



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

**Issued by the Department of Transportation
On the Twenty-Third day of January, 2012**

Alitalia Compagnia Aerea Italiana SpA

Docket OST 2012-0002

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

Served January 23, 2012

CONSENT ORDER

This consent order involves violations by Alitalia Compagnia Aerea Italiana SpA (Alitalia) of Article 19 of the Montreal Convention (Convention) and the statutory prohibition against unfair and deceptive trade practices, 49 U.S.C. § 41712, in connection with monetary claims resulting from delay of checked baggage on Alitalia flights to or from the United States. It directs Alitalia to cease and desist from future similar violations of Article 19 and section 41712, and assesses the carrier a compromise civil penalty of \$80,000.

Applicable Law

Article 22 of the Convention currently sets the liability limit for damages associated with lost, damaged, or delayed baggage at 1,131 Special Drawing Rights (SDRs) for each passenger.¹ Article 19 provides that a carrier is liable for damage caused by delay in the carriage of baggage, except to the extent that the carrier proves that it took all reasonable measures to prevent the damage or that it was impossible to take such measures. Further, Article 26 states that any contractual 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.

¹ *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 (November 9, 2009).

Violations of the Convention constitute unfair or deceptive business practices and unfair methods of competition in violation of 49 U.S.C. § 41712.²

Background

Based on a consumer complaint, the Office of Aviation Enforcement and Proceedings (Enforcement Office) investigated Alitalia'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, Alitalia, through language used in letters responding to baggage delay claims, was limiting reimbursement to between \$50 and \$75 per day of delay regardless of the amount of the expenses claimed by passengers or the submission of original receipts documenting such expenses. The practical effect of this practice was to limit Alitalia's liability for damage occasioned by the delay of baggage to less than the minimum 1,131 SDRs for each passenger as required by the Convention.

Mitigation

In mitigation, Alitalia states that it is committed to minimizing passenger hardships involving delayed delivery of checked baggage and complying with the Montreal Convention and the Department's enforcement policies. The airline further states that in a number of cases it provided baggage delay payments even in the absence of documentation to substantiate the underlying claim and, in other cases, provided compensation in excess of documented expenses or when the claims were submitted well outside the jurisdictional time limits of the Montreal Convention. Alitalia further notes that it has cooperated fully with the Department's investigation and, moreover, implemented swift and comprehensive corrective measures in direct response to the Department's concerns.

Decision

The Enforcement Office has carefully considered the information provided by Alitalia but continues to believe that enforcement action is warranted. The Enforcement Office and Alitalia have reached a settlement of this matter in order to avoid litigation. Without admitting or denying the violations described above, Alitalia 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, and to the assessment of \$80,000 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 a strong deterrent against future noncompliance with the Montreal Convention by Alitalia, as well as by other air carriers and foreign air carriers.

² See *Societe Air France, Violations of Article 17 of the Montreal Convention and 49 U.S.C. § 41712*, Order 2010-12-26 (December 23, 2010).

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 Alitalia Compagnia Aerea Italiana SpA violated Article 19 of the Montreal Convention by limiting its liability for expenses resulting from its delay in returning checked baggage to an amount significantly less than the minimum amount established under Article 22 of the Montreal Convention;
3. We find that by engaging in the conduct and violations described in ordering paragraph 2, above, Alitalia Compagnia Aerea Italiana SpA has also violated 49 U.S.C. § 41712;
4. We order Alitalia Compagnia Aerea Italiana SpA, and all other entities owned or controlled by or under common ownership with Alitalia Compagnia Aerea Italiana SpA, 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 Alitalia Compagnia Aerea Italiana SpA and its successors and assignees to further enforcement action;
5. We assess Alitalia Compagnia Aerea Italiana SpA a compromise civil penalty of \$80,000 in lieu of civil penalties that might otherwise be assessed for the violations described in ordering paragraphs 2 and 3, above. Of this total amount, \$40,000 is due and payable within 15 days after the service date of this order. The remaining \$40,000 shall become due and payable if Alitalia Compagnia Aerea Italiana SpA violates this order's cease and desist or payment provisions within one year following the date of the issuance of this order, in which case the entire unpaid portion of this civil penalty shall become due and payable immediately; and
6. We order Alitalia Compagnia Aerea Italiana SpA 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 in accordance with the instructions contained in the Attachment to this order. Failure to pay the penalty as ordered shall subject Alitalia Compagnia Aerea Italiana SpA 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:

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Deputy General Counsel

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