



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

Issued by the Department of Transportation  
on the 23rd day of January, 2006

**I.M.P. Group Limited d/b/a Exequire  
Violations of 49 U.S.C. §§ 41703 and 41712  
and 14 CFR Part 294**

**Served January 23, 2006**

**OST 2006-23528**

**CONSENT ORDER**

This order concerns unauthorized passenger air service between various cities in the United States by I.M.P. Group Limited d/b/a Exequire, a Canadian charter air taxi registered with the Department pursuant to 14 CFR Part 294. The carriage of local traffic for compensation or hire by foreign air carriers, including Canadian charter air taxis, between two points in the United States, a practice commonly referred to as cabotage, is a violation of 49 U.S.C. § 41703, which prohibits cabotage except under very limited circumstances that do not apply here. Registered Canadian charter air taxis that engage in cabotage without Departmental authorization also violate 14 CFR 294.81, which applies the general statutory prohibition in section 41703 specifically to them as a class of foreign air carrier. Violations of section 41703 and Part 294 also constitute an unfair and deceptive trade practice and unfair method of competition in violation of 49 U.S.C. § 41712. This consent order directs Exequire to cease and desist from such further violations and to pay a compromise civil penalty of \$20,000.

The violations that are the subject of this order occurred between October 17 and October 19, 2005, when an Exequire-operated Challenger 604 transported passengers for compensation or hire over the following route: Columbus, Ohio—Rogers, Arkansas—Amarillo, Texas—Columbus, Ohio. On October 17, 2005, the aircraft entered the United States at Columbus from Montreal, Canada, carrying two passengers. At Columbus, a third passenger boarded the aircraft and accompanied the party to Rogers and Amarillo before returning to Columbus, where he terminated his journey. At Rogers, a fourth passenger boarded the aircraft and accompanied the party to Amarillo, where he terminated his journey. On October 19, 2005, the aircraft departed the U.S. at Columbus and returned to Montreal with the two Montreal-originating passengers and a fifth passenger who boarded the aircraft that day in Columbus. The flights were performed pursuant to a single-entity charter<sup>1</sup> contract between Exequire and

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<sup>1</sup> A single-entity charter is a charter in which the cost is borne directly by the charterer and not directly or indirectly by the individual passengers.

the charterer, a Montreal-based media and entertainment company. All of the passengers were employees of the charterer.

For purposes of determining whether a violation of 49 U.S.C. § 41703 occurred, the relevant analytical perspective here is not that of the charterer, i.e., the entity that contracted and paid for the air transportation provided by Exeaire, but that of each individual passenger and his or her particular journey, as discussed below. If, for the purposes of such analysis, the movements of individual passengers were deemed as collectively comprising a single continuous international journey of the charterer, then foreign air carriers could transport potentially large numbers of passengers on journeys solely between United States points pursuant to “stopovers” by the charterer at those points, so long as the aircraft being used were operated pursuant to single-entity charter agreements for operations that began and/or ended outside the U.S. As a consequence, foreign air carriers could circumvent the cabotage prohibition simply by styling their charter contracts as being international in character when, in fact, the actual movement of most or all of the passengers resulting from those contracts occurred entirely within the U.S. Such a result would eviscerate the statutory prohibition against cabotage and permit the diversion of domestic traffic to foreign air carriers.

In the instant case, there was a single charterer contracting in Canada for air transportation for its employees. The resulting movements involved five passengers to, from, or between points in the United States. We will look at each in turn: First, with respect to the two Montreal-originating passengers, their movements did not constitute cabotage. Rather, the movement of each constituted a single (as to the individual) continuous international journey originating and terminating in Canada with four stopovers in the United States (Montreal-Columbus-Rogers-Amarillo-Columbus-Montreal). Since Exeaire flew these passengers into the U.S. from Canada, it could lawfully transport them to other U.S. points, provided that there was no break in each passenger’s journey at any point prior to the terminal point.<sup>2</sup> Second, with respect to the passenger who commenced his journey on the flight from Columbus to Montreal on October 19<sup>th</sup>, his movement did not constitute cabotage. Rather, it occurred as part of the carrier’s lawful exercise of its Fourth Freedom rights.<sup>3</sup>

However, regarding the passengers who boarded the aircraft in Columbus and Rogers, and who terminated their respective journeys in Columbus and Amarillo, their transport constituted cabotage because each was carried only between points in the United States on flights operated by Exeaire for which it was compensated.<sup>4</sup> The fact that these passengers

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<sup>2</sup> We note that had a second foreign air carrier operated any of the U.S. to U.S. legs of the operation, the second carrier would have engaged in unlawful cabotage service. We also note that these passengers could lawfully have terminated their journey at any of the points at which they stopped, rather than returning to Canada.

<sup>3</sup> We note that Exeaire could permissibly have picked this passenger up at any other U.S. point prior to the second stop at Columbus, so long as the passenger was ultimately transported to a terminal point in Canada.

<sup>4</sup> At least one other Canadian air carrier has been found to have engaged in cabotage under circumstances similar to those of the instant case, i.e., the carrier moved a number of passengers on journeys entirely between U.S. points pursuant to single-entity charters that began and/or ended in Canada. *London Air Services Limited, Violations of 49 U.S.C. §§ 41301 and 41712*, Order 2003-1-9 (Jan. 6, 2003).

did not personally pay for their transportation is irrelevant. So too is Exeaire's assertion detailed below that, for transporting these passengers, it did not receive from the charterer any additional compensation over the base charter price. This assertion, if granted weight, would mean that these passengers were transported for free, rather than for compensation, and that there could therefore be no violation of the 49 U.S.C. § 41703. However, like viewing the movements of individual passengers on a single-entity charter flight as being parts of a single collective international journey of the charterer, accepting this line of reasoning would create an avenue for easily circumventing the cabotage prohibition. The result would be that on flights originating or terminating outside the United States, foreign air carriers could transport large numbers of passengers solely between U.S. points simply by characterizing the transportation of those passengers as being "free" or "at no additional cost," while purporting to be compensated only for transporting other passengers whose journeys began or ended outside of the U.S.

For purposes of its future operations, Exeaire should take care that any passenger it enplanes at a point in the United States, regardless of the reason for the passenger's journey (e.g., business or pleasure), his or her country of citizenship, whether the passenger or another party (e.g., the passenger's employer) paid for the transportation, or whether the transportation was arranged or paid for in Canada, must be transported by Exeaire to Canada<sup>5</sup> as part of a single continuous international journey.

In mitigation, Exeaire acknowledges that it operated a single-entity executive charter flight for compensation between Montreal and several points in the United States and then back to Montreal over a three-day period in October 2005. Exeaire also acknowledges that, pursuant to this flight, it transported between U.S. points two employees of the charterer whom Exeaire asserts were invited to join the flight by other employees of the charterer who were already aboard the flight. Exeaire maintains that it did not solicit the two passengers at issue and Exeaire states that it neither requested nor received any remuneration from them, nor did it charge or receive from the charterer any increase in its compensation for performing the charter flight because of their presence aboard the aircraft. Exeaire also maintains that it had a good faith belief that its transportation of the two U.S.-originating passengers to other U.S. points did not constitute cabotage within the meaning of 49 U.S.C. § 41703.

The Office of Aviation Enforcement and Proceedings (Enforcement Office) has carefully considered all of the information provided by I.M.P. Group Limited d/b/a Exeaire, but continues to believe that enforcement action is warranted. In this connection and in order to avoid litigation, the Enforcement Office and I.M.P. Group Limited d/b/a Exeaire have reached a settlement of this matter. Without admitting or denying the violations described above, I.M.P. Group Limited d/b/a Exeaire agrees to the issuance of this order to cease and desist from future violations of 49 U.S.C. §§ 41703 and 41712 and 14 CFR Part 294 and to the assessment of \$20,000 (US) in compromise of potential civil penalties otherwise assessable. Of this amount, \$10,000 shall be paid under the terms described below. The remaining \$10,000 shall be suspended for 12 months following the service date of this order and then forgiven unless I.M.P. Group Limited d/b/a Exeaire violates this order's cease and desist or payment provisions, in which case the entire unpaid amount shall become due and

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<sup>5</sup> The passenger may also be transported to a third country, to the extent that such transportation is permissible under the United States-Canada bilateral aviation agreement then in effect.

payable immediately and I.M.P. Group Limited d/b/a Exeaire may be subject to additional enforcement action. The Enforcement Office believes this compromise is appropriate in view of the nature and extent of the violations in question, serves the public interest, and creates an incentive for all foreign air carriers to comply fully with the requirements of sections 41703 and 41712 and, as applicable, Part 294.

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 I.M.P. Group Limited d/b/a Exeaire violated 49 U.S.C. § 41703 and 14 CFR 294.81 by holding out and performing air transportation for compensation or hire on journeys between points entirely within the United States.
3. We find that, by engaging in the conduct and violations described in paragraph 2, above, I.M.P. Group Limited d/b/a Exeaire, engaged in an unfair and deceptive practice and unfair method of competition in violation of 49 U.S.C. § 41712.
4. We order that I.M.P. Group Limited d/b/a Exeaire and all other entities owned and controlled by, or under common ownership and control with I.M.P. Group Limited d/b/a Exeaire and their successors and assignees cease and desist from future violations of 49 U.S.C. §§ 41703 and 41712 and 14 CFR 294.81.
5. We assess I.M.P. Group Limited d/b/a Exeaire a compromise civil penalty of \$20,000 (US) in lieu of civil penalties that might otherwise be assessed for the violations found in paragraphs 2 and 3, above. Of this total amount, \$10,000 shall be due and payable 30 days after the service date of this order. The remaining \$10,000 shall be suspended for 12 months after the service date of this order and then forgiven, unless, during this time, I.M.P. Group Limited d/b/a Exeaire violates this order's cease and desist or payment provisions, in which case the entire amount shall become due and payable immediately and I.M.P. Group Limited d/b/a Exeaire may be subject to additional enforcement action. Failure to pay the penalty as ordered shall subject I.M.P. Group Limited d/b/a Exeaire to the assessment of interest, penalty, and collection charges under the Debt Collection Act.
6. We order I.M.P. Group Limited d/b/a Exeaire to make the payment 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 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 ten days after its service 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)*

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