



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

**Issued by the Department of Transportation  
On the Fifth day of October, 2012**

**Jetstar Airways Pty Limited**

**Docket OST 2012-0002**

**Violations of Article 17 of the  
Montreal Convention and 49 U.S.C. § 41712**

**Served October 5, 2012**

**CONSENT ORDER**

This consent order concerns violations by Jetstar Airways Pty Limited (Jetstar), an Australian air carrier, of Article 17 of the Montreal Convention (Convention) and the statutory prohibition against unfair and deceptive trade practices, 49 U.S.C. § 41712, involving the carrier's blanket exclusion on reimbursement for a class of items contained in lost bags on Jetstar flights to or from the United States. It directs Jetstar to cease and desist from future similar violations of Article 17 and section 41712, and assesses the carrier a compromise civil penalty of \$30,000.

**Applicable Law**

The Convention sets forth rules on certain international flights that govern air carrier liability for lost, delayed, and damaged checked baggage.<sup>1</sup> Article 17 of the Convention provides that carriers are liable for loss of or damage to checked baggage in the custody of the carrier, except to the extent that the loss or damage "resulted from an inherent defect, quality, or vice" of the baggage. Under the Convention, carriers may cap their liability for lost, delayed, or damaged checked baggage, but Article 22 requires that any such cap be no lower than 1,131 Special Drawing Rights (SDRs).<sup>2</sup>

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<sup>1</sup>*Convention for the Unification of Certain Rules for International Carriage by Air*, adopted on May 28, 1999. The Convention entered into force for the United States of America on November 4, 2003, and for Australia on January 4, 2009.

<sup>2</sup>*Inflation Adjustments to Liability Limits Governed by the Montreal Convention Effective December 30, 2009*, 74 Fed. Reg. 59017 (Nov. 16, 2009) available at <http://airconsumer.dot.gov/rules/guidance.htm>.

The Convention does not permit blanket exclusions or otherwise allow carriers to disclaim liability for any class or category of item, such as jewelry, electronics, or high value goods that they have accepted for transport as checked baggage. Rather, such exclusions contravene Article 17 because they have the effect of limiting—with respect to items falling within their ambit—a carrier’s liability to an amount lower, i.e., zero, than the minimum level required by Article 22. (By notice dated March 26, 2009, the Department reminded all airlines engaged in foreign air transportation<sup>3</sup> of this proscription and gave them 90 days from the date of the notice to revise their tariffs, statements, and policies related to baggage liability.)<sup>4</sup> Under Departmental enforcement case precedent, violations of Articles 17 also constitute unfair and deceptive practices and unfair methods of competition in violation of 49 U.S.C. § 41712.<sup>5</sup> In addition, Article 26 states that any contractual provision tending to relieve the carrier of liability or to fix a lower liability than set forth in the Convention is null and void.

### Facts

According to Article 7.4 of Jetstar’s contract of carriage, passengers:

“must not include in [their] checked Baggage: fragile, delicate or perishable items, computers, items with a special value, such as money, jewelry, precious metals, silverware, negotiable papers, share certificates, securities or other valuable documents, cameras, electronic equipment, commercial goods or business documents, or passports and other travel documents. As [Jetstar’s] liability is limited (see 14), [it] will not be liable for any inconvenience or Damage [passengers] suffer if [they] have ignored [Jetstar’s] requirements and included the item/s as Checked Baggage.”

Article 14.3(a) of Jetstar’s contract of carriage provides:

Except to the extent required by law, [Jetstar is] not liable for Damage to items which [passengers] are asked not to include in... checked baggage (under 7.4).

While we note that Article 14.3 includes language that appears to condition the blanket exclusion set forth in Article 7.4, Jetstar’s response to the Department acknowledged that their policy regarding baggage liability “to comply with all applicable laws had not been applied consistently.”

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<sup>3</sup>“Foreign air transportation” means 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 when any part of the transportation is by air. 49 U.S.C. § 40102(a)(23).

<sup>4</sup>*Guidance on Airline Baggage Liability and Responsibilities of Code-share Partners Involving International Itineraries*, 74 Fed. Reg. 14837 (Mar. 26, 2009), available at <http://airconsumer.dot.gov/rules/guidance.htm>.

<sup>5</sup> See, e.g., *Emirates, Violations of Articles 17 and 19 of the Montreal Convention and 49 U.S.C. § 41712*, Order 2011-8-24 (Aug. 30, 2011).

### **Mitigation**

Jetstar states that it takes its responsibilities to comply with all applicable laws and regulations very seriously, including the Montreal Convention and the Department's rules. Jetstar notes that it has cooperated fully with the Department with respect to this matter.

Jetstar asserts that it conducted its own thorough review of the airline's baggage claim handling policies and practices. As a result of this review, Jetstar clarified the wording in its Conditions of Carriage and in its internal policies and procedures. Jetstar also states that it retrained relevant employees and third-party contractors to ensure that they understand and are able to correctly apply the baggage liability policy.

### **Decision**

The Enforcement Office has carefully considered the information provided by Jetstar but continues to believe that enforcement action is warranted. The Enforcement Office and Jetstar have reached a settlement of this matter in order to avoid litigation. Without admitting or denying the violations described above, Jetstar consents to the issuance of an order to cease and desist from future violations of Article 17 of the Montreal Convention and 49 U.S.C. § 41712 and to the assessment of \$30,000 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 against future noncompliance with the Montreal Convention by Jetstar, as well as by other air carriers and foreign air carriers.

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

### **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 Jetstar Airways Pty Limited violated Article 17 of the Montreal Convention by seeking to limit its liability resulting from a blanket exclusion on reimbursement for a class of items contained in lost baggage, as described above;
3. We find that by engaging in the conduct and violations described in ordering paragraph 2, above, Jetstar Airways Pty Limited has also violated 49 U.S.C. § 41712;
4. We order Jetstar Airways Pty Limited and all other entities owned or controlled by or under common ownership with Jetstar Airways Pty Limited and their successors and assignees, to cease and desist from violations of Article 17 of the

Montreal Convention and 49 U.S.C. § 41712. Failure to comply with this cease and desist provision shall subject Jetstar Airways Pty Limited and its successors and assignees to further enforcement action;

5. We assess Jetstar Airways Pty Limited \$30,000 in compromise of civil penalties that might otherwise be assessed for the violations described above. Of this total penalty amount, \$15,000 shall be due and payable within 30 days of the date of issuance of this order. The remaining \$15,000 shall become due and payable immediately if Jetstar Airways Pty Limited violates this order's cease and desist provision within one year following the date of issuance of this order or fails to comply with the order's payment provisions; and
6. We order Jetstar Airways Pty Limited 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 Jetstar Airways Pty Limited 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:**

**SAMUEL PODBERESKY**  
**Assistant General Counsel for**  
**Aviation Enforcement and Proceedings**

**(SEAL)**

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