



**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**

**Private Air, Inc.**

**Violations of 49 U.S.C. §§ 41301 and 41712**

**Docket OST 2012-0002**

**Served April 13, 2012**

**CONSENT ORDER**

This consent order concerns unlawful conduct by Private Air, Inc., (Private Air) in which the company held itself out as a direct air carrier,<sup>1</sup> when it was not, and engaged in foreign air transportation as an indirect air carrier<sup>2</sup> without the economic authority to do so, in contravention of 49 U.S.C. § 41301. These violations also constituted unfair and deceptive trade practices and unfair methods of competition in violation of 49 U.S.C. § 41712. This order directs Private Air to cease and desist from further violations of these statutory provisions and it assesses a compromise civil penalty of \$25,000.

As background, in addition to applicable Federal Aviation Administration (FAA) safety requirements, in order to engage in foreign air transportation<sup>3</sup> as a direct or an indirect air carrier, a foreign air carrier<sup>4</sup> must hold economic authority from the Department. This authority can either be in the form of a foreign air carrier permit issued pursuant to

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<sup>1</sup> 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.

<sup>2</sup> 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.

<sup>3</sup> "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).

<sup>4</sup> 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).

49 U.S.C. § 41301 or an exemption from section 41301, such as that available to direct air carriers under 14 CFR Part 294<sup>5</sup> or to public charter operators functioning as indirect air carriers pursuant to 14 CFR Part 380.

Private Air was incorporated in Canada in 2008 to provide marketing, aircraft management, and other support services to Pilatus PC-12 Centre of Canada, Inc., (PCC) (formerly known as V. Kelner Pilatus Center). PCC is a foreign air carrier within the meaning of 49 U.S.C. § 40102(a)(21) that holds FAA-issued Part 129 operations specifications and economic authority from the Department pursuant to 14 CFR Part 294 to engage in trans-border charter air transportation with small aircraft. According to Private Air, it was to function as an agent of PCC to market and arrange for charter flights operated by PCC until such time as Private Air would be financially able to operate as a direct air carrier and obtain its own licenses from U.S. and Canadian aviation authorities. At no time relevant to this matter did Private Air hold the economic authority from the Department to engage in direct or indirect foreign air transportation.

The Office of Aviation Enforcement and Proceedings (Enforcement Office) initiated an investigation of Private Air in response to information from the FAA indicating that Private Air had operated charter flights into the U.S. from Canada on aircraft registered to PCC. The FAA's records showed that neither PCC's operations specifications nor its Part 294 registration listed "Private Air" as a "doing-business-as" (d/b/a) name. Although PCC apparently was the actual aircraft operator on these occasions, the Enforcement Office subsequently learned that from January 2009 until March 2010, Private Air had entered as a principal into contracts with charterers for a significant number of trans-border flights between Canada and the U.S. In addition, the Enforcement Office found statements on Private Air's printed brochures and on its web site, such as "Private Air operates the Pilatus PC-12 aircraft," that could have misled readers into believing that Private Air was a direct air carrier operating aircraft when, in fact, it did not. By holding itself out as a direct air carrier when it was not and by engaging in foreign air transportation without economic authority, Private Air violated 49 U.S.C. §§ 41301 and 41712.

In mitigation, Private Air asserts that any alleged violation was completely inadvertent and states that since its formation, it has been the sales and marketing arm of its sister company, PCC. Indeed, the two companies' relationship was so close in its view, that Private Air believed it needed no U.S. authority of its own to conduct its sales and marketing activities as PCC was, and remains, a fully licensed air carrier in both Canada and the United States. Private Air also notes that it cooperated fully with the Department's investigation and took quick action to remedy the Department's concerns. Specifically, Private Air states that it immediately revised its website and formalized its relationship with PCC with a written Marketing Agency Agreement. Private Air also undertook to

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<sup>5</sup> 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."

obtain its Canadian air carrier licenses, which it recently received, and anticipates applying for its foreign air carrier authority from the Department and FAA in the near future.

The Enforcement Office has carefully considered all of the information available to it, including that provided by Private Air, but continues to believe that enforcement action is warranted. In order to avoid litigation, the Enforcement Office and Private Air have reached a settlement of this matter. Without admitting or denying the violations described above, Private Air agrees to the issuance of this order to cease and desist from future violations of 49 U.S.C. §§ 41301 and 41712. Private Air further agrees to the assessment of \$25,000 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 Private Air and other indirect 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 Private Air, Inc., violated 49 U.S.C. § 41301, as described above, by holding itself out as a direct air carrier when it was not and by engaging in foreign air transportation without economic authority.
3. We find that by engaging in the conduct described in paragraph 2 above, Private Air, Inc., engaged in an unfair and deceptive practice and an unfair method of competition in violation of 49 U.S.C. § 41712.
4. We order Private Air, Inc., and all other entities owned and controlled by or under common ownership with Private Air, Inc., and its successors and assignees, to cease and desist from further violations of 49 U.S.C. §§ 41301 and 41712.
5. We assess Private Air, Inc., a compromise civil penalty of \$25,000 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, \$12,500 shall become due and payable 30 days after the issuance date of this order. The remaining \$12,500 shall become due and payable if Private Air, Inc., violates the payment or the cease and desist provisions of this order within one year following the issuance date of this order, in which case the entire unpaid portion of the civil penalty shall become due and payable immediately, and Private Air, Inc., may be subject to additional enforcement action for failure to comply with this order. If Private Air, Inc., fails to comply with the payment provision of this order, Private Air, Inc., shall be subject to the assessment of interest, penalty, and collection charges under the Debt Collection Act.

6. Payment shall be made within 15 days of the issuance date of this order 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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