



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

**Issued by the Department of Transportation  
On the Twenty-Ninth day of March, 2012**

**International Jet Management GmbH**

**Violations of 49 U.S.C. §§ 41301,  
41703, and 41712**

**Docket OST 2012-0002**

**Served March 29, 2012**

**CONSENT ORDER**

This order concerns unauthorized passenger air service between points in the United States by International Jet Management GmbH, (IJM) an Austrian air carrier authorized by the Department to engage in foreign air transportation<sup>1</sup> pursuant to an exemption<sup>2</sup> from the permit requirement in 49 U.S.C. § 41301. The carriage of local traffic for compensation or hire by foreign air carriers between two points in the United States, a practice commonly referred to as cabotage, violates 49 U.S.C. § 41703, which prohibits cabotage except under very limited circumstances that do not apply here.<sup>3</sup> In addition, a foreign air carrier that holds out to the public without authorization, either expressly or by course of conduct, that it provides cabotage service violates 49 U.S.C. § 41301. Violations of sections 41301 and 41703 also constitute an unfair and deceptive trade practice and unfair method of competition in violation of 49 U.S.C. § 41712. This consent order directs IJM to cease and desist from such further violations and assesses the carrier a compromise civil penalty of \$25,000.

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<sup>1</sup> Foreign air transportation is “the transportation of passengers or property by aircraft as a common carrier for compensation... between a place in the United States and a place outside the United States... .” 49 U.S.C. § 40102(a)(23).

<sup>2</sup> See Docket DOT-OST-2010-0037 re International Jet Management GmbH.

<sup>3</sup> The pertinent language of 49 U.S.C. § 41703 states that foreign aircraft may “take on for compensation, at a place in the United States, passengers or cargo destined for another place in the United States only if – (1) specifically authorized under section 40109(g) of this title... .”

## Background

The violations that are the subject of this order occurred on October 18, 2011, when IJM transported passengers for compensation or hire between two points in the United States, without having carried the passengers between the United States and a foreign point. The flight was performed pursuant to a single-entity<sup>4</sup> charter contract between IJM and the charterer.

For purposes of determining whether a violation of 49 U.S.C. § 41703 occurred, the relevant analytical perspective is not that of the charterer, i.e., the entity that contracted and paid for the air transportation provided by IJM, but that of each individual passenger and his or her particular journey. If, for the purposes of such analysis, the movements of individual passengers were deemed as collectively comprising a single continuous international journey of the charterer, then foreign air carriers could transport potentially large numbers of passengers on journeys solely between United States points pursuant to “stopovers” by the charterer at those points, so long as the aircraft being used were operated pursuant to a single-entity charter agreements for operations that began and/or ended outside the United States. As a consequence, foreign air carriers could circumvent the cabotage prohibition simply by styling their charter contracts as being international in character when, in fact, the actual movement of most or all of the passengers resulting from those contracts occurred entirely within the United States. Such a result would eviscerate the statutory prohibition against cabotage and permit the diversion of domestic traffic to foreign air carriers.

In the instant case, the charterer was traveling into and out of the United States and was onboard for all segments of the flight. IJM’s movement of the charterer did not constitute cabotage. However, during a flight segment between two points within the United States, IJM transported passengers who were not on the inbound or outbound segments. IJM’s movement of these passengers constituted cabotage because they were carried only between points in the United States on a flight operated by IJM for compensation.<sup>5</sup>

For purposes of its future operations, IJM should take care to ensure that any passenger it enplanes at a point in the United States, regardless of the reason for the passenger’s journey, e.g., business or pleasure, his or her country of citizenship, whether the passenger or another party, e.g., the passenger’s host or employer, paid for the transportation, or whether the transportation was arranged or paid for in Austria, is

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<sup>4</sup> A single-entity charter is a charter in which the cost is borne by the charterer and not directly or indirectly by the individual passengers. *See* 14 C.F.R. § 212.2

<sup>5</sup> Other foreign air carriers have been found to have engaged in cabotage under circumstances similar to those of the instant case, i.e., the carrier moved a number of passengers on journeys entirely between United States points pursuant to single-entity charters that began or ended in foreign countries. *See, e.g., Cameron Air Services, Inc.*, Violations of 49 U.S.C. §§ 41703 and 41712 and 14 C.F.R. Part 294, Order 2011-6-19 (June 17, 2011); *The Craig Evan Corporation d/b/a Flightexec*, Violations of 49 U.S.C. §§ 41301, 41703, and 41712, Order 2011-8-22 (Aug. 25, 2011).

transported by IJM to Austria or another country<sup>6</sup> as part of a single continuous international journey.

In mitigation, IJM states this was a first-time violation, it is unaware of any prior penalties imposed on it by the United States, and it has not received any penalties from the Austrian government. IJM states that it did not intentionally violate any law or regulation of the Department, and it deeply regrets that any violation may have occurred. At the time, a new IJM dispatcher believed it was acceptable for additional passengers to be transported on a domestic U.S. sector as long as the “lead passenger,” the passenger paying for the flight, was onboard. IJM further states that it now understands that this is not the case under the U.S. cabotage law. IJM took immediate action to educate and reinforce U.S. cabotage rules with its pilots and dispatchers and set up internal procedures to ensure future compliance. Further, IJM notes that it approached DOT on its own initiative to disclose its violation, which IJM believes demonstrates its commitment to compliance with all applicable rules and regulations.

### **Decision**

The Office of Aviation Enforcement and Proceedings (Enforcement Office) has carefully considered all of the information provided by IJM, but continues to believe that enforcement action is warranted. In this connection and in order to avoid litigation, the Enforcement Office and IJM have reached a settlement of this matter. Without admitting or denying the violations described above, IJM agrees to the issuance of this order to cease and desist from future violations of 49 U.S.C. §§ 41301, 41703, and 41712 and to the assessment of \$25,000 in compromise of potential civil penalties otherwise assessable. The Enforcement Office believes this compromise is appropriate in view of the nature and extent of the violations in question, serves the public interest, and creates an incentive for all foreign air carriers to comply fully with the requirements of sections 41301, 41703, and 41712.

This order is issued under the authority contained in 49 C.F.R. § 1.57a and 14 C.F.R. § 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 International Jet Management GmbH violated 49 U.S.C. §§ 41301 and 41703 by holding out and performing air transportation for

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<sup>6</sup> Transportation from the United States to a third country may be provided to the extent that transportation is permissible under the aviation agreement between the United States and Austria then in effect.

compensation or hire on journeys between points entirely within the United States.

3. We find that, by engaging in the conduct and violations described in paragraph 2, above, International Jet Management GmbH engaged in an unfair and deceptive practice and unfair method of competition in violation of 49 U.S.C. § 41712.
4. We order that International Jet Management GmbH and all other entities owned and controlled by, or under common ownership and control with, International Jet Management GmbH and its successors and assignees cease and desist from future violations of 49 U.S.C. §§ 41301, 41703, and 41712.
5. We assess International Jet Management GmbH a civil penalty of \$25,000 in lieu of civil penalties that might otherwise be assessed for the violations found in paragraphs 2 and 3, above. Of this total amount, \$12,500 is due and payable within 30 days after the service date of this order. The remaining \$12,500 shall become due and payable if International Jet Management GmbH violates this order's cease and desist provisions or the payment provisions within one year following the date of the issuance of this order, in which case the entire unpaid portion of this civil penalty shall become due and payable immediately. Failure to pay as ordered shall subject International Jet Management GmbH 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.
6. We order International Jet Management GmbH to pay the compromise civil penalty by wire transfer through the Federal Reserve Communications System, commonly known as "Fed Wire," to the account of the United States Treasury. The wire transfer shall be executed in accordance with the instructions contained in the Attachment to this order.

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

**BY:**

**ROSALIND A. KNAPP**  
**Deputy General Counsel**

**(SEAL)**

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