



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

Issued by the Department of Transportation
on the **23rd day of October, 2002**

**Korean Air Lines Co., Ltd.
Violations of 49 U.S.C. §§ 41302, 41703,
and 41712**

Served October 23, 2002

OST 2002-12273

CONSENT ORDER

This order concerns unauthorized passenger air service by Korean Air Lines Co., Ltd., (KAL) a foreign air carrier within the meaning of 49 U.S.C. § 40102(a)(21), between Guam (a U.S. territory) and Saipan in the Northern Mariana Islands (a U.S. commonwealth) and cities in the United States, by way of Seoul, Republic of Korea. Service by a foreign air carrier between two points in the United States, a practice commonly referred to as cabotage, is a violation of 49 U.S.C. § 41703, which prohibits such transportation for compensation or hire except under very limited circumstances that do not apply here.¹ In addition, holding out to the public, expressly or by course of conduct, that a foreign air carrier provides any such service, without the appropriate exemption authority, violates the carrier's permit authority issued under 49 U.S.C. § 41302 and constitutes an unfair and deceptive trade practice in violation of 49 U.S.C. § 41712.

Between December 2001 and May 2002, KAL unlawfully transported over one hundred passengers between Guam and Saipan and cities in the United States. During this period, KAL also unlawfully held out transportation between these locations via a broad spectrum of media, both direct and indirect, including the Internet, and through its reservations agents and travel agents. As recently as May 2002, it was possible to purchase tickets between Guam and Saipan and cities in the United States through the website of Orbitz LLC, an Internet travel agent acting on KAL's behalf, and through KAL's own telephone reservations agents. Moreover, KAL distributed memoranda to travel agents on Guam and Saipan and in cities in

¹ The pertinent language of 49 U.S.C. § 41703 states that foreign civil 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..."

the United States setting forth its net fares on various routes between these locations, thereby encouraging the sale of cabotage air service.

In mitigation, KAL states that the sale of such transportation was largely the result of mistakes made by mid-level employees who were not sensitive to the unique status of Guam and Saipan and who were unaware of the applicability of cabotage restrictions to connecting services operated via a foreign point. According to KAL, these errors were compounded by a programming feature contained in many global distribution systems that allowed those systems to automatically construct routings and fares and to accept reservations for online connections between Guam and Saipan and cities in the United States without taking into account the lack of traffic rights.

Aside from these isolated instances, KAL states that it did not take any action to promote, advertise, or otherwise encourage the sale of service between Guam and Saipan and cities in the United States, nor did it ever intend to engage in any form of conduct that violated U.S. law. Consequently, upon receiving notification from the Department, KAL represents that it immediately undertook extensive remedial measures to prevent any further holding out or sales of such service. These measures consisted of issuing instructions to its various sales offices advising of the discontinuance of the sale of transportation between Guam and Saipan and cities in the United States. Additionally, KAL states that it informed the global distribution systems with which it contracts to prevent all online availability of such service, thus making it impossible for consumers using Internet travel agents to independently construct a connection between KAL's Guam/Saipan-Seoul service and its other services to points in the United States. At all times in this matter, KAL points out that it has exhibited a cooperative and compliant attitude and has sought advice from the Department to ensure that its future operations do not violate 49 U.S.C. §§ 41302, 41703, and 41712.

During the investigation of this matter, an issue arose concerning what actions might constitute a break in the continuity of travel so that a foreign air carrier could legally transport a passenger between two points in the United States via an intermediate point or points in the carrier's homeland or a third country. In response, the Enforcement Office emphasizes that the sale or holding out, either explicitly or by course of conduct, of air transportation between two points in the United States via an intermediate point or points in a foreign country may be illegal regardless of the duration of the stopover, the passenger's immigration status at the intermediate point or points, the number of tickets under which the transportation is conducted, and the number of foreign air carriers under which the transportation is conducted if they are working in concert.² However, we are not likely to pursue enforcement action except in straightforward cases, such as those in which the transportation was continuous (including short stopovers that were incidental to or otherwise did not break the continuity of the trip), the transportation was conducted pursuant to a single ticket, the carrier or its agents knowingly sold two tickets covering cabotage service, the carrier or its agents held out cabotage service via the Internet or other advertising media, or the carrier explicitly or tacitly accepted, benefited from, or participated in a substantial arrangement with a third party to

² While these and other circumstances not listed here may be an indication of a break in the continuity of travel, they are not definitive of such, either alone or in any particular combination.

conduct cabotage operations.³ In reaching conclusions regarding any future cabotage violations and any related enforcement action, the Enforcement Office will continue to consider the reasonable good faith efforts of the carrier involved to avoid engaging in conduct that the Department considers to constitute prohibited cabotage.

The Enforcement Office views seriously the obligation of all foreign air carriers to observe the statutory prohibitions on cabotage operations. Accordingly, we have carefully considered all of the available information, including that provided by KAL, but continue to believe that enforcement action is warranted. In this connection and in order to avoid litigation, the Enforcement Office and KAL have reached a settlement of this matter. Without admitting or denying the violations described above, KAL consents to the issuance of this order to cease and desist from future violations of 49 U.S.C. §§ 41302, 41703, and 41712 and to the assessment of \$65,000 in compromise of potential civil penalties otherwise assessable. Of this total penalty amount, \$32,500 shall be paid under the terms described below. The remaining \$32,500 shall be suspended for one year following the issuance of this order, and then forgiven, unless, during this time period, KAL violates this order's cease and desist or payment provisions, in which case the entire unpaid portion of this civil penalty shall become due and payable immediately and KAL may be subject to further enforcement action. The Enforcement Office believes this compromise is appropriate, serves the public interest, and creates an incentive for all foreign air carriers to comply fully with the requirements of 49 U.S.C. §§ 41302, 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 Korean Air Lines Co., Ltd., violated 49 U.S.C. §§ 41302 and 41703 by holding out and performing air transportation for compensation or hire between Guam and Saipan and cities in the United States via the Republic of Korea between December 2001 and May 2002;
3. We find that by holding out and performing air transportation for compensation or hire between Guam and Saipan and cities in the United States via the Republic of Korea between December 2001 and May 2002, Korean Air Lines Co., Ltd., engaged in an unfair and deceptive practice in violation of 49 U.S.C. § 41712;
4. Korean Air Lines Co., Ltd., and all other entities owned and controlled by, or under common ownership and control with Korean Air Lines Co., Ltd., and their successors and assignees, are ordered to cease and desist from future violations of 49 U.S.C. §§ 41703, 41302, and 41712 in connection with cabotage operations;

³ The Enforcement Office does not intend to preclude air carriers from continuing standard interline agreements that are common in the industry and are not used to circumvent the cabotage prohibition. We also do not intend to preclude travel agents from issuing separate tickets on separate carriers as long as the issuance of such tickets is not pursuant to an explicit or tacit arrangement with one or both air carriers to facilitate cabotage service.

5. Korean Air Lines Co., Ltd., is assessed a civil penalty of \$65,000 in compromise of the civil penalties that might otherwise be assessed for the violations found in paragraphs 2 and 3 above. Of the assessed penalty, \$11,000 is due and payable within 30 days of the date of issuance of this order, \$11,000 is due and payable on April 15, 2003, and \$10,500 is due and payable on October 15, 2003. The remaining \$32,500 shall be suspended for one year following the issuance of this order, and then forgiven, unless, during this time period, Korean Air Lines Co., Ltd., violates this order's cease and desist or payment provisions, in which case the entire unpaid portion of this civil penalty shall become due and payable immediately. Failure to pay the penalty as ordered will subject Korean Air Lines Co., Ltd., 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; and

6. Payment of the civil penalty described above 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 transfer shall be executed in accordance with the attached instructions.

This order will become a final order of the Department 10 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)

*An electronic version of this document is available on the World Wide Web at
<http://dms.dot.gov>*