



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

Issued by the Department of Transportation
On the 26th day of November, 2014

Saudi Arabian Airlines Corporation

Violations of 49 U.S.C. §§ 41301 and 41712

Served: November 26, 2014

Docket OST-2014-0001

CONSENT ORDER

This consent order concerns Saudi Arabian Airlines Corporation's (Saudia) advertisement and sale of air service between Jeddah, Saudi Arabia, and Los Angeles, California, prior to the carrier holding requisite economic authority from the Department in violation of 49 U.S.C. § 41301 and 49 U.S.C. § 41712. This order directs Saudia to cease and desist from such further violations and assesses a compromise civil penalty of \$50,000.

Applicable Law

In addition to applicable Federal Aviation Administration safety requirements, foreign air carriers that offer or provide air transportation into or out of the United States must hold economic authority in the form of a foreign air carrier permit issued by the Department of Transportation pursuant to 49 U.S.C. § 41301, or a valid exemption from this section. The violation of any term, condition or restriction contained in a permit or exemption constitutes a violation of section 41301.¹ It is also a violation of the authority provisions of 49 U.S.C. § 41301, for a foreign air carrier to hold out service in the U.S. for which it does not possess, at the time of the holding out, all requisite authorizations from the Department.² Such conduct is also an unfair and deceptive practice and an unfair method of competition within the meaning of 49 U.S. C. § 41712.

¹ See, e.g., *Thai Airways International Company Ltd., Violations of 49 U.S.C. § 41301, 41703, and 41712*, Order 2008-09-15; *Export Air del Pens, S.A.*, Order 93-10-2.

² See, Notice on *Advertising of Scheduled Service in Foreign Air Transportation- Use of the Notation "Subject to Government Approval"* (62 Fed. Reg. 51,175 (September 30, 1997)).

The holding out of air transportation includes listing or advertising service in any medium reasonably likely to reach the public, such as computer reservations systems, the internet, or published media, such as the Worldwide Edition of the *Official Airline Guide*. If the carrier has an application for economic authority pending with the Department, the service may not be listed or advertised until that application is approved.³

Background

On March 3, 2014, Saudia filed an application in Docket DOT-OST-2014-0030 requesting exemption authority to provide scheduled foreign air transportation commencing March 31, 2014, between Saudi Arabia and the United States. According to Saudia's application, the service would be conducted between Jeddah and Los Angeles three times per week (Monday, Thursday, and Saturday). On March 24, 2014, the Department granted and made effective the carrier's application for an exemption to operate its proposed service.

Prior to receiving Departmental economic authority to operate the proposed service, Saudia launched an advertising campaign about its proposed service via a number of public forums, including the carrier's website, emails, newspapers, magazines, and social media sites. Although Saudia did not operate service on the proposed route prior to receiving authorization, the advertising campaign resulted in significant ticket sales and revenue prior to Saudia having economic authority to operate the route. As such, Saudia's advertisement and sale of proposed air service between Jeddah and Los Angeles prior to March 24, 2014, violated sections 41301 and 41712.

Mitigation

In mitigation, Saudia states that its staff was unfamiliar with the Department's rules as they apply to sales and advertising by foreign air carriers and had no intention of violating such rules. Saudia notes that the only regulation on the issue, 14 CFR § 201.5, does not directly apply to foreign air carriers at this time, and the carrier maintains that the Department's Office of Aviation Enforcement and Proceedings (Enforcement Office) did not adequately notify industry of the 1997 *Federal Register* notice (Notice). The Notice advises foreign carriers that advertising service for which they lack the requisite economic authority from the Department violates the authority provisions of 49 U.S.C. section 41301 and is an unfair and deceptive practice under 49 U.S.C. section 41712, and sets forth the Enforcement Office's policy of applying the standards of 14 CFR § 201.5 to foreign air carriers. Accordingly, Saudia believes the Department should take reasonable steps to either amend its regulations or better display the Notice to enable foreign air

³ We note that 14 CFR § 201.5 of the Department's rules also prohibits an applicant from advertising, listing schedules or accepting reservations for proposed service until the air transportation covered by its application has been approved by the Department. Although section 201.5 covers only U.S. carriers applying for certificate authority, the Department applies the standards set forth in section 201.5 regarding the holding out and sale of proposed service by applicants for foreign air carrier permits.

carriers to be aware of the enforcement policy with regard to the advertising of service to or from the U.S. by foreign carriers before it is enforced. In addition, Saudia asserts that its staff mistakenly believed that no further Department authorizations were needed for the new LAX route based on the existence of the recently entered into US-Saudia Arabia Open Skies Agreement. Saudia states that it filed its exemption application immediately upon becoming aware of the need for such filing, and the exemption authorization was received prior to Saudia initiating the air service. Finally, Saudia states that its long record of operation throughout the world attests to its commitment to meeting regulatory requirements, and that this is its first alleged violation of these provisions.

Decision

The Enforcement Office has carefully considered all of the information available to it, but continues to believe that enforcement action is warranted. In order to avoid litigation, the Enforcement Office and Saudia have reached a settlement of this matter. Without admitting or denying the violations described above, Saudia agrees to the issuance of this order to cease and desist from future violations of 49 U.S.C. §§ 41301 and 41712, and to the assessment of \$50,000 in compromise of potential civil penalties otherwise assessable against the carrier. This compromise assessment is appropriate in view of the nature and extent of the violations in question, serves the public interest, and establishes a deterrent to future similar unlawful practices by Saudia and other foreign air 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 the order as being in the public interest;
2. We find that Saudi Arabian Airlines Corporation violated 49 U.S.C. § 41301, as described above, by advertising and selling tickets for foreign air transportation prior to receiving appropriate authority from the Department for the specified foreign air transportation;
3. We find that, by engaging in the conduct described in paragraphs 2, above, Saudi Arabian Airlines Corporation engaged in an unfair and deceptive practice and an unfair method of competition in violation of 49 U.S.C. § 41712;
4. We order Saudi Arabian Airlines Corporation and all other entities owned and controlled by or under common ownership with Saudi Arabian Airlines Corporation and its successors and assignees to cease and desist from further violations of 49 U.S.C. §§ 41301 and 41712;

5. We assess Saudi Arabian Airlines Corporation \$50,000 in compromise of civil penalties that might otherwise be assessed for the violations described in ordering paragraphs 2 and 3, above. Of this amount, \$25,000 shall be paid within sixty days of the date this order is issued. The remaining \$25,000 of the penalty assessed here shall be suspended for one year following the service date of this order and shall be forgiven unless Saudi Arabian Airlines Corporation fails to comply with the payment provisions of this order or commits other violations of 49 U.S.C. § 41301, 49 U.S.C. § 41712, or this order during that period, in which case the entire unpaid portion of the assessed penalty shall become due and payable immediately; and

6. Payments 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 transfers shall be executed in accordance with the instructions contained in the Attachment to this order. Failure to pay the penalty as prescribed shall subject Saudi Arabian Airlines Corporation to the 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 initiative.

BY:

BLANE A. WORKIE

**Acting Assistant General Counsel for
Aviation Enforcement and Proceedings**

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