CHAPTER IV: GOVERNMENT CONTROL OF INTERNATIONAL RATEMAKING

Ratemaking in international air transport is, as already noted in the Introduction to this book, a matter of vital importance for airlines, consumers and Governments. For airlines the level of international air fares and rates forms one of the cornerstones of their economic viability. For airline users the level of international air fares and rates forms the yardstick by which to measure their financial capability to make use of international air transport. Governments, as the guardians of the public interest, have the difficult task of striking a just balance between the often opposed financial and other interests of airlines on the one hand and consumers on the other.

In controlling international ratemaking, Governments pay attention to both scheduled and charter fares and rates. In practice, however, Government involvement in scheduled international ratemaking is considerably more active than in international charter ratemaking.

This Chapter will, in the first, place, examine the reason why Governments tend to regulate international air transport in general, and international air tariffs in particular. It will also study how Governments control IATA agreed rates and fares. Finally, a study will be made of how the U.S. CAB deals with the regulation of international air fares and rates. The reason for singling out the CAB lies in the fact that without any doubt the U.S.A. is civil air power number one in the world, and that the ratemaking policy of its CAB is one of great expertise and of substantial impact on the overall international tariff structure.

I. Rationale for Government Control

The answer to the question "Why do Governments regulate, c.q., control international air fares and rates?" depends on the answer to the more general question "Why do Governments regulate (international) air transport as such?" In a socialist economy the answer to the last question is not hard to give. In such an economic system the State is involved in the regulation of every aspect of economic life, and hence also in the regulation of the economic sector of (international) air transport. The rationale for Government control and regulation of (international) air transport is, however, more complicated in a capitalistic, free enterprise economy. It should first be remarked that, granted that in the industrialized Western world there are very few or no purely capitalistic economic systems left, it remains a fact that also in our modern, "mixed" economies one of the central economic laws can still be said to be that of demand and supply. Applying the law of demand and supply to the determination of (international) air fares and rates would lead to the fixing of those fares and rates at the level, where the supply of air transportation by carriers would meet the demand for such transportation by users. It should immediately be remembered, however, that no pure and simple application of the law of demand and supply is possible in the case of (international) air transport. The air transport industry is, as explained earlier,
oligopolistic in character. Inter alia due to the fact that the industry is highly capital intensive, entry into it is far from being free and unlimited. Consequently there are a limited number of suppliers in the industry which, in its turn, distorts the classical application of the law of demand and supply. In order to avoid tariff wars the industry, therefore, heavily relies on an inter-carrier agreed uniform price structure, reached through the IATA ratemaking machinery. Nevertheless, the application of the law of demand and supply plays a considerably more important role in the determination of international charter air tariffs.

In a free enterprise or "mixed" economy, the answer to the question, why Governments regulate (international) air transport, lies not so much in the oligopolistic character of the airline industry as such, but rather in its public utility character.

As all other modes of public or common transportation, air transport is a public utility. Pillai(1) correctly calls international air transport a "world public utility". The term "public utilities" is used for a branch of industries legally affected with a public interest and, therefore, conducted under Government regulation. They occupy an intermediate position between State services and services offered by private enterprises. The main services performed by public utilities include public transportation - be it by rail, road, water or air - communications - radio, television, telegraph, telephone - gas, water and electricity services, and finally such community services as sanitation and irrigation. Public utilities fail under the obligation to render reasonably adequate and stable service to all who apply. They fall within the class of industries whose services form a "common necessity" for the public. Public utility services are usually best performed by either a monopoly - one supplier, e.g., one telephone company in one country, Province or State - or an oligopoly - few suppliers, e.g., in the transportation field. On the one hand, Government authorities allow public utilities to be performed by a monopoly or oligopoly. On the other hand, in order to prevent public utilities from abusing their monopolistic, c.q., oligopolistic position and to assure adequate and stable service to the public, Governments regulate those public utilities. One of the most important forms of public utility regulation then, is the regulation of prices charged by utilities for their services to the public.

Government regulation of public utilities generally takes one of two forms: public utilities are either performed by State-owned or partially State-owned enterprises, or they are performed by private enterprises which are strictly controlled by a Government agency, Ministry or Department. The first form of regulation could be called the Western European public utility concept, whereas the latter could be called the American concept. Railways and telephone companies, for instance, are generally speaking State-owned in Western Europe, whereas in the U.S.A. they are privately-owned, but regulated by independent regulatory agencies. In the Western European concept Governmental ownership of public utilities gives the competent State authorities the power to regulate those utilities directly from within. In the American concept public utilities are basically autonomous private enterprises, controlled and regulated from the outside by competent State authorities.

Public utility regulation of international air transport in Western Europe is generally exercised through complete or partial State-ownership of international airline companies. In the U.S.A., on the other hand, all (international) airline companies are entirely privately-owned, but at the same time strictly regulated and controlled