



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

**Issued by the Department of Transportation  
On the Seventeenth day of June, 2011**

**Deutsche Lufthansa AG**

**Violations of Article 19 of the  
Montreal Convention and 49 U.S.C. § 41712**

**Docket OST 2011-0003**

**Served June 17, 2011**

**CONSENT ORDER**

This consent order involves violations by Deutsche Lufthansa AG (Lufthansa) of Article 19 of the Montreal Convention and the statutory prohibition against unfair and deceptive trade practices, 49 U.S.C. § 41712, in connection with monetary claims resulting from its delay in delivering checked baggage. It directs Lufthansa to cease and desist from future similar violations of Article 19 and section 41712, and assesses the carrier a compromise civil penalty of \$50,000.

**Applicable Law**

Article 19 of the Montreal Convention (Montreal) provides that a carrier is liable for damage occasioned by delay in the carriage by air of baggage, except to the extent that it proves that it took all reasonable measures to prevent the damage or that it was impossible to take such measures.<sup>1</sup> Article 22 currently sets the liability limit for damages associated with delayed passenger baggage at 1,131 Special Drawing Rights (SDRs) for each passenger.<sup>2</sup> Furthermore, Article 26 states that any provision tending to relieve a carrier of liability or to fix a lower limit than that which is laid down in the Convention is null and void. Violations of the Montreal Convention constitute unfair or deceptive business practices and unfair methods of competition in violation of 49 U.S.C. § 41712.

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<sup>1</sup> *Convention for the Unification of Certain Rules for International Carriage by Air*, adopted on May 28, 1999.

<sup>2</sup> *Inflation Adjustments to Liability Limits Governed by the Montreal Convention Effective December 30, 2009*, 74 FR 59017, available at [http://airconsumer.dot.gov/rules/Notice\\_11\\_09\\_09.pdf](http://airconsumer.dot.gov/rules/Notice_11_09_09.pdf) (November 9, 2009).

## **Background**

Based on a consumer complaint, the Office of Aviation Enforcement and Proceedings (Enforcement Office) investigated Lufthansa's policies and practices in connection with its handling of monetary claims for delay in delivering checked baggage. That investigation showed that in a number of instances arising out of flights to and from the United States Lufthansa was limiting reimbursement to 50 percent of the claimed expense against original receipts for damages associated with a delay in returning checked baggage. That investigation also determined that on some occasions Lufthansa was using language in letters to claimants reflecting this practice and had accordingly advised numerous claimants who had requested reimbursement for their expenses associated with the delay in returning checked baggage that Lufthansa would reimburse only 50 percent of the cost of clothing items and 100 percent of the cost of toiletries and underwear. The practical effect of using this language in the letters was to limit in some instances Lufthansa's liability for damage occasioned by delay to less than the minimum 1,131 SDRs required by the Montreal Convention.

## **Mitigation**

In mitigation, Lufthansa states that it responds to passenger claims on a case by case basis and takes note of the particular circumstances surrounding each claim and tries to assist the passengers in the best possible manner. Lufthansa asserts that it never had any intention of purposely misstating its policies to passengers or establishing limits of liability below allowable legal standards. Lufthansa states that response letters to customers over a period of time contained language that may have been somewhat ambiguous but certainly there was no intent on denying its valued customers anything less than they deserved under the law. Lufthansa states that it has revised the language for passenger communications under such circumstances making it clearer to the passenger and consistent with applicable law.

## **Decision**

The Enforcement Office has carefully considered the information provided by Lufthansa but continues to believe that enforcement action is warranted. The Enforcement Office and Lufthansa have reached a settlement of this matter in order to avoid litigation. Lufthansa consents to the issuance of an order to cease and desist from future violations of Article 19 of the Montreal Convention and 49 U.S.C. § 41712 of the Department's regulations, and to the assessment of \$50,000 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 the size and sophistication of the carrier, and serves the public interest. It represents an adequate deterrence to future noncompliance with the Montreal Convention by Lufthansa, 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 this order as being in the public interest;
2. We find that Deutsche Lufthansa AG violated Article 19 of the Montreal Convention by limiting its reimbursement to 50 percent of the claimed expense against original receipts for damages associated with a delay in returning checked baggage;
3. We find that by engaging in the conduct and violations described in ordering paragraph 2, above, Deutsche Lufthansa AG, has also violated 49 U.S.C. § 41712;
4. We order Deutsche Lufthansa AG, and all other entities owned or controlled by or under common ownership with Deutsche Lufthansa AG, and their successors and assignees, to cease and desist from violations of Article 19 of the Montreal Convention and 49 U.S.C. § 41712. Failure to comply with this cease and desist provision shall subject Deutsche Lufthansa AG, and their successors and assignees to further enforcement action;
5. We assess Deutsche Lufthansa AG, a compromise civil penalty of \$50,000 in lieu of civil penalties that might otherwise be assessed for the violations described in ordering paragraphs 2 and 3, above. Of this total penalty amount, \$25,000 shall be due and payable within fifteen (15) days of the date of issuance of this order. The remaining \$25,000 shall be due and payable immediately if Deutsche Lufthansa AG violates this order's cease and desist or payment provisions during the twelve (12) months following the service date of this order; and
6. We order Deutsche Lufthansa AG, to remit the payment ordered in 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 in accordance with the instructions contained in the Attachment to this order. Failure to pay the penalty as ordered shall subject Deutsche Lufthansa AG, to the assessment of interest, penalty, and collection charges under the Debt Collection Act and to further enforcement action for failing 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**

**(SEAL)**

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