



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

Issued by the Department of Transportation  
On the Fourth day of September, 2012

**JSC Aeroflot**

**Violations of 14 CFR 259.5(b)(4) and 399.84(a),  
and 49 U.S.C. § 41712**

**Docket OST 2012-0002  
Served September 4, 2012**

**CONSENT ORDER**

This order concerns violations by JSC Aeroflot (Aeroflot) of 14 CFR 259.5(b)(4) and 399.84(a) and the statutory prohibition against unfair and deceptive practices, 49 U.S.C. § 41712. It directs Aeroflot to cease and desist from future similar violations and assesses the carrier \$60,000 in civil penalties.

**Applicable Law**

On April 25, 2011, the Department issued a set of rules designed to enhance protections for air travel consumers that, among other things, required airlines to comply with the Department's full-fare advertising rule as written, which requires that the price advertised include all government-imposed taxes and fees and all airline- and ticket agent-imposed fees.<sup>1</sup> In addition, the rules require "covered carriers," which include foreign air carriers operating to, from or within the United States using any aircraft with a design capacity of 30 or more passenger seats, to adopt a provision in their customer service plans permitting the holding of reservations without payment, or the canceling of reservations without penalty, within a twenty-four hour time period of making a reservation.

<sup>1</sup> 76 Fed. Reg. 23110 (April 25, 2011).

The Department delayed the effective date for certain requirements of the rules from August 23, 2011, to January 24, 2012, including provisions pertaining to the holding of a reservation without payment, or cancellation without penalty, for twenty-four hours.<sup>2</sup> The Department also delayed the effective date from October 24, 2011, to January 24, 2012, for the requirements pertaining to full-fare advertising,<sup>3</sup> and later extended that time period for compliance to January 26, 2012.<sup>4</sup>

## **I. Full-Fare Advertising**

The Department's current full-fare advertising rule, 14 CFR 399.84(a), requires that advertisements specifying airfares and tour package prices with an air component state the entire price to be paid by the consumer. This rule ensures that consumers are not deceived and are given accurate and complete fare information on which to base their travel purchase decisions. Although charges included within the single total price listed, e.g., government taxes, may be stated separately or through links or "pop ups" on websites that display the total price, such charges may not be false or misleading, may not be displayed as prominently as the full fare, may not be presented in the same or larger size as the total price, and must provide cost information on a per passenger basis that accurately reflects the cost of the item covered by the charge. Violations of section 399.84 constitute unfair and deceptive practices in violation of section 41712.

## **II. Customer Service Plan**

Pursuant to 14 CFR 259.5(b)(4), a covered carrier is required to include a commitment in its customer service plan that at a minimum it will allow reservations to be held at the quoted fare without payment, or cancelled without penalty, for at least twenty-four hours after the reservation is made if the reservation is made one week or more prior to a flight's departure. This provision allows a consumer to make travel plans and shop for a fare that meets his or her needs, and addresses the carrier's need for adequate time to sell seats on its flights. Violations of section 259.5(b)(4) constitute unfair and deceptive practices in violation of section 41712.

### **Facts**

As a foreign air carrier, Aeroflot is subject to the prohibition on engaging in unfair and deceptive practices set forth in 49 U.S.C. § 41712 and to the advertising requirements of 14 CFR 399.84(a). Aeroflot failed to meet the requirements of section 399.84(a) by advertising fares that did not include taxes and fees on its website. For a period of time after January 26, 2012, in response to consumer searches using the main booking path on its website, Aeroflot displayed a fare matrix that separately listed the base fares for

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<sup>2</sup> 76 Fed. Reg. 45184 (July 28, 2011).

<sup>3</sup> 76 Fed. Reg. 45184 (July 28, 2011).

<sup>4</sup> 76 Fed. Reg. 82115 (Dec. 30, 2011).

outbound and inbound legs. These base fares, however, did not include the amount of additional government taxes and fees. Although the total fare to be charged, including taxes and fees, was ultimately disclosed at the bottom of the page, by failing to advertise fares as the entire price to be paid by the consumer when they were first stated, Aeroflot violated 14 CFR 399.84(a) as well as 49 U.S.C. § 41712.

As a covered carrier, Aeroflot is required to adopt and follow a customer service plan applicable to its scheduled flights. From January 24, 2012, through the week of March 13, 2012, Aeroflot failed to include a commitment in its customer service plan allowing reservations to be held at the quoted fare without payment, or canceled without penalty, for at least twenty-four hours after the reservation was made if the reservation was made one week or more prior to a flight's departure. Aeroflot's failure to include this commitment in the contents of its plan violated 14 CFR 259.5(b)(4) and 49 U.S.C. § 41712.

### **Mitigation**

In mitigation, Aeroflot states that it was restructuring its website to include all the taxes and fees in the fare initially displayed to the consumer, even before the Department announced its Final Rule regarding the full fare advertising requirements. Aeroflot maintains that any violation of the Department's requirements would have been inadvertent and attributable to unanticipated delays in programming its website. Aeroflot further states that it fully cooperated with the Department's investigation, and that this is the first consent order that the Department has ever issued against it for violation of the Department's regulations.

Aeroflot also states that it did not receive any passenger complaints regarding the issues addressed in this order, and that it has no evidence that any passengers were not able to readily obtain all necessary information regarding Aeroflot's full fares. Moreover, Aeroflot submits that, although for a limited time its customer service plan may not have included language explicitly allowing reservations to be held at the quoted fare without payment, or canceled without penalty, for at least twenty-four hours, to the best of its knowledge, it did not deny any such refund requests since the Department's rule became effective on January 24, 2012.

### **Decision**

The Enforcement Office has carefully considered the information provided by JSC Aeroflot, but continues to believe enforcement action is warranted. The Enforcement Office and JSC Aeroflot have reached a settlement of this matter in order to avoid litigation. Without admitting or denying the violations described above, JSC Aeroflot, consents to the issuance of this order to cease and desist from future violations of 14 CFR 259.5(b)(4), 14 CFR 399.84(a), and 49 U.S.C. § 41712 and to the assessment of \$60,000 in compromise of potential civil penalties otherwise due and payable pursuant to 49 U.S.C. § 46301.

The compromise assessment is appropriate considering the nature and extent of the violations described herein and serves the public interest. It establishes a strong deterrent to future similar unlawful practices by Aeroflot and other carriers.

This order is issued under the authority in 49 CFR Part 1.

ACCORDINGLY,

1. Based on the above information, we approve this settlement and the provisions of this order as being in the public interest;
2. We find that JSC Aeroflot violated 14 CFR 259.5(b)(4) by failing to include a provision in its customer service plan permitting the holding of reservations without payment, or the canceling of reservations without penalty, within a twenty-four hour time period after the reservation was made provided that it was made a week or more before departure;
3. We find that JSC Aeroflot violated 14 CFR 399.84(a) by failing to state the entire price to be paid in the advertisement of airfares on its website;
4. We find that by engaging in the conduct described in ordering paragraphs 2 and 3, above, JSC Aeroflot engaged in unfair and deceptive practices and unfair methods of competition in violation of 49 U.S.C. § 41712;
5. We order JSC Aeroflot, and all other entities owned or controlled by, or under common ownership and control with JSC Aeroflot, its successors, affiliates, and assignees, to cease and desist from further violations of 14 CFR 259.5(b)(4), 14 CFR 399.84(a), and 49 U.S.C. § 41712;
6. JSC Aeroflot is assessed \$60,000 in compromise of civil penalties that might otherwise be assessed for the violations described above. Of this total penalty amount, \$30,000 shall be due and payable within thirty (30) days of the date of the issuance of this order. The remaining portion of the civil penalty amount, \$30,000, shall become due and payable immediately if, within one year of the date of issuance of this order, JSC Aeroflot, violates this order's cease and desist provisions or fails to comply with this order's payment provisions, in which case JSC Aeroflot may be subject to additional enforcement action for violation of this order; and
7. We order JSC Aeroflot to pay the penalty through Pay.gov to the account of the U.S. Treasury. Payments shall be made in accordance with the instructions contained in the Attachment to this order. Failure to pay the penalty as ordered shall subject JSC Aeroflot 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:**

**SAMUEL PODBERESKY**  
**Assistant General Counsel for**  
**Aviation Enforcement and Proceedings**

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