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Airline Competition Preservation Act of 2001 (Introduced in the Senate)

S 199 IS

107th CONGRESS

1st Session

S. 199

To amend title 49, United States Code, to authorize the Secretary of Transportation to oversee the competitive activities of air carriers following a concentration in the airline industry, and for other purposes.

IN THE SENATE OF THE UNITED STATES

January 29, 2001

Mr. REID introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To amend title 49, United States Code, to authorize the Secretary of Transportation to oversee the competitive activities of air carriers following a concentration in the airline industry, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the `Airline Competition Preservation Act of 2001'.

SEC. 2. OVERSIGHT OF AIR CARRIER PRICING.

(a) In General- Chapter 415 of title 49, United States Code, is amended by adding at the end the following:

`Sec. 41512. Oversight of air carrier pricing

`(a) Effective Date-

`(1) In general- This section shall take effect immediately upon a determination by the Secretary of Transportation that 3 or fewer air carriers account for 70 percent or more of the scheduled revenue passenger miles in interstate air transportation as a result of--

`(A) the consolidation or merger of the properties (or a substantial portion of the properties) of 2 or more of the 7 air carriers that account for the highest number of scheduled revenue passenger miles in interstate air transportation into a single entity that owns or operates the properties previously in separate ownership; or

`(B) the acquisition (by purchase, lease, or contract to operate) of the properties (or a substantial portion of the properties) of 1 or more of the 7 air carriers described in subparagraph (A) by another of such carriers.

`(2) Use of data- For the purpose of determining the number of scheduled revenue passenger miles under paragraph (1), the Secretary shall use data from the latest year for which complete data is available.

`(3) Determination of air carrier concentration- In making a determination under paragraph (1), the Secretary shall attribute to an air carrier those scheduled revenue passenger miles in interstate air transportation of the air carrier that is consolidated, merged, or acquired that are associated with routes adopted by the remaining carrier.

`(b) Fares of Air Carriers-

`(1) In general- On the initiative of the Secretary or on a complaint filed with the Secretary, the Secretary may undertake an investigation to determine whether an air carrier is charging a fare or an average fare for interstate air transportation on a route that is unreasonably high.

`(2) Considerations- In determining whether a fare or an average fare of an air carrier for interstate air transportation on a route is unreasonably high, the Secretary shall consider, among other factors, whether--

`(A) the fare or average fare is higher than the fare or average fare charged by the carrier on other routes in interstate air transportation of comparable distances;

`(B) the fare or average fare has increased by a significant amount in excess of any increase in the cost to operate flights on the route; and

`(C) the range of fares specified on the route or the carrier's entire fare system offers a reasonable balance and a fair allocation of costs between passengers who are primarily price sensitive and passengers who are primarily time sensitive.

`(3) Actions in response to unreasonable fares- If the Secretary determines that an air carrier

is charging a fare or an average fare for interstate air transportation on a route that is unreasonably high, the Secretary, after providing the carrier an opportunity for a hearing, may order the carrier--

`(A) to reduce the fare;

`(B) to offer the reduced fare for a specific number of seats on the route; and

`(C) to offer rebates to individuals who have been charged the fare.

`(4) Period of effectiveness of order- An order issued by the Secretary under this subsection shall remain in effect for a period to be determined by the Secretary.

`(c) Actions of Dominant Air Carriers in Response to New Entrants- If, with respect to a route in interstate air transportation to or from a hub airport, a dominant air carrier at the airport--

`(1) institutes or changes its fares for air transportation on the route in a manner that results in fares that are lower than or comparable to the fares offered by a new entrant air carrier for such air transportation; and

`(2) increases the passenger capacity at which such fares are offered on the route to a level which is--

`(A) 2 or more times the capacity previously offered by the carrier at such fares on the route; and

`(B) 2 or more times the total capacity offered by the new entrant air carrier on the route,

the dominant air carrier, in the 2-year period beginning on the date that such fares and additional capacity are instituted, shall continue to offer such fares with respect to not less than 80 percent of the highest number of seats per week for which the dominant air carrier has offered the fares.

`(d) Ensuring Competition at Hub Airports-

`(1) In general- On the initiative of the Secretary or on a complaint filed with the Secretary, the Secretary may undertake an investigation to determine whether a dominant air carrier at a hub airport is charging higher than average fares at the airport.

`(2) Higher than average fares- For purposes of paragraph (1), the Secretary may determine that a dominant air carrier is charging higher than average fares at a hub airport if the carrier is charging, with respect to 20 percent or more of its routes in interstate air transportation that begin or end at the airport, an average fare that is at least 5 percent higher than the average fare being charged by all air carriers on routes in interstate air transportation of comparable distances and density, after adjustments for costs that are carrier or airport specific, such as passenger facility charges or employee compensation.

`(3) Actions in response to unfair competition- If the Secretary determines under paragraph (1) that a dominant air carrier is charging higher than average fares at a hub airport, the Secretary, after providing the carrier an opportunity for a hearing, may order the carrier to

take actions to increase opportunities for competition at the hub airport, including--

`(A) requiring the carrier to make gates, slots, and other airport facilities available to other air carriers on reasonable and competitive terms;

`(B) requiring adjustments in the commissions paid by the carrier to travel agents;

`(C) requiring adjustments in the carrier's frequent flyer program; and

`(D) requiring adjustments in the carrier's corporate discount arrangements and comparable corporate arrangements.

`(e) Definitions- In this section, the following definitions apply:

`(1) Dominant air carrier- The term `dominant air carrier', with respect to a hub airport, means an air carrier that accounts for more than 50 percent of the total annual boardings at the airport in the preceding 2-year period or a shorter period specified in paragraph (3).

`(2) Hub airport- The term `hub airport' means an airport that each year has at least .25 percent of the total annual boardings in the United States.

`(3) Interstate air transportation- The term `interstate air transportation' includes intrastate air transportation.

`(4) New entrant air carrier- The term `new entrant air carrier', with respect to a hub airport, means an air carrier that accounts for less than 5 percent of the total annual boardings at the airport in the preceding 2-year period or in a shorter period specified by the Secretary if the carrier has operated at the airport less than 2 years.'.

(b) Conforming Amendment- The analysis for such chapter is amended by adding at the end the following:

`41512. Oversight of air carrier pricing.'.

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