



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

Issued by the Department of Transportation  
on the 1st day of December, 2006

**China Airlines, Ltd.**

**Violations of 49 U.S.C. § 41712  
and 14 CFR 399.84**

**Docket OST 2006-23528**

**Served December 1, 2006**

**CONSENT ORDER**

This consent order concerns fare displays on the U.S. website of China Airlines, Ltd., (<https://calec.china-airlines.com/olb/us/asp/class.asp>) and certain displays of China Airlines' fares on Travelocity.com, a major travel vendor and agent of China Airlines that failed to comply with the Department of Transportation's rule on full fare advertising, 14 CFR 399.84. These fare displays, in addition, constituted an unfair and deceptive trade practice and an unfair method of competition in violation of 49 U.S.C. § 41712. Based on these violations, the order directs the carrier to cease and desist from future violations. Moreover, concerning the fare displays on China Airlines' U.S. website, the order assesses a compromise civil penalty of \$29,500.

To ensure that consumers receive accurate and complete information on available air fares, section 399.84 of the Department's rules requires that fare advertisements by air carriers or their agents, in this instance Travelocity.com, state the full price to be charged the consumer. Under its enforcement case precedent, the Department has allowed certain government-imposed taxes and fees to be stated separately in fare advertisements provided that the consumer is informed of these charges in conveniently accessible text.<sup>1</sup> However, carrier-imposed fees and charges, such as insurance and fuel surcharges, must be included in the advertised fare.<sup>2</sup>

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<sup>1</sup> Fees or charges may be listed separately provided that they are levied by a government entity on a per-passenger basis, are not *ad valorem* in nature, and their existence and amount are clearly indicated in the advertisement so that the consumer can determine the full fare to be paid. Examples of such additional charges are passenger facility charges (PFCs) and international departure taxes. See *Société Air France*, Order 2005-7-3, and cases cited therein.

<sup>2</sup> In addition, the Transportation and Security Administration's rule on the September 11<sup>th</sup> Security Fee, 14 CFR 1510.7 requires that fare advertisements by carriers or their agents include the security service fee, if applicable in the advertised fare, or a description in a link proximate to the stated fare of the fee as "September 11<sup>th</sup> Security Fee".

The China Airlines website violated these Department requirements by displaying fares which did not include insurance or fuel surcharges and which failed to list additional taxes and fees appropriately. The website offered fares on its initial screens that gave a base fare that excluded the carrier's insurance and fuel surcharges and certain taxes and fees without an explanation as to their nature or amount. Only in subsequent screens, after a consumer selected a flight itinerary and submitted personal data, did the website give the full fare including surcharges and taxes.

In addition, China Airlines has a sales agency relationship with Travelocity.com, a prominent Internet vendor of travel services which has sold tickets through that site for a number of years. In connection with the sales of tickets on China Airlines' flights, Travelocity.com displayed China Airlines fare offerings in a number of different formats, including a flexible search feature referred to by Travelocity.com as its "Flexible Fare Finder" (FFFi). On the FFFi the consumer did not specify travel dates but requested the lowest published fares in a city-pair market over a period of up to nine months from the date of inquiry. This search path produced an initial fare display which for certain carriers, including China Airlines, omitted carrier-imposed surcharges, such as fuel surcharges, from the fare quotation. It was only after a consumer selected a specific carrier, date of travel and itinerary, with specific flights, that the Travelocity.com site would reprice the ticket cost, providing a complete price including any carrier-imposed surcharges as well as government-imposed fees. In a recent consent order, the Department found that Travelocity.com's FFFi search function was in violation of the full-fare advertising rule and 49 U.S.C. § 41712.<sup>3</sup>

The omission of fuel surcharges from the initial fare quotes on FFFi was the result of the software methodology embodied in the Travelocity.com site and changes in the manner in which carriers, in particular foreign carriers, among them China Airlines, filed carrier-imposed surcharges after October 2004.<sup>4</sup> Travelocity.com gathered its fare data from Sabre, which derived its information from filings with the Airline Tariff Publishing Company (ATPCO), but Travelocity.com's fare data, for purposes of the FFFi, were compiled on the basis of city-pair markets. In their filings with ATPCO subsequent to October 2004, several carriers, among them China Airlines, began filing surcharges in a format that was not market-specific but was linked to individual itineraries and flight numbers.<sup>5</sup> As a result, for carriers filing in the new format, referred to as the YQ/YR

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<sup>3</sup> Order 2006-10-4. That order mentioned that the Enforcement Office was conducting related investigations of a number of individual carrier websites that appeared to display fare quotations that did not conform to the requirements of section 399.84.

<sup>4</sup> By a notice dated October 14, 2004, the Department stated that, with regard to tariffs filed with the Department, it was a matter of carrier discretion whether to file surcharges as general rules tariffs. This replaced the prior prohibition, as a matter of policy, on filing carrier surcharges in individual carrier tariffs. In that notice, however, the Department made clear that its revised tariff-filing policy did not affect carriers' obligations to comply with Department advertising requirements.

<sup>5</sup> The previous filing format submitted carrier surcharges as a "Category 12" charge which was market-specific and which ensured the charges were included in fares displayed on the FFFi. However, subsequent to October 2004 carriers began filing in a YQ/YR format, which was flight- rather than market-specific.

format, the initial fares displayed in the FFFi did not include surcharges and were generally lower than fares of carriers filing in the prior format, which continued to include any such charges. When fares were displayed in the FFFi for a city-pair market, from low to high, the ranking conferred a bias in favor of those carriers, such as China Airlines, which filed in the new format, and their fares tended to appear at the top of the display. This occurred despite the fact that the actual total cost of these fares, with all relevant surcharges included, were often higher than fares that were placed below them on the initial display.

The disparity in the display of fares depending on the method in which carriers elected to file surcharges was deceptive to consumers and provided an unfair competitive advantage to those carriers filing surcharges in the flight-specific (YQ/YR) format. As Travelocity.com's principal in its contractual sales arrangement, China Airlines was jointly responsible for the advertising practices of its agent and therefore shares in the liability for the deficient fare displays on the Travelocity.com site. By this order, we are directing the carrier to monitor the display of its fares on the websites of its sales agents to ensure that these sites, as much as the China Airlines home site, comply with section 399.84.

In mitigation, China Airlines points out that in response to the inquiries of the Office of Aviation Enforcement and Proceedings (Enforcement Office), it promptly revised the initial screen of its website to include the carrier's insurance and fuel surcharge in its advertised fares and a link with the appropriate disclosure statement regarding additional applicable taxes and fees.<sup>6</sup> The carrier also points out that it promptly removed its fares from the Travelocity.com's FFFi after being contacted by the Enforcement Office regarding its concerns with the site.<sup>7</sup>

The omissions of insurance and fuel surcharges on China Airlines' website continued over a significant period of time, as did similar omissions in quotations of China Airlines' fares available on Travelocity.com's FFFi. In view of the duration and wide dissemination of these fare quotations that violated section 399.84, we believe that enforcement action is warranted. In order to avoid litigation and without admitting or denying the alleged violations, China Airlines agrees to the issuance of this order to cease and desist from future violations of 49 U.S.C. § 41712 and 14 CFR 399.84, including failing to monitor the display of its fares on the websites of its sales agents to ensure that these sites, as well as China Airlines own site, comply with section 399.84 and to an assessment of \$29,500 in compromise of potential civil penalties of which one-half will be payable according to the payment schedule described below and the other half will be forgiven if there are no violations of this order over the next year. This compromise assessment, based exclusively on the flaws occurring on the air carrier's website, is appropriate in view of the nature and extent of those violations in question, and serves the public interest. China Airlines, moreover, is advised that it will continue to be held

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<sup>6</sup> This new link also includes a description of the September 11<sup>th</sup> Security Fee in accordance with 49 CFR 1510.7.

<sup>7</sup> Travelocity.com's remedial steps in response to the Department's investigation are described in Order 2006-10-4.

accountable in the future for advertisements of its fares appearing on the websites of its agents. This settlement, moreover, represents a deterrent to future noncompliance with the Department's advertising regulations and section 41712 by China Airlines, as well as by other sellers of air transportation.

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 China Airlines, Ltd., violated 14 CFR 399.84 by advertising fares on its Internet site without proper disclosure of additional government fees and taxes, and by failing to include a separate insurance and fuel surcharge in fares displayed on its website, as described above;
3. We find that China Airlines, Ltd., violated 14 CFR 399.84 by allowing non-compliant displays of China Airlines fares to be displayed on the Travelocity.com Flexible Fare Finder over an extended period, as described above;
4. We find that by engaging in the conduct described in paragraphs 2 and 3, above, China Airlines, Ltd., has engaged in unfair and deceptive trade practices and unfair methods of competition in violation of 49 U.S.C. § 41712;
5. China Airlines, Ltd., its successors, affiliates, and assigns, are ordered to cease and desist from further violations of 14 CFR 399.84 and 49 U.S.C. § 41712;
6. China Airlines, Ltd., is assessed \$29,500 in a compromise of civil penalties that might otherwise be assessed for the violations described in ordering paragraph 2, and, to the extent that it relates to ordering paragraph 2, ordering paragraph 4. Of this total penalty amount, \$14,750 shall be due and payable within 30 days of the issuance of this order. The remaining \$14,750 shall be suspended for one year following issuance of this order, and then forgiven, unless China Airlines, Ltd., violates this order's cease and desist provision within that one-year period, or fails to comply with the order's payment provisions, in which case, the entire unpaid portion of the \$29,500 penalty shall become due and payable immediately, and the company may be subject to further enforcement action; 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. Failure to pay the penalty as ordered shall also subject China Airlines 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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