



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

Issued by the Department of Transportation  
On the 18th day of September, 2015

**Beijing Capital Airlines  
d/b/a Deer Jet**

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

**Served: September 18, 2015**

**Docket OST-2015-0002**

**CONSENT ORDER**

This order concerns unauthorized air transportation by Beijing Capital Airlines d/b/a Deer Jet (Beijing Capital) between the United Kingdom and the United States in violation of 49 U.S.C. §§ 41301 and 41712. It directs Beijing Capital to cease and desist from further violations of these statutory provisions and to pay a compromise civil penalty of \$40,000.

**Applicable Law**

Pursuant to 49 U.S.C. § 41301, a foreign air carrier may engage in foreign air transportation only if it holds economic authority in the form of a foreign air carrier permit or an exemption from the permit requirement. This authority is separate and distinct from the safety authority required by the Federal Aviation Administration (FAA). Under section 41301, the holding out of service, as well as the actual operation of air service, constitutes “engaging” in air transportation.<sup>1</sup> Violations of section 41301 also constitute unfair and deceptive practices and unfair methods of competition in violation of 49 U.S.C. § 41712.

**Facts and Conclusions**

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<sup>1</sup> See *Notice on Advertising of Scheduled Service in Foreign Air Transportation—Use of the Notation “Subject to Government Approval,”* It is a violation of 49 U.S.C. § 41301 “for a foreign air carrier to hold out service in the U.S. for which it does not have all requisite authorizations from the Department at the time of the holding out.” 62 FR 51175 (September 30, 1997).

Beijing Capital is a foreign air carrier within the meaning of 49 U.S.C. § 40102(a)(21). At all times relevant to this matter, Beijing Capital did not hold a foreign air carrier permit or an exemption from the permit requirement. As such, Beijing Capital did not have effective economic authority as required by 49 U.S.C. § 41301 to engage in air transportation to and from the United States.

Notwithstanding its lack of economic authority, Beijing Capital operated a charter flight between the United Kingdom and the United States on September 10, 2014, in contravention of 49 U.S.C. § 41301. Violations of section 41301 also constitute an unfair and deceptive practice and an unfair method of competition in violation of 49 U.S.C. § 41712.

### **Mitigation**

In mitigation, Beijing Capital states that the charter flight affected a very small number of passengers on its VIP-configured aircraft. Beijing Capital states that while it takes responsibility for all operations of its aircraft, it notes that the aircraft was leased to a third party charter broker, which Beijing Capital expected would comply with all applicable regulatory requirements. Beijing Capital states that it has since ceased doing business with this charter broker and it is committed to conducting its operations in accordance with all applicable regulatory requirements. Beijing Capital states that it expects to apply for exemption and foreign air carrier permit authority to serve the United States so that it will have all necessary authorizations prior to any future US charter flights.

### **Decision**

The Office of Aviation Enforcement and Proceedings (Enforcement Office) has carefully considered all of the information provided by Beijing Capital, but believed that enforcement action is warranted. In order to avoid litigation, the Enforcement Office and Beijing Capital have reached a settlement of this matter. Without admitting or denying the violations described above, Beijing Capital, 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. This compromise is appropriate in view of the nature and extent of the violations in question, serves the public interest, and creates an incentive for all foreign air carriers to comply fully with the requirements of 49 U.S.C. §§ 41301 and 41712.

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 Beijing Capital Airlines d/b/a Deer Jet violated 49 U.S.C. § 41301 by engaging in foreign air transportation between the United Kingdom and the United States without economic authority from the Department;
3. We find that, by engaging in the conduct described in paragraph 2 of this order, Beijing Capital Airlines d/b/a Deer Jet engaged in an unfair and deceptive practice and unfair method of competition in violation of 49 U.S.C. § 41712;
4. We order Beijing Capital Airlines d/b/a Deer Jet and all other entities owned and controlled by, or under common ownership and control with Beijing Capital Airlines d/b/a Deer Jet and their successors and assignees, to cease and desist from future violations of 49 U.S.C. §§ 41301 and 41712;
5. We assess Beijing Capital Airlines d/b/a Deer Jet a compromise civil penalty of \$40,000 in compromise of civil penalties that might otherwise be assessed for the violations found in paragraphs 2 and 3 of this order. Of this total penalty amount, \$20,000 shall be due and payable within 30 days of the issuance of this order. The remaining portion of any unpaid civil penalty shall become immediately due and payable if, within one year of the date of this order, Beijing Capital Airlines d/b/a Deer Jet violates this order's cease and desist payment provision, in which case Beijing Capital Airlines d/b/a Deer Jet may become subject to additional enforcement action for any violations of the order; and
6. We order Beijing Capital Airlines d/b/a Deer Jet to pay the penalty assessed in paragraph 5, above, through Pay.gov to the account of the U.S. Treasury. Failure to pay the penalty as ordered shall subject Beijing Capital Airlines d/b/a Deer Jet 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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