



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

Issued by the Department of Transportation  
On the Twenty-Third day of January, 2012

**Polskie Linie Lotnicze LOT S.A.**

**Violations of 49 U.S.C. § 41712 and  
14 CFR 399.84**

**Docket OST 2012-0002**

**Served January 23, 2012**

**CONSENT ORDER**

This consent order concerns Internet advertisements by Polskie Linie Lotnicze LOT S.A., (LOT) that violate the advertising requirements specified in 14 CFR 399.84, as well as 49 U.S.C. § 41712, which prohibits unfair and deceptive practices and unfair methods of competition. It directs LOT to cease and desist from future violations of section 399.84 and section 41712 and assesses the carrier a compromise civil penalty of \$60,000.

**Applicable Law**

As a foreign air carrier, LOT is subject to the advertising requirements of Part 399 of the Department's rules. Pursuant to 14 CFR 399.84, carriers advertising airfares must state the full price to be paid by the consumer. Under long-standing enforcement case precedent, the Department has allowed taxes and fees collected by carriers and ticket agents, such as passenger facility charges and departure taxes, to be stated separately from base fares in advertisements, so long as such taxes and fees are levied by a government entity, are not *ad valorem* in nature, i.e., not assessed as a percentage of the fare price, are collected on a per-passenger basis, and their existence and amounts are clearly indicated at the first point in the advertisements where a fare is presented so that

consumers can immediately determine the full fare to be paid.<sup>1</sup> Thus, for example, fare advertisements that 1) fail entirely to identify the existence and amount of separate additional taxes and fees at the first point at which a fare is displayed, or 2) include only general statements regarding the existence of such taxes and fees do not comply with section 399.84 or the Department's enforcement case precedent. Violations of section 399.84 constitute an unfair and deceptive practice and unfair method of competition in violation of 49 U.S.C. § 41712.<sup>2</sup>

In Internet advertising displays, taxes and fees that properly may be stated separately from the advertised fare may be disclosed through a prominent link placed adjacent to the stated fare that notes that taxes and fees are extra and directly takes the viewer to the bottom of the screen, or to a pop-up or a place on a separate screen, where the nature and amount of taxes and fees are prominently and immediately displayed.<sup>3</sup>

### **Facts and Conclusions**

For a period of time in the fall of 2011, LOT displayed advertisements on its website that did not provide any information on additional taxes and fees. Rather, once the consumer clicked on the advertised fare, he or she was taken to a landing page where sample routes and prices were displayed, as well as fine print on a separate screen reached only after scrolling to the bottom of the page, which explained the nature and amounts of additional taxes and fees. LOT's failure to provide proper notice of taxes and fees that may legally be stated separately from the fare violated 14 CFR 399.84 and 49 U.S.C. § 41712.

### **Mitigation**

In mitigation, LOT states that it always strives to fully comply with the Department's rules and that it placed fare advertisements on its web-page in good faith and in the belief

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<sup>1</sup> On April 20, 2011, the Department issued a rule changing its enforcement policy with respect to section 399.84 to require that airlines and ticket agents comply with the rule as written. Under this new enforcement policy, which is effective January 26, 2012, airlines and ticket agents must include all government taxes and fees in every advertised fare. The Department's long-standing prohibition on omitting carrier-or agent-imposed charges, such as fuel surcharges or convenience fees, from advertised fares remains in effect.

<sup>2</sup> See, e.g., *US Airways, Inc.*, Violations of 49 U.S.C. § 41712 and 14 CFR 399.84, Order 2011-6-2 (June 2, 2011); *Delta Air Lines, Inc.*, Violations of 49 U.S.C. § 41712 and 14 CFR 399.84 Order 2010-5-30 (May 28, 2010);

<sup>3</sup> For example, under current policies, a carrier or ticket agent could advertise a flight in the following manner: "\$260 + Taxes and Fees" with the phrase "Taxes and Fees" set off as a hyperlink that takes the viewer directly to the bottom of the screen or to a pop-up or a place on a separate screen, where the nature and amount of taxes and fees are prominently and immediately displayed. See Department notices entitled "Disclosure of Air Fare Variations: Web vs. Other Sources, Surcharges that May be Listed Separately in Advertisements," dated November 4, 2004; "Disclosure of Additional Fees, Charges, and Restrictions on Air Fares in Advertisements, Including 'Free' Airfares," dated September 4, 2003; and "Prohibition on Deceptive Practices in the Marketing of Airfares to the Public Using the Internet," dated January 18, 2001, available at: <http://airconsumer.ost.dot.gov/rules/guidance.htm>.

that they were compliant with applicable regulations. Additionally, LOT asserts that it did not intend to mislead customers and upon notification of the issue by the Department, took immediate steps to modify its website as well as the related internal editing procedures and automation processes. LOT further states that it has fully cooperated with the Department with regard to this inquiry. Furthermore, LOT asserts that its efforts to ensure full compliance with the Department's rules and regulations will be supported by the launch of a new and redesigned website in January 2012.

### **Decision**

The Department views compliance with the Federal aviation statutes and regulations very seriously. The Enforcement Office has carefully considered the information provided by LOT and continues to believe that enforcement action is warranted. The Enforcement Office and LOT have reached a settlement of this matter in order to avoid litigation. Without admitting or denying the violations described above, LOT consents to the issuance of this order to cease and desist from future violations of 49 U.S.C. § 41712 and 14 CFR 399.84 and to the assessment of \$60,000 in compromise of potential civil penalties otherwise due and payable pursuant to 49 U.S.C. § 46301.

This compromise assessment is appropriate considering the nature and extent of the violations described herein and serves the public interest. It represents a strong deterrent against future noncompliance with the Department's advertising requirements.

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

ACCORDINGLY,

1. Based on the above information, we approve this settlement and the provisions of this order as being in the public interest;
2. We find that Polskie Linie Lotnicze LOT S.A. violated 14 CFR 399.84 by advertising fares that failed to state the entire price to be paid;
3. We find that by engaging in the conduct described in ordering paragraph 2, above, Polskie Linie Lotnicze LOT S.A. engaged in an unfair and deceptive practice and unfair methods of competition in violation of 49 U.S.C. § 41712;
4. We order Polskie Linie Lotnicze LOT S.A., and all other entities owned or controlled by, or under common ownership and control with LOT and its successors, affiliates, and assignees, to cease and desist from further similar violations of 14 CFR 399.84 and 49 U.S.C. § 41712. Failure to comply with this cease and desist provision shall subject LOT and its successors, affiliates, and assignees to possible further enforcement action;
5. We assess Polskie Linie Lotnicze LOT S.A. \$60,000 in compromise of civil penalties that might otherwise be assessed for the violations described above. Of this total penalty amount, \$30,000 shall be due and payable within 30 days of the date of

issuance of this order. The remaining \$30,000 shall become due and payable immediately if LOT violates this order's cease and desist provisions within one year following the date of issuance of this order or fails to comply with the order's payment provisions; and

6. We order Polskie Linie Lotnicze LOT S.A. to remit the payment assessed in ordering paragraph 5 above by wire transfer through the Federal Reserve Communications System, commonly known as "Fed Wire," to the account of the U.S. Treasury in accordance with the instructions contained in the attachment to this order. Failure to pay the penalty as ordered shall subject LOT to the assessment of interest, penalty, and collection charges under the Debt Collection Act, and to additional 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)

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