



**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, DC**

Issued by the Department of Transportation
on the 12th day of August 1998

Magadan Airlines, Inc.

**Violations of 49 U.S.C. §§ 41301, 41712,
Order 96-12-37 and 14 CFR 212.4**

Served August 12, 1998

CONSENT ORDER

This consent order concerns the unauthorized operation of flights between Magadan, Russia, and Anchorage, Alaska and Seattle, Washington, by Magadan Airlines, Inc., (Magadan), a carrier holding foreign permit authority, that constitutes violations of 49 U.S.C. §§ 41301 and 41712, Order 96-12-37 and 14 CFR 212.4. This order directs Magadan to cease and desist from future similar violations and to pay compromise civil penalties.

Magadan, which is based in the Russian Federation, operates foreign scheduled passenger air transportation using Ilyushin IL-62M aircraft.¹ On September 16, 1996, Magadan filed an application for exemption authority pursuant to 49 U.S.C. § 41301 (OST Docket No. 96-1710). By a Notice of Action Taken dated October 26, 1996, and confirmed by Order 96-12-37 (issued December 26, 1997), Magadan was granted the requested authority for one year, subject to the condition that the carrier must apply for specific prior authorization under 14 CFR Part 212 before conducting any code-share or wet lease operations.² The Federal Aviation Administration (FAA) approved Operations Specifications for Magadan on October 1, 1997.

Despite the condition specified in the October 1996 Notice of Action Taken and Order 96-12-37, between October 1997 and March 1998, without obtaining prior authorization for any code-share operations, Magadan caused to be listed flights in the Official Airline

¹ Magadan is an independently-owned and -operated enterprise, registered in the Russian Federation.

² The conditions were imposed pursuant to 49 U.S.C. § 41305(b).

Desktop Flight Guide (OAG) and various Computer Reservation Systems as Aeroflot-Russian International Airlines, Inc. (Aeroflot) flights, without obtaining code-share authority from the Department. Moreover, during this time period, Magadan took reservations and sold tickets to persons whom it informed would be traveling on Aeroflot, but in fact placed those passengers on flights that it, not Aeroflot, conducted.

Engaging in foreign air transportation without appropriate authority from the Department is a violation of 49 U.S.C. § 41301. From the standpoint of the requirements of section 41301, the holding out of foreign air service, as well as the actual operation of foreign air service, constitutes "engaging in" foreign air transportation. Holding out such service without requisite authority and holding out and selling the service of one carrier when another carrier performs the service also constitute unfair and deceptive practices and unfair methods of competition prohibited by 49 U.S.C. § 41712.³ By engaging in the conduct described above, Magadan violated 49 U.S.C. §§ 41301 and 41712, as well as Order 96-12-37 and 14 CFR 212.4. Under 49 U.S.C. § 46301, as amended, violations of Title 49 and the Department's orders and regulations may subject a carrier and its principals to civil penalties of up to \$1,100 for each violation and \$1,100 per day for each day each violation continues.

In mitigation, Magadan Airlines states that it has always been its goal to comply with all Department laws and regulations. Magadan avers that, during the time period at issue here, it in no way held itself out as authorized to perform any code-share, and certainly not *de facto* code-share, service between Russia and the United States with Aeroflot. Instead, Magadan explains that it operated services, namely three flights, which Aeroflot had already advertised, listed in Computer Reservation Systems, and sold tickets for during the period when Magadan was operating without its own code (that is, prior to the FAA's issuance of operations specifications for Magadan on October 1, 1997); Magadan asserts that at that point Magadan could not retract the tickets and advertising.

Magadan also affirms that it was the first of the former Aeroflot divisions to request and receive Department authority. When Magadan was advised by U.S. government officials in mid-September 1997, that it was critical to complete its start-up process, Magadan states that it moved speedily to accomplish all the necessary transitional activities both in Russia and abroad. Magadan recounts that although it encountered obstacles which slowed some of its efforts, it still managed rapidly to submit its operations specifications

³ The latter activity is analogous to a violation of the Department's code-share disclosure rule, 14 CFR 399.88. Under that rule, an air carrier is required to provide information in any direct oral communication with a consumer concerning a code-shared flight sufficient to alert the consumer that the flight will occur on an airline different from the carrier whose code is used and to identify the carrier that will actually provide the service (14 CFR 399.88(2)). The required code-share authority for which Magadan had not applied, despite the conditions imposed by the Department, if approved, would have contained language requiring the carrier to advise passengers that they would be placed on Aeroflot/ Magadan code-shared flights.

materials, and obtain the required airport approvals, customs bonding and Immigration and Naturalization approvals. Magadan concludes that, apart from the Aeroflot flights, it complied with the DOT and FAA request to finalize its independent status in both letter and spirit.

The Enforcement Office has carefully considered the information provided by Magadan but continues to believe that enforcement action is warranted. In this connection, the Enforcement Office and Magadan have reached a settlement of this matter. Magadan consents to the issuance of an order to cease and desist from future violations of 49 U.S.C. §§ 41301 and 41712, Order 96-12-37 and 14 CFR 212.4, and to the assessment of \$1,000 in compromise of potential civil penalties otherwise assessable. Of that penalty amount, \$500 shall be due and payable 15 days from the date of issuance of this order. The remaining \$500 shall be suspended for one year following issuance of this order, and then forgiven, unless Magadan violates this order's cease and desist provisions within that one-year period, or fails to comply with the order's payment provisions, in which case the entire unpaid portion of the \$1,000 penalty shall become due and payable immediately, and the carrier may be subject to further enforcement action. We believe that this compromise assessment is appropriate and serves the public interest. It represents an adequate deterrent to future noncompliance with the Department's licensing requirements by Magadan, as well as by other air carriers and foreign air carriers.

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 Magadan Airlines, Inc. has violated 49 U.S.C. § 41301 by advertising, accepting reservations, selling tickets for and operating foreign scheduled passenger air transportation without the requisite authority from the Department;
3. We find that Magadan Airlines, Inc. has violated Order 96-12-37 and 14 CFR 212.4 by advertising, selling and operating foreign scheduled passenger air transportation using the code of Aeroflot-Russian International Airlines without obtaining from the Department the requisite code-share authority as required by the Notice of Action Taken, dated October 26, 1996, in OST Docket No. 96-1710 and confirmed by Order 96-12-37;
4. We find that by engaging in the conduct and violations described in paragraphs 2 and 3 above, Magadan Airlines, Inc. has engaged in unfair and deceptive practices and unfair methods of competition in violation of 49 U.S.C. § 41712;

5. Magadan Airlines, Inc. and all other entities owned or controlled by or under common ownership with it, and their successors and assignees, are ordered to cease and desist from violations of 49 U.S.C. §§ 41301 and 41712, Order 96-12-37 and 14 CFR 212.4, as described in paragraphs 2-4, above;
6. Magadan Airlines, Inc. is assessed \$1,000 in compromise of civil penalties that might otherwise be assessed for the violations found in ordering paragraphs 2 through 4 above. Of that penalty amount, \$500 shall be due and payable 15 days from the date of issuance of this order. The remaining \$500 shall be suspended for one year following issuance of this order, and then forgiven, unless Magadan Airlines, Inc. violates this order's cease and desist provision, in which case the entire unpaid portion of the \$1,000 penalty shall become due and payable immediately, and the carrier may be subject to further enforcement action. Failure to pay the compromise assessment as directed by this paragraph will subject Magadan Airlines, Inc. 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; and
7. 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 transfers shall be executed in accordance with the instructions contained in the Attachment to 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)

*An electronic version of this document is available
on the World Wide Web at
<http://dms.dot.gov/general/orders/aviation.html>*