



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

**Issued by the Department of Transportation
on the 12th day of December, 2024**

Etihad Airways P.J.S.C.

Violations of 49 U.S.C. § 41301

Docket DOT-OST-2024-0001

Served December 12, 2024

CONSENT ORDER

This consent order concerns unauthorized foreign air transportation by Etihad Airways P.J.S.C. (Etihad) in violation of 49 U.S.C. § 41301. More specifically, by carrying the JetBlue Airways' (JetBlue) designator code (B6) on flights between the United Arab Emirates and the United States in airspace prohibited by the Federal Aviation Administration (FAA) to U.S. operators due to safety concerns, Etihad violated the conditions of its authority to operate and engaged in foreign air transportation without proper U.S. Department of Transportation (DOT or Department) authority. This order directs Etihad to cease and desist from future similar violations of section 41301 and assesses the carrier a compromise civil penalty of \$400,000.

Applicable Law

Pursuant to 49 U.S.C. § 41301, a foreign air carrier may provide foreign air transportation only if the foreign air carrier holds a permit from DOT authorizing the foreign air transportation or a valid exemption from that section. Any operation in violation of the terms, conditions, or limitations of a foreign air carrier permit is a violation of 49 U.S.C. § 41301.

In addition to this requirement, 14 CFR Part 212 requires U.S. and foreign air carriers that operate code-shared services to first obtain authorization from the Department in the form of a statement of authorization. Under 14 CFR 213.6, any violation by a foreign air carrier of the terms, conditions, or limitations applicable to the exercise of the privileges granted by its foreign air

carrier permit shall constitute a failure to comply with the terms, conditions, and limitations of such permit.

As part of the terms, conditions, or limitations referenced above, the Department prohibits foreign air carriers from carrying the code of a U.S. air carrier in airspace in which the FAA prohibits U.S. operators and airmen from flying.¹ This condition is incorporated into Etihad's statement of authorization in which the Department granted Etihad the authority to display JetBlue's B6 code in conjunction with Etihad's foreign air transportation.² The condition, provided in paragraph (d) of the statement of authorization, states, in pertinent part, the following:

The code-sharing operations conducted under this authority must comply with 14 CFR [Part] 257 and with any amendments to the Department's regulations concerning code-share arrangements that may be adopted. Notwithstanding any provisions in the contract between the carriers, our approval here is expressly conditioned upon the requirement[] that . . . the operating carrier shall not permit the code of its U.S. code-sharing partner to be carried on any flight that enters, departs, or transits the airspace of any area for whose airspace the Federal Aviation Administration has issued a flight prohibition.

The FAA issues flight prohibitions for U.S. civil aviation regarding flight operations in airspace other countries manage with respect to safety of flight because of the risks posed by weapons capable of targeting, or otherwise negatively affecting, U.S. civil aviation, as well as other hazards to U.S. civil aviation associated with fighting, extremist or militant activity, or heightened tensions. The FAA issues these flight prohibitions as emergency orders of the FAA Administrator via Notices-to-Air Missions (NOTAMs) and Special Federal Aviation Regulations (SFARs), as appropriate. The above DOT condition makes such flight prohibitions applicable to foreign air carriers when they are carrying a U.S. air carrier's code.

Facts and Conclusions

On October 16, 2020, the FAA amended and extended Special Federal Aviation Regulation (SFAR) 77, 14 CFR 91.1605, *Prohibition against Certain Flights in the Baghdad Flight Information Region (ORBB FIR)*, prohibiting all U.S. air carriers, all U.S. commercial operators, all persons exercising the privileges of airman certificates issued by the FAA (except when such persons are operating a U.S.-registered aircraft for a foreign air carrier), and all operators of civil aircraft registered in the United States (except when the operator of such aircraft is a foreign air carrier) from conducting flight operations in the ORBB FIR at altitudes below Flight Level (FL)

¹ See Order 95-2-34 (Feb. 15, 1995) and Notice – Conflict Zone, DOT-OST-1998-20-0690 (Mar. 19, 2015); see also *Qatar Airways Q.C.S.C. Violations of 49 U.S.C. §§ 41301 and 41712*, Order 2016-11-11 (Nov. 10, 2016); *Emirates Violations of 49 U.S.C. § 41301*, Order 2020-9-29 (Oct. 1, 2020).

² *Department Action on Application in Docket DOT-OST-2022-0040* (May 4, 2022), available at <https://www.regulations.gov/document/DOT-OST-2022-0040-0003>.

320.³ In addition, on October 29, 2020, the FAA issued SFAR 117, 14 CFR 91.1617, *Prohibition Against Certain Flights in the Tehran Flight Information Region (OIIX FIR)*, prohibiting all persons described in paragraph (a) of the SFAR⁴ from conducting flight operations in the OIIX FIR.⁵

In connection with the Department's rules and the condition imposed on Etihad's foreign air carrier permit and the statement of authorization for a codeshare arrangement with JetBlue, as described above, the prohibitions in SFAR 77 and SFAR 117 extend to Etihad's flights carrying the B6 code.

An investigation by the Department's Office of Aviation Consumer Protection (OACP) revealed that between August 2022 and September 2022, Etihad operated numerous flights carrying the B6 code between the United Arab Emirates and the United States, in the airspace referenced by SFAR 117. Further, although OACP notified Etihad of the problematic conduct on September 20, 2022 and November 2, 2022, OACP learned that between January 2023 and April 2023, Etihad operated several additional flights carrying the B6 code between the United Arab Emirates and the United States in the airspace referenced by SFAR 117, as well as in the airspace referenced by SFAR 77. By operating flights carrying the B6 code in airspace in which the FAA prohibited U.S. operators from flying, Etihad's operations violated the conditions of its statement of authorization. As a result, Etihad violated 49 U.S.C. § 41301.

Response

In response, Etihad states that its paramount priority is the safety of its passengers, crews, and aircraft, and that it is fully compliant with all relevant ICAO standards as well as the safety and security requirements of its home country regulator, the General Civil Aviation Authority of the

³ This SFAR is available online at <https://www.federalregister.gov/documents/2020/10/16/2020-23047/prohibition-against-certain-flights-in-the-baghdad-flight-information-region-fir-orbb>. On September 20, 2022, the FAA published a notice in the Federal Register extending the expiration date of this SFAR until October 26, 2024, without changing the boundaries of the flight prohibition for U.S. civil aviation. <https://www.federalregister.gov/documents/2022/09/20/2022-20318/extension-of-the-prohibition-against-certain-flights-in-the-baghdad-flight-information-region-fir>. On October 16, 2024, the FAA published a notice in the Federal Register further extending the expiration date of this SFAR until October 26, 2027, without changing the boundaries of the flight prohibition for U.S. civil aviation. <https://www.federalregister.gov/documents/2024/10/16/2024-23785/extension-of-the-prohibition-against-certain-flights-in-the-baghdad-flight-information-region-fir>.

⁴ As with SFAR 77, SFAR 117 applies to all U.S. air carriers and U.S. commercial operators; all persons exercising the privileges of an airman certificate issued by the FAA, except when such persons are operating U.S.-registered aircraft for a foreign air carrier; and all operators of U.S.-registered, except when the operator of such aircraft is a foreign air carrier.

⁵ This SFAR is available online at: <https://www.federalregister.gov/documents/2020/10/29/2020-23721/prohibition-against-certain-flights-in-the-tehran-flight-information-region-fir-oix>. On September 20, 2022, the FAA published a notice in the Federal Register extending the expiration date of this SFAR until October 31, 2024. <https://www.federalregister.gov/documents/2022/09/20/2022-20316/extension-of-the-prohibition-against-certain-flights-in-the-tehran-flight-information-region-fir>. On October 3, 2024, the FAA published a notice in the Federal Register further extending the expiration date of this SFAR until October 31, 2027. <https://www.federalregister.gov/documents/2024/10/03/2024-22731/extension-of-the-prohibition-against-certain-flights-in-the-tehran-flight-information-region-fir>.

UAE (“GCAA”). Etihad states that it operates in a challenging geopolitical environment, and as such it regularly consults with the GCAA, as well as with other UAE government entities, UAE military intelligence, and non-governmental sources of aviation security information.

For the flights that entered the OIIX FIR before September 20, 2022, Etihad states that its noncompliance was inadvertent, rooted in the large-scale turnover in personnel, and the resulting loss of institutional knowledge that occurred as a result of Etihad’s 2018 restructuring, followed by the COVID-19 public health emergency. Etihad asserts that, upon being informed of the issue by OACP, Etihad and JetBlue both took immediate action to suppress the B6 designator code to prevent additional ticket sales under the B6 designator code. Etihad states that it also reminded its operational departments and flight crews of the applicability of U.S. regulations to flights carrying the B6 code, and that by September 22, 2022, it had implemented new routings on a provisional basis for the affected flights to ensure compliance with U.S. overflight rules. Etihad asserts that it concurrently developed permanent new routings, which added 40 minutes to each flight, and codified these new, longer routings into its published schedules on October 2, 2022, allowing it to reinstate ticket sales for JetBlue codeshare flights.⁶

For the flights that entered the OIIX FIR and the flights that entered ORBB FIR below FL 320, after September 20, 2022, Etihad states that when it implemented the corrective measures described above, those measures included specific operational department and flight crew instructions requiring flights carrying the B6 designator code to avoid the OIIX FIR entirely, and only operate in the ORBB FIR at or above FL 320. Etihad also asserts that the flight plans for each of the flights at issue were operated in a manner consistent with SFAR 77 and SFAR 117, and that in each case, the pilot in command had to deviate from the original flight plan due to exigent circumstances.⁷ Etihad asserts that the ORBB FIR incursions were due to air traffic control’s delay in authorizing flights to climb to FL320;⁸ and that the OIIX FIR incursions were due to unanticipated weather conditions and turbulence that impacted flight safety and required immediate action by the cockpit flight crew, and should fall within the exceptions or extenuating circumstances set forth in Section D of SFAR 117, 14 CFR 91.1617.

Etihad states that it issued additional alerts and bulletins to its operating departments and flight crews addressing the airspace restrictions. Etihad further states that, shortly thereafter, Etihad and JetBlue suspended JetBlue’s codesharing on Etihad flights altogether.

⁶ Etihad states that the B6 designator code was subsequently removed from Etihad’s Abu Dhabi-Chicago flights on October 30, 2022.

⁷ It is the Department’s position that even if local air traffic control instructed each of these flights to deviate from flight plans, the emergency situation exemption in Paragraph (d) of SFAR 77 and SFAR 117, described above, did not apply. After the first few instances on these routes where Etihad was instructed to deviate from a filed flight plan by, for example, flying below FL320 in the ORBB FIR, the Department views that Etihad knew, or should have known, that local air traffic control would likely continue to direct flights to fly below FL320, and as such, Etihad should and could have taken actions to avoid additional violations of the condition of its codeshare statement of authorization but failed to do so.

⁸ The Department is taking this enforcement action against Etihad due to the carrier continuing to operate over an area where the carrier knew, or should have known, that it could not operate flights above FL320 as planned and as required when carrying the JetBlue code. This action is not being taken for the carrier’s adherence to the instructions of air traffic control once in the air to operate flights below FL 320.

Etihad states that only 15 passengers traveling on B6 code tickets were affected by the overflights in question. Etihad further asserts that at the time the OIIX FIR overflights occurred, neither the GCAA or EASA (or its constituent countries) had flight restrictions over Iranian airspace, suggesting a contemporaneous divergence of views among safety regulators on the ability to use this airspace.

Decision

OACP views seriously Etihad's violations of 49 U.S.C. § 41301. Accordingly, after carefully considering all the facts in this case, including those set forth above, OACP believes that enforcement action is warranted. To avoid litigation, and without admitting or denying the violations described above, Etihad consents to the issuance of this order to cease and desist from future violations of 49 U.S.C. § 41301, and to the assessment of \$400,000 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 against future similar unlawful practices by Etihad 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 Etihad Airways P.J.S.C. violated 49 U.S.C. § 41301, as described above, by violating the condition of its statement of authorization prohibiting Etihad from operating flights carrying the designator code of a U.S. carrier into airspace in which the FAA prohibits U.S. operators and airmen from flying, thereby engaging in foreign air transportation without the appropriate economic authority;
3. We order Etihad Airways P.J.S.C. and its successors and assigns to cease and desist from further violations of 49 U.S.C. § 41301;
4. We assess Etihad Airways P.J.S.C. \$400,000 in compromise of civil penalties that might otherwise be assessed for the violations described above.
 - a. Of this total amount, \$200,000 shall be due and payable within 30 days of the service date of this order.
 - b. The remaining \$200,000 shall become due and payable if, within one year of the issuance date of this order, Etihad Airways P.J.S.C. violates this order's cease and desist or payment provisions, in which case the entire unpaid amount shall become due and payable immediately and Etihad Airways P.J.S.C. may be subject to additional enforcement action for failure to comply with this order.

5. We order Etihad Airways P.J.S.C. to pay the penalty assessed in Ordering Paragraph 4, 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 Etihad Airways P.J.S.C. 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:

LIVAUGHN CHAPMAN, JR.
Deputy Assistant General Counsel
for the Office of Aviation Consumer Protection

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