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

Issued by the Department of Transportation
on the 19th day of April, 2006.

Aero Services Corporate, S.A.
Violations of 49 U.S.C. §§ 41301, 41703, and 41712

Served April 19, 2006

Docket OST 2006-23528

CONSENT ORDER

This order concerns unauthorized passenger air service between points in the United States by Aero Services Corporate, S.A., (Aero Services) a foreign air carrier based in France and authorized by the Department to engage in foreign air transportation[1] pursuant to an exemption[2] 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 U.S., a practice commonly referred to as cabotage, violates 49 U.S.C. § 41703.[3] 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 Aero Services to cease and desist from further violations of the aforementioned provisions and to pay a compromise civil penalty of $10,000.

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1 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).

2 *Notice of Action Taken*, DOT Docket 10974-3 (Jan. 25, 2002). Although Aero Services' exemption expired on its face on January 25, 2004, the carrier timely filed a renewal application and, as such, is permitted to continue engaging in charter foreign air transportation pursuant to the exemption pending final disposition of the renewal application. 14 CFR 377.10.

3 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... ." See also 14 CFR 375.1 defining "foreign civil aircraft."

The violations that are the subject of this order occurred on September 11, 2005, when an executive-configured, French-registered Airbus A319 operated by Aero Services transported a passenger for compensation or hire between Saratoga, Wyoming, (SAA) and Washington, D.C., (IAD), without having carried that passenger between the United States and a foreign point.

On September 7, 2005, the chartered aircraft entered the United States at Minneapolis, Minnesota, (MSP) from Paris, France, (LBG) carrying six passengers, at least five crewmembers (pilot, co-pilot, and three flight attendants), and a replacement pilot and co-pilot. The replacement pilot was an employee of the charterer, a heavy equipment manufacturer based in France. All of the crewmembers and the replacement co-pilot were Aero Services employees. After clearing customs in Minneapolis, the replacement pilot and co-pilot flew the aircraft with the same six passengers to Saratoga. (The pilot and co-pilot left the aircraft at Minneapolis and rejoined it at Washington.)

On September 11, 2005, the replacement pilot and co-pilot flew the six Paris-originating passengers and five Saratoga-originating passengers to Washington, where one Paris-originating passenger and one Saratoga-originating passenger terminated their journeys. Under the command of the original pilot and co-pilot, the aircraft then returned to Paris with the remaining nine passengers. The three Aero Services flight attendants were on-duty on all legs of the operation (LBG-MSP-SAA-IAD-LBG). The flights were performed pursuant to a single-entity charter[4] contract between Aero Services and the charterer. All eleven of the passengers were employees or guests of the charterer.

It is a violation of 49 U.S.C. § 41703 for a foreign civil aircraft to transport passengers or cargo solely between two points in the United States for compensation or hire, even if the aircraft is being operated pursuant to a single entity charter that, in other respects, begins or ends outside the United States.[5] Thus, for purposes of 49 U.S.C. § 41703, where a single-entity charter involves the operation of a foreign aircraft in U.S. airspace, as in this case, the journey of each passenger carried on the chartered aircraft, rather than the entire itinerary paid for by the charterer, is considered a separate act of providing air transportation for compensation or hire. If the journey of any individual on such a charter is entirely between U.S. points, then the carriage of that passenger constitutes cabotage.

In the instant case, the charterer contracted in France for air transportation for its employees and guests utilizing a French-registered Airbus A319. The resulting movements involved

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[4] 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.

[5] Our focus on the itinerary of each individual passenger, rather than the chartering entity as a whole, is not merely required by a strict reading of the statute. If the movements of individual passengers were ignored in favor of the single continuous international journey of the single-entity charterer, then foreign air carriers could routinely circumvent our restrictions on cabotage by designating the points between which it provided transportation within the United States as mere "stopovers" by the charterer. Such a result would eviscerate the statutory prohibition against cabotage and permit the diversion of domestic traffic to foreign air carriers.

eleven passengers traveling to, from, or between points in the United States following one of four distinct itineraries. We look at each in turn:

1. The carriage of five passengers who began and ended their journeys in Paris did not constitute cabotage. Rather, their movements (LBG-MSP-SAA-IAD-LBG), conducted pursuant to the carrier's lawful exercise of its Third and Fourth Freedom rights, constituted single (as to each passenger) continuous international journeys originating and terminating in France with stopovers in the United States. Since Aero Services flew these passengers into the U.S. from France, it could lawfully transport them to other U.S. points, provided that there was no break in each passenger's journey at any point prior to the terminal point.[6]

2. The carriage of four Saratoga-originating passengers who terminated their journeys in Paris did not constitute cabotage. Rather, their movements (SAA-IAD-LBG) were conducted pursuant to the carrier's lawful exercise of its Fourth Freedom rights.

3. The carriage of the Paris-originating passenger who ended his journey at Washington did not constitute cabotage because, based on the circumstances of this case as we understand them, he did not break his journey at Saratoga.[7] Rather, his movement (LBG-MSP-SAA-IAD) constituted a single continuous international journey between Paris and Washington with stopovers in Minneapolis and Saratoga and, as such, was pursuant to the lawful exercise by Aero Services of its Third Freedom rights.

4. The carriage of the Saratoga-originating passenger who terminated his journey in Washington constituted cabotage. His movement (SAA-IAD) was solely between U.S. points aboard a foreign civil aircraft (i.e., the French-registered A319) for which the operator (i.e., Aero Services) was compensated.[8]

For purposes of its future operations, Aero Services should take note 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 employer) paid for the transportation, or whether the

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[6] We note that had a second foreign air carrier operated any of the U.S. to U.S. legs of the operation, the second carrier would have engaged in unlawful cabotage service.

[7] Care should be taken not to extend our opinion with respect to this passenger as necessarily having applicability outside of this case since each situation must be reviewed on a case-by-case basis. We cannot designate herein an exact time period applicable to all situations that, when spent at a U.S. point, breaks a passenger's journey such that it would then comprise two separate and distinct journeys.

[8] 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 passengers on journeys entirely between U.S. points pursuant to single-entity charters that began and/or ended at a non-U.S. point. See, e.g., *London Air Services Limited, Violations of 49 U.S.C. §§ 41301 and 41712*, Order 2003-1-9 (Jan. 6, 2003); *I.M.P. Group Limited d/b/a Execaire, Violations of 49 U.S.C. §§ 41703 and 41712 and 14 CFR Part 294*, Order 2006-1-17 (Jan. 23, 2006).

transportation was arranged or paid for outside the United States, must be transported by Aero Services to France or another country[9] as part of a single continuous international journey.

In mitigation, Aero Services states that this matter involves the carriage of a single passenger on a single flight that was incidental to a roundtrip arranged by the charterer under exceptional circumstances: at the charterer's request, one of its employees was pilot-in-command of the aircraft on the MSP-SAA-IAD legs. Aero Services states that it did not see any cabotage implications. Further, the company states that it has instituted procedures to ensure that no passengers are carried between U.S. points who do not commence or terminate their travel in France, regardless of the circumstances.

The Office of Aviation Enforcement and Proceedings (Enforcement Office) has carefully considered all of the information provided by Aero Services Corporate, S.A., but continues to believe that enforcement action is warranted. In this connection and in order to avoid litigation, the Enforcement Office and Aero Services Corporate, S.A, have reached a settlement of this matter. Without admitting or denying the violations described above, Aero Services Corporate, S.A, 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 $10,000 in compromise of potential civil penalties otherwise assessable. Of this amount, $5,000 shall be paid under the terms described below. The remaining $5,000 shall be suspended for 12 months following the service date of this order and then forgiven unless Aero Services Corporate, S.A., violates this order's cease and desist or payment provisions, in which case the entire unpaid amount shall become due and payable immediately and Aero Services Corporate, S.A., may be subject to additional enforcement action. 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 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 Aero Services Corporate, S.A, violated 49 U.S.C. §§ 41301 and 41703 by holding out and performing air transportation for compensation between points in the United States.

3. We find that, by engaging in the conduct and violations described in paragraph 2, above, Aero Services Corporate, S.A, engaged in an unfair and deceptive practice and unfair method of competition in violation of 49 U.S.C. § 41712.

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[9] The passenger may also be transported to a third country, provided that such transportation is permissible under the United States-France bilateral aviation agreement then in effect.

4. We order that Aero Services Corporate, S.A, and all other entities owned and controlled by, or under common ownership and control with Aero Services Corporate, S.A, and their successors and assignees cease and desist from future violations of 49 U.S.C. §§ 41301, 41703, and 41712.

5. We assess Aero Services Corporate, S.A, a compromise civil penalty of $10,000 in lieu of civil penalties that might otherwise be assessed for the violations found in paragraphs 2 and 3, above. Of this total amount, $5,000 shall be due and payable 30 days after the service date of this order. The remaining $5,000 shall be suspended for 12 months after the service date of this order and then forgiven, unless, during this time, Aero Services Corporate, S.A., violates this order's cease and desist or payment provisions, in which case the entire unpaid amount shall become due and payable immediately and Aero Services Corporate, S.A., may be subject to additional enforcement action. Failure to pay the penalty as ordered shall subject Aero Services Corporate, S.A, to the assessment of interest, penalty, and collection charges under the Debt Collection Act.

6. We order Aero Services Corporate, S.A, to make the payment set forth in ordering paragraph 5, above, 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.

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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