



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

Issued by the Department of Transportation
on the 10th day of August, 1998

**Swissair, Swiss Air Transport Company, Ltd.,
and
Delta Air Lines, Inc.**

Violation of Order 95-2-34

Served August 10, 1998

CONSENT ORDER

This Consent Order results from an investigation by the Department's Office of Aviation Enforcement and Proceedings (Enforcement Office) of the overflight of prohibited airspace by Delta Air Lines, Inc.'s (Delta) code-share partner Swissair, Swiss Air Transport Company, Ltd. (Swissair), on code-shared flights that violated the applicable code-share approval order. The order directs that both carriers cease and desist from further violations and that Swissair pay compromise civil penalties.

Because of safety and security concerns arising from the civil conflict in Afghanistan, all U.S. air carriers and aircraft operators are prohibited by the Federal Aviation Administration from overflying Afghanistan, 14 CFR, Part 91, SFAR 67 (63 F.R. 26684, May 13, 1998). By Order 95-2-34, the Department of Transportation accordingly conditioned the approval of all code-sharing arrangements between U.S. and foreign carriers by extending this prohibition to flights by foreign air carriers on which the code of a U.S. airline is carried. Under this order, the foreign operator of the flight may not permit the code of its U.S. air carrier code-sharing partner to be carried on any flight that enters, departs, or transits the airspace of any area for whose airspace the Federal Aviation Administration has issued a flight prohibition. Both the U.S. and foreign code-share partners are responsible for compliance with this provision.

The Enforcement Office's investigation has revealed that Delta's designator code was displayed on Swissair flights between Zurich, on the one hand, and Delhi, Bangkok, and Singapore, on the other. The code-sharing service between Zurich and Delhi was approved by the Department under Order 97-2-26 and was subject to the provisions of Order 95-2-34; similar services to Bangkok and Singapore were approved pursuant to a blanket statement of authorization granted in April 1997, and are subject to the same conditions.

However, numerous of those flights transited the restricted airspace potentially placing the safety of those U.S. code-share passengers on board at risk.

In response to these findings, both Delta and Swissair admit that Swissair overflowed the restricted Afghanistan airspace on code-shared flights that carried Delta passengers from Zurich to Delhi, Bangkok, and Singapore. Delta and Swissair state that they have adopted certain remedial measures to ensure future compliance with Order 95-2-34, because Delta's past procedure of obtaining oral assurances and using oral communication to inform Swissair of the code-share flights that would violate restricted airspace and Order 95-2-34 was overlooked by Swissair personnel in this case. According to the carriers, an internal miscommunication within Swissair allowed the code-share flights in question to transit the restricted airspace. In order to ensure future compliance, Delta first will notify Swissair in writing of all flight restrictions applicable to code-share flights under Order 95-2-34. Second, Swissair will telex to Delta the flight plan transmitted to the appropriate air traffic control authorities on all code-share routes which might traverse restricted airspace, so that Delta will be able to monitor and check compliance with Order 95-2-34. Third, Swissair will establish a special information section in its operations department to ensure that Delta code-share flights are routed appropriately. Fourth, the Swissair-Delta code-share agreement will be modified to address specifically the issue of overflights of restricted airspace and the information flows that would facilitate prevention of any such occurrence.

Although both Delta and Swissair have separately and jointly taken prompt and decisive action to deal with this matter, we believe that Swissair and Delta's failure to comply with Order 95-2-34 created a potential risk of consumer harm and warrants enforcement action. In order to avoid litigation, and without admitting or denying the alleged violations, both Delta and Swissair have agreed to settle this matter through the issuance of this consent order to cease and desist from further violations of Order 95-2-34. Furthermore, Swissair, whose actions most proximately led to the violations at issue here, has also agreed to an assessment of \$50,000 in compromise of potential civil penalties otherwise assessable under the provisions of 49 U.S.C. § 46301. Of this amount, Swissair shall pay \$25,000 within 21 days of the service date of this order. The remaining \$25,000 shall be suspended for one year following the service date of this order and shall be forgiven unless Swissair fails to comply with the payment provisions of this order or commits other violations of Order 95-2-34 during that period. Should such violations occur, the entire unpaid portion of the \$50,000 assessed penalty shall become due and payable immediately. The Enforcement Office believes that the assessment of a civil penalty of \$50,000 in this instance is warranted in light of the nature of the violation in question. This order and the civil penalty it assesses will provide a strong incentive to all carriers to ensure that they do not violate our code-share approval orders in the future.

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 being in the public interest;

2. We find that Delta Air Lines, Inc. and Swissair, Swiss Air Transport Company, Ltd., violated Order 95-2-34 when Swissair overflew restricted airspace established by the Federal Aviation Administration on flights carrying the Delta Air Lines' code;

3. We order Delta Air Lines, Inc. and Swissair, Swiss Air Transport Company, Ltd., Inc. to cease and desist from the activities described in paragraph 2 above; and

4. Swissair, Swiss Air Transport Company, Ltd., Inc. shall pay \$50,000 as a compromise of civil penalties that might otherwise be assessed for the violations described in ordering paragraph 2 of this order.

5. Swissair, Swiss Air Transport Company, Ltd., is assessed \$50,000 in compromise of civil penalties that might otherwise be assessed for the violations found in ordering paragraphs 2 of this order. Of this amount, \$25,000 shall be paid within 21 days of the service date of this order. The remaining \$25,000 of the penalty assessed here shall be suspended for one year following the service date of this order and shall be forgiven unless Swissair fails to comply with the payment provisions of this order or commits other violations of Order 95-2-34 or this order, during that period, in which case the entire unpaid portion of the assessed penalty shall become due and payable immediately and the carrier 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 enclosed instructions. Failure to pay the penalty as ordered will subject Swissair, Swiss Air Transport Company, Ltd., to the 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 date of service 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)

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