

Antitrust Claims Nixed In American, Delta, United Fare Row

By **Eric Kroh**

Law360, New York (July 25, 2016, 2:24 PM ET) -- A California federal judge on Friday granted a request by American Airlines, Delta, United and a global airfare publisher to toss a California antitrust suit alleging they colluded to fix fares on multicity flights and overcharged consumers, but allowed the complaint to be amended.

U.S. District Judge Maxine M. Chesney said a group of 26 travel agents had until Aug. 12 to amend its complaint that the three largest U.S. commercial passenger airlines conspired to increase the fares for domestic, multicity flights by making it harder to book those itineraries, according to the minutes of a hearing in the case. The group alleged the airlines each unveiled substantially identical policies on multicity trips in written notifications given to members of the travel agency industry.

The travel agents' original complaint also accused the airlines of collaborating with the Airline Tariff Publishing Co., which collects and distributes air passenger transportation fare data to more than 450 airlines globally, to raise fares on consumers as part of the alleged conspiracy.

Joseph M. Alioto of Alioto Law Firm said Judge Chesney averred that the travel agents had not sufficiently alleged that the airlines had worked together in instituting the change in policy, which would be rectified in the amended complaint.

"I think any juror could reasonably find that they obviously had to communicate, they could not have done it otherwise," Alioto said.

The airlines and ATPCO maintained that the travel agents were mischaracterizing executives' statements and relevant facts to support allegations that the airlines had advance knowledge of rivals' upcoming fare changes and colluded to hike the prices to control key markets.

"There was an indisputable independent economic incentive for each of the airline defendants to ensure that its fare rules confined the availability of certain fares to the itineraries for which they were intended," the airlines said in a June brief. "Importantly, the fare rule changes solely addressed unintended opportunities to arbitrage the airline's own published fares in a way that was not intended to (and did not) affect competition between any of the airline defendants."

Furthermore, the travel agents lacked antitrust standing because all travel agents are subject to the same rules and the ATPCO system simply does not allow the booking of affected fares on a single ticket, the airlines said. The travel agents also have not bought any tickets affected by the fare rules and have

admitted that their alleged injury is only “threatened,” based on the allegation that they “are or will be consumers of air travel,” the carriers said.

ATPCO, which is owned by American, Delta, United and 12 other airlines, also sought to dismiss the suit, arguing in its own brief that the allegations relate almost exclusively to airlines’ decisions to adjust their prices and pricing structures.

Representatives of the airlines did not respond to a request for comment.

The travel agents are represented by Joseph M. Alioto, Theresa D. Moore, Thomas Paul Pier and Jamie L. Miller of Alioto Law Firm, Gil D. Messina of Messina Law Firm PC, and Lawrence G. Papale of Law Offices of Lawrence G. Papale.

ATPCO is represented by J. Parker Erkmann, Dee Bansal, David Burns, John C. Dwyer and Jon F. Cieslak of Cooley LLP. American is represented by Daniel M. Wall, Sadik Huseny, Elif Kimyacioglu and Farrell J. Malone of Latham & Watkins LLP. Delta is represented by James P. Denvir, Michael Mitchell and Beko O. Reblitz-Richardson of Boies Schiller & Flexner LLP. United is represented by Peter K. Huston, Joshua Hill, Jennifer N. Gaspar and Vikram S. Shah of Sidley Austin LLP.

The case is Prosterman et al. v. Airline Tariff Publishing Co. et al., case number 3:16-cv-02017, in the U.S. District Court for the Northern District of California.

--Editing by Rebecca Flanagan.

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