



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

**Issued by the Department of Transportation
On the Seventeenth day of September, 2012**

Air China, Limited

Docket OST 2012-0002

**Violations of Article 17 of the
Montreal Convention and 49 U.S.C. § 41712**

Served September 17, 2012

CONSENT ORDER

This consent order concerns violations by Air China, Limited, (Air China) of Article 17 of the Montreal Convention (Convention) and the statutory prohibition against unfair and deceptive trade practices, 49 U.S.C. § 41712, involving the carrier's blanket exclusion on reimbursement for a class of items contained in lost bags on Air China flights to or from the United States. It directs Air China to cease and desist from future similar violations of Article 17 and section 41712, and assesses the carrier a compromise civil penalty of \$40,000.

Applicable Law

The Convention sets forth rules on certain international flights that govern air carrier liability for lost, delayed, and damaged checked baggage.¹ Article 17 of the Convention provides that carriers are liable for loss of or damage to checked baggage in the custody of the carrier, except to the extent that the loss or damage "resulted from an inherent defect, quality, or vice" of the baggage. Under the Convention, carriers may cap their liability for lost, delayed, or damaged checked baggage, but Article 22 requires that any such cap be no lower than 1,131 Special Drawing Rights (SDRs).²

¹*Convention for the Unification of Certain Rules for International Carriage by Air*, adopted on May 28, 1999. The Convention entered into force for the United States of America on November 4, 2003, and for the People's Republic of China on July 31, 2005.

²*Inflation Adjustments to Liability Limits Governed by the Montreal Convention Effective December 30, 2009*, 74 Fed. Reg. 59017 (Nov. 16, 2009) available at <http://airconsumer.dot.gov/rules/guidance.htm>.

Nothing in the Convention permits blanket exclusions or otherwise allows carriers to disclaim liability for any class or category of item, such as jewelry, electronics, or high value goods that they have accepted for transport as checked baggage. Rather, such exclusions contravene Article 17 because they have the effect of limiting—with respect to items falling within their ambit—a carrier’s liability to an amount lower, i.e., zero, than the minimum level required by Article 22. (By notice dated March 26, 2009, the Department reminded all airlines engaged in foreign air transportation³ of this proscription and gave them 90 days from the date of the notice to revise their tariffs, statements, and policies related to baggage liability.)⁴ Under Departmental enforcement case precedent, violations of Articles 17 also constitute an unfair and deceptive practice and an unfair method of competition in violation of 49 U.S.C. § 41712.⁵ In addition, Article 26 states that any contractual provision tending to relieve the carrier of liability or to fix a lower liability than set forth in the Convention is null and void.

Facts

For a significant period of time, Air China had a policy of refusing reimbursement for baggage claims based on a blanket exclusion as stated in its “conditions of carriage.” Specifically, in Article 8.3.3 of those conditions the carrier, acting properly within its rights, warned passengers not to include in their checked baggage “money, jewelry, precious metals, computers, personal electronic devices, negotiable papers, securities or other valuables, prescribed medicine to be taken regularly, business documents, passports and other identification documents or samples.” However, in Articles 8.3.3 and 8.3.4 the carrier stated that with respect to passengers who failed to heed the admonition in Article 8.3.3 and nevertheless included prohibited items in their checked baggage, it would “not be responsible for any loss, damage or confiscation...”

Mitigation

In mitigation, Air China asserts (1) that promptly upon being requested by the Department of Transportation to do so, Air China amended its General Conditions of Carriage on its website, available worldwide, to delete the “blanket exclusionary” language in Article 8.3.3, and as referenced in Article 8.3.4, of Air China’s General Conditions of Carriage; (2) that Air China provided the Department of Transportation, as requested, with the details relating to all checked baggage claims processed by Air China in the calendar year 2011 involving transportation from/to the United States to/from the

³“Foreign air transportation” means the transportation of passengers or property by aircraft as a common carrier for compensation... between a place in the United States and a place outside the United States when any part of the transportation is by air. 49 U.S.C. § 40102(a)(23).

⁴*Guidance on Airline Baggage Liability and Responsibilities of Code-share Partners Involving International Itineraries*, 74 Fed. Reg. 14837 (Mar. 26, 2009), available at <http://airconsumer.dot.gov/rules/guidance.htm>.

⁵ See, e.g., *Emirates, Violations of Articles 17 and 19 of the Montreal Convention and 49 U.S.C. § 41712*, Order 2011-8-24 (Aug. 30, 2011).

People's Republic of China; (3) that despite the "blanket exclusionary" provisions of Air China's General Conditions of Carriage, Air China states that it has settled checked baggage claims involving Montreal Convention transportation without invoking said provisions of its General Conditions of Carriage; and (4) that Air China is firmly committed to complying fully with the liability rules of the Montreal Convention applicable to the transportation of passengers, baggage and cargo. Further, Air China asserts that it has re-emphasized with its claims handling staff in the United States and in the People's Republic of China the necessity of resolving passenger claims in strict accordance with the liability rules of the Montreal Convention where applicable. Finally, Air China firmly believes that no passengers were misled by the "blanket exclusionary" provisions of its General Conditions of Carriage while contained therein.

Decision

The Enforcement Office has carefully considered the information provided by Air China but continues to believe that enforcement action is warranted. The Enforcement Office and Air China have reached a settlement of this matter in order to avoid litigation. Without admitting or denying the violations described above, Air China consents to the issuance of an order to cease and desist from future violations of Article 17 of the Montreal Convention and 49 U.S.C. § 41712 and to the assessment of \$40,000 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 Air China, as well as by other air carriers and foreign air carriers.

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

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 Air China, Limited, violated Article 17 of the Montreal Convention by seeking to limit its liability resulting from a blanket exclusion on reimbursement for a class of items contained in lost baggage, as described above;
3. We find that by engaging in the conduct and violations described in ordering paragraph 2, above, Air China, Limited, has also violated 49 U.S.C. § 41712;
4. We order Air China, Limited, and all other entities owned or controlled by or under common ownership with Air China, Limited, and their successors and assignees, to cease and desist from violations of Article 17 of the Montreal

Convention and 49 U.S.C. § 41712. Failure to comply with this cease and desist provision shall subject Air China, Limited, and its successors and assignees to further enforcement action;

5. We assess Air China, Limited, a compromise civil penalty of \$40,000 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, \$20,000 shall be due and payable within 30 days of the date of issuance of this order. The remaining \$20,000 shall become due and payable immediately if Air China, Limited, violates this order's cease and desist provisions within one-year following the date of issuance of this order, or fails to comply with the order's payment provisions; and
6. We order Air China, Limited, 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 Air China, Limited, 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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Aviation Enforcement and Proceedings

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