



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

**Issued by the Department of Transportation
On the Thirteenth day of April, 2012**

Pilatus PC-12 Centre Canada, Inc.

**Violations of 49 U.S.C. § 41712 and
14 CFR Part 294**

Docket OST 2012-0002

Served April 13, 2012

CONSENT ORDER

This consent order concerns facilitation by Pilatus PC-12 Centre Canada, Inc., (PCC) (formerly V. Kelner Pilatus Center, Inc., (VKPC)), a direct air carrier,¹ of unlawful conduct by Private Air, Inc., (Private Air), an indirect air carrier,² involving the marketing, sale, and operation of charter flights between Canada and the United States in which Private Air held itself out as the operator without having the requisite economic authority. By facilitating such conduct, PCC itself engaged in unfair and deceptive trade practices and unfair methods of competition in violation of 49 U.S.C. § 41712. This order also concerns the use by PCC of a name not listed on its Canadian air taxi registration, in violation of 14 CFR 294.31.³ Such conduct constitutes a separate violation of section 41712. This order directs PCC to cease and desist from further violations of these statutory provisions and to pay a compromise civil penalty of \$20,000.

¹ A “direct air carrier” is a person or other entity that provides air transportation and that has control over the operational functions involved in providing that transportation.

² An “indirect air carrier” is a person or other entity that engages indirectly in air transportation operations and who uses for such transportation the services of a direct air carrier.

³ 14 CFR 294.31 requires Canadian charter air taxi operators to hold out charter air service to the public and perform operations only in the names in which their registrations are issued.

As background, in addition to applicable Federal Aviation Administration (FAA) safety requirements, in order to engage in foreign air transportation⁴ as a direct or an indirect air carrier, a foreign air carrier⁵ must hold economic authority from the Department. This authority can either be in the form of a foreign air carrier permit issued pursuant to 49 U.S.C. § 41301 or an exemption from section 41301, such as that available to direct air carriers under 14 CFR Part 294⁶ or to public charter operators functioning as indirect air carriers pursuant to 14 CFR Part 380.

PCC, a foreign air carrier within the meaning of 49 U.S.C. § 40102(a)(21), holds operations specifications from the FAA under 14 CFR Part 129 and economic authority from the Department pursuant to 14 CFR Part 294 to engage in trans-border charter air transportation. PCC is also the Canadian distributor and sales agent for the Pilatus PC-12 aircraft. In 2008, Private Air, a sister company of PCC, incorporated in Canada to provide sales and marketing support services for PCC. Private Air has no operational control of any of the aircraft it charters and holds neither the economic authority from the Department nor the corresponding safety authority from the FAA required of a direct air carrier.

The Office of Aviation Enforcement and Proceedings (Enforcement Office) began an investigation of Private Air in response to information from the FAA that Private Air was conducting charter flights to the U.S. from Canada using aircraft bearing Private Air's livery. The investigation revealed that the aircraft in question was operated by PCC and that "Private Air" was not listed as a "doing-business-as" name on PCC's Part 294 registration, in violation of 14 CFR 294.31. Upon further investigation, the Enforcement Office found that, from January 2009 until March 2010, PCC operated a significant number of trans-border flights for charterers who had entered into contracts with Private Air for charter service that identified Private Air as the direct air carrier operating the flights, notwithstanding the fact that Private Air lacked economic authority to engage in foreign air transportation. In so doing, PCC facilitated the unlawful conduct of Private Air and itself engaged in an unfair and deceptive practice and an unfair method of competition in violation of 49 U.S.C. § 41712.

In mitigation, PCC states that any alleged violation was completely inadvertent. As Private Air's sister company, PCC believed its Canadian and U.S. air carrier authority was all that was needed for Private Air to act as its sales and marketing arm. Immediately upon

⁴ Foreign air transportation" means the transportation of passengers or property by aircraft as a common carrier for compensation, or the transportation of mail by aircraft, between a place in the United States and a place outside the United States when any part of the transportation is by aircraft. 49 U.S.C. § 40102(a)(23).

⁵ A "foreign air carrier" means a person, not a citizen of the United States, undertaking by any means, directly or indirectly, to provide foreign air transportation. 49 U.S.C. § 40102(a)(21).

⁶ Part 294 provides an exemption for "Canadian charter air taxi operators" from the permit requirements of 49 U.S.C. § 41301, provided that such carriers register with the Department and have the requisite level of liability insurance. The exemption authority conferred under Part 294 is available only to carriers that operate "small aircraft," which is defined in section 294.2(i) as "any aircraft designed to have a maximum passenger capacity of not more than 30 seats and a maximum payload capacity of 7,500 pounds, and/or a maximum authorized takeoff weight on wheels not greater than 35,000 pounds."

the Department contacting Private Air and well before the Department's separate investigation of PCC, PCC states that it undertook to formalize its relationship with Private Air with a written Marketing Agency Agreement and revise its charter contracts to remove any doubt that charter customers were entering into an agreement with PCC and that PCC was the operator of the aircraft.

The Enforcement Office has carefully considered all of the information available to it, including the cooperation of PCC, but continues to believe that enforcement action is warranted. In order to avoid litigation, the Enforcement Office and PCC have reached a settlement of this matter. Without admitting or denying the violations described above, PCC agrees to the issuance of this order to cease and desist from future violations of 49 U.S.C. § 41712 and 14 CFR 294.31. PCC further agrees to the assessment of \$20,000 in compromise of potential civil penalties otherwise assessable against it. This compromise assessment is appropriate in view of the nature and extent of the violations in question, serves the public interest, and establishes a deterrent to future similar unlawful practices by PCC and other Canadian air taxi operators.

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 Pilatus PC-12 Centre Canada, Inc., violated 49 U.S.C. § 41712, as described above, by facilitating Private Air, Inc., in holding out as a direct air carrier when it did not possess the appropriate economic authority to do so in violation of 49 U.S.C. § 41301, and thus engaged in an unfair and deceptive practice and an unfair method of competition.
3. We find that Pilatus PC-12 Centre Canada, Inc., violated 14 CFR 294.31 as described above, by holding out charter air service to the public and performing operations in a name other than the one in which its registration is issued.
4. We find that by engaging in the conduct described in paragraph 3, above, Pilatus PC-12 Centre Canada, Inc., engaged in an unfair and deceptive practice and an unfair method of competition in violation of 49 U.S.C. § 41712.
5. We order Pilatus PC-12 Centre Canada, Inc., and all other entities owned and controlled by or under common ownership with Pilatus PC-12 Centre Canada, Inc., and its successors and assignees, to cease and desist from further violations of 14 CFR 294.31 and 49 U.S.C. § 41712.
6. We assess Pilatus PC-12 Centre Canada, Inc., a compromise civil penalty of \$20,000 in lieu of civil penalties that might otherwise be assessed for the violations described in ordering paragraphs 2, 3, and 4 above. Of this total amount, \$10,000 shall become due and

payable 30 days after the issuance date of this order. The remaining \$10,000 shall become due and payable if Pilatus PC-12 Centre Canada, Inc., violates the payment or the cease and desist provisions of this order within one year following this order's date of issuance, in which case the entire unpaid portion of the civil penalty shall become due and payable immediately, and Pilatus PC-12 Centre Canada, Inc., may be subject to additional enforcement action for failure to comply with this order. If Pilatus PC-12 Centre Canada, Inc., fails to comply with the payment provisions of this order, Pilatus PC-12 Centre Canada, Inc., shall also be subject to the assessment of interest, penalty, and collection charges under the Debt Collection Act.

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 as described in the attached instructions.

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:

**ROSALIND A. KNAPP
Deputy General Counsel**

(SEAL)

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