portugueses.



nevertheless sets out for itself in suspension order after suspension order including the order here under review. Contrary to what the Board has been recommending, and recommends here, the Report of the Senate Committee on Commerce, S. Rep. No. 92-593, January 24, 1972, p. 7, states that:

"Price competition in itself is not prohibited by this provision. On the contrary, the intent of the amendment is to encourage healthy price competition by requiring the Board to consider the effect of rates on the continued existence of alternative, competitive air transport suppliers." [Emphasis added]

We think it is wrong for the CAB to send orders to the President for his approval which do not comport with the law. We also think that when such orders have the effect of raising or keeping unnecessarily high international transportation costs, thereby fueling international inflation, the President is entirely justified in terms of his foreign policy review authority to disapprove such orders.

With respect to the specific order here under review, we recommended Presidential disapproval for virtually all of the reasons outlined above. Thus, at pp. 4-5 of our memorandum, we pointed out that the Board is authorized to suspend and investigate only those decreased rates which may be predatory or monopolistic or threatening the provision of needed air transportation. However, in our view the Board had not suggested any credible connection between these proposed rates and the evils which it is supposed to guard against.

Most importantly, we found support in the President's foreign policy for reducing worldwide inflation by reducing international air transportation costs (specifically enunciated on March 8, 1975, when the President wrote a letter to the Board disapproving a proposed order suspending and investigating new general commodity tariffs filed by Seaboard and Lufthansa--Appendix A). While our memorandum might have been clearer in this respect, it is our position that neither the Board's order, nor the rationale attached to it, presents a credible distinction between the fares proposed by KAL, on the one hand, and the fares proposed by Seaboard/Lufthansa, on the other, which the President had ordered not be suspended. Therefore, we urged Presidential disapproval of the instant Board order, both to prevent erosion of the previously established policy (in Seaboard) and also to extend the benefits of the policy to other markets.



We believe that the President's foreign policy of combatting worldwide inflation by trying to reduce transportation costs is a good one. Our recommendation in this particular case reflects our desire to preserve and extend the policy whenever possible.

Nevertheless, we recognize that there may be instances in which the President's policy of combatting worldwide inflation by permitting nonpredatory price cuts to become effective may well have to yield to other more important and pressing foreign policy goals. Of course, only the President has the ultimate responsibility for resolving all conflicts between antitrust and foreign policy. Nevertheless, to the extent that foreign policy considerations are part of the record of CAB proceedings, or are otherwise made known to us, we do attempt to take them into account.

In addition, we try our best within the statutory time constraints to make a balanced analysis of any particular Board order and to recommend appropriate action by the President. ^{2/} We certainly have not recommended Presidential disapproval of every CAB order proposing to suspend a lower fare. For example, on August 29, 1975, the CAB transmitted an order proposing to suspend tariff revisions of Aeronaves de Mexico, S.A. The staff reviewed this order in the ordinary course of business and wrote me a memorandum on September 2, 1975, recommending that the President not be urged to overturn

^{2/} Section 801(b) of the Federal Aviation Act accords the President ten days only within which to disapprove a proposed Board order suspending an international air fare. This obviously presents us with serious time problems. Because OMB and the White House staff need time no less than our staff needs time to review these matters, our staff attempts to review fare suspension orders of the Board and prepare a memorandum recommending Presidential action or inaction within 24 to 48 hours after receipt of the Board order. The staff has actually been rather successful in adhering to this schedule and in fact did adhere to such a schedule in this particular case. Thus, the CAB transmitted its proposed order to the Department on October 2; the staff transmitted its recommendation in the form of a proposed memorandum to Mr. Kauper on Friday, October 3; Mr. Kauper approved and transmitted the memorandum to Mr. Scalia on Monday, October 6; and Mr. Scalia in turn transmitted Mr. Kauper's memorandum to OMB on October 6.



this particular order. 3/ As you can see by reading this memorandum, the staff recommended Presidential inaction in respect to an order suspending decreased fares because of the Board's judgment that such decreased fares might be predatory or monopolistic. This is the type of Board action we have previously argued would be entirely proper (indeed required) by the Federal Aviation Act. Both I and Mr. Kauper concurred in the staff's recommendation. No one to our knowledge urged Presidential disapproval of this particular Board order and in fact Aeronaves' fares were suspended.

In conclusion, we adhere to our view that the President should disapprove the Board's proposed order suspending KAL's tariffs. They are neither predatory nor monopolistic, and they would tend to reduce Transpacific transportation costs. Presidential disapproval would be a reaffirmation of his intention to fight worldwide inflation which we believe is an important goal. Presidential inaction would inevitably be perceived as a backing away from this policy. This perception would discourage other carriers from attempting to compete on price, a result which we assume the President wishes to avoid. As long as the CAB continues to ignore the applicable statutory standard, and as long as the President's policy of reducing worldwide inflation remains constant, we will continue to make recommendations of this nature.

Attachments

3/ A copy of this memorandum is attached hereto as Appendix B.



THE WHITE HOUSE

WASHINGTON

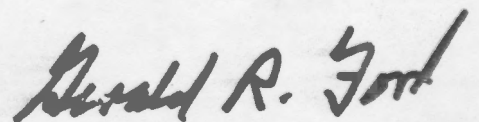
March 8, 1975

Dear Mr. Chairman:

I have reviewed pursuant to Section 801(b) of the Federal Aviation Act the Board's proposed Order in Docket 27557 suspending and investigating tariff revisions filed by Seaboard World Airlines, Inc. and Deutsche Lufthansa Aktiengesellschaft to establish new, lower, one-way general commodity rates from the United States to the Federal Republic of Germany.

I am disapproving your Order for foreign policy reasons, insofar as it suspends these rates pending the outcome of a formal investigation. The current international economic situation calls for the cooperation of all nations in reducing world-wide inflation. The Federal Republic of Germany has approved these rates, and the United States Government should demonstrate a comparable willingness to reduce international transportation costs. While I have no objection to the Board's further investigation of these rates, I have determined that they are to be available to the shipping public during the pendency of any such investigation.

Respectfully,



Honorable Richard J. O'Melia
Acting Chairman
Civil Aeronautics Board
Washington, D.C. 20428



OPTIONAL FORM NO. 10
 JULY 1973 EDITION
 GSA FPMR (41 CFR) 101-11.6

UNITED STATES GOVERNMENT

Memorandum

TO : Jonathan Rose
 Acting Deputy Assistant Attorney General

DATE: SEP 2 1975

FROM : Joseph J. Saunders, Chief
 Public Counsel and Legislative Section

File No. 60-228-100

SUBJECT: Civil Aeronautic Board's Proposed
 Order Suspending Fares of Aeromexico

On August 29, 1975, the Civil Aeronautics Board submitted to the President pursuant to Section 801(b) of the Federal Aviation Act an order proposing to suspend and investigate tariff revisions of Aeronaves de Mexico, S.A. (Aeromexico), proposing to reduce all passenger fares between Miami, Philadelphia, and New York on the one hand, and nine Mexican cities on the other hand, to the level of corresponding fares between the United States and Mexico City. ^{1/} The staff has concluded that the President should not be urged to overturn this proposed Board order because the Aeromexico fares can be viewed as predatory vis a vis U.S. flag carriers (Pan American, Eastern, and American).

This follows from the facts that (1) Aeromexico demands its full local fare on prorates of interline transportation where a U.S. carrier transports a passenger to Mexico City and Aeromexico carries him to his ultimate destination; and (2) U.S. carriers' traffic rights in U.S.-Mexico markets are largely limited to Mexico City. In these circumstances, implementation of Aeromexico's proposal would have a severe impact on any U.S. carrier which participates in this interline traffic. Our carriers might have no choice but to turn down passengers wishing to interline with Aeromexico over Mexico City to one of the beyond Mexico City points, since to do otherwise might prevent the U.S. carrier from recovering the costs of carrying that passenger over the U.S.-Mexico City sector.

^{1/} This pricing device is known as "common-rating." The common-rate points extend as far from Mexico City as 780 miles. Common-rated fares thus differ from ordinary transportation tariffs which are customarily based upon mileage, with the long trips costing more.



We believe that the Civil Aeronautics Board is correct when it states that "the end result may be that Aeromexico would succeed in reserving to itself the preponderance of traffic destined to points other than Mexico City." We have previously taken the position that the Board is authorized under Section 1002(j) of the Act to suspend international rates if they are predatory or monopolistic.^{2/} Here, the Board's finding that the Aeromexico fares may force U.S. carriers out of the market meets this standard.

Thus, this particular order satisfies our view of what the Federal Aviation Act authorizes the Civil Aeronautics Board to do and, therefore, we do not recommend that the President overrule the Board.

^{2/} The Board is authorized to suspend international fares if it finds that the proposed fare may be "coercive or designed to force weaker rivals out of business on a particular market." Report of Senate Committee on Commerce, S. Rep. No. 92-593, Jan. 24, 1972, p.7.



ROUTING AND TRANSMITTAL SLIP		ACTION
1 TO (Name, office symbol or location) <i>FEK</i>	INITIALS	CIRCULATE
	DATE	COORDINATION
2 <i>Sounders</i>	INITIALS	FILE
	DATE	INFORMATION
3 <i>Seiden 6611*</i>	INITIALS	NOTE AND RETURN
	DATE	PER CON - VERSATION
4	INITIALS	SEE ME
	DATE	SIGNATURE

REMARKS

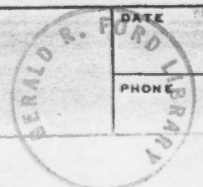
*I agree with the staff -
this needs a decision by
9:30 a.m. today according
to Seiden*

*I concur with the
views in your memo of
9/3/75.
FEK 9/3/75*

Do NOT use this form as a RECORD of approvals, concurrences, disapprovals, clearances, and similar actions

FROM (Name, office symbol or location)

Am



DATE

PHONE



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

file

October 16, 1975

MEMORANDUM FOR: PHIL BUCHEN
FROM: CAL COLLIER
SUBJECT: Iran National Airlines

Your memorandum of October 15, 1975, suggesting the appropriate course for advising the President on this 801 case, arrived after I had already forwarded my recommendations to the President. However, we had independently reached the same conclusion and you will note that our recommendation is consistent with your suggestion.





EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

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THE WHITE HOUSE

WASHINGTON

October 24, 1975

*CAB
(See
Senator
Buckley)*

MEMORANDUM FOR: PETER WALLISON

FROM: PHILIP BUCHEN *P.*

Attached is a copy of a reply Congressional Relations sent to Senator Buckley concerning his letter to the President on the Service to Saipan case.

I think the Vice President's reply to the Senator could indicate that his views have been noted by the persons who were preparing the material for the President's review of the Civil Aeronautics Board decision in this case.

For your personal information, we are urgently trying to rationalize the procedure for Presidential review of CAB decisions so that his concern would be only with national defense or foreign policy issues and not other issues which have been considered by the CAB. Even then the problem is that so long as the relevant issues have been properly raised and fully considered by the CAB and especially if the decision on these issues has been consistent with positions taken during the hearing by the State and Defense Departments, there is the question of the proper weight to be given the decision on the defense and foreign policy issues. We want to avoid having the President retry each case without ample procedures for doing so. However, I caution you that this point of view may not prevail, and I do not know how the President will come out on this particular case.

cc: Dudley Chapman

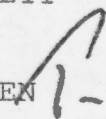


THE WHITE HOUSE
WASHINGTON

CAB

December 17, 1975

MEMORANDUM FOR: DOUG BENNETT

FROM: PHIL BUCHEN 

SUBJECT: William R. Haley for
Appointment to CAB

Attached is a letter from Ed McCabe recommending the above appointment.

As you know, Ed has been close to this Administration and has served our office well in the past as an advisor.

When you are giving consideration to filling this position, I would very much appreciate your calling Ed.

Attachment



CA13

THE WHITE HOUSE
WASHINGTON
December 18, 1975

MEMORANDUM FOR: PHIL BUCHEN
ED SCHMULTS

FROM: DUDLEY CHAPMAN DC

SUBJECT: 801 Memorandum

Cal Collier's office has requested an opportunity to see a draft of whatever memorandum we put out before it is circulated by the Staff Secretary.

*Noted
P.*

