



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

Issued by the Department of Transportation
on the 9th day of September, 2005

AMI Jet Charter, Inc.

**Violations of 49 U.S.C. § 41101
and 14 CFR Part 298**

Docket OST 2005-20077

Served September 9, 2005

CONSENT ORDER

This consent order concerns unauthorized interstate and foreign air transportation by AMI Jet Charter, Inc., (AMI) which, while under the actual control of a non-U.S. citizen corporation, engaged in air services as a common carrier between points in the United States and between points in the United States and points abroad. AMI's conduct in this regard violated 49 U.S.C. § 41101 and 14 CFR Part 298. This order directs AMI to cease and desist from such future unlawful conduct and assesses a compromise civil penalty of \$250,000.

In order to engage directly or indirectly in air transportation, air carriers must hold economic authority from the Department, either in the form of a certificate of public convenience and necessity issued pursuant to 49 U.S.C. §§ 41101 and 41102, or in the form of an exemption from the certificate requirement, such as those applicable to direct air carriers operating as air taxis under 14 CFR Part 298 or to indirect air carriers acting as air freight forwarders under 14 CFR Part 296. (This economic authority is in addition to any safety authority necessary under applicable Federal Aviation Administration (FAA) requirements.) Part 298 exempts qualified air taxis from section 41101, but only if they comply with the requirements of Part 298, including the requirement that they remain citizens of the United States.¹

Under 49 U.S.C. § 40102(a)(15), as amended by Vision 100—Century of Aviation Reauthorization Act (P.L. 108-176, 117 Stat. 2490, December 12, 2003), a “citizen of the United States” includes a corporation organized in the United States that 1) meets certain

¹ 14 CFR 298.11. We also note that section 298.21 requires applicants for the exemption authority set forth in section 298.11 to certify that they are U.S. citizens.

specified standards regarding the citizenship of its president, officers and directors, and holders of its voting interests and 2) is under the actual control of citizens of the United States.² The Department has customarily looked at the totality of the circumstances to determine whether a carrier was under the *de facto* control of U.S. citizens.³

AMI is a California corporation registered with the Department since 1998 as an air taxi operator pursuant to 14 CFR Part 298 when it acquired Aviation Methods, its predecessor. (AMI also holds operations specifications issued by the FAA under 14 CFR Part 135.) Between its founding in 1976 and 1998, Aviation Methods, a Part 298 carrier and AMI's predecessor for purposes of AMI's charter operations, was a U.S. citizen corporation for Departmental economic licensing purposes. In 1998, however, the Part 298 carrier underwent a substantial restructuring when its charter operations were acquired by AMI. At that time, 25 percent of AMI's voting stock and 49 percent of its total equity were held by TAG Aviation USA, Inc., (TAG USA) or its predecessor. TAG USA was and continues to be a majority-owned subsidiary of TAG Aviation Holding, S.A., (TAG Holding) a Swiss-registered and foreign-owned holding company. TAG Holding, through its various subsidiary companies, engages in, among other things, the sale, management, leasing, charter brokering, maintenance and repair, and servicing of business jet aircraft. TAG USA, by dint of being owned by TAG Holding, is a foreign corporation for Departmental licensing purposes.

After the restructuring described above, AMI continued to meet the numerical requirements that define a U.S. citizen corporation in 49 U.S.C. § 40102(a)(15): its president, more than two-thirds of its officers and directors and the holders of three-quarters of its voting interest continued to be U.S. citizens. Furthermore, two U.S. citizens retained 51 percent of AMI's total equity, thus enabling AMI to continue to meet a prong of what at the time was the Department's "actual control" requirement regarding the level of total equity in an air carrier that must be held by U.S. citizens for licensing purposes.⁴ However, a review by the Office of Aviation Enforcement and Proceedings (Enforcement Office) of the totality of the circumstances showed that AMI was clearly under the *actual* control of TAG USA and, as a result, AMI did not satisfy the Department's citizenship requirements.

The Enforcement Office's investigation revealed numerous instances in which individuals with oversight and decision-making power over the entirety of AMI's

² Specifically, section 40102(a)(15) states that a U.S. citizen corporation is one in which the president and at least two-thirds of the board of directors and other managing officers are citizens of the United States and at least 75 percent of the voting interest is owned or controlled by persons who are citizens of the United States. An actual control test for citizenship historically was applied by the Department before Vision 100's enactment.

³ See, e.g., *In the matter of the citizenship of DHL Airways, Inc. n/k/a ASTAR Air Cargo, Inc.*, Order 2004-5-10 at 6 (May 13, 2004) (assessment of actual control based on "totality of the circumstances"), and at 8, quoting *Acquisition of Northwest Airlines by Wings Holdings*, Order 89-9-51 at 5 (Sept. 29, 1989) ("control standard is a *de facto* one").

⁴ Since 1991, the Department has allowed certain foreign entities from open skies countries to hold 49 percent of the total equity in an air carrier. See, e.g., *In the Matter of the Acquisition of Northwest Airlines by Wings Holdings, Inc.*, Order 91-1-41 (Jan. 23, 1991).

operations were employed by TAG Holding or TAG USA. For example, after the 1998 restructuring in which AMI assumed Aviation Methods' charter operations, a former officer of Aviation Methods became the chief executive officer (CEO) of TAG Holding (a position he still holds). However, notwithstanding this individual's new position as CEO of TAG Holding, he acquired and then retained, as part of his personal portfolio, a substantial percentage of AMI's voting stock. His voting interest, when combined with the 25 percent voting interest held by TAG USA, a subsidiary of his employer, then gave the TAG USA/TAG Holding the ability to control indirectly a majority of AMI's voting stock. In addition, at the same time, there were numerous interlocking officers and directors, including an individual who served simultaneously from 2000 to 2004 as vice president of AMI and as president and CEO of TAG USA, and another individual who was, at various times, AMI's president and chief financial officer (CFO) while also serving as CFO of TAG USA. Furthermore, for a period of time including July 2000, although each member of AMI's Board of Directors was a U.S. citizen, all four of those directors held senior management positions at TAG USA.⁵

The Enforcement Office's investigation found other facts that, based on Department precedent, are also indicia of AMI's past foreign control. These included matters related to AMI's capitalization and business activities, administrative and support services, and the marketing of AMI's services as "TAG Aviation."⁶ In sum, when taken together, many of the above indicia compel the conclusion that AMI was under the actual control of TAG USA, a foreign citizen, in violation of 49 U.S.C. § 41101 and 14 CFR Part 298.

In mitigation, AMI states that it and its predecessor, Aviation Methods, have always enjoyed a good reputation for regulatory compliance, and reasonably believed that at the time it acquired the charter operations of Aviation Methods as described above, it was a citizen of the U.S. as defined in the applicable statute in effect at that time, which did not expressly include the "actual control" test of citizenship. AMI further notes that an air taxi engaged solely in passenger charter operations—such as AMI—would have limited contact with the Department. According to AMI, at the time of its acquisition of Aviation Methods' charter operations, AMI's contact with DOT had been limited to registering under Part 298, a relatively straightforward process focusing on the registrant's contact information and aircraft fleet composition. Part 298 charter carriers were not—and are still not—required to undergo a "fitness" determination which would have involved a detailed examination of AMI's citizenship. According to AMI, it is also significant that AMI consulted reputable aviation counsel which, in turn, coordinated with FAA in structuring the transaction to acquire Aviation Method's charter operations, including establishing AMI as an independent U.S. citizen air taxi operator. As such, since "citizenship" was common to both FAA Part 135 certification and DOT Part 298 authorization, AMI argues that it was not unreasonable to conclude that acceptance by

⁵ In December 2004, when asked by the Enforcement Office, AMI stated that only one of three AMI directors currently held a management position with TAG USA.

⁶ See, e.g., *Air-Evac Air Ambulance Inc. Concerning U.S. Citizenship*, Order 96-6-13, issued June 7, 1996, withdrawing Order to Show Cause 95-3-3 (March 7, 1995).

FAA of AMI's status as a Part 135 air taxi determined AMI's U.S. citizenship for DOT purposes.

After being contacted by the Enforcement Office, AMI states that it took certain steps to avoid even the perception of foreign control by ensuring that at least two-thirds of its officers and directors (all of whom were U.S. citizens) had no interlocking positions with TAG USA or any other TAG company and by placing the voting stock of the AMI shareholder who also served as the CEO of TAG Holding in a voting trust.

AMI states that it also embarked on a comprehensive restructuring of its ownership and management. Among other things, it worked closely with Department staff and outside counsel experienced in DOT regulatory matters and engaged an independent voting trustee to hold the voting stock in AMI of two U.S. citizen shareholders with current or former ties to TAG USA/Holding until the completion of AMI's restructuring plan. AMI states that the objective of these efforts was to ensure that AMI's restructuring plan and its relationship with TAG USA avoided even the perception of foreign control and that a re-structured AMI conformed to the statutory definition of U.S. citizenship.

To underscore its commitment to restructure in a manner acceptable to DOT, AMI states that it consulted extensively with counsel, and AMI's shareholders and senior executives of AMI and TAG USA met on numerous occasions with DOT to present in person AMI's restructuring plan, as revised from time to time, and the resulting relationship between AMI and TAG USA. The purpose of these meetings, according to AMI, was not only to develop a mutually acceptable restructuring plan, but also to give the Department's staff, including the Enforcement Office, an opportunity to confirm first hand the good faith and cooperation of AMI's shareholders and management—which AMI submits has been exemplary—in fashioning the plan. According to AMI, the costs associated with this restructuring effort have exceeded \$250,000 and are still being incurred as parts of the restructuring plan are being implemented. These diligent efforts undertaken to address the Enforcement Office's concerns, AMI points out, have resulted in a plan which has paved the way for this settlement.

The Enforcement Office views seriously AMI's violations of the Department's licensing requirements and, after carefully considering the facts of this case, continues to believe that enforcement action is necessary. AMI, 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. § 41101 and 14 CFR Part 298 and to an assessment of \$250,000 in compromise of potential civil penalties otherwise due and payable. Of this amount, \$125,000 shall be paid under the terms described below. The remaining \$125,000 shall be suspended for 12 months following the service date of this order and then forgiven unless AMI violates this order's cease and desist or payment provisions, in which case the entire unpaid amount shall become due and payable immediately and AMI may be subject to additional enforcement action. This compromise assessment is appropriate in view of the nature and extent of the violations in question and serves the public interest. Moreover, this settlement creates an incentive

for all carriers, including AMI, to comply with the U.S. citizenship requirements of 49 U.S.C. § 41101 and 14 CFR Part 298.

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, as described above, AMI Jet Charter, Inc., engaged in interstate and foreign air transportation while it was under the actual control of foreign interests and, therefore, not a citizen of the United States as defined in 49 U.S.C. § 40102(a)(15);
3. We find that by engaging in the conduct described in ordering paragraph 2, above, AMI Jet Charter, Inc., violated 49 U.S.C. § 41101 and 14 CFR Part 298;
4. We order AMI Jet Charter, Inc., and all other entities owned and controlled by or under common ownership and control with AMI Jet Charter, Inc., and their successors and assignees to cease and desist from further similar violations of 49 U.S.C. § 41101 and 14 CFR Part 298;
5. We assess AMI Jet Charter, Inc., a compromise civil penalty of \$250,000 in lieu of civil penalties that might otherwise be assessed for the violations described in ordering paragraph 3, above. Of this total amount, \$62,500 shall be due and payable 30 days after the service date of this order, and \$62,500 shall be due and payable 12 months after the service date of this order. The remaining \$125,000 shall be suspended for 12 months after the service date of this order, and then forgiven unless AMI Jet Charter, Inc., violates this order's cease and desist or payment provisions, in which case the entire unpaid amount shall become due and payable immediately and AMI Jet Charter, Inc., may be subject to additional enforcement action. Failure to pay this penalty as ordered shall also subject AMI Jet Charter, Inc., to the assessment of interest, penalty, and collection charges under the Debt Collection Act; and
6. We order AMI Jet Charter, Inc., to make the payments set forth in ordering paragraph 5, above, by wire transfer through the Federal Reserve Communications System, commonly known as "Fed Wire," to the account of the U.S. Treasury. The wire transfers 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 initiative.

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>