



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

Issued by the Department of Transportation
on the 17th day of December 1999

**Alaska Airlines, Horizon Air Industries
and KLM Royal Dutch Airlines, Inc.**

**Violations of 49 U.S.C. §§ 41101, 41301 and
41712, and 14 CFR Part 212**

Served December 17, 1999

CONSENT ORDER

This consent order concerns the unauthorized operation of flights between the Netherlands, the United States and Canada, by Alaska Airlines, Inc. ("Alaska") and Horizon Air Industries, Inc. ("Horizon"), and KLM Royal Dutch Airlines, Inc. ("KLM"), that constitute violations of 49 U.S.C. §§ 41101, 41301 and 41712, and 14 CFR Part 212. This order directs Alaska and Horizon and KLM to cease and desist from future similar violations and to pay compromise civil penalties.

Alaska and Horizon each hold authority from the Department pursuant to 49 U.S.C. § 41101 to conduct scheduled passenger air transportation. KLM, which is based in Amsterdam, the Netherlands, is authorized pursuant to 49 U.S.C. § 41301 to operate foreign scheduled passenger air transportation. Under 14 CFR Part 212, an airline must obtain explicit Department approval before conducting any code-share or wet lease operations. On April 9, 1999, Alaska, Horizon, and KLM filed a joint application for exemption authority (OST Docket OST 99-5529), requesting immediate approval and a waiver of the Part 212 45-day advance filing requirement for approval of a code-share arrangement. Under the arrangement proposed by the three parties, KLM would be authorized to place its two-letter designator code on certain domestic and U.S.-Canada flights operated by Alaska

and/or Horizon.¹ Also on April 9, 1999, the Department's Air Carrier Licensing Division learned orally from counsel for the joint applicants that the three carriers had already been conducting the code-share operations without having applied for or having been granted authorization to conduct such operations.²

Engaging in foreign air transportation without appropriate authority from the Department is a violation of 49 U.S.C. § 41301 for KLM and a violation of 49 U.S.C. § 41101 for Alaska and Horizon. From the standpoint of the requirements of sections 41101 and 41301, the holding out of foreign air service, as well as the actual operation of foreign air service, constitutes 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 constitutes an unfair and deceptive practice and unfair method of competition prohibited by 49 U.S.C. § 41712. By engaging in the conduct described above, KLM violated 49 U.S.C. §§ 41301 and 41712, and Alaska and Horizon violated 49 U.S.C. § 41101, in addition to 14 CFR Part 212.

In mitigation, Alaska, Horizon and KLM state that they had no intention of violating the Department's regulations when they decided to integrate certain of their flights. According to the carriers, it was not until early 1999, when they realized that there might be a compliance issue present, that they informed the Department's representative that prior to the date of their application to conduct a code-share arrangement, they had implemented that arrangement. In addition, when the code-sharing arrangement was implemented in June 1998, the carriers state that it was not as extensive as it later became. Given their alacrity and initiative in bringing the matter to the Department's attention and their virtual certainty that the code-share would be approved in light of the United States-Netherlands open-skies relationship, the three carriers believe that their failure to obtain a statement of authorization was an unfortunate, but innocent, mistake. These facts, the carriers state, also played a role in their willingness to settle this matter promptly. The carriers also state that they have reviewed their operational procedures in order to enable them to eliminate the possibility of any analogous legal flaws in carrying out their future strategic plans.

The Enforcement Office has carefully considered the information provided by Alaska, Horizon and KLM but continues to believe that enforcement action is

¹ The application requests code-share approval to cover flights serving 45 interior United States points beyond the Seattle gateway, 5 interior U.S. points beyond the Los Angeles gateway, 4 interior U.S. points beyond the San Francisco gateway, and trans-border services between Vancouver and U.S. points and between Seattle and 5 Canadian points.

² The Department approved the joint application on April 27, 1999.

warranted. The Enforcement Office and Alaska, Horizon and KLM have reached a settlement of this matter. In order to avoid litigation, and without admitting or denying the violations described above, Alaska and Horizon consent to the issuance of an order to cease and desist from future violations of 49 U.S.C. § 41101 and 14 CFR Part 212, and to the assessment of \$45,000 in compromise of potential civil penalties otherwise assessable. KLM consents to the issuance of an order to cease and desist from future violations of 49 U.S.C. §§ 41301 and 41712, and the assessment of \$45,000 in compromise of potential civil penalties otherwise assessable. Of these total penalty amounts, \$22,500 shall be due and payable by Alaska and Horizon, and \$22,500 shall be due and payable by KLM 15 days from the date of issuance of this order. The remaining \$45,000 penalty amount shall be suspended for one year following the date of issuance of this order, and then forgiven, unless, during that one-year period, Alaska, Horizon, or KLM violates this order's cease and desist provisions or fails to comply with the order's payment provisions. If Alaska or Horizon violates this order's cease and desist provisions or fails to comply with the order's payment provisions, an additional \$22,500 shall become due and payable by Alaska and Horizon immediately. Similarly, if KLM violates this order's cease and desist provisions or fails to comply with the order's payment provisions, an additional \$22,500 shall become due and payable by KLM immediately. Failure to pay the compromise assessment and future violations will subject Alaska, Horizon, and KLM to further enforcement action.

We believe that this compromise assessment is appropriate and serves the public interest. It reflects, among other things, the fact that the carriers themselves disclosed the unauthorized operations to the Department. It represents an adequate deterrent to future noncompliance with the Department's licensing requirements by Alaska, Horizon and KLM, 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 Alaska Airlines, Inc., and Horizon Air Industries, Inc., have violated 14 CFR Part 212 by operating foreign scheduled passenger air transportation carrying the code of KLM Royal Dutch Airlines without obtaining from the Department the requisite code-share authority;

3. We find that by engaging in the conduct and violation described in paragraph 2 above, Alaska Airlines, Inc., and Horizon Air Industries, Inc., have violated 49 U.S.C. § 41101;
4. We find that KLM Royal Dutch Airlines, Inc. has violated 49 U.S.C. § 41301 by advertising and selling foreign scheduled passenger air transportation using the code of KLM Royal Dutch Airlines on flights operated by United States carriers that had not requested or obtained the requisite statement of authorization prior to the implementation of a code-share arrangement;
5. We find that by engaging in the conduct and violations described in paragraph 4 above, KLM Royal Dutch Airlines, Inc. has engaged in an unfair and deceptive practice and unfair method of competition in violation of 49 U.S.C. § 41712;
6. Alaska Airlines, Inc. and Horizon Air Industries, Inc., and all other entities owned or controlled by them, and their successors and assignees, are ordered to cease and desist from violations of 49 U.S.C. § 41101 and 14 CFR Part 212, as described in paragraphs 2 and 3, above, and KLM Royal Dutch Airlines, Inc., and all other entities owned or controlled by it, and their successors and assignees, are ordered to cease and desist from violations of 49 U.S.C. §§ 41301 and 41712, as described in paragraphs 4 and 5, above; and
7. Alaska Airlines, Inc., and Horizon Air Industries, Inc., are assessed \$45,000 and KLM Royal Dutch Airlines, Inc., is assessed \$45,000 for a total of \$90,000 in compromise of civil penalties that might otherwise be assessed for the violations found in ordering paragraphs 2 through 5 above.
 - a. Of those penalty amounts, \$22,500 shall be due and payable by Alaska and Horizon, and \$22,500 shall be due and payable by KLM 15 days from the date of issuance of this order.
 - b. The remaining \$45,000 penalty amount shall be suspended for one year following the date of issuance of this order, and then forgiven, unless, during that one-year period, Alaska Airlines, Inc., Horizon Air Industries, Inc., or KLM Royal Dutch Airlines, Inc. violates this order's cease and desist provision or fails to comply with the order's payment provisions.
 - c. If Alaska or Horizon violates this order's cease and desist provision or fails to comply with the order's payment provisions, an additional \$22,500 shall become due and payable by those carriers immediately.

- d. Similarly, if KLM violates this order's cease and desist provision or fails to comply with the order's payment provisions, an additional \$22,500 shall become due and payable by KLM immediately.
 - e. Failure to pay the compromise assessment as directed by this order will subject Alaska Airlines, Inc., Horizon Air Industries, Inc., and KLM Royal Dutch 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
8. Payments 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)

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on the World Wide Web at
<http://dms.dot.gov/general/orders/aviation.html>*