

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

Issued by the Department of Transportation
on the fourth day of April, 2005

Docket OST-2005-20077

St. Barth Commuter, SARL

Violations of 49 U.S.C. §§ 41301 and 41712

Served April 4, 2005

CONSENT ORDER

This consent order concerns unauthorized holding out and operation of air transportation by St. Barth Commuter, SARL ("St. Barth"), a foreign air carrier. The unauthorized holding out and operations by St. Barth violates the licensing requirements of 49 U.S.C. § 41301 and constitutes an unfair and deceptive practice and unfair method of competition in violation of 49 U.S.C. § 41712. This order directs St. Barth to cease and desist from future violations and assesses the carrier compromise civil penalties of \$50,000.

Section 41301 requires that a foreign air carrier hold a permit conferring economic authority from the Department in order to engage in air transportation to or from the United States.¹ From the standpoint of the requirements of section 41301, the holding out of service, as well as the actual operation of air service, constitutes "engaging" in air transportation. Violations of section 41301 also constitute unfair and deceptive practices and unfair methods of competition prohibited by 49 U.S.C. § 41712.

St. Barth is a provider of air transport services, chiefly as a commuter airline licensed in France and based in St. Barthélemy, French West Indies. After St. Barth obtained an amended blanket waiver for operation to and from the Virgin Islands and Puerto Rico from the Federal Aviation Administration covering that agency's safety certification requirements, it began carrying passengers to and from St. Barthélemy and the U.S. Virgin Islands (St. Thomas and St. Croix) and San Juan, Puerto Rico.

¹ This authority is separate and distinct from the safety authority that such a carrier must obtain from the FAA.

St. Barth conducted these operations for an extended period of time without obtaining economic authority from the Department. Prior to receiving economic authority from the Department, St. Barth printed and distributed brochures advertising its charter flights and also verbally informed travel agencies about its flights. St. Barth also offered information about its unlawful flight services on its web site, www.stbarthcommuter.com.

On August 26, 2004, St. Barth finally filed an application for exemption authority to conduct charter operations from St. Barthélemy and several other French West Indies territories to the U.S. Virgin Islands and Puerto Rico. The Department granted the application on October 7, 2004.

St. Barth's operations as a foreign entity engaging in air transportation to and from the United States without appropriate economic authority from the Department violated 49 U.S.C. § 41301, and also constituted an unfair and deceptive practice and unfair method of competition prohibited by 49 U.S.C. § 41712.

In explanation and mitigation, St. Barth Commuter states that its goal at all times has been to comply with all of the Department's requirements. St. Barth explains that it believed that the Letter of Authorization it received from the Federal Aviation Administration provided all the authorization necessary to fulfill the Department's rules and regulations. Since the carrier provided its Air Operator Certificate to obtain that Letter of Authorization, St. Barth states that it believed that the FAA was at all times aware of the carrier's intention to engage in air transportation to and from the United States. Moreover, St. Barth advises that its dealings with other U.S. government agencies were likewise overt, for example, it informed the pertinent U.S. Customs and Immigration office before each flight, and arranged to have its contracting handlers request landing rights at each airport before the carrier conducted each flight.

According to St. Barth, when it learned that it had not obtained all of the necessary authority, it immediately applied for the required economic authority from the Department. The carrier affirms, in summary, that it has taken the necessary steps to assure that both its conduct and its compliance disposition are altogether excellent, and will remain so in the future.

The Enforcement Office has carefully considered the information provided by St. Barth Commuter, SARL, but continues to believe that enforcement action is warranted. In this connection, the Enforcement Office and St. Barth have reached a settlement of this matter. St. Barth consents to the issuance of an order to cease and desist from future violations of 49 U.S.C. §§ 41301 and 41712, and to the assessment of \$50,000 in compromise of potential civil penalties. Of the total penalty amount, \$25,000 shall be due within 15 days of the date of issuance of this order. The remaining \$25,000 shall be suspended for twelve months after the date of issuance of this order, and then forgiven, unless St. Barth violates this order's cease and desist or payment provisions, in which case the entire sum will

become due and payable. We believe that this compromise assessment is appropriate and serves the public interest. It represents an adequate deterrence to future noncompliance with the Department's licensing requirements by St. Barth Commuter, SARL, as well as by other companies engaged in similar air services.

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 St. Barth Commuter, SARL, violated 49 U.S.C. § 41301 by engaging in air transportation to and from the United States without economic authority;
3. We find that by engaging in the conduct and violations described in paragraph 2 above, St. Barth Commuter, SARL, also engaged in an unfair and deceptive practice and unfair method of competition in violation of 49 U.S.C. § 41712;
4. St. Barth Commuter, SARL, and all other entities owned or controlled by St. Barth Commuter, SARL, and their successors and assignees, are ordered to cease and desist from violations of 49 U.S.C. §§ 41301 and 41712;
5. St. Barth Commuter, SARL, is assessed \$50,000 in compromise of potential civil penalties that might otherwise be assessed for the violations found in paragraphs 2 and 3 of this order. Of the total penalty amount, \$25,000 shall be due within 15 days of the date of issuance of this order. The remaining \$25,000 shall be suspended for twelve months after the date of issuance of this order, and then forgiven, unless St. Barth violates this order's cease and desist or payment provisions, in which case the entire sum will become due and payable immediately;
6. Failure to pay the compromise assessment as ordered will subject St. Barth Commuter, SARL, to the assessment of interest, penalty, and collection charges under the Debt Collection Act, and possible enforcement action for failure to comply with this order; and

7. 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.

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

(SEAL)

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