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

Issued by the Department of Transportation
on the 28th day of March, 2018

Qantas Airways Limited **Violations of 49 U.S.C. §§ 41301, 41703, and 41712**	**Docket DOT-OST-2018-0001** **Served: March 28, 2018**

CONSENT ORDER

This consent order concerns violations of 49 U.S.C. §§ 41301, 41703, and 41712 by Qantas Airways Limited ("Qantas"). This order directs Qantas to cease and desist from future similar violations of 49 U.S.C. §§ 41301, 41703, and 41712, and assesses $125,000 in civil penalties.

Applicable Law

The carriage by air of local traffic for compensation or hire by foreign air carriers between two points in the United States, a practice commonly referred to as cabotage, violates 49 U.S.C. § 41703,[1] which prohibits cabotage except under very limited circumstances that do not apply here. Cabotage traffic includes passengers first enplaned by one foreign air carrier at a point in the United States and flown to another U.S. point for purposes of obtaining onward transportation to a foreign point that is operated by another U.S. or foreign air carrier.[2] In addition, a foreign air carrier that holds out cabotage service to the public also violates 49 U.S.C. § 41703.

[1] The pertinent language of 49 U.S.C. § 41703 states that foreign aircraft may "take on for compensation, at a place in the United States, passengers or cargo destined for another place in the United States only if – (1) specifically authorized under section 40109(g) of this title…"

[2] *See Petition of Qantas Empire Airways Limited for Interpretative Rule*, 23 CAB 33 (April 6, 1959). *See also* 49 U.S.C. § 41703(e), which states that "eligible cargo taken on or off any aircraft at a place in Alaska in the course of transportation of that cargo by any combination of 2 or more air carriers or foreign air carriers in either direction between a place in the United States and a place outside the United States shall not be deemed to have broken its

Foreign air carriers that offer or provide service to or from the United States must hold a valid permit issued by the Department of Transportation ("Department") pursuant to 49 U.S.C. § 41301, or a valid exemption from this section under 49 U.S.C. § 40109(c).[3] The violation of any term, condition, or restriction contained in a permit or exemption constitutes a violation of section 41301 or 40109.[4] The unauthorized operation or holding out of cabotage service constitutes such a violation.

Violations of section 41301, 40109, and 41703 also constitute unfair and deceptive practices and unfair methods of competition in violation of 49 U.S.C. § 41712.

Facts and Conclusions

Qantas has authority from the Department, pursuant to a permit, to engage in foreign air transportation between any point or points in the United States and any point or points in Australia or in a third country or countries. An investigation by the Department's Office of Aviation Enforcement and Proceedings ("Enforcement Office") revealed that, for a period of time during 2015 and 2016, Qantas held out, and enplaned revenue passengers on, flights that it operated wholly between two points within the United States. These passengers were then transported on connecting Qantas codeshare flights operated by a U.S. or another foreign air carrier to points outside the United States. Specifically, Qantas' U.S.-facing website held out, and accepted reservations and payments from passengers for, flights from John F. Kennedy International Airport (JFK) to Fa'a'ā International Airport (PPT) in Tahiti, French Polynesia, with a connection at Los Angeles International Airport (LAX). The first leg of the flights from JFK to LAX was operated by Qantas on Qantas' aircraft. However, in order to continue on to PPT, passengers deplaned at LAX and continued as Qantas codeshare passengers on board aircraft operated by other carriers. Additionally, Qantas' U.S.-facing website also held out, and accepted reservations and payments from passengers for, flights from JFK to Auckland International Airport (AKL) in New Zealand, with a connection at LAX. The first leg of the flights from JFK to LAX was operated by Qantas on Qantas' aircraft. However, in order to continue on to AKL, passengers deplaned at LAX and continued as Qantas codeshare passengers on board aircraft operated by other carriers.

By holding out flights and transporting revenue passengers between two points within the United States and then placing those passengers on flights operated by other carriers for onward transportation to foreign destinations, Qantas engaged in unauthorized cabotage in violation of 49 U.S.C. § 41703, violated the terms, conditions, and restrictions of its foreign air carrier permit in violation of 49 U.S.C. § 41301, and engaged in an unfair and deceptive practice in violation of 49 U.S.C. § 41712.

---

international journey in, be taken on in, or be destined for Alaska." This limited exception to the *Qantas* doctrine does not apply to the facts of this case.

[3] The authority required by section 41301 is separate and distinct from any safety authority that the carrier must obtain from the Federal Aviation Administration (FAA).

[4] *See, e.g., WestJet*, Order 2014-9-3 (September 5, 2014); *Thai Airways International Company Ltd.*, Order 2008-09-15 (September 12, 2008).

Qantas' Response

Qantas states that although it denies any wrongdoing and that it specifically denies violating any U.S. statutes and regulations, it has agreed to enter into this Consent Order solely as a compromise in order to resolve all outstanding allegations and charges against Qantas.

Qantas states that in all the routings identified by the Department, the flights operated by other carriers that connected to Qantas operated flights between JFK and LAX were sold as codeshare flights with a "QF" flight number. Qantas acknowledges that the *Qantas* decision of 1959 held that "a foreign carrier may incidentally transport within [the United States] only that traffic which it brings in or carries out."[5] Qantas states, however, that it believes the operations that the Department has cited are fully consistent with the principles of that decision based on Qantas' interpretation that U.S. law deems Qantas to be the carrier that is transporting the traffic into and out of the United States. Qantas specifically notes that the business model of airlines in providing air services has become much more sophisticated since 1959 and points out that code-sharing arrangements, which are common today, did not emerge until approximately 30 years after the *Qantas* decision.

Decision

The Enforcement Office views seriously Qantas' violations of 49 U.S.C. §§ 41301, 41703, and 41712. Accordingly, after carefully considering the facts in this case, including those set forth above, the Enforcement Office believes that enforcement action is warranted. In order to avoid litigation, and without admitting the violations described above, Qantas consents to the issuance of this order to cease and desist from further similar violations of 49 U.S.C. §§ 41301, 41703, and 41712 and to the assessment of $125,000 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 against similar unlawful practices by Qantas 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 this order as being in the public interest;

2. We find that Qantas Airways Limited violated 49 U.S.C. § 41703 by holding out and transporting passengers for compensation or hire between two points within the United States, as described above;

[5] *Qantas*, 36 C.A.B. 33 at 36.

3. We find that by engaging in the conduct described in ordering paragraph 2, above, Qantas Airways Limited violated the terms, conditions, and restrictions of its foreign air carrier permit in violation of 49 U.S.C. § 41301;

4. We find that by engaging in the conduct described in ordering paragraphs 2 and 3, above, Qantas Airways Limited engaged in an unfair and deceptive practice and unfair method of competition in violation of 49 U.S.C. § 41712;

5. We order Qantas Airways Limited and its successors and assigns to cease and desist from further violations of 49 U.S.C. §§ 41301, 41703, and 41712;

6. We assess Qantas Airways Limited $125,000 in compromise of civil penalties that might otherwise be assessed for the violations described above. Of this total amount, $62,500 shall be due and payable within 30 days of the service date of this order. The remaining $62,500 shall become due and payable if, within one year following the service date of this order, Qantas Airways Limited violates this order's cease and desist or payment provisions, in which case the entire unpaid amount shall become due and payable immediately, and Qantas Airways Limited may be subject to additional enforcement action for failure to comply with this order; and

7. We order Qantas Airways Limited to pay within thirty (30) days of the issuance of this order the penalty assessed in ordering paragraph 6, above, 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 Qantas Airways 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 ten (10) days after its service date unless a timely petition for review is filed or the Department takes review on its own motion.

BY:

BLANE A. WORKIE
Assistant General Counsel for
Aviation Enforcement and Proceedings

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