



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

Issued by the Department of Transportation
on the 16th day of November 2018

Scandinavian Airlines System

**Violations of 14 CFR Parts 259 and 382 &
49 U.S.C. §§ 41705 and 41712**

Docket DOT-OST-2018-0001

Served November 16, 2018

CONSENT ORDER

This order concerns violations by Scandinavian Airlines System (SAS) of the requirements in 14 CFR Part 382 (Part 382). SAS violated the Department's Web site accessibility requirements when it created a separate Web site for individuals with disabilities instead of ensuring that its primary Web site met the Web Content Accessibility Guidelines (WCAG) 2.0 Level AA standard, as required by section 382.43(c). Part 382 implements the Air Carrier Access Act (ACAA), 49 U.S.C. § 41705, and violations of that part also violate the ACAA. In addition, violations of Part 382 constitute a failure to adhere to the carrier's Customer Service Plan in violation of 14 CFR 259.5. Finally, violations of Parts 382 and 259 and 49 U.S.C. § 41705 also constitute unfair and deceptive practices and unfair methods of competition in violation of 49 U.S.C. § 41712. This order directs SAS to cease and desist from future violations of these requirements and assesses the carrier \$200,000 in civil penalties.

The Department's Web site accessibility rule requires U.S. and foreign air carriers that operate at least one aircraft having a designed seating capacity of more than 60 passengers and own or control a primary Web site that markets passenger air transportation or a tour, or tour component that must be purchased with air transportation, to the general public in the United States to ensure that the public facing Web pages on their primary Web site are accessible to individuals with disabilities.

The Department's Web site accessibility requirements were implemented in two phases. The first phase required that covered carriers comply with the following requirements by December 12, 2015:

- (1) Ensure that the following core travel information and services on the airline's primary Web site meet the Web Content Accessibility Guidelines (WCAG) 2.0 Level AA standard:

- (a) Booking or changing reservation (including all flight amenities)
 - (b) Checking in for a flight,
 - (c) Accessing a personal itinerary,
 - (d) Accessing a personal frequent flyer account,
 - (e) Accessing flight schedules, and
 - (f) Accessing carrier contact information.
- (2) Obtain feedback on the accessibility and usability of the airline's Web site by consulting with individuals with disabilities or members of disability organization(s) who use or want to use the Web site to research or book air transportation; and
- (3) Provide a mechanism on the airline's primary Web site for passengers with disabilities to request services including, but not limited to, wheelchair assistance, seating accommodations, escort assistance for a visually impaired passenger, and onboard stowage of an assistive device.

The second phase required airlines to ensure that all remaining Web pages on their primary Web sites were accessible by December 12, 2016.

In February 2017, the Department's Office of Aviation Enforcement and Proceedings (Aviation Enforcement Office) discovered that SAS's primary Web site did not meet the Web Content Accessibility Guidelines (WCAG) 2.0 Level AA standard required by section 382.43(c)(1). In lieu of ensuring that its primary Web site met the requirements in section 382.43(c), SAS created an "assistive version" of its primary Web site, which was located at <https://assistive.flysas.com/h5/assistive/r/www.flysas.com/en/us/?logout=true>. This alternative Web site had a URL that was separate and distinct from the URL on SAS's primary Web site, <http://www.flysas.com/en/us/>, and the link to the assistive version of SAS's website was located on the top right of the homepage on SAS's primary Web site.

The Department specifically addressed the question of whether carriers could comply with the requirements in section 382.43(c) by creating a U.S. facing Web site designed only for individuals with disabilities in the preamble of its kiosk and Web site accessibility rule. In the preamble to the rule the Department explained that to create a separate accessible Web site would "likely perpetuate the problem of unequal access as carriers allot fewer resources than needed over time to properly maintain the secondary site." The Department also stated that it is a "well-established principle of disability non-discrimination law that separate or different aids, benefits or services can only be provided to individuals with disabilities (or a class of such individuals) when necessary to provide aids, benefits, or service that are as effective as those provided to others."¹ The Department allows airlines to use an alternative version only when conforming a public facing **Web page** would constitute an undue burden or fundamentally alter the information provided by that page.²

¹ See 78 Fed. Reg. 67882, 67898 and 67899 (November 12, 2013).

² See 14 CFR 382.43(c)(3).

As of the date of this Consent Order, SAS's primary Web site is accessible and SAS no longer has an alternative separate Web site designed for individuals with disabilities.

SAS's failure to comply with the Department's Web site accessibility requirements violated 14 CFR 382.43(c) and the Air Carrier Access Act, 49 U.S.C. § 41705. Violations of 14 CFR Part 382 and 49 U.S.C. § 41705 constitute violations of 49 U.S.C. § 41712, which prohibits carriers from engaging in unfair and deceptive practices and unfair methods of competition.

Response

In response, SAS states that it held a good faith belief that the assistive version of its Web site was a conforming alternate version as defined in 14 CFR 382.3 that brought its primary Web site within the scope of conformance. SAS adds that it believed that it met the undue burden test set forth in 14 CFR 382.43(c)(3) for use of such a site. SAS acknowledges that carriers are permitted to use a Level AA conforming alternate version only when conforming a public-facing Web page to all WCAG 2.0 Level AA success criteria would constitute an undue burden or fundamentally alter the information or functionality provided by that page.

SAS states that the assistive version of its Web site was developed by a third-party vendor, Usablenet, who assured SAS that the assistive version conformed to WCAG 2.0 Level AA success criteria and that its use complied with DOT requirements and was also being used by other U.S. carriers. SAS states that it was in the process of developing a new global Web site platform in 2015 and believed that the Usablenet product was the best way to meet the DOT Web site accessibility requirements then scheduled to take effect in December 2015. SAS notes that DOT had delayed enforcement of the first phase of its Web site accessibility requirements until June 30, 2016. SAS states that it launched the assistive version of its Web site, which was developed by Usablenet, shortly before the Department's original December 12, 2015 deadline.

Decision

The Enforcement Office has carefully considered the information provided by SAS and believes that enforcement action is warranted. The Enforcement Office and SAS have reached a settlement of this matter in order to avoid litigation. SAS consents, without admitting to the violations described above, to the issuance of this order to cease and desist from future similar violations of 14 CFR Parts 259 and 382, and 49 U.S.C. §§ 41705 and 41712 regarding the accessibility of its primary U.S. Web site, and to the assessment of \$200,000 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 serves the public interest. It represents a strong deterrent to future similar unlawful practices by SAS and other carriers.

This order is issued under the authority contained in 14 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 Scandinavian Airlines System violated 14 CFR 382.43(c) by failing to comply with the Department's Web site-accessibility requirements;
3. We find that by engaging in the conduct described in paragraph 2 above, Scandinavian Airlines System violated 49 U.S.C. § 41705;
4. We find that by engaging in the conduct described in paragraphs 2 and 3 above, Scandinavian Airlines System failed to adhere to its Customer Service Plan in violation of Part 259;
5. We find that, by engaging in the conduct described in paragraphs 2-4 above, Scandinavian Airlines System engaged in an unfair and deceptive practice and unfair method of competition in violation of 49 U.S.C. § 41712.
6. We order Scandinavian Airlines System and its successors and assigns to cease and desist from further similar violations of 14 CFR Parts 259 and 382, and 49 U.S.C. §§ 41705 and 41712 regarding the accessibility of its primary U.S. Web site;
7. We assess Scandinavian Airlines System a compromise civil penalty of \$200,000 in compromise of civil penalties that might otherwise be assessed for the violations described above. Of this total amount, \$100,000 shall be due and payable within 30 days of the service date of this order. The remaining \$100,000 shall become due and payable if, within one year of the service date of this order, Scandinavian Airlines System violates this order's cease and desist or payment provisions, in which case the entire unpaid amount shall become due and payable immediately and Scandinavian Airlines System may be subject to additional enforcement action for failure to comply with this order.
8. We order Scandinavian Airlines System to pay \$100,000 within 30 days of the issuance of this order through Pay.gov to the account of the U.S. Treasury. Payment shall be made in accordance with the instructions contained in the Attachment to this order. Failure to pay the penalty as ordered shall subject Scandinavian Airlines System 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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