



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

Issued by the Department of Transportation
On the 4th Day of June, 2019

Deutsche Lufthansa AG

**Violation of 14 CFR Part 399
and 49 U.S.C. § 41712**

Docket OST 2019-0001

Served June 4, 2019

CONSENT ORDER

This order concerns violations by Deutsche Lufthansa AG (Lufthansa) of the Department of Transportation's (Department) full fare advertising rule contained in 14 CFR § 399.84(a). These violations constitute unfair and deceptive practices and unfair methods of competition in violation of 49 U.S.C. § 41712. The Department directs Lufthansa to cease and desist from future violations of 14 CFR § 399.84(a) and 49 U.S.C. § 41712 and assesses the carrier a compromise civil penalty of \$50,000.

Applicable Law

On April 25, 2011, the Department issued a set of rules designed to enhance protections for air travel consumers which, among other things, require U.S. and foreign air carriers to comply with the Department's full-fare advertising rule.¹ As a foreign air carrier, Lufthansa is subject to the advertising requirements of 14 CFR § 399.84(a). Section 399.84(a) provides, in relevant part, that the first price quote for air transportation must

¹ 14 CFR § 399.84(a)

state the entire price to be paid by the customer. The rule permits charges included within that total price to be stated separately, but the separate statement may not be false or misleading and must provide cost information on a per passenger basis that accurately reflects the cost of the item covered by the charge. Violations of 14 CFR § 399.84(a) constitute unfair and deceptive practices in violation of 49 U.S.C. § 41712.

Facts

In response to a consumer complaint received by the Office of Aviation Enforcement and Proceedings (Enforcement Office), the Enforcement Office investigated whether Lufthansa was engaging in a practice of improperly collecting taxes that were not due on non-revenue international tickets sold through Lufthansa's U.S.-facing website. During its investigation, the Enforcement Office found that in November 2016 the carrier became aware that it was improperly collecting a \$17.80 tax from passengers booking non-revenue tickets through its U.S.-facing website. Despite becoming aware that it was improperly collecting this tax, Lufthansa continued to collect the \$17.80 tax through 2016 and then increased the tax amount collected to \$18.00 in 2017. Lufthansa did not implement changes to correct the improper tax collection until November 2017. The Enforcement Office found that, in total, over 6,900 consumers were improperly charged a tax on non-revenue international tickets booked through Lufthansa's U.S.-facing website between June 2016 and November 2017. By improperly displaying and collecting taxes on international non-revenue tickets during the booking process on Lufthansa's U.S.-facing website, Lufthansa violated 14 CFR § 399.84(a) and 49 U.S.C. § 41712.

Response

In response, Lufthansa states that between June 2016 and November 2017, it was only made aware of two instances in which it was claimed that tax was inadvertently collected on non-revenue tickets, and both instances involved the same passenger. Lufthansa states that in each case, the collected tax was remitted to the government. Lufthansa further states that once the passenger informed Lufthansa of what occurred, the company issued a refund of the inadvertent tax collection to the passenger. Lufthansa notes that because the carrier did not receive further inquiries from any other passengers during this entire period, it believed the two instances to be isolated incidents relative to the same passenger.

Lufthansa explains that due to an unforeseen consequence of a system update by its service provider, the software used to comply with U.S. tax regulations was inadvertently modified to collect tax on all tickets, including non-revenue tickets. Lufthansa notes that the carrier did not benefit or profit from the inadvertent tax collection, as all taxes were timely remitted to the government. Lufthansa states that upon learning of the software error, the carrier took immediate corrective action to fix the problem. Lufthansa states that the carrier also proactively issued refunds for almost every single ticket in which a tax was inadvertently collected.

Decision

The Enforcement Office has carefully considered the information provided by Lufthansa, but continues to believe that enforcement action is warranted. The Enforcement Office and Lufthansa have reached a settlement of this matter in order to avoid litigation. Without admitting or denying the violations described above, Lufthansa consents to the issuance of this order and to cease and desist from future violations of 14 CFR Part 399 and 49 U.S.C. § 41712, and to the assessment of \$50,000 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 to future similar unlawful practices by Lufthansa and other carriers.

This order is issued under the authority contained in 49 CFR Part 1.

ACCORDINGLY,

1. Based on the above information, we approve this settlement and the provisions of this order as being in the public interest;
2. We find that Deutsche Lufthansa AG violated 14 CFR § 399.84(a) by displaying prices that incorrectly included an excise tax on non-revenue tickets on Deutsche Lufthansa AG's U.S. facing website, and improperly collecting and remitting the excise tax when booking such tickets;
3. We find that by engaging in the conduct described in paragraph 2 above, Deutsche Lufthansa AG engaged in unfair and deceptive practices and unfair methods of competition in violation of 49 U.S.C. § 41712;
4. We order Deutsche Lufthansa AG and its successors and assigns to cease and desist from further violations of 14 CFR Part 399, as well as 49 U.S.C. § 41712;
5. We assess Deutsche Lufthansa AG \$50,000 in compromise of civil penalties that might otherwise be assessed for the violations described above.
 - a. \$25,000 of the assessed penalty shall be due and payable within 30 days of the service date of this order; and
 - b. \$25,000 shall become due and payable if, within one year of the date of issuance of this order, Deutsche Lufthansa AG violates the order's cease and desist provisions or fails to comply with the order's payment provisions, in which case Deutsche Lufthansa AG may be subject to additional enforcement action for violation of this order.

6. We order Deutsche Lufthansa AG to pay the penalty 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 compromise penalty assessment as ordered will subject Deutsche Lufthansa AG to an 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 motion.

BY:

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