



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

Issued by the Department of Transportation
on the 3rd day of October, 1997

SERVED: October 3, 1997

**THAI AIRWAYS INTERNATIONAL,
PUBLIC COMPANY LIMITED**
Violations of 49 U.S.C. §§ 41301 and 41712
and Order 92-11-4

CONSENT ORDER

This order concerns the operation by Thai Airways International, Public Company Limited (Thai Airways), a foreign air carrier, of air transportation service without proper authority in the Bangkok-Osaka-Los Angeles market between December 1, 1996, and January 13, 1997. The carrier conducted 22 flights during this period without authority. Thai Airways did not apply for and receive authorization from the Department for this air service until January 14, 1997.

Thai Airways' operations in the Bangkok-Osaka-Los Angeles market during the period in question were in violation of 49 U.S.C. §§ 41301 and 41712. Specifically, during the period in question Thai Airways did not have Department authority to stop in Osaka on its Bangkok-Los Angeles flights. Under section 41301, a foreign air carrier may provide foreign air transportation only if the carrier has authority issued by the Department. Section 41712 prohibits unfair or deceptive practices and unfair methods of competition. Thai Airways also violated the terms of Order 92-11-4¹ in which it agreed to cease and desist from violations of 49 U.S.C. § 41301.

¹ Order 92-11-4 concerned Thai Airways' unauthorized operations in the Bangkok-Seoul-Los Angeles market between May 11 and July 5, 1992.

In mitigation, Thai Airways declares that its holding out and providing of air service over Osaka without required authority from the Department was due to an inadvertent error, and that it was Thai itself that discovered and immediately reported the error, which was of a technical nature with no material consequence. Thai also notes that the operations were actually conducted by another carrier on behalf of Thai under wetlease, were cargo only, and involved negligible revenue. Thai notes the route authority was fully contemplated by the bilateral agreement between Thailand and the United States, and that the Department would have been required to approve the authority had the proper paperwork been filed. Thai stresses that it considers its regulatory obligations of paramount importance and for this reason had filed in advance with the U.S. Customs Service for landing rights in Los Angeles for new flights from Osaka. It notes that in Thailand, the equivalent action would have constituted sufficient authority for a U.S. carrier in these circumstances and that Thai therefore believed it was acting properly.

The Enforcement Office has carefully considered the information provided by Thai Airways; however, it continues to believe Thai Airways' operation of its Bangkok-Osaka-Los Angeles service without the Department's authority constitutes a violation of sections 41301 and 41712 that warrants enforcement action. In this regard and in order to avoid litigation and without admitting or denying the alleged violations, Thai Airways has agreed to a settlement of this matter with the Enforcement Office. Thai Airways consents to the issuance of an order to cease and desist from future violations of 49 U.S.C. §§ 41301 and 41712 and Order 92-11-4 and to the assessment of \$20,000 in compromise of potential civil penalties. Of this amount, Thai Airways shall pay \$10,000 within 15 days of the service date of this order. The remaining \$10,000 shall be suspended for one year following the service date and shall then be forgiven unless Thai fails to comply with the payment provisions of this order or commits other violations of 49 U.S.C. § 41301 or § 41702 or this order during that period, in which case the entire unpaid portion of the \$20,000 assessed penalty shall become due and payable immediately. We believe that this compromise assessment is appropriate and serves the public interest. This order and the penalty it assesses will provide a strong incentive to Thai Airways and other air carriers not to conduct operations without appropriate authority from the Department.

This order is issued under the authority contained in 49 CFR 1.57a and 14 CFR 385.15.

ACCORDINGLY,

1. Based on the above discussion, we approve this settlement and the provisions of this order as in the public interest;

2. Thai Airways International, Public Company Limited, is found to have violated 49 U.S.C. § 41301 by holding out and conducting operations in the Bangkok-Osaka-Los Angeles market without requisite authority from the Department;

3. We find that by engaging in the conduct and violations described in paragraph 2 above, Thai Airways International, Public Company Limited, also violated 49 U.S.C. § 41712 and the cease and desist provisions of Order 92-11-4;

4. Thai Airways International, Public Company Limited, and all other entities owned or controlled by Thai Airways, and their successors and assignees, are ordered to cease and desist from violations of 49 U.S.C. §§ 41301 and 41712 and Order 92-11-4;

5. Thai Airways International, Public Company Limited (Thai Airways), is assessed \$20,000 in compromise of civil penalties that might otherwise be assessed for the violations described in ordering paragraphs 2 and 3 of this order. Of this amount, \$10,000 is payable within 15 days of the service date of this order. The remaining \$10,000 of the penalty assessed here shall be suspended for one year following the service date of this order and shall be forgiven at that time unless the carrier fails to comply with the payment provisions of this order or commits other violations of 49 U.S.C. § 41301 or this order during that period, in which case the entire unpaid portion of the assessed penalty shall become due and payable immediately and Thai Airways may be subject to further enforcement action; and

6. Payment shall be made by wire transfer through the Federal Reserve Communications System, commonly known as "Fed Wire," to the account of the U.S. Treasury. The wire transfer shall be executed in accordance with the instructions contained in the Attachment to this order. Failure to pay the penalty as ordered will subject Thai Airways International, Public Company Limited, to assessment of interest, penalty, and collection charges under the Debt Collection Act, and 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:

ROSALIND A. KNAPP
Deputy General Counsel

(SEAL)