



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

**Issued by the Department of Transportation
On the Twelfth day of July, 2013**

British Airways Plc

Violations of 49 U.S.C. § 41712

Docket OST 2013-0004

Served July 12, 2013

CONSENT ORDER

This consent order concerns inaccurate information provided by British Airways Plc (British Airways) to consumers regarding the availability of discounted fees for baggage on its Internet website in violation of 49 U.S.C. § 41712. The order directs British Airways to cease and desist from future similar violations of section 41712, and assesses the carrier a compromise civil penalty of \$40,000.

Applicable Law

Carriers that display on their websites specific optional service fees, including discounted fees for baggage, as being available to all consumers must ensure that the displayed fees are in fact available to all consumers and that as a practical matter consumers are able to obtain the optional services at the advertised rates.¹ The failure to provide accurate optional service fee information by advertising certain fees as universally obtainable when that is not the case is an unfair and deceptive practice in violation of 49 U.S.C. § 41712.

Background

In May 2012, in response to a consumer complaint, the Department's Office of Aviation Enforcement and Proceedings (Enforcement Office) conducted an investigation of British

¹ Pursuant to 14 CFR 399.85(d), a U.S. or foreign air carrier that has a website marketed to U.S. consumers must prominently disclose on the website information on fees for all optional services that are available to a passenger purchasing air transportation.

Airways' U.S. website, www.britishairways.com/us, which offered discounted rates for consumers that pay the fee for baggage in advance. The Enforcement Office found that certain consumers that made their reservations through third-party booking agents were unable to pay at the discounted rate for these baggage fees on British Airways' website; instead, they received a "system non-responding" message, which provided no other instructions or explanations except a prompt to try again later. British Airways failed to provide notice that its discounted rates may not be available to all consumers or to implement a system making the discounted rates available to all consumers. As such, a number of consumers who attempted to pay baggage fees at the discounted rates that the carrier stated were available online were unable to do so and as a result were forced to pay the higher rates applicable to purchases made at airport ticket counters. British Airways' failure to provide accurate information regarding the availability of its discounted baggage fees violates 49 U.S.C. § 41712.

Mitigation

In mitigation, British Airways emphasizes its regret that any of its passengers may have been inconvenienced by being unable to book an online discounted extra baggage fee and asserts that the vast majority of its passengers were able to obtain the discount without difficulty. British Airways further states that the discount is not intended to promote the sale of excess baggage but to ease congestion at airport check-in, allow customers to avoid lengthy lines and otherwise enhance the customer experience. British Airways notes that passengers who contacted it because they were unable to book the discounted rate online were either provided with alternative means to obtain that rate or British Airways provided refunds to those passengers.

Decision

The Enforcement Office has carefully considered the information provided by British Airways, but continues to believe that enforcement action is warranted. The Enforcement Office and British Airways have reached a settlement of this matter in order to avoid litigation. Without admitting or denying the violations described above, British Airways consents to the issuance of an order to cease and desist from future similar violations of 49 U.S.C. § 41712, and to the assessment of \$40,000 in compromise of potential civil penalties otherwise due and payable pursuant to 49 U.S.C. § 46301.

This compromise assessment is appropriate considering the nature and extent of the violations described herein and the size and sophistication of the carrier and serves the public interest. It represents a strong deterrent to future similar practices by British Airways, as well as by other carriers.

This order is issued under the authority contained in 49 CFR Part 1 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 British Airways Plc engaged in an unfair and deceptive practice and an

unfair method of competition in violation of 49 U.S.C. § 41712 by failing to accurately inform certain consumers of the availability of its discounted baggage fees;

3. We order British Airways Plc and its successors and assignees to cease and desist from future similar violations of 49 U.S.C. § 41712. Failure to comply with this cease and desist provision shall subject British Airways Plc and its successors and assignees to further enforcement action;

4. We assess British Airways Plc a compromise civil penalty of \$40,000 in lieu of civil penalties that might otherwise be assessed for the violations described in ordering paragraph 2, above. Of this total penalty amount, \$20,000 shall be due and payable within 30 days of the issuance date of this order, and the remaining \$20,000 shall become due and payable if, within one year of the issuance date of this order, British Airways Plc violates the cease and desist provision in ordering paragraph 3, above, or fails to comply with the payment provisions in this ordering paragraph, in which case, the entire unpaid portion of the civil penalty shall become due and payable immediately; and

5. We order British Airways Plc to pay the penalty through Pay.gov to the account of the U.S. Treasury. Payments shall be made in accordance with the instructions contained in the Attachment to this order. Failure to pay the penalty as ordered shall subject British Airways Plc to the assessment of interest, penalty, and collection charges under the Debt Collection Act and to further enforcement action for failing 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:

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