



**UNITED STATES OF AMERICA  
DEPARTMENT OF TRANSPORTATION  
OFFICE OF THE SECRETARY  
WASHINGTON, D.C.**

Issued by the Department of Transportation  
on the 1st day of December, 2006

**Alitalia**

**Violations of 49 U.S.C. § 41712  
and 14 CFR 399.84**

**Docket OST 2006-23528**

**Served December 1, 2006**

**CONSENT ORDER**

This consent order concerns certain fare displays on Alitalia's U.S. website ([www.alitalia.com](http://www.alitalia.com)) and certain displays of Alitalia fares on Travelocity.com, a major travel vendor and agent of Alitalia, that failed to comply with the Department's rule on full fare advertising, 14 CFR 399.84. These fare displays, in addition, constituted an unfair and deceptive trade practice and an unfair method of competition in violation of 49 U.S.C. § 41712. Based on these violations, the order assesses a compromise civil penalty of \$29,500 and directs the carrier to cease and desist from future similar violations.

To ensure that consumers receive accurate and complete information on available air fares, section 399.84 of the Department's rules (14 CFR 399.84) requires that fare advertisements by air carriers or their agents, in this instance Travelocity.com, state the full price to be charged the consumer. Under its enforcement case precedent, the Department has allowed certain government-imposed taxes and fees to be stated separately in fare advertisements provided that the consumer is informed of these charges in conveniently accessible text.<sup>1</sup> However, carrier-imposed fees and charges, such as fuel surcharges, must be included in the advertised fare.

The Alitalia website, over an extended period, violated these Department requirements by displaying fares which did not include a fuel surcharge and which listed additional taxes and fees inappropriately. The website offered fares on its initial screens that gave a base fare that excluded the carrier's fuel surcharge and then, as a separate figure, gave the total amount of surcharges and taxes but gave no breakdown of the composition of these additional charges. In subsequent screens, after a consumer selected an itinerary and

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<sup>1</sup> Fees or charges may be listed separately provided that they are levied by a government entity on a per-passenger basis, are not *ad valorem* in nature, and their existence and amount are clearly indicated in the advertisement so that the consumer can determine the full fare to be paid. Examples of such additional charges are passenger facility charges (PFCs) and international departure taxes. See *Soci t  Air France*, Order 2005-7-3, and cases cited therein.

flights, the website gave complete information regarding taxes and fees but only in the context of a final booking summary.

In addition, Alitalia has a sales agency relationship with Travelocity.com, a prominent Internet vendor of travel services and has sold tickets through that site for a number of years. In connection with the sales of tickets on Alitalia flights, Travelocity.com displayed Alitalia fare offerings in a number of different formats, including a flexible search feature referred to by Travelocity.com as its "Flexible Fare Finder" (FFFi). On the FFFi the consumer did not specify travel dates but requested the lowest published fares in a city-pair market over a period of up to nine months from the date of inquiry. This search path produced an initial fare display which for certain carriers, including Alitalia, omitted carrier-imposed surcharges, such as fuel surcharges, from the fare quotation. It was only after a consumer selected a specific carrier, date of travel and itinerary, with specific flights, that the Travelocity.com site would reprice the ticket cost, providing a complete price including any carrier-imposed surcharges as well as government-imposed fees. In a recent consent order, the Department found that Travelocity.com's FFFi search function was in violation of the full-fare advertising rule and 49 U.S.C. § 41712.<sup>2</sup>

The omission of fuel surcharges from the initial fare quotes on FFFi was the result of the software methodology embodied in the Travelocity.com site and changes in the manner in which carriers, in particular foreign carriers, among them Alitalia, filed carrier-imposed surcharges after October 2004.<sup>3</sup> Travelocity.com gathered its fare data from Sabre, which derived its information from filings with the Airline Tariff Publishing Company (ATPCO), but Travelocity.com's fare data, for purposes of the FFFi, was compiled on the basis of city-pair markets. In their filings with ATPCO subsequent to October 2004, several carriers, among them Alitalia, began filing surcharges in a format that was not market-specific but was linked to individual itineraries and flight numbers.<sup>4</sup> As a result, for carriers filing in the new format, referred to as the YQ/YR format, the initial fares displayed in the FFFi did not include surcharges and were generally lower than fares of carriers filing in the prior format, which continued to include any such charges. When fares were displayed in the FFFi for a city-pair market, from low to high, the ranking conferred a bias in favor of those carriers, such as Alitalia, filing in the new format, and their fares tended to appear at the top of the display. This occurred despite the fact that

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<sup>2</sup> Order 2006-10-4. That order mentioned that the Enforcement Office was conducting related investigations of a number of individual carrier websites that appeared to display fare quotations that did not conform to the requirements of section 399.84.

<sup>3</sup> By a notice dated October 14, 2004, the Department stated that, with regard to tariffs filed with the Department, it was a matter of carrier discretion whether to file surcharges as general rules tariffs. This replaced the prior prohibition, as a matter of policy, on filing carrier surcharges in individual carrier tariffs. In that notice, however, the Department made clear that its revised tariff-filing policy did not affect carriers' obligations to comply with Department advertising requirements.

<sup>4</sup> The previous filing format submitted carrier surcharges as a "Category 12" charge which was market-specific and which ensured the charges were included in fares displayed on the FFFi. However, subsequent to October 2004 carriers began filing in a YQ/YR format, which was flight- rather than market-specific.

the actual total cost of these fares, with all relevant surcharges included, were often higher than fares that were placed below them on the initial display.

The disparity in the display of fares depending on the method in which carriers elected to file surcharges was deceptive to consumers and provided an unfair competitive advantage to those carriers filing surcharges in the flight-specific (YQ/YR) format. As Travelocity.com's principal in its contractual sales arrangement, Alitalia was jointly responsible for the advertising practices of its agent and therefore shares in the liability for the deficient fare displays on the Travelocity.com site. By this order, we are directing the carrier to monitor the display of its fares on the websites of its sales agents to ensure that these sites, as much as the Alitalia home site, comply with section 399.84.

In mitigation, Alitalia points out that in response to the inquiries of the Office of Aviation Enforcement and Proceedings (Enforcement Office), it promptly revised the initial screen of its website to include the carrier's fuel surcharge in its quoted base fare and to provide the required asterisk and link with the appropriate disclosure statement regarding applicable taxes and fees. The carrier also points out that it promptly removed its fares from the Travelocity.com's FFFi after being contacted by the Enforcement Office regarding its concerns with the site.<sup>5</sup>

The omissions of fuel surcharges on Alitalia's website continued over a significant period of time, as did similar omissions in quotations of Alitalia's fares available on Travelocity.com's FFFi. In view of the wide dissemination of these fare quotations that violated section 399.84, while acknowledging Alitalia's cooperation with our investigation, we believe that enforcement action is warranted in this instance. Alitalia, for its part, in order to avoid litigation and without admitting or denying the alleged violations, agrees to the issuance of this order to cease and desist from future violations of 49 U.S.C. § 41712 and 14 CFR 399.84, including failing to monitor the display of its fares on the websites of its sales agents to ensure that these sites, as much as the Alitalia home site, comply with section 399.84 and to an assessment of \$29,500 in compromise of potential civil penalties of which one-half will be payable according to the payment schedule described below. This compromise assessment, based exclusively on the flaws occurring on the air carrier's website, is appropriate in view of the nature and extent of those violations in question, and serves the public interest. Alitalia, moreover, is advised that it will continue to be held accountable in the future for advertisements of its fares appearing on the websites of its agents. This settlement, moreover, represents a deterrent to future noncompliance with the Department's advertising regulations and section 41712 by Alitalia, as well as by other sellers of air transportation.

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<sup>5</sup> Travelocity.com's remedial steps in response to the Department's investigation are described in Order 2006-10-4.

This order is issued under the authority contained in 49 CFR 1.57a and 14 CFR 385.15.

ACCORDINGLY,

1. Based on the above discussion, we approve this settlement and the provisions of this order as being in the public interest;
2. We find that Alitalia violated 14 CFR 399.84 by advertising fares on its Internet site without proper disclosure of additional fees and taxes, and by failing to include a separate fuel surcharge in certain fares displayed on its website, as described above;
3. We find that Alitalia violated 14 CFR 399.84 by allowing non-compliant displays of Alitalia fares to be displayed on the Travelocity.com Flexible Fare Finder over an extended period, as described above;
4. We find that by engaging in the conduct described in paragraphs 2 and 3, above, Alitalia has engaged in unfair and deceptive trade practices and unfair methods of competition in violation of 49 U.S.C. § 41712;
5. Alitalia, its successors, affiliates, and assigns, are ordered to cease and desist from further violations of 14 CFR 399.84 and 49 U.S.C. § 41712;
6. Alitalia is assessed \$29,500 in a compromise of civil penalties that might otherwise be assessed for the violations described in ordering paragraph 2, of which \$14,750 shall be due and payable within 30 days of the service date of this order. The remainder of the penalty shall be suspended for one year following the service date of this order and then forgiven, provided that Alitalia complies with the payment terms of this order, as well as its cease and desist provisions, during the suspension period; if it fails to do so, the entire unpaid balance of the penalty shall become due and payable immediately, and Alitalia may be subject to further enforcement action; and
7. Payment shall be made by wire transfer through the Federal Reserve Communications System, commonly known as "Fed Wire," to the account of the U.S. Treasury. The wire transfer shall be executed in accordance with the instructions contained in the Attachment to this order. Failure to pay the penalty as ordered shall also subject Alitalia to an assessment of interest, penalty, and collection charges under the Debt Collection Act, and possible enforcement action for failure to comply with this order.

This order will become a final order of the Department 10 days after its service date unless a timely petition for review is filed or the Department takes review on its own motion.

**BY:**

**ROSALIND A. KNAPP  
Deputy General Counsel**

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