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COMMENT:
THE AMERICAN AIRLINES INDUSTRY AND
THE NECESSITY OF DEREGULATION

SENATOR EDWARD M. KENNEDY*

AS THE CHAIRMAN of the the United States' Senate Subcommittee on Administrative Practice, I have had the opportunity in recent months to observe and review in great detail the practices and procedures utilized by the Civil Aeronautics Board (CAB) in its regulation and control of the varied aspects of the American airlines industry. During the preceeding 18 months, the Subcommittee's oversight of the operations of the CAB has been extremely comprehensive consisting of 10 days of public hearings in which 72 witnesses were called to testify before the Subcommittee. Extensive questionnaires directed to each of the individual airlines and the CAB itself were also included, as well as numerous economic studies which were conducted and reviewed in many instances in order to provide sufficient factual data and information to aid in the Subcommittee's investigation.

This rather exhaustive effort by the members of the Subcommittee and their staff was finally condensed into a 255 page report. It would be extremely difficult, absent a detailed analysis, to summarize the findings of the Subcommittee's exhaustive study. However, the final report clearly reflects the fact that the domestic airline industry is naturally competitive and further, that unwise, unnecessarily overextensive, and virtually uncontrolled federal regulation has served only to raise fares substantially, promote inefficiency, and discourage new, innovative businessmen from entering the industry. Based upon these determinations, the Subcommittee quite simply recommends that such regulation as currently exists, be ended.

Over the long run, the most damaging authority exercised by the CAB is clearly its power to prevent new entry, not only through the severe restrictions placed upon the rights of existing airlines to expand services by entering new routes and thereby providing competition among those on such routes, but also by the prevention of entry by new enterprises into the airline industry market itself. Such an attitude seems to contradict the intentions of the legislature in adopting the Civil Aviation Act of 1938. Indeed, the chief sponsor in the Senate, Senator McCarren stated: "In the proposed bill there is nothing to prevent a little fellow with a new idea [and] with plenty of capital from establishing an airline."

Yet, the CAB has failed during its 38 years of existence to permit a

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new trunk airline to directly compete with the original domestic trunks. This failure is not due to the lack of applications from various sources requesting such an opportunity as can be seen from the fact that 79 have been submitted since 1950, with none having been accepted. In fact, the CAB has granted a hearing to only four of the applications submitted during that period of time. This control of competition has even been exercised extensively to provide restrictions among present carriers. Between 1969 and 1974 the CAB secretly instituted a route moratorium in which virtually all major proposals for competitive route authority were denied a hearing despite the fact that the statute clearly states that such applications shall be decided as speedily as possible. Most insidiously, this policy was instituted in such a way that the airlines could not even appeal for a judicial review of the CAB's determinations.

This anti-competitive attitude regarding entry carries over into the area of fares, where the CAB has always discouraged price competition. On April 29, 1974, it took the extraordinary step of virtually outlawing price competition and now sets all coach and first class fares within the continental United States according to a formula which seems to be based primarily on administrative convenience. The CAB itself has admitted that it was not based on the costs of serving the individual routes.

The results of such regulation may be seen by comparing the service provided by the CAB regulated carriers with the service provided by intrastate carriers in those states large enough to have their own airlines — California and Texas. These intrastate carriers fly the same routes and charge 20 to 50 percent less than the CAB regulated carriers. The low fares have stimulated consumer traffic to such a degree that the intrastate carriers have increased the number of flights on respective routes.

The misdirection of federal regulation is further evidenced by the classic case of World Airways. In 1967, World offered to fly the coast to coast route for \$75 while the CAB carriers were charging \$145. The CAB never conducted a hearing, and finally dismissed the application in 1973 following a determination that it was "stale." In 1975, World again proposed to furnish air transportation coast to coast for \$89.00 while the established CAB airlines were charging \$179, the same being the rate approved by the CAB. Once again, following what has been termed as a strained interpretation of the law, the CAB denied this proposal by World and eliminated at least for the time being all possibility of a reduction in fares for this route.

The investigation conducted by the Subcommittee has led to the conclusion that strained interpretations are hardly exceptions to the general

rule, but rather the general rule itself. Such an authoritarian and limiting approach to regulation within the airlines' industry seems hardly conducive to the public interest, at least as that term has been conceived by the members of the Subcommittee. The recommendations unanimously presented by the Subcommittee are definite, unwavering and capable of only one interpretation: Federal regulation of the domestic airlines industry must be drastically reduced if that industry is to serve the "public interest" to the greatest possible degree.

More specifically, the Subcommittee proposed the following amendments to the Federal Aviation Act of 1958:

1. Require that major shifts in CAB policy take place only after adequate opportunity is given both to members of the industry and the general public to submit views and arguments.
2. Provide strict time limits governing route cases.
3. Liberalize entry requirements gradually so that eventually any firm wishing to supply air service on a route is allowed to do so on a showing that it is "fit, willing and able."
4. Allow carriers flexibility to charge the prices they desire. The CAB should retain a rate ceiling, but no floor, removing the ceiling only when entry rules become sufficiently liberal for the threat of new competition to hold prices down.
5. Liberalize restrictions on charter travel.
6. Adopt a standard that would prohibit any act that would violate the antitrust laws, unless the anticompetitive effects are clearly outweighed in the public interest by the need to secure a significant transportation objective.
7. Increase substantially the protection of the consumer against, among other things, the exigencies of lost baggage, overcharging, and fare complexities.

I am convinced that we are today in the middle of what will prove to be a fundamental and exciting change in federal aviation policy. When the present debate in the Congress draws to a close, I am hopeful that laws will have been enacted which will foster the growth of a more efficient, more competitive, lower-fare airline system that will provide better service for college students and working men and women, as well as business executives and the wealthy.

