



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

**Issued by the Department of Transportation
on the 22nd day of May, 2023**

LATAM Airlines Group S.A.

**Violations of 49 U.S.C. § 41712 and
14 CFR Part 259**

**Docket OST-2023-0001
Docket OST-2020-0093**

Served May 22, 2023

CONSENT ORDER AND ORDER OF DISMISSAL

The U.S. Department of Transportation's (Department or DOT) Office of Aviation Consumer Protection (OACP) has determined that LATAM Airlines Group S.A. and several affiliates (collectively, LATAM)¹ routinely failed to provide timely refunds to passengers for flights to and from the United States that the carrier cancelled in violation of 49 U.S.C. § 41712 (Section 41712) and 14 CFR Part 259. Since March 1, 2020, the Department has received over 750 complaints alleging that LATAM failed to provide timely refunds after cancelling flights to or from the United States. Our investigation revealed that from March 2020 through at least November 2021, LATAM required consumers who requested refunds to obtain a travel voucher from the carrier first and then exchange the travel voucher for cash by means of a bank transfer. The process of obtaining a refund was lengthy, with thousands of refund requests taking more than 100 days to process to completion. This order directs LATAM to cease and desist from future similar violations of 49 U.S.C. § 41712 and 14 CFR Part 259 and assesses the carrier \$1,000,000 in civil penalties.

¹ This order pertains to LATAM Airlines Group S.A. and affiliates in Argentina, Brazil, Chile, Colombia, Ecuador, and Peru. LATAM Airlines Group S.A., and its affiliates LATAM Airlines Colombia, LATAM Airlines Ecuador, LATAM Airlines Chile and LATAM Airlines Peru filed a voluntary bankruptcy petition on May 26, 2020 in the U.S. Bankruptcy Court for the Southern District of New York under chapter 11 of the Bankruptcy Code. LATAM Airlines Brasil subsequently filed its voluntary bankruptcy petition in the same docket on July 9, 2020. LATAM Airlines Argentina did not file for bankruptcy, but ceased operations on June 17, 2020.

Applicable Law

Pursuant to 49 U.S.C. § 41301, a foreign air carrier² may provide foreign air transportation³ only if the foreign air carrier holds a permit from the Department authorizing the foreign air transportation or has a valid exemption from that section.⁴ A foreign air carrier that holds a foreign air carrier permit from the Department is subject to the requirements of 49 U.S.C. § 41712, which prohibits an air carrier, foreign air carrier, or a ticket agent from engaging in an unfair and deceptive practice in air transportation or the sale of air transportation. Section 41712 authorizes the Department to investigate and decide whether a carrier or ticket agent is engaging in an unfair or deceptive practice, and if so, to prohibit such a practice.⁵

In April and May 2020, in response to the high volume of air travel service complaints received, many of which concerned refunds, OACP issued notices to help consumers understand their rights and emphasize to airlines that the unprecedented impact COVID-19 has had on air travel has not changed the airlines' obligation under Section 41712 to refund passengers for flights that airlines cancel or significantly change.⁶ Then, in December 2020, the Department published in the Federal Register a final rule titled "Defining Unfair or Deceptive Practices."⁷ The rule defined the terms "unfair" and "deceptive" for purposes of Section 41712. Pursuant to the rule, a practice is "unfair" to consumers within the meaning of Section 41712 if it causes substantial harm to consumers, the harm is not reasonably avoidable, and the harm is not outweighed by benefits to consumers or competition.⁸ For the reasons set forth below, the practice of cancelling or significantly changing a flight to or from the United States without providing a refund is "unfair" as that term is defined by regulation, irrespective of the reason for the cancellation.

² 49 U.S.C. § 40102(a)(21) defines a "foreign air carrier" as "a person, not a citizen of the United States, undertaking by any means, directly or indirectly, to provide foreign air transportation."

³ 49 U.S.C. § 40102(a)(5) defines "air transportation" as "foreign air transportation, interstate air transportation, or the transportation of mail by aircraft." 49 U.S.C. § 40102(a)(23) defines "foreign air transportation" as "the transportation of passengers or property by aircraft as a common carrier for compensation, or the transportation of mail by aircraft, between a place in the United States and a place outside the United States when any part of the transportation is by aircraft."

⁴ The authority required by section 41301 is separate and distinct from the operations specifications and approvals that such an entity must obtain from the Federal Aviation Administration (FAA) for operations to and from the United States.

⁵ The Department's regulations impose obligations on airlines that cannot be avoided through contractual provisions. See *Spirit Airlines vs. DOT*, 687 F.3d 403, 416 (D.C. Cir. 2012) (DOT may implement rule that airlines must change their policies to permit a passenger to cancel a reservation without penalty within 24 hours, based on DOT's finding that existing practices were unfair or deceptive).

⁶ "Enforcement Notice Regarding Refunds by Carriers Given the Unprecedented Impact of the Covid-19 Public Health Emergency on Air Travel" (April 3, 2020), available at https://www.transportation.gov/airconsumer/enforcement_notice_refunds_apr_3_2020; "Frequently Asked Questions Regarding Airline Ticket Refunds Given the Unprecedented Impact of the Covid-19 Public Health Emergency on Air Travel" (May 12, 2020), available at https://www.transportation.gov/airconsumer/FAQ_refunds_may_12_2020.

⁷ 85 Fed. Reg. 78707 (December 7, 2020).

⁸ 14 CFR 399.79(b)(1).

First, the practice imposes substantial harm to consumers because they paid money to the carrier for a service that the carrier did not provide. Consumers incur harm from delays in receiving refunds, as well as from the time, effort, and expense involved in seeking a refund.

Second, the harm is not reasonably avoidable. A consumer acting reasonably would believe that he or she was entitled to a refund under U.S. law if the carrier cancelled or significantly changed the flight whatever the reason for the cancellation or significant change. Moreover, a reasonable consumer would not believe that it is necessary to purchase a more expensive refundable ticket in order to be able to recoup the ticket price when the *airline* fails to provide the service paid for through no action or fault of the consumer. Reasonable consumers understand that “refundable” tickets are valuable because they ensure a refund if the *passenger* cancels their own flight reservation.

Third, the harm is not outweighed by countervailing benefits to consumers or competition. The Department seeks to regulate practices that are injurious to consumers in their net effects.⁹ In enforcing Section 41712, which is modeled on Section 5 of the Federal Trade Commission (FTC) Act, the Department recognizes, like the FTC, that practices may be harmful to consumers in some ways, but beneficial in others. For example, offsetting benefits may include lower prices or a wider availability of products and services resulting from competition.¹⁰ Here, there is no offsetting benefits to consumers that would outweigh the harm of retaining passengers’ funds for lengthy periods of time.

In addition to the general prohibition on unfair and deceptive practices, pursuant to 14 CFR 259.5, U.S. and foreign air carriers operating at least one aircraft having a seating capacity of 30 or more seats must adopt a Customer Service Plan and adhere to the Plan’s terms. Customer Service Plans represent a baseline, uniform, minimum level of service to which all covered carriers operating flights to and from the United States must comply. The Customer Service Plan must include certain commitments relating to the payment of refunds to passengers when required by Section 41712. Section 259.5(b)(5) requires: “Where ticket refunds are due, providing prompt refunds, as required by 14 CFR 374.3 and [Regulation Z, 12 CFR Part 1026] for credit card purchases, and within 20 days after receiving a complete refund request for cash and check purchases, including refunding fees charged to a passenger for optional services that the passenger was unable to use due to an oversale situation or flight cancellation.” OACP’s position is that refunds are “due” when failure to provide them would constitute an unfair or deceptive practice under Section 41712. Regulation Z states, at 12 CFR 1026.11(a)(2), that for credit card purchases, refunds must be provided within seven business days of receipt of a written request from the consumer. Pursuant to 14 CFR 374.3(b), violations of Regulation Z constitute violations of 49 U.S.C. Subtitle VII.¹¹

⁹ See <https://www.ftc.gov/public-statements/1980/12/ftc-policy-statement-unfairness>.

¹⁰ See *id.*

¹¹ In enforcement orders, DOT has clarified that violations of section 259.5 are violations of Section 41712 specifically, not just 49 U.S.C. Subtitle VII generally. See, e.g., *American Airlines*, DOT Order 2017-7-9.

Facts and Conclusions

LATAM operates flights to and from the United States under foreign air carrier permits pursuant to 49 U.S.C. § 41301. LATAM uses at least one aircraft having a designed capacity of more than 30 passenger seats. One condition of LATAM's foreign air carrier permits is that LATAM "comply with such other reasonable terms, conditions, and limitations required by the public interest as may be prescribed by the Department, with all applicable orders or regulations of other U.S. agencies and courts, and with all applicable laws of the United States."¹² Accordingly, LATAM is subject to the requirements in 49 U.S.C. § 41712 and 14 CFR 259.5.

Since March 1, 2020, approximately 750 consumers submitted complaints to the Department alleging that LATAM was failing to provide timely refunds for flights to or from the United States that LATAM cancelled.¹³ Our investigation revealed that, beginning on March 18, 2020, when a consumer requested a refund for a flight that was cancelled by LATAM, the carrier would not immediately process a refund and instead issued a travel voucher to the consumer. Consumers could use the travel voucher to purchase services through LATAM or exchange the travel voucher for cash by means of a bank transfer.¹⁴ As a result, consumers had to go through extra steps and wait additional time to get the refund to which they were entitled. LATAM changed its policy and began providing refunds in the original form of payment instead of travel vouchers, in most cases, on November 30, 2021, and discontinued issuing travel vouchers instead of entitled refunds in all cases on May 24, 2022. From the initial refund request to issuance of a travel voucher to completion of the bank transfer, the process of obtaining a refund often took several weeks. It took LATAM more than 100 days to process thousands of refund requests to completion and, as a result, thousands of consumers experienced significant harm from the extreme delay in receiving their refunds.

Response

In response, LATAM states that at the onset of the pandemic, due to government restrictions on travel and entry requirements, LATAM had to cancel more than 1,100 flights daily. At the same time, the number of refund requests quadrupled from normal levels. LATAM explains that these multiple challenges combined with the fact that government-funded emergency assistance was not available to it forced LATAM to file for protection under Chapter 11 of the Bankruptcy Code and radically downsize the company, resulting in layoffs of thousands of employees. According to LATAM, despite the extreme circumstances threatening LATAM's very survival and despite the significantly reduced and demoralized workforce, it always honored its obligation to provide refunds to passengers on cancelled flights to and from the U.S. although refunds were delayed. Indeed, LATAM states that it has issued more than \$62,000,000 in refunds since the beginning of the pandemic for cancelled flights to and from the U.S. LATAM states that it has done so

¹² See, e.g., Docket DOT-OST-1999-6493-0018.

¹³ OACP received one formal complaint relating to LATAM's refund practices during 2020. *Desi v. LATAM*, Docket DOT-OST-2020-0093.

¹⁴ If a consumer used miles to purchase a flight that LATAM subsequently cancelled, LATAM restored the miles to the consumer's account rather than providing cash through a bank transfer.

without receiving any government financial assistance, unlike U.S. carriers serving the United States-Latin America market.

LATAM explains that it instituted the two-step travel voucher process for two reasons. First, and foremost, LATAM avers it was instituted to manage and track the refund process, based on the unprecedented volume of refund requests. Second, LATAM explains many passengers sought chargebacks from their credit card companies in addition to seeking a refund from LATAM. Through the travel voucher process, LATAM states that it was able to verify whether the passenger had already received a chargeback from their credit card provider.

To process refund requests more efficiently, LATAM states it has implemented a new digital platform on its website to automatically process eligible refund requests. According to LATAM, it invested approximately \$2,000,000 to implement and maintain the platform and plans to invest a similar amount in 2023 to continue to improve the passenger experience with the refund process.

LATAM states that it always acted in good faith, and that it believes a large penalty is inappropriate given the dire circumstances facing LATAM during the pandemic. Lastly, LATAM states that it fully cooperated with OACP throughout this process and has agreed to settlement solely in the interest of avoiding litigation.

Decision

OACP views seriously LATAM's violations of 49 U.S.C. § 41712 and 14 CFR Part 259. Accordingly, after carefully considering all the facts in this case, OACP believes that enforcement action is warranted.¹⁵ In order to avoid litigation, LATAM consents to the issuance of this order to cease and desist from future violations of 49 U.S.C. § 41712 and 14 CFR Part 259 and to the assessment of \$1,000,000 in compromise of potential civil penalties otherwise due and payable pursuant to 49 U.S.C. § 46301. The compromise assessment is appropriate considering the nature and extent of the violations described herein and serves the public interest. It establishes a strong deterrent to future similar unlawful practices by LATAM and other 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;

¹⁵ OACP reviewed the formal complaint filed against LATAM for lack of timely refunds and found it to be meritorious. This complaint was considered in OACP's decision to pursue an order against LATAM and in the civil penalty assessed against LATAM. To promote the efficient use of OACP's resources, OACP is dismissing the complaint through this Consent Order and concurrently providing notice of the Consent Order to the complainant.

2. We find that by significantly delaying the payment of refunds to passengers for flights to or from the United States that LATAM cancelled, LATAM engaged in unfair practices in violation of 49 U.S.C. § 41712.
3. We find that by failing to adhere to its customer commitment to provide prompt refunds, LATAM violated 14 CFR 259.5(b)(5) which also constitutes a violation of 49 U.S.C. § 41712;
4. We order LATAM and its successors and assigns to cease and desist from further violations of 49 U.S.C. § 41712 and 14 CFR 259.5;
5. We order LATAM to continue to provide refunds to those consumers who are entitled to a refund for flights to or from the United States that were cancelled by the airline, regardless of when their requests are submitted.
6. We assess LATAM \$1,000,000 in compromise of civil penalties that might otherwise be assessed for the violations described in paragraphs 2 and 3 above. Of this amount,
 - a. \$333,334 shall be due and payable within 30 days of the issuance of the order;
 - b. \$333,333 shall be due and payable within 90 days of the issuance of the order;
and
 - c. \$333,333 shall be due and payable within 150 days of the issuance of the order.
7. We order LATAM to pay under the installment plan described in order paragraph 6, above, through Pay.gov to the account of the U.S. Treasury. Payment shall be made in accordance with the instructions contained in the Attachment to this order. Failure to pay the penalty as ordered shall subject LATAM 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.
8. We dismiss the complaint filed in Docket DOT-OST-2020-0093.

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:

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