



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

**Issued by the Department of Transportation
on the 5th day of September, 2014**

WestJet

**Violations of 49 U.S.C. §§ 41301 and 41712 and
14 CFR Part 212**

Docket OST 2014-0001

Served September 5, 2014

CONSENT ORDER

This consent order concerns unauthorized foreign air transportation by WestJet in violation of 49 U.S.C. § 41301 and 14 CFR Part 212, arising from WestJet's operating of unauthorized codeshare flights marketed by another foreign air carrier without obtaining proper authority from the Department. Violations of section 41301 and Part 212 also constitute unfair and deceptive practices and unfair methods of competition in violation of 49 U.S.C. § 41712. This order directs WestJet to cease and desist from such further violations and assesses a compromise civil penalty of \$50,000.

Applicable Law

Foreign air carriers that offer or provide air transportation into or out of the United States must hold a valid permit issued by the Department of Transportation pursuant to 49 U.S.C. § 41301, or a valid exemption from this section. The violation of any term, condition or restriction contained in a permit or exemption constitutes a violation of section 41301.¹ Further, under the authority of 49 U.S.C. § 41302, the Department promulgates regulations pertaining to the standards and procedures for issuing a permit authorizing a non-U.S. citizen to provide foreign air transportation as a foreign air carrier. Among those regulations, 14 CFR 212.9(b)(2) provides that a foreign air carrier shall

¹ See, e.g., *Thai Airways International Company Ltd., Violations of 49 U.S.C. § 41301, 41703, and 41712*, Order 2008-09-15; *Export Air del Peru, S.A.*, Order 93-10-21.

obtain a statement of authorization from the Department for each long term wet lease.² Violations of section 41301 and Part 212 also constitute unfair and deceptive practices and unfair methods of competition in violation of 49 U.S.C. § 41712.

Background

On June 21, 2012, WestJet and China Eastern Airlines Corporation Limited (China Eastern), a carrier from the People's Republic of China, entered into a codeshare agreement providing that China Eastern would market WestJet-operated flights within North America under China Eastern's "MU" flight indicator. Between June 2012 and September 2013, China Eastern marketed certain flights between Canada and the United States operated by WestJet under China Eastern's code on its website and through the flight schedules in the monthly *Flight Guide Worldwide* published by the Official Airline Guide (OAG).³ WestJet, as the operating carrier of these flights, did not apply for a statement of authorization from the Department for these codeshare flights in foreign air transportation, and therefore, is in violation of 49 U.S.C. § 41301 and 14 CFR 212.9(b)(2).

Mitigation

In mitigation, WestJet states that it places a high priority on compliance with all applicable licensing and other government requirements, and it regrets that it may have inadvertently operated unauthorized service in connection with its codeshare arrangement with China Eastern. WestJet further states that because the codeshare arrangement primarily involved service between China and Canada, and only involved a limited number of U.S. sectors, it did not focus on the need to obtain authority from the Department in addition to authority from the Canadian and Chinese regulatory authorities. WestJet avers that upon learning that additional U.S. codeshare authority was required for these trans-border flights, it immediately requested that China Eastern suspend all U.S.-related codeshare sales activity. WestJet points out that all unauthorized codeshare activities were suspended well before the Department raised this issue with WestJet and WestJet fully cooperated with the Department's subsequent investigation.

Decision

The Enforcement Office has carefully considered all of the information available to it, but continues to believe that enforcement action is warranted. In order to avoid litigation, the Enforcement Office and WestJet have reached a settlement of this matter. Without admitting or denying the violations described above, WestJet agrees to the issuance of

² A "wet lease" is defined as a lease between direct air carriers by which the lessor provides all or part of the capacity of an aircraft, and its crew, including operations where the lessor is conducting services under a blocked space or *code-sharing* arrangement. 14 CFR 212.2 (emphasis added).

³ China Eastern is the subject of a separate investigation by the Enforcement Office for its conduct in this code-sharing matter.

this order to cease and desist from future violations of 49 U.S.C. §§ 41301 and 41712 and 14 CFR Part 212, and to the assessment of \$50,000 in compromise of potential civil penalties otherwise assessable against the carrier. 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 WestJet and other 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 the order as being in the public interest;
2. We find that WestJet violated 49 U.S.C. § 41301, as described above, by operating trans-border codeshare flights with the China Eastern “MU” flight indicator without appropriate authority from the Department;
3. We find that by failing to obtain a statement of authorization from the Department for a code-sharing arrangement, WestJet violated 14 CFR 212.9(b)(2);
4. We find that, by engaging in the conduct described in paragraphs 2 and 3, above, WestJet engaged in an unfair and deceptive practice and an unfair method of competition in violation of 49 U.S.C. § 41712;
5. We order WestJet and all other entities owned and controlled by or under common ownership with WestJet and its successors and assignees to cease and desist from further engaging in unauthorized codeshare service in violation of 49 U.S.C. §§ 41301 and 41712 and 14 CFR Part 212;
6. We assess WestJet \$50,000 in compromise of civil penalties that might otherwise be assessed for the violations described in ordering paragraphs 2, 3, and 4, above. Of this total amount, \$25,000 shall be due and payable within 30 days of the issuance date of this order. The remaining \$25,000 shall become due and payable if, within one year of the issuance date of this order, WestJet violates the cease and desist provision in ordering paragraph 5, above, or fails to comply with the payment provisions in this ordering paragraph, in which case, the entire unpaid portion of the civil penalty shall become due and payable immediately; and
7. Payments 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. The wire transfers shall be executed in accordance with the instructions contained in the Attachment to this order. Failure to pay the penalty as prescribed shall subject WestJet to the 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 10 days after its service date unless a timely petition for review is filed or the Department takes review on its own initiative.

BY:

BLANE A. WORKIE

**Acting Assistant General Counsel for
Aviation Enforcement and Proceedings**

*An electronic version of this document is available at
www.regulations.gov*