



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

Issued by the Department of Transportation
On the Twenty-Sixth day of November, 2013

**VRG Linhas Aéreas S.A.
d/b/a GOL Linhas Aéreas Inteligentes**

**Violations of 14 CFR Parts 259 and 399
and 49 U.S.C. §§ 41712 and 42302**

Docket OST 2013-0004

Served November 26, 2013

CONSENT ORDER

This order concerns violations by VRG Linhas Aéreas S.A. d/b/a GOL Linhas Aéreas Inteligentes (GOL) of the consumer protection provisions contained in 14 CFR Parts 259 and 399 and 49 U.S.C. § 42302, as well as the statutory prohibition against unfair and deceptive practices, 49 U.S.C. § 41712. It directs GOL to cease and desist from future similar violations and assesses the carrier \$250,000 in civil penalties.

Contingency Plan for Lengthy Tarmac Delays and Customer Service Plan

Pursuant to 14 CFR 259.4, covered carriers¹ are required to adopt, implement, and adhere to contingency plans for lengthy tarmac delays at each U.S. large hub airport, medium hub airport, small hub airport, and non-hub airport at which they operate scheduled or public charter air service, including planned diversion airports. Pursuant to 14 CFR

¹ "Covered carriers" includes foreign carriers that operate scheduled passenger service to or from the United States with at least one aircraft with a design capacity of 30 or more passenger seats. GOL is a covered carrier because it operates scheduled passenger service on Boeing 737 aircraft between Brazil and the United States (via the Dominican Republic).

259.6(a), each covered carrier that has a website marketed to U.S. consumers, and that is required to adopt a contingency plan for lengthy tarmac delays, is required to post its current contingency plan on its website in easily accessible form. Furthermore, pursuant to 14 CFR 259.5(a), covered carriers are required to adopt and follow customer service plans, which must include the commitments listed in sections 259.5(b)(4) and 259.8. Under section 259.6(b), these plans must be posted in easily accessible form on the carriers' websites. For a period of time beginning in November 2012, when GOL launched its U.S. website, GOL failed to post its tarmac delay contingency plan and its customer service plan online. GOL's violation of sections 259.6(a) and (b) also constitutes an unfair and deceptive practice and unfair method of competition in violation of 49 U.S.C. § 41712.

Contract of Carriage

Pursuant to 14 CFR 259.6(c), each covered carrier that has a website marketed to U.S. consumers is required to post its current contract of carriage in easily accessible form on its website. For a period of time beginning in November 2012, visitors to the GOL website could only access the carrier's contract of carriage after entering a proposed itinerary by clicking a link on the search results page. Thus, a consumer had to begin the process of searching for a desired itinerary before obtaining access to GOL's contract of carriage. Such placement does not satisfy the requirement that a carrier post its contract of carriage in "easily accessible form." For example, a consumer wishing to purchase a ticket through GOL's telephone reservation center or through a ticket agent, would be unable to easily access the contract of carriage. Moreover, even consumers desiring to complete their purchases online would not have the option of comparing GOL's contract of carriage to contracts offered by competing carriers until taking affirmative steps in the booking process. Similarly, a consumer who previously purchased a ticket online would have to begin a new booking in order to reference the contract of carriage applicable to the previously-purchased ticket. GOL's violation of section 259.6(c) constitutes an unfair and deceptive practice and unfair method of competition in violation of 49 U.S.C. § 41712.

Notice of Fees for Optional Services

Pursuant to 14 CFR 399.85(d), a foreign air carrier that has a website marketed to U.S. consumers must prominently disclose on the homepage of its website a clear and conspicuous link that takes the viewer directly to a page or a place on a page where all fees for optional services that it may charge, including baggage fees, are disclosed. "Optional services" is defined as any services the airline provides, for a fee, beyond passenger air transportation. For a period of time beginning in November 2012, GOL failed to provide a link to a list of its fees for optional services.

In addition, 14 CFR 399.85(b) requires foreign air carriers to clearly and prominently disclose on the first screen in which they offer a fare quotation for a specific itinerary selected by a consumer that additional fees for baggage may apply and where consumers can view the applicable baggage fees. For a period of time beginning in November 2012,

GOL failed to meet the requirements of section 399.85(b) by advertising fares on its website without disclosing that baggage fees may apply and without providing a link to potentially applicable baggage fees on the first screen on which a fare quotation appeared.

GOL's violations of sections 399.85(d) and (b) also constitute an unfair and deceptive practice and unfair method of competition in violation of 49 U.S.C. § 41712.

Advertising

Pursuant to 14 CFR 399.84(a), foreign air carriers are required to comply with the Department's full-fare advertising rule as written. The full-fare rule mandates that the price advertised for passenger air transportation include all government-imposed taxes and fees and all mandatory airline-imposed fees. For a period of time beginning in November 2012, the fares displayed on GOL's website in response to consumer searches did not include taxes and fees. Instead, the website advertised a specific fare and, after a consumer selected his or her desired itinerary, the price originally presented on the website increased in order to reflect taxes and fees added to the fare. Therefore, GOL violated section 399.84(a).

GOL's violation of section 399.84(a) also constitutes an unfair and deceptive practice and unfair method of competition in violation of 49 U.S.C. § 41712.

Informing Consumers How to Complain

Pursuant to 14 CFR 259.7 and 49 U.S.C. § 42302(b), each covered carrier is required to make available on its website the mailing address and e-mail address of the designated department in the airline with which to file a complaint. Additionally, 49 U.S.C. § 42302(b) requires foreign carriers to provide on their websites the telephone number for the submission of passenger complaints, as well as the website and mailing addresses of the Department's Aviation Consumer Protection Division. For a period of time beginning in November 2012, GOL failed to meet the requirements of 14 CFR 259.7 and 49 U.S.C. § 42302(b) by not informing consumers how to file complaints with the carrier and with the Department.

Mitigation

In mitigation, GOL states that although its disclosures did not conform to the Department's specific regulations, all persons making purchases on GOL's website were provided with full and accurate tax and fee information prior to the completion of their purchase. GOL states that at no time did any person purchase a ticket on GOL's website without first receiving a full fare quotation, including all taxes and fees. Similarly, GOL states that its contract of carriage was available to consumers for review via GOL's website prior to any purchase. Although GOL's tarmac delay contingency plan was not initially available for online review, GOL has not experienced any such delays since commencing service to the United States in late 2012. Nor, GOL states, has it received

any consumer complaints pertaining to its website. Finally, GOL states that all of the occurrences described in this order were inadvertent and that the Department's concerns were addressed promptly after discussion with the Department

Decision

The Enforcement Office has carefully considered the information provided by GOL, but continues to believe enforcement action is warranted. The Enforcement Office and GOL have reached a settlement of this matter in order to avoid litigation. Without admitting or denying the violations described above, GOL consents to the issuance of this order to cease and desist from future violations of 14 CFR Parts 259 and 399 and 49 U.S.C. §§ 41712 and 42302, and to the assessment of \$250,000 in compromise of potential civil penalties otherwise due and payable pursuant to 49 U.S.C. § 46301.

The compromise assessment is appropriate considering the nature and extent of the violations described herein and serves the public interest. It establishes a strong deterrent to future similar unlawful practices by GOL and other carriers.

This order is issued under the authority contained in 49 CFR Part 1.

ACCORDINGLY,

1. Based on the above information, we approve this settlement and the provisions of this order as being in the public interest;
2. We find that VRG Linhas Aéreas S.A. d/b/a GOL Linhas Aéreas Inteligentes violated 14 CFR 259.6(a) by failing to post its tarmac delay contingency plan on its website;
3. We find that VRG Linhas Aéreas S.A. d/b/a GOL Linhas Aéreas Inteligentes violated 14 CFR 259.6(b) by failing to post its customer service plan on its website;
4. We find that VRG Linhas Aéreas S.A. d/b/a GOL Linhas Aéreas Inteligentes violated 14 CFR 259.6(c) by failing to post its contract of carriage in easily accessible form on its website;
5. We find that VRG Linhas Aéreas S.A. d/b/a GOL Linhas Aéreas Inteligentes violated 14 CFR 399.85(d) by failing to disclose on the homepage of its website a clear and conspicuous link that takes the viewer directly to a page or place on a page where all fees for optional services are disclosed;
6. We find that VRG Linhas Aéreas S.A. d/b/a GOL Linhas Aéreas Inteligentes violated 14 CFR 399.84(a) by advertising prices for passenger air transportation that failed to include all government-imposed taxes and fees and all mandatory airline-imposed fees;

7. We find that VRG Linhas Aéreas S.A. d/b/a GOL Linhas Aéreas Inteligentes violated 14 CFR 399.85(b) by failing to clearly and prominently disclose on the first screen in which the carrier offers a fare quotation for a specific itinerary selected by a consumer that additional airline fees for baggage may apply and where consumers can view the applicable fees;
8. We find that VRG Linhas Aéreas S.A. d/b/a GOL Linhas Aéreas Inteligentes violated 14 CFR 259.7 and 49 U.S.C. § 42302(b) by failing to make available on its website the mailing address and e-mail address of the designated department in the airline with which to file a complaint and the website and mailing address of the U.S. Department of Transportation's Aviation Consumer Protection Division;
9. We find that by engaging in the conduct described in ordering paragraphs 2 through 8, above, VRG Linhas Aéreas S.A. d/b/a GOL Linhas Aéreas Inteligentes engaged in unfair and deceptive practices and unfair methods of competition in violation of 49 U.S.C. § 41712;
10. We order VRG Linhas Aéreas S.A. d/b/a GOL Linhas Aéreas Inteligentes and all other entities owned or controlled by, or under common ownership and control with VRG Linhas Aéreas S.A. d/b/a GOL Linhas Aéreas Inteligentes, its successors, affiliates, and assignees, to cease and desist from further violations of 14 CFR Parts 259 and 399, as well as 49 U.S.C. §§ 41712 and 42302;
11. VRG Linhas Aéreas S.A. d/b/a GOL Linhas Aéreas Inteligentes is assessed \$250,000 in compromise of civil penalties that might otherwise be assessed for the violations described above. Of this total penalty amount, \$25,000 shall be due and payable within thirty (30) days of the date of the issuance of this order, \$25,000 shall be due and payable within sixty (60) days of the date of the issuance of this order, \$25,000 shall be due and payable within ninety (90) days of the date of the issuance of this order, \$25,000 shall be due and payable within one-hundred-twenty (120) days of the date of the issuance of this order, and \$25,000 shall be due and payable within one-hundred-fifty (150) days of the date of the issuance of this order. The remaining portion of the civil penalty amount, \$125,000, shall become due and payable if, within one year of the date of issuance of this order, VRG Linhas Aéreas S.A. d/b/a GOL Linhas Aéreas Inteligentes violates this order's cease and desist provisions or fails to comply with this order's payment provisions, in which case VRG Linhas Aéreas S.A. d/b/a GOL Linhas Aéreas Inteligentes may become subject to additional enforcement action for violation of this order; and
12. We order VRG Linhas Aéreas S.A. d/b/a GOL Linhas Aéreas Inteligentes to pay the penalty through Pay.gov to the account of the U.S. Treasury. Payment shall be made in accordance with the instructions contained in the Attachment to this order. Failure to pay the compromise penalty assessment as ordered will subject VRG Linhas Aéreas S.A. d/b/a GOL Linhas Aéreas Inteligentes to an assessment

of interest, penalty, and collection charges under the Debt Collection Act and to 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:

SAMUEL PODBERESKY
Assistant General Counsel for
Aviation Enforcement and
Proceedings

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