

O. Eastwood, Jr.
8262

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-138942

DATE: November 6, 1978

MATTER OF: Cost considerations for Department of Defense
employees under Fly America Act

DIGEST:

The means of generating revenue to U.S. international air carriers selected in section 5 of the Fly America Act is to use them where they are "available." Military Traffic Management Command's proposed definition of regularly scheduled U.S.-flag passenger service for an entire trip as "unavailable" because of its relatively higher cost in contrast to alternative U.S.-flag passenger service combined with a foreign air carrier is disapproved because it necessarily requires a diminished use of U.S.-flag air carriers.

The Commander, Military Traffic Management Command (MTMC), Department of the Army, has presented two examples for our review involving international air transportation of passengers in the Department of Defense (DOD) which illustrate decisions MTMC has made about U.S.-flag air carrier "availability" under section 5 of the International Air Transportation Fair Competitive Practices Act of 1974, 49 U.S.C. 1517 (Supp V, 1975) (Fly America Act). The decisions whether certain U.S.-flag air carriers were "available" under section 5 were based on the cost via so-called MAC channels compared to the cost of other combinations of U.S.-flag air carriers and foreign air carriers.

The first example used to illustrate cost considerations involved in U.S.-flag air carrier "availability" under section 5 of the Fly America Act is a trip with the origin in the New York-New Jersey area and the destination in Moscow, USSR. If regularly scheduled commercial airlines were used, the trip could be accomplished by taking a U.S.-flag air carrier from the J. F. Kennedy International Airport in New York to Frankfurt, Germany, briefly stopping in Frankfurt, and then continuing on with the same flight from Frankfurt to the destination of Moscow. MTMC represents that of the total fare of \$511.80

charged by the regularly scheduled U.S.-flag air carrier for a DOD passenger, \$271.30, represents the fare to Frankfurt and \$240.50, represents the fare from Frankfurt to Moscow. This flight, at the time of MTMC's submission, operated once a week.

MTMC points out that there is a less expensive way for DOD passengers to travel between the New York-New Jersey area and Moscow. A slightly different route would be used, utilizing aircraft chartered from the U.S.-flag air carriers by the Military Airlift Command (MAC) at special charter rates approved by the Civil Aeronautics Board (CAB). The different route is called a MAC channel, and MAC establishes these channels, currently about 700 of them, after estimating the overall needs of DOD for passenger transportation. MAC is the "single manager" unit of DOD with the responsibility to provide the airlift needs of DOD. Frequently these channels do not coincide with the routes flown by the regularly scheduled airlines, as in the first example. The MAC channel is between McGuire Air Force Base, New Jersey, and Frankfurt rather than between J. F. Kennedy International Airport, New York, and Frankfurt.

A MAC channel may coincide with the routes of the regularly scheduled airlines depending upon the kind of charter arrangement involved. A Category B charter is an arrangement where MAC charts an entire aircraft, the kind of arrangement in the first example. A Category A charter is an arrangement where MAC contracts for a certain number of seats on a regularly scheduled commercial flight. A third category of special fares provided to DOD through MAC is the Category Z arrangement, which is an individually ticketed service involving a reservation for the individual passenger on regularly scheduled commercial airline at a special rate with restrictions specified in the airlines' tariffs. A Category Z arrangement is utilized in the first example where a regularly scheduled commercial airline would be used between New York and Frankfurt, costing \$271.30, which is considerably lower than the commercial economy fare between New York and Frankfurt, but higher than the MAC channel fare between McGuire Air Force Base and Frankfurt.

MTMC represents that if the MAC channel were used between McGuire Air Force Base and Frankfurt rather than the Category Z fare between New York and Frankfurt, there could be a fare

savings of \$81.30. [The MAC charter cost to the U.S.-flag carrier of the channel between McGuire and Frankfurt is \$132, presumably the amount paid to the U.S.-flag air carrier divided by the number of seats on the plane. However, MTMC states that its user cost, which is "based on the cost of movement of a passenger, including 66 pounds of baggage or a pound of cargo or mail," as provided in Air Force Regulation 76-11, September 9, 1974, is \$190. Since the \$190 DOD user cost appears to be the actual cost of getting the passenger from McGuire to Frankfurt, we believe that that is the figure which should be compared with the \$271.30 figure (special DOD Category Z fare on the regularly scheduled U.S.-flag air carrier) applicable between New York and Frankfurt.]

MTMC represents that it uses the "available" regularly scheduled U.S.-flag air carrier at the higher Category Z fare because the use of the lower Category B fare in the MAC channel would result in the use of a foreign air carrier for the segment of the trip between Frankfurt and Moscow at the same cost of \$240.50 as the U.S.-flag air carrier. Thus, in the first example MTMC represents that it is willing to spend \$81.30 more on one particular U.S.-flag air carrier for the first segment of the trip so that the second segment of the trip can be performed by an "available" U.S.-flag air carrier rather than by a foreign air carrier at the same fare of \$240.50.

While we agree with MTMC that the additional \$81.30 should be spent in order to protect "available" U.S.-flag air carriers for the entire trip between the New York-New Jersey area and Moscow, use of the MAC channel to Frankfurt would have resulted in a foreign air carrier being used for the remainder of the trip to Moscow only if all the MAC flights into Frankfurt arrived too late in the day to connect with the regularly scheduled U.S.-flag air carrier that continued on from Frankfurt to Moscow one day a week. For the other six days a week there were no U.S.-flag air carrier connecting flights from Frankfurt to Moscow, so for those six days the MAC channel could have been used because there were no "available" U.S.-flag air carriers to protect for the entire trip. However, assuming MAC channel air carriers could not make connections with the regularly scheduled U.S.-flag air carrier that continued on from Frankfurt to Moscow one day a week, this example represents the relatively small increase in fare DOD would incur in order to protect a relatively large portion of a through fare for a U.S.-flag air carrier.

The second example used to illustrate the cost considerations involved in U.S.-flag air carrier "availability" under section 5 of the Fly America Act is a trip with the origin in the Philadelphia-New York area and the destination in Barcelona, Spain. If regularly scheduled commercial airlines were used, the trip could be accomplished by taking a U.S.-flag air carrier from the J. F. Kennedy International Airport in New York to Madrid, Spain, briefly stopping in Madrid, and then continuing on with the same U.S.-flag air carrier from Madrid to the destination of Barcelona. MTMC represents that of the total fare of \$289.30, due the regularly scheduled U.S.-flag air carrier for a DOD passenger, \$249.50 represents the fare to Madrid, a Category 2 fare, and \$39.80 represents the fare from Madrid to Barcelona. [We would say that the total fare would be \$294.90. The correct Category 2 fare to Madrid is \$249.50, but we believe that \$45.40 is the correct fare from Madrid to Barcelona. This is the economy class reservation fare. The \$39.80 that MTMC quotes is the no-reservation shuttle fare that the Official Airline Guide says "should not be used for constructing connections." The Madrid to Barcelona fare is obviously a connection with the Category 2 fare from New York to Madrid.]

As in the first example MTMC points out that there is a less expensive way for DOD passengers to travel between the New York-Philadelphia area and Barcelona. A MAC channel has been established between Philadelphia and Torrejon Air Base, near Madrid. The MAC charter cost to the U.S.-flag air carrier of the channel between Philadelphia and Torrejon is \$124, and MAC's user cost is \$188. DOD would save \$61.50 by using its slightly different MAC channel into Madrid. However, since the DOD passenger would have to deplane in Torrejon (there is no MAC channel to Barcelona), he would have to use a foreign air carrier from Madrid to Barcelona because there are no U.S.-flag air carriers that have authority to pick up passengers in Madrid and carry them to Barcelona.

The DOD passenger that used the MAC channel to Torrejon would cost \$39.80 via a foreign air carrier for the no-reservation shuttle service or \$45.40 via a foreign air carrier for the economy class reservation service. In either case, the regularly scheduled U.S.-flag air carrier that was otherwise "available" under section 5 of the Fly America Act to carry the passenger from Madrid to Barcelona, had it been used from

the origin New York area, would not realize the \$45.40 that we believe would be due for that segment of the trip.

In this second example MTMC decided not to spend an additional \$61.50 on a Category Z fare offered by a regularly scheduled U.S.-flag air carrier for the first segment of the trip in order to protect the economy class reservation fare of \$45.40 for the U.S.-flag air carrier for the second segment of the trip. MTMC has decided in effect that the \$61.50 lower cost of the MAC channel fare has made the otherwise "available" regularly scheduled air carrier under section 5 of the Fly America Act "unavailable." Apparently, in contrasting the two situations previously described, MTMC has decided that there is some kind of cost-benefit ratio in U.S.-flag air carrier "availability." We believe that this is an erroneous decision.

In 57 Comp. Gen. ____, (B-138942, June 5, 1978), we state that "The basic concepts of scheduling travel to comply with the mandate of 49 U.S.C. § 1517 apply to travel by military officers and enlisted members as well as to the travel of civilian officers and employees of the Government." That decision held that "available" passenger service by a U.S.-flag air carrier from the point of origin in Vienna, Austria, which required a plane change in New York to provide service to the destination of Washington, D.C., must be used even though it might be more convenient to take a foreign air carrier from Vienna to an interchange point that allowed a U.S.-flag air carrier to fly directly into Washington without having to go through New York, which is sometimes so congested with air traffic that delays result. The decision describes the basic concept of "availability" under section 5 of the Fly America Act, as defined by our Office's Guidelines and decisions, and it is clear that unless through service by U.S.-flag air carrier(s) will not accomplish the agency's mission, it must be used. There has been no indication by this Office that the higher cost of a U.S.-flag air carrier's fare renders service by that carrier "unavailable."

Our guideline defining U.S.-flag air service as "available" even though service by a foreign air carrier costs less does not precisely pertain to the examples presented by MTMC. In those examples the issue is whether the higher cost through

service by a U.S.-flag air carrier is "unavailable" in comparison to the lower cost service by another U.S.-flag air carrier when combined with the use of a foreign air carrier. However, we believe that we have indicated in our decisions that Congress was not concerned primarily with minimizing the cost of air travel in section 5 of the Fly America Act.


In B-184136, March 10, 1976, we held that the proposed use of a foreign air carrier for a small European portion of a trip from Washington, D. C. to Paris, France, in conjunction with transoceanic service by one U.S.-flag air carrier from Washington where there was also "available" direct service between Washington and Paris by another U.S.-flag air carrier so that the entire cost of the trip could be paid in excess foreign currency would contravene section 5 of the Fly America Act. In the decision we stated that the Act "* * * was enacted to correct a generally unfavorable United States international airline economic situation. The measures provided in the Act were intended to produce a more competitive environment for the American flag air carriers conducting international operations which in turn would generate more income to such carriers." And in the decision we pointed out that the means used in section 5 of the Act of generating income to U.S.-flag air carriers was "to require the use of and consequent payment to American flag carriers 'to the extent service by such carriers is available.'" even though such action would "cost" the Government the desirable chance to profitably dispose of a considerable amount of excess foreign currency. Therefore, we do not believe that it would be consistent with the purpose of the Act to approve MTMC's defining through U.S.-flag passenger service as "unavailable" because of its relatively higher cost compared to an alternative U.S.-flag passenger service combined with use of foreign air carrier service.

It should be understood clearly that this decision is not mandating the use of higher cost air transportation per se. If the trip in the second example presented by MTMC had been from the Philadelphia-New York area to Madrid rather than to Barcelona, there is no question that MTMC would have been free to take advantage of its MAC channel and use the lower cost U.S.-flag air carrier. Similarly, if the trip in the first situation presented by MTMC had been from the New York-New Jersey area to Frankfurt rather than to Moscow, the lower cost MAC channel

could have been used seven days a week. There would have been alternative "available" U.S.-flag air carriers for the entire trip and the rate level established by the CAB for DOD (See CAB Order 73-9-9, effective September 5, 1973); approved in Trans-continental Bus System, Inc. v. C.A.B., 383 F.2d 466, 487 (5th Cir. 1967), cert. denied, 390 U.S. 920 (1968), could have been utilized. And when there are alternative "available" U.S.-flag air carriers, as discussed in B-138942, supra, for only a portion of a trip, the lower cost U.S.-flag air carriers may be utilized.

This decision will require the use of the higher cost U.S.-flag air carrier in situations similar to those presented by MTMC where the regularly scheduled U.S.-flag air carriers provide service for the entire trip and the lower cost U.S.-flag carrier in the MAC channel does not provide or connect with other U.S.-flag air carriers that provide service for the entire trip. It also will require the use of the higher cost U.S.-flag air carrier or carriers in those situations where the regularly scheduled U.S.-flag air carriers provide services substantially further along a usually travelled route than the lower cost U.S.-flag carrier or carriers when it is not possible to provide service for the entire trip. Using higher cost U.S.-flag air carriers is only using the means selected in section 5 of the Fly America Act to achieve its purpose of generating income to the U.S.-flag international airlines.

MTMC's Routing Guide for International Air Travel via Category Z, Commercial Air, Military Airlift, and Foreign Flag, dated February 6, 1978, and changes, contain decisions similar to the decision we found erroneous in the second example presented by MTMC. Therefore, the Routing Guide must be revised to be consistent with section 5 of the Fly America Act. Perhaps future establishment of MAC channels to provide through service to the destinations of most DOD passengers can minimize the cost effects of compliance with section 5.


Deputy Comptroller General
of the United States