



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

**Issued by the Department of Transportation
on the 3rd day of June, 2024**

KLM Royal Dutch Airlines

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

Docket OST-2024-0001

Served June 3, 2024

CONSENT ORDER

The U.S. Department of Transportation's Office of Aviation Consumer Protection has determined that KLM Royal Dutch Airlines (KLM) routinely failed to provide timely refunds to passengers for flights to and from the United States that the carrier cancelled or significantly changed in violation of 49 U.S.C. § 41712 (Section 41712) and 14 CFR Part 259. Since March 2020, the Department has received over 948 complaints regarding KLM's handling of refund request after cancelling or significantly changing consumers' flights to or from the U.S. In June 2020, KLM began offering refunds to all consumers holding non-refundable tickets on flights to and from the United States that were cancelled or significantly changed by the carrier. However, thousands of the refund requests took longer than a hundred days to process. This order directs KLM to cease and desist from future similar violations of 49 U.S.C. § 41712 and 14 CFR Part 259 and assesses the carrier \$1,100,000 in civil penalties.

Applicable Law

Pursuant to 49 U.S.C. § 41301, a foreign air carrier¹ may provide foreign air transportation² 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.³ 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 practices 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.⁴

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 had on air travel did not change the airlines' obligation under Section 41712 to refund passengers for flights that airlines cancel or significantly change.⁵ Then, in December 2020, the Department published in the Federal Register a final rule titled "Defining Unfair or Deceptive Practices."⁶ 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.⁷ 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.

¹ 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."

² 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."

³ 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.

⁴ 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).

⁵ "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.

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

⁷ 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.⁸ 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.⁹ Here, there are 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 designed 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.¹⁰

⁸ See <https://www.ftc.gov/public-statements/1980/12/ftc-policy-statement-unfairness>.

⁹ See *Id.*

¹⁰ 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

KLM, a foreign air carrier, holds a foreign air carrier permit to operate flights to and from the United States pursuant to 49 USC 41301. KLM uses at least one aircraft having a designed capacity of more than 30 passenger seats. One condition of KLM's foreign air carrier permit is that KLM "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."¹¹ Accordingly, KLM is subject to the requirements in 49 U.S.C. § 41712 and 14 CFR 259.5.

An investigation by OACP revealed that beginning on or about March 19, 2020, KLM did not provide refunds to consumers for flights to or from the United States that were cancelled or significantly changed by the carrier in response to the impact of the COVID-19 pandemic. Instead, the carrier provided travel vouchers to all impacted consumers. At the end of March 2020, KLM began cancelling all passenger services between the U.S. and Europe, ultimately cancelling 7,950 flights that had been scheduled to operate from March 2020 and September 2022. On or about June 11, 2020, KLM began offering refunds to all consumers holding non-refundable tickets on flights to and from the United States that were cancelled or significantly changed by the carrier. However, by the time KLM began providing refunds to customers for flights to and from the U.S., staffing and technical issues and the large number of refund requests led to thousands of consumers waiting for many months before receiving the refunds to which they were entitled. As a result, thousands of consumers experienced significant harm from extreme delay in providing refunds to those consumers.

Response

In response, KLM states that it made good faith efforts to comply with its regulatory obligations during the onset of the COVID-19 pandemic, which was an unprecedented crisis for the commercial aviation industry. KLM explains that its policy prior to March 2020 was to provide a cash refund in all cases when it cancelled a flight or delayed a flight for over 3 hours, regardless of whether a ticket was non-refundable under the applicable fare conditions. KLM states that in mid-March 2020, as a result of government-imposed travel restrictions that forced it to cancel most of its scheduled flights and uncertain about when (or whether) normal service would resume, it suspended its normal refund policy partly because it was unclear whether there would be sufficient cash flow to cover refunds for all canceled tickets. KLM states that the suspension was expressly permitted by the Dutch government because of concerns over potential insolvency. KLM explains that when the DOT issued its April 3, 2020, Enforcement Notice Regarding Refunds by Carriers, it responded promptly by reinstating its refund policy for U.S. passengers effective on April 7, 2020, and for all passengers on June 11, 2020.

KLM further states that during the first months of the pandemic, it experienced staff shortages and office closures due to government stay-at-home orders while facing an unprecedented influx of tens of thousands of refund requests per month. Despite these difficulties, KLM states that it made good faith efforts to process all refunds as quickly as possible with the result that, out of over 47,000 refund requests received during the review period, over 90% of customers received refunds

¹¹ DOT Order 2008-5-40 (May 29, 2008), paragraph 11.

within one hundred days. KLM states that it has made a concerted effort since the onset of the pandemic to further reduce processing time by hiring additional full-time employees to process refund requests and implementing new technology to improve its online refund-handling platform.

KLM further states that after its refund policy was reimplemented in April 2020, it adopted one of the most customer-friendly ticket refund and exchange policies in the industry, providing refunds to all customers with non-refundable tickets regardless of whether their flights were cancelled significantly delayed. As a result of this policy, KLM confirms that between March 2020 and December 2021 it provided approximately USD 84,15 million in refunds to customers for flights to or from the U.S. who were not entitled to refunds under U.S. law. KLM argues that these efforts demonstrate its continuing commitment to meeting its regulatory obligations and providing industry-leading customer service even through the most critical early months of the pandemic.

Decision

OACP views seriously KLM's violations of 49 U.S.C. § 41712 and 14 CFR Part 259. Accordingly, after carefully considering all the facts in this case, including those set forth above, OACP believes that enforcement action is warranted. In order to avoid litigation, KLM 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 \$1,100,000 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 KLM 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;
2. We find that by significantly delaying the payment of refunds to passengers for flights to or from the United States that KLM Royal Dutch Airlines cancelled or significantly changed, KLM Royal Dutch Airlines engaged in an unfair practice in violation of 49 U.S.C. § 41712;
3. We find that failing to adhere to its customer commitment related to providing prompt refunds, KLM Royal Dutch Airlines violated 14 CFR 259.5(b)(5), which also constitutes a violation of 49 U.S.C. § 41712;
4. We order KLM Royal Dutch Airlines 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 assess KLM Royal Dutch Airlines \$1,100,000 in compromise of civil penalties that might otherwise be assessed for the violations described in paragraphs 2 and 3 above; of this total amount, \$137,500 shall be due within 30 days from the day this Order is served upon the carrier; \$137,500 shall be due and payable by August 30, 2024; \$137,500 shall be due and payable by October 30, 2024, and \$137,500 shall be due and payable by

December 31, 2024. The remaining \$550,000 shall be credited to KLM for refunds that KLM provided to passengers with non-refundable tickets for flights to or from the United States who chose not to travel and were not entitled to refunds under U.S. law;

6. We order KLM Royal Dutch Airlines to pay the penalty assessed in ordering paragraph 5, 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 KLM Royal Dutch Airlines 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:

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for the Office of Aviation Consumer Protection

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