



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

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

**Finnair Plc**

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

**Docket OST 2012-0002**

**Served January 27, 2012**

**CONSENT ORDER**

This consent order concerns Internet advertisements by Finnair Plc (Finnair) that violate the advertising requirements specified in 14 CFR 399.84, as well as 49 U.S.C. § 41712, which prohibits unfair and deceptive practices. It directs Finnair to cease and desist from further violations of this statute and federal regulation and assesses the carrier a compromise civil penalty of \$35,000.

**Applicable Law**

As a foreign air carrier, Finnair is subject to the advertising requirements of Part 399 of the Department's rules. Pursuant to 14 CFR 399.84, carriers advertising airfares must state the full price to be paid by the consumer. Under long-standing enforcement case precedent, the Department has allowed taxes and fees collected by carriers, such as passenger facility charges and departure taxes, to be stated separately from base fares in advertisements, so long as such taxes and fees are levied by a government entity, are not *ad valorem* in nature, i.e., not assessed as a percentage of the fare price, are collected on a per-passenger basis, and their existence and amounts are clearly indicated at the first point in the advertisement where a fare is presented so that consumers can immediately determine the full fare to be paid. Thus, for example, fare advertisements that 1) fail to identify the existence and amount of separate additional taxes and fees at the first point at which a fare is displayed, or 2) include only general statements regarding the existence of such taxes and fees do not comply with section 399.84 or the Department's

enforcement case precedent. Violations of section 399.84 constitute unfair and deceptive practices in violation of 49 U.S.C. § 41712.<sup>1</sup>

In Internet advertising displays, taxes and fees that properly may be stated separately from the advertised fare may be disclosed through a prominent link placed adjacent to the stated fare that notes that taxes and fees are extra. That link must directly take the viewer to the bottom of the screen or to a pop-up or a place on a separate screen, where the nature and amount of taxes are prominently and immediately displayed.<sup>2</sup>

### **Facts and Conclusion**

From September 15, 2011, to October 25, 2011, Finnair displayed three fare advertisements on its website that made no mention of additional taxes and fees that were applicable to these fares. Rather, once consumers clicked on the advertisements, they were taken to a landing page on Finnair's website where applicable taxes and fees were displayed in the fine print at the bottom of the page. In one of the three advertisements, consumers could not see the fine print unless they happened to scroll to the bottom of the page. By failing to provide notice of the government-imposed taxes and fees in any of the manners described above when the fares first were advertised, Finnair violated section 399.84 and 49 U.S.C. § 41712.

### **Mitigation**

In mitigation, Finnair states that it is committed to fully complying with all DOT regulations, and any omissions were completely inadvertent. Finnair emphasizes that it monitors its own compliance with the rules. Further, the carrier asserts that, on its own initiative, it had already found and corrected the errors in its advertising *before* receiving notice of the defects from the Department. Finnair notes that when it corrected the errors at issue here, it also took the initiative to come into early compliance with the Department's revised fare disclosure rules, which entered into force on January 26,

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<sup>1</sup> See, e.g., US Airways, Inc., *Violations of 49 U.S.C. § 41712 and 14 CFR 399.84*, Order 2011-6-2 (June 2, 2011), Delta Air Lines, Inc., *Violations of 49 U.S.C. § 41712 and 14 CFR 399.84*, Order 2010-5-30 (May 28, 2010). On April 20, 2011, the Department issued a rule changing its enforcement policy with respect to section 399.84 to require that airlines and ticket agents comply with the rule as written. Under this new enforcement policy, which is effective January 24, 2012, airlines must include all government taxes and fees in every advertised fare. The Department's long-standing prohibition on omitting carrier- or agent-imposed charges, such as fuel charges or convenience fees, from advertised fares remains in effect.

<sup>2</sup> For example, under current policies, a carrier could advertise a flight in the following manner: "\$260 + Taxes and Fees" with the phrase "Taxes and Fees" set off as a hyperlink that takes the viewer directly to the bottom of the screen or to a pop-up or a place on a separate screen, where the nature and amount of taxes and fees are prominently and immediately displayed. See Department notices entitled "Disclosure of Air Fare Violations: Web vs. Other Sources, Surcharges that May be Listed Separately in Advertisements," dated November 4, 2004; "Disclosure of Additional Fees, Charges, and Restrictions on Air Fares in Advertisements, Including 'Free' Airfares," dated September 4, 2003; and "Prohibition on Deceptive Practices in the Marketing of Airfares to the Public Using the Internet," dated January 18, 2001, available at: <http://airconsumer.ost.dot.gov/rules/guidance.htm>.

2012. Finnair states that it came into compliance with the new rule on October 26, 2011.

Finnair further notes that its error was of short duration, and that the company has had no prior violations of DOT's advertising rules. Finnair notes that there was no intention to deceive consumers as the terms and conditions were visible to a consumer upon arrival at the landing page and scrolling to the bottom of that page.

### **Decision**

The Department views compliance with the Federal aviation statutes and regulations very seriously. The Office of Aviation Enforcement and Proceedings (Enforcement Office) has carefully considered the information provided by Finnair but continues to believe that enforcement action is warranted. The Enforcement Office and Finnair have reached a settlement of this matter in order to avoid litigation. Finnair consents to the issuance of an order to cease and desist from future violations of 49 U.S.C. § 41712 and 14 CFR 399.84, and to the assessment of \$35,000 in compromise of potential 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 a strong deterrent to future noncompliance with the Department's advertisement requirements.

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 Finnair Plc violated 14 CFR 399.84 by advertising fares that failed to state the total price;
3. We find that by violating 14 CFR 399.84 as described in ordering paragraph 2, above, Finnair Plc engaged in an unfair and deceptive practice and an unfair method of competition in violation of 49 U.S.C. § 41712;
4. We order Finnair Plc and all other entities owned or controlled by, or under common ownership and control with Finnair Plc, and its successors, affiliates, and assignees, to cease and desist from future violations of 14 U.S.C. § 41712 and 14 CFR 399.84. Failure to comply with this cease and desist provision shall subject Finnair Plc, and its successors, affiliates, and assignees to further enforcement action;
5. We assess Finnair Plc \$35,000 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, \$17,500 shall be due and payable within 30 days of the date of issuance of this order. The remaining \$17,500 shall be due and payable immediately if Finnair Plc violates this order's cease and desist or payment provisions within one year of the issuance of this order; and

6. We order Finnair Plc to remit the payment assessed 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 Finnair Plc to an 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 ten days after its service date 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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