



**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 5, 2014**

China Eastern Airlines Corporation Limited

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

Docket OST 2014-0001

Served September 5, 2014

CONSENT ORDER

This consent order concerns unauthorized foreign air transportation by China Eastern Airlines Corporation Limited (China Eastern) in violation of 49 U.S.C. § 41301, arising from China Eastern's marketing and sale of unauthorized codeshare flights operated by another foreign air carrier that did not hold proper authority from the Department. Violations of section 41301 also constitute unfair and deceptive practices and unfair methods of competition in violation of 49 U.S.C. § 41712. This order directs China Eastern to cease and desist from such further violations and assesses a compromise civil penalty of \$40,000.

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 93-10-2.

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

Background

On June 21, 2012, China Eastern and WestJet, a Canadian carrier, 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). WestJet, as the operating carrier of these flights, did not apply for a statement of authorization from the Department to hold out these codeshare flights in foreign air transportation with the Department, and therefore, is in violation of 14 CFR 212.9(b)(2).³ By holding out and selling these unauthorized flights, China Eastern violated 49 U.S.C. § 41301.

Mitigation

In mitigation, China Eastern states that it takes very seriously its obligation to operate in compliance with all DOT economic regulations and did not intend to circumvent or intentionally violate any of the regulations at issue here. China Eastern states that when it entered the aforementioned codeshare agreement in March 2012 with WestJet, it received approval for this operation from both the Civil Aviation Administration of China (CAAC) and the Canadian Transportation Agency (CTA). China Eastern asserts that upon receiving these approvals, it believed that it had all the necessary government authority to institute the codeshare operations because the flights offered were within the authorized time period and included only U.S. points for which China Eastern already had DOT permit or exemption authority.

China Eastern states that since instituting U.S. service more than twenty years ago, it has exercised great vigilance to ensure that it has requested and received prior Department approval for all new operating authorizations. China Eastern asserts that certain personnel simply were not aware in this particular instance that U.S. approval was needed, and mistakenly believed that the CTA approval, which was obtained prior to any marketing activities taking place, covered the U.S. portion of the codeshare.

China Eastern states that since being notified of the apparent violation, it immediately pulled all marketing and sales for this service. China Eastern also states that it cooperated

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

fully with the investigation by the Enforcement Office and has undertaken significant efforts to ensure that marketing and sale of third-country codeshares does not take place until economic authority from the Department is obtained. Following the apparent violation its top management personnel initiated a thorough internal review of its U.S. authority and codeshare approval process, which included an evaluation of all applicable documents, collection of information, and in-person and telephone meetings with personnel and key management. It has also adopted amendments to its internal procedures governing third-country codeshares to require that approvals be obtained from all relevant government entities.

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 China Eastern have reached a settlement of this matter. Without admitting or denying the violations described above, China Eastern agrees to the issuance of this order to cease and desist from future violations of 49 U.S.C. §§ 41301 and 41712, and to the assessment of \$40,000 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 China Eastern 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 China Eastern Airlines Corporation Limited violated 49 U.S.C. § 41301, as described above, by engaging in foreign air transportation without appropriate authority from the Department;
3. We find that, by engaging in the conduct described in paragraphs 2, above, China Eastern Airlines Corporation Limited engaged in an unfair and deceptive practice and an unfair method of competition in violation of 49 U.S.C. § 41712;
4. We order China Eastern Airlines Corporation Limited and all other entities owned and controlled by or under common ownership with China Eastern Airlines Corporation Limited and its successors and assignees to cease and desist from further violations of 49 U.S.C. §§ 41301 and 41712;
5. We assess China Eastern Airlines Corporation Limited \$40,000 in compromise of civil penalties that might otherwise be assessed for the violations described in ordering paragraphs 2, and 3, above. Of this total amount, \$20,000 shall be due and payable within

60 days of the issuance date of this order. The remaining \$20,000 shall become due and payable if, within one year of the issuance date of this order, China Eastern Airlines Corporation Limited violates the cease and desist provision in ordering paragraph 4, 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

6. 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 China Eastern Airlines Corporation Limited 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

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