



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

Issued by the Department of Transportation
On the Sixteenth Day of October, 2009

TAP Portugal

**Violations of U.S. Department of
Transportation Order 2007-2-16**

Docket OST 2009-0001

Served October 16, 2009

CONSENT ORDER

This consent order concerns reporting delinquencies by TAP Portugal (TAP) that constitute violations of Department Order 2007-2-16, issued on February 13, 2007. This order directs TAP to cease and desist from future violations, and assesses the carrier a compromise civil penalty of \$10,000.

On November 4, 2005, TAP and several other Star Alliance partners¹ (Joint Applicants) filed a Joint Application with the Department, seeking authority under 49 U.S.C. §§ 41308 and 41309 to operate a global alliance with antitrust immunity. On February 13, 2007, the Department issued its final finding in Order 2007-2-16, granting antitrust immunity to all Joint Applicants, subject to certain terms and conditions, among which Ordering Paragraph 6 directs TAP, Air Canada, Polskie Linie Lotnicze LOT, S.A., and Swiss International Air Lines, Ltd., to “report full-itinerary Origin-Destination Survey of Airline Passenger Traffic for all passenger itineraries that include a United States point, beginning in the first full quarter after the issuance of a final order in this case (similar to the O&D Survey data already reported by United and immunized Star partners).” Specifically, in footnote 13 of the Order, the Department states “[w]e note that all of the Joint Applicants, except for bmi, are now obligated to report origin & destination survey data.” Thus, TAP’s obligation under the Order to report its passenger origin and destination survey data started with the second quarter of 2007 data.

TAP failed to file the reports as required, taking steps to do so only after receiving a written directive from the Bureau of Transportation Statistics (BTS) on February 26, 2009.

¹ The other Star Alliance partners who filed the Joint Application with TAP were: Air Canada, the Austrian Group, British Midland Airways Ltd., d/b/a bmi, Deutsche Lufthansa AG, Polskie Linie Lotnicze LOT, S.A., Scandinavian Airlines System, Swiss International Air Lines Ltd., and United Air Lines, Inc.

In mitigation, TAP states that it takes its regulatory obligations very seriously, as evidenced by its excellent compliance record, including its otherwise timely submission of reports. TAP explains that when it received the letter from BTS, it very promptly used the contacts provided in that letter to begin a dialogue with BTS concerning how to prepare and submit the O&D Survey reports. TAP had never before been subject to the O&D Survey reporting requirement, and the filing process is complicated. TAP's IT department needed to create a new automated program to prepare the reports. TAP states that those efforts were temporarily hampered by a platform migration of its IT systems, which consumed nearly all of its IT resources. TAP's analysts are not native English speakers; nonetheless, they were aided by the manual containing reporting instructions for foreign carriers that was provided by BTS to TAP in March 2009. TAP completed its work and was up-to-date on its O&D Survey reports by July 2009.

The Department views compliance with its orders seriously. The Office of the Assistant General Counsel for Aviation Enforcement and Proceedings (Enforcement Office) has carefully considered all the circumstances surrounding this matter, including the mitigating factors set forth by TAP, and continues to believe that enforcement action is warranted. The Enforcement Office and TAP Portugal have reached a settlement of this matter in order to avoid litigation. TAP Portugal consents to the issuance of an order to cease and desist from future violations of Order 2007-2-16, and to the assessment of \$10,000 in compromise of potential civil penalties otherwise due and payable pursuant to 49 U.S.C. § 46301.

This compromise assessment is appropriate considering the nature and extent of the violations described herein and serves the public interest. It represents an adequate deterrence to future noncompliance with the Department's orders and reporting requirements by TAP Portugal, as well as by other air carriers and foreign air 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 TAP Portugal violated Order 2007-2-16, as described above, by failing to file required passenger origin and destination survey data reports in a timely manner;
3. We order TAP Portugal and all other entities owned and controlled by or under common ownership with TAP Portugal and its successors and assignees, to cease and desist from further violations of Order 2007-2-16;
4. We assess a compromise civil penalty of \$10,000 in lieu of civil penalties that might otherwise be assessed for the violation found in paragraphs 2 of this order. Of this total amount, \$5,000 shall become due and payable within 20 days of the issuance of this order. The remaining \$5,000 shall become due and payable if TAP Portugal violates this

order's cease and desist provision within one year following the date of the issuance of this order, in which case the entire unpaid portion of the civil penalty shall become due and payable immediately, and TAP Portugal may be subject to additional enforcement action for failure to comply with this order.

5. Payment should be made by wire transfer through the Federal Reserve Communication System, commonly known as "Fed Wire," to the account of the U.S. Treasury in accordance with the attached instructions. Failure to pay the penalty as ordered shall subject TAP Portugal to the assessment of interest, penalty, and collection charges under the Debt Collection Act and to 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 initiative.

BY:

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Deputy General Counsel

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