



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

Issued by the Department of Transportation
on the **20th day of April, 2004**

Miami Air International, Inc.

Violations of 49 U.S.C. § 41712

Docket OST 2004-16943

Served April 20, 2004

CONSENT ORDER

This consent order concerns violations by Miami Air International, Inc. (hereinafter referred to as Miami Air) of 49 U.S.C. § 41712, which prohibits unfair and deceptive practices and unfair methods of competition. Miami Air entered into contracts with DB Air, Ltd., which in turn unlawfully engaged in air transportation as an indirect air carrier, without the requisite economic authority from the Department. The order directs Miami Air to cease and desist from future unlawful conduct and assesses the company \$15,000 in compromise civil penalties.

Companies engaged in air transportation are required to hold economic authority from the Department under 49 U.S.C. § 41101.¹ Miami Air is an air carrier that holds such economic authority from the Department and safety certification from the Federal Aviation Administration under 14 CFR Part 121. DB Air, the lessee of two executive configured Boeing 727-200 aircraft sub-leased to Miami Air, has no economic authority itself to hold out or to provide, directly or indirectly, air transportation using these or any other aircraft. DB Air contracted with Miami Air to provide air transportation using aircraft leased by DB Air to Miami Air and DB Air in turn, separately contracted directly with professional sports teams, entertainers, and other entities that were the ultimate customers seeking air service, promising to provide them air transportation. As a result, there was no privity of contract between the sports teams or other entities and Miami Air, the licensed air carrier. Thus, Miami Air, which was or should have been aware of DB Air's conduct and the fact that it was not authorized to act as an air carrier, facilitated DB Air's engaging in significant indirect air carrier service without any economic authority from the Department.² Miami Air's conduct constitutes an unfair and deceptive trade

¹ A carrier may also operate small aircraft as an air taxi under the exemption authority of 14 CFR Part 298. Carriers engaged in air transportation must also be certificated by the Federal Aviation Administration under 14 CFR Parts 135 or 121. 14 CFR 119.1.

² DB Air's unlawful activities are the subject of Order 2004-2-21, issued on February 23, 2004.

practice and an unfair method of competition in violation of 49 U.S.C. § 41712 (See, e.g., Ryan International Airlines, Inc., DOT Order 2003-12-15).

As of July 24, 2003, DB Air had sub-leased two aircraft to Miami Air. Miami Air, in turn, chartered the aircraft back to DB Air. Under the companies' arrangement, DB Air paid all of the expenses incurred by Miami Air in placing the aircraft on Miami Air's Part 121 Operations Specifications. Furthermore, DB Air paid all of the expenses incurred by Miami Air in operating the aircraft, such as the loading and unloading fees, power carts, air startups, pushback fees, ramp charges, landing fees, all baggage fees, all taxes relating to operation of the aircraft, passenger facility charges, and all security fees. Under the arrangement, the aircraft were maintained for the exclusive use of DB Air and Miami Air was forbidden from using DB Air's aircraft without DB Air's permission.

Miami Air was aware that DB Air marketed charters using the aircraft to potential clients directly, as well as indirectly to other members of the public through various brokers, mass mailings, and DB Air's internet website. DB Air had entered into contracts to provide air transportation using the aircraft with numerous entities, including several professional sports teams, various entertainment groups, and corporate clients. Thus, it was DB Air that contracted directly with the customers for air transportation and DB Air that collected and held all of the monies paid by the entities that ultimately were provided air transportation using DB Air's aircraft that DB Air paid Miami Air to operate. DB Air did not act as an agent for Miami Air or for the ultimate charter customers that Miami Air transported. Therefore, Miami Air facilitated DB Air's unlawful operations as an indirect air carrier and in doing so it has engaged in an unfair and deceptive practice and unfair method of competition in violation of 49 U.S.C. § 41712.

In mitigation, Miami Air states that it has a longstanding record of compliance and cooperation with the government, and that it cooperated fully in this investigation. Miami Air further states that, in its relationship with DB Air, Miami Air endeavored strenuously and alone to achieve optimal compliance with DOT regulations in a harsh economic setting, an effort that labored against the powerful pull of a well-established industry practice. Miami Air states that, when its effort was unavailing, Miami Air voluntarily terminated a lucrative contract with DB Air, a contract involving a significant fraction of Miami Air's operating fleet. Miami Air states that the termination was commenced by a notice issued well in advance of the beginning of DOT's investigation. Additionally, Miami Air states that no members of the public lost any money or suffered any inconvenience to their travel plans as a result of Miami Air's relationship with DB Air. Miami Air states that it took extraordinary measures to assure that would be the case.

We have carefully considered the facts of this case including those set forth by Miami Air and we continue to believe enforcement action is necessary. Miami Air, in order to avoid litigation and without admitting or denying the alleged violations, agrees to the issuance of this order to cease and desist from future violations of 49 U.S.C. § 41712 and to an assessment of \$15,000 in compromise of potential civil penalties. This compromise assessment is appropriate in view of the circumstances in this case, in particular, the fact

that Miami Air voluntarily terminated its relationship with DB Air prior to being contacted by the Enforcement Office. In light of these facts and Miami Air's full cooperation in this matter, this compromise serves the public interest. This settlement, moreover, represents a deterrent to similar conduct in the future by Miami Air and other carriers.

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 the order as being in the public interest;
2. We find that Miami Air International, Inc., by facilitating unauthorized indirect air carrier operations by DB Air, Ltd., engaged in an unfair and deceptive practice and an unfair method of competition in violation of 49 U.S.C. § 41712;
3. Miami Air International, Inc., and all other entities owned and controlled by, or under common ownership and control with Miami Air International, Inc., and their successors and assignees, as well as the owners and officers of all such companies, are ordered to cease and desist from further violations of 49 U.S.C. § 41712;
4. Miami Air International, Inc., is assessed \$15,000 in compromise of civil penalties that might otherwise be assessed for the violations described in ordering paragraph 2 above. Of the assessed penalty, \$7,500 is due and payable within 30 days of the date of the issuance of this order. The remaining \$7,500 shall be suspended for one year following the issuance of this order, and then forgiven, unless, during this time period, Miami Air International, Inc., 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
5. Payment 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 instructions contained in the Attachment to this order. Failure to pay the penalty as ordered shall also subject Miami Air International, Inc., to an assessment of interest, penalty, and collection charges under the Debt Collection Act, and possible enforcement action for failure 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:

ROSALIND A. KNAPP
Deputy General Counsel

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