



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

Issued by the Department of Transportation
On the 29th day of March, 2018

Norwegian Air Shuttle ASA

Docket OST-2018-0001

**Violations of 14 CFR § 399.88
and 49 U.S.C. § 41712**

Served: March 29, 2018

CONSENT ORDER

This order concerns violations by Norwegian Air Shuttle ASA (NAS) of the rule concerning post-purchase price increases due to an increase in a government-imposed tax, 14 CFR 399.88(b), and the statutory prohibition against unfair and deceptive practices, 49 U.S.C. § 41712. It directs NAS to cease and desist from future similar violations and assesses the carrier \$100,000 in civil penalties.

Applicable Law

As a foreign air carrier, NAS is subject to the requirements of Part 399 of the Department's rules. To ensure that consumers are not deceived and are given accurate and complete fare information on which to base their airline travel plans, 14 CFR 399.88 provides in relevant part that a seller of scheduled air transportation within, to or from the United States or a tour (*i.e.*, a combination of air transportation and ground or cruise accommodations), or tour component (e.g., a hotel stay) that includes scheduled air transportation within, to or from the United States, must notify a consumer of the potential for a post-purchase price increase due to an increase in a government-imposed tax or fee. The seller of scheduled air transportation must also obtain the consumer's written consent to the potential for such an increase prior to purchase of the scheduled air transportation, tour or tour component that includes scheduled air transportation. Imposition of

any such increase without providing the consumer the appropriate notice and without obtaining his or her written consent of the potential increase constitutes an unfair and deceptive practice within the meaning of 49 U.S.C. § 41712.

Facts and Conclusions

In response to a June 2016 consumer complaint, the Department's Office of Aviation Enforcement and Proceedings (Enforcement Office) investigated the manner by which NAS informed consumers of and collected from them a retroactive air passenger tax imposed by the government of Norway. In December 2015, the Norwegian Government issued a parliamentary decision detailing proposed statutory provisions that would implement a tax on passengers flying from Norwegian airports. The Norwegian Government accepted comments on the proposal until February 2016 and expected the statutory provisions to take effect on April 1, 2016. On May 20, 2016, the Norwegian Tax Administration delayed implementation until June 1, 2016. The Norwegian Tax Administration stated that the tax would apply to all passengers travelling from Norwegian airports as of June 1, 2016, including those ticketed before that date.

Although NAS was aware as of December 2015 of the possible enactment of the aforementioned statutory provisions, it did not notify consumers of, or request their prior written consent to, the potential for a post-purchase price increase due to the new air passenger tax. Prior to June 1, 2016, NAS, through its website, sold a number of tickets to consumers with flights after that date. Once it became aware of the effective date, it sent an email to a significant number of consumers who held tickets for flights from Norway to the United States, stating that it was obliged to collect the tax and would forward it to the Norwegian Treasury. The email stated that the tax of 80 Norwegian Kroner (approximately USD \$9 at the time) applied to each passenger travelling from a Norwegian airport, excluding children under two years of age. It also stated that if consumers did not pay the tax online with a credit card by August 1, 2016, they would automatically receive an invoice including an additional administration fee of one Euro (€ 1). NAS subsequently sent a reminder email to consumers who did not pay the tax. The carrier ultimately collected the tax from a significant number of consumers.

NAS's attempt to apply a post-purchase increase in price due to the above-described government tax, without notifying consumers of, and without obtaining their written consent to, the potential for such an increase prior to ticket purchase, violates 14 CFR 399.88(b). Such conduct also violates the Department's prohibition against unfair or deceptive conduct in 49 U.S.C. § 41712.

Response

In response, NAS states that in over four years of operations to and from the United States, NAS has never been cited for a violation of any of the Department's regulatory requirements. NAS is fully committed to compliance with the Department's rules. Here, NAS has gone above and beyond to come into compliance with the rule.

In this instance, NAS was faced with a highly unusual situation. While the Norwegian passenger tax was first announced in December of 2015, due to opposition to the tax, it was uncertain as to whether the tax would be implemented. It was not until May 2016 that the Government of Norway

confirmed that the tax would be introduced and would be applied to passengers travelling from Norwegian airports after June 1, 2016, even if they had been ticketed before that date. At that point, NAS had already sold a number of tickets with flight dates after June 1, 2016.

In response to the law, NAS sent a request for voluntary payment to some passengers who had already purchased tickets from Norway to the United States, and forwarded the sums received to the Norwegian Government. Where passengers did not respond, NAS sent a reminder, and then took no further action. Though NAS stated it was obliged to collect the tax, NAS did not take further action to impose or mandate payment. At no time were passengers' credit cards automatically charged. NAS has provided 99.41% of the affected passengers a full refund of any post-purchase tax payment made on tickets for flights from Norway to the United States.

Decision

The Enforcement Office views seriously NAS's violations of 14 CFR 399.88 and 49 U.S.C. § 41712. Accordingly, after carefully considering all 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 or denying the violations described above, NAS consents to the issuance of this order to cease and desist from future violations of 14 CFR 399.88 and 49 U.S.C. § 41712 and to the assessment of \$100,000 in compromise of potential civil penalties otherwise due and payable pursuant to 49 U.S.C. § 46301. The Enforcement Office believes this 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 future similar unlawful practices by NAS and other 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 Norwegian Air Shuttle ASA violated 14 CFR 399.88(b) by imposing a post-purchase price increase due to an increase in a government-imposed tax without providing appropriate notice to consumers of, and without obtaining their written consent to, the potential for such an increase;
3. We find that by engaging in the conduct and violations described in ordering paragraph 2, above, Norwegian Air Shuttle ASA has violated 49 U.S.C. § 41712;
4. We order Norwegian Air Shuttle ASA and its successors and assigns to cease and desist from further violations of 14 CFR 399.88(b) and 49 U.S.C. § 41712;
5. We assess Norwegian Air Shuttle ASA a compromise civil penalty of \$100,000 in lieu of civil penalties that might otherwise be assessed for the violations described above. Of this total amount, \$50,000 shall be due and payable on April 28, 2018. The remaining \$50,000

shall become due and payable if, within one year of the service date of this order, Norwegian Air Shuttle ASA violates this order's cease and desist or payment provisions, in which case the entire unpaid amount shall become due and payable immediately and Norwegian Air Shuttle ASA may be subject to additional enforcement action for failure to comply with this order.

6. We order Norwegian Air Shuttle ASA to pay the penalty through Pay.gov to the account of the U.S. Treasury in accordance with the instructions contained in the Attachment to this order. Failure to pay the penalty as ordered shall subject Norwegian Air Shuttle ASA 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:

BLANE WORKIE
Assistant General Counsel for
Aviation Enforcement and Proceedings

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