



**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 June, 2024**

Deutsche Lufthansa AG

**Violations of 49 U.S.C. § 41712 and
14 CFR Part 259**

Docket OST-2024-0001

Served June 3, 2024

CONSENT ORDER

The U.S. Department of Transportation’s Office of Aviation Consumer Protection has determined that Deutsche Lufthansa AG (Lufthansa) failed to provide timely refunds to passengers for flights to and from the United States that the carrier cancelled or significantly changed in violation of 49 U.S.C. § 41712 (Section 41712) and 14 CFR Part 259. Since March 2020, the Department has received over 2,500 complaints regarding Lufthansa’s handling of refund requests after cancelling or significantly changing consumers’ flights to or from the U.S. The airline has received tens of thousands more complaints, claims, and refund requests from passengers directly. During the peak of the COVID-19 pandemic, thousands of the refund requests took longer than a hundred days to process. This order directs Lufthansa to cease and desist from future similar violations of 49 U.S.C. § 41712 and 14 CFR Part 259 and assesses the carrier \$1,100,000 in civil penalties.

Applicable Law

Pursuant to 49 U.S.C. § 41301, a foreign air carrier¹ may provide foreign air transportation² only if the foreign air carrier holds a permit from the Department authorizing the foreign air

¹ 49 U.S.C. § 40102(a)(21) defines a “foreign air carrier” as “a person, not a citizen of the United States, undertaking by any means, directly or indirectly, to provide foreign air transportation.”

² 49 U.S.C. § 40102(a)(5) defines “air transportation” as “foreign air transportation, interstate air transportation, or the transportation of mail by aircraft.” 49 U.S.C. § 40102(a)(23) defines “foreign air transportation” as “the

transportation or has a valid exemption from that section.³ A foreign air carrier that holds a foreign air carrier permit from the Department is subject to the requirements of 49 U.S.C. § 41712, which prohibits an air carrier, foreign air carrier, or a ticket agent from engaging in an unfair and deceptive practices in air transportation or the sale of air transportation. Section 41712 authorizes the Department to investigate and decide whether a carrier or ticket agent is engaging in an unfair or deceptive practice, and if so, to prohibit such a practice.⁴

In April and May 2020, in response to the high volume of air travel service complaints received, many of which concerned refunds, OACP issued notices to help consumers understand their rights and emphasize to airlines that the unprecedented impact COVID-19 had on air travel did not change the airlines' obligation under Section 41712 to refund passengers for flights that airlines cancel or significantly change.⁵ Then, in December 2020, the Department published in the Federal Register a final rule titled "Defining Unfair or Deceptive Practices."⁶ The rule defined the terms "unfair" and "deceptive" for purposes of Section 41712. Pursuant to the rule, a practice is "unfair" to consumers within the meaning of Section 41712 if it causes substantial harm to consumers, the harm is not reasonably avoidable, and the harm is not outweighed by benefits to consumers or competition.⁷ For the reasons set forth below, the practice of cancelling or significantly changing a flight to or from the United States without providing a refund is "unfair" as that term is defined by regulation, irrespective of the reason for the cancellation.

First, the practice imposes substantial harm to consumers because they paid money to the carrier for a service that the carrier did not provide. Consumers incur harm from delays in receiving refunds, as well as from the time, effort, and expense involved in seeking a refund.

Second, the harm is not reasonably avoidable. A consumer acting reasonably would believe that he or she was entitled to a refund under U.S. law if the carrier cancelled or significantly changed the flight whatever the reason for the cancellation or significant change. Moreover, a reasonable consumer would not believe that it is necessary to purchase a more expensive refundable ticket in order to be able to recoup the ticket price when the airline fails to provide the service paid for

transportation of passengers or property by aircraft as a common carrier for compensation, or the transportation of mail by aircraft, between a place in the United States and a place outside the United States when any part of the transportation is by aircraft."

³ The authority required by section 41301 is separate and distinct from the operations specifications and approvals that such an entity must obtain from the Federal Aviation Administration (FAA) for operations to and from the United States.

⁴ The Department's regulations impose obligations on airlines that cannot be avoided through contractual provisions. *See Spirit Airlines vs. DOT*, 687 F.3d 403, 416 (D.C. Cir. 2012) (DOT may implement rule that airlines must change their policies to permit a passenger to cancel a reservation without penalty within 24 hours, based on DOT's finding that existing practices were unfair or deceptive).

⁵ "Enforcement Notice Regarding Refunds by Carriers Given the Unprecedented Impact of the Covid-19 Public Health Emergency on Air Travel" (April 3, 2020), available at https://www.transportation.gov/airconsumer/enforcement_notice_refunds_apr_3_2020; "Frequently Asked Questions Regarding Airline Ticket Refunds Given the Unprecedented Impact of the Covid-19 Public Health Emergency on Air Travel" (May 12, 2020), available at https://www.transportation.gov/airconsumer/FAQ_refunds_may_12_2020.

⁶ 85 Fed. Reg. 78707 (December 7, 2020).

⁷ 14 CFR 399.79(b)(1).

through no action or fault of the consumer. Reasonable consumers understand that “refundable” tickets are valuable because they ensure a refund if the *passenger* cancels their own flight reservation.

Third, the harm is not outweighed by countervailing benefits to consumers or competition. The Department seeks to regulate practices that are injurious to consumers in their net effects.⁸ In enforcing Section 41712, which is modeled on Section 5 of the Federal Trade Commission (FTC) Act, the Department recognizes, like the FTC, that practices may be harmful to consumers in some ways, but beneficial in others. For example, offsetting benefits may include lower prices or a wider availability of products and services resulting from competition.⁹ Here, there are no offsetting benefits to consumers that would outweigh the harm of retaining passengers’ funds for lengthy periods of time.

In addition to the general prohibition on unfair and deceptive practices, pursuant to 14 CFR 259.5, U.S. and foreign air carriers operating at least one aircraft having a designed seating capacity of 30 or more seats must adopt a Customer Service Plan and adhere to the Plan’s terms. Customer Service Plans represent a baseline, uniform, minimum level of service to which all covered carriers operating flights to and from the United States must comply. The Customer Service Plan must include certain commitments relating to the payment of refunds to passengers when required by Section 41712. Section 259.5(b)(5) requires: “Where ticket refunds are due, providing prompt refunds, as required by 14 CFR 374.3 and [Regulation Z, 12 CFR Part 1026] for credit card purchases, and within 20 days after receiving a complete refund request for cash and check purchases, including refunding fees charged to a passenger for optional services that the passenger was unable to use due to an oversale situation or flight cancellation.” OACP’s position is that refunds are “due” when failure to provide them would constitute an unfair or deceptive practice under Section 41712. Regulation Z states, at 12 CFR 1026.11(a)(2), that for credit card purchases, refunds must be provided within seven business days of receipt of a written request from the consumer. Pursuant to 14 CFR 374.3(b), violations of Regulation Z constitute violations of 49 U.S.C. Subtitle VII.¹⁰

Facts and Conclusions

Lufthansa, a foreign air carrier, holds a foreign air carrier permit to operate flights to and from the United States pursuant to 49 USC 41301. Lufthansa uses at least one aircraft having a designed capacity of more than 30 passenger seats. One condition of Lufthansa’s foreign air carrier permit is that Lufthansa “comply with such other reasonable terms, conditions, and limitations required by the public interest as may be prescribed by the Department, with all applicable orders or regulations of other U.S. agencies and courts, and with all applicable laws of the United States.”¹¹ Accordingly, Lufthansa is subject to the requirements in 49 U.S.C. § 41712 and 14 CFR 259.5.

⁸ See <https://www.ftc.gov/public-statements/1980/12/ftc-policy-statement-unfairness>.

⁹ See *Id.*

¹⁰ In enforcement orders, DOT has clarified that violations of section 259.5 are violations of Section 41712 specifically, not just 49 U.S.C. Subtitle VII generally. See, e.g., *American Airlines*, DOT Order 2017-7-9.

¹¹ Order 2008-1-20 (January 24, 2008), paragraph 11.

An investigation by OACP revealed that beginning on or about March 13, 2020, Lufthansa did not provide prompt refunds to consumers for flights to or from the United States that were cancelled or significantly changed by the carrier in response to the impact of the COVID-19 Pandemic. The carrier advised the impacted consumers via a press release and its website that existing bookings would be cancelled but the ticket and ticket value would remain unchanged and could be rebooked for a new departure date. During March 2020, Lufthansa began cancelling most of its passenger services between the U.S. and Europe, ultimately cancelling 32,512 flights that had been scheduled to operate from March 2020 through September 2022. On April 6, 2020, Lufthansa issued another press release advising its customers regarding flights to and from the U.S., that passengers whose flights had been cancelled and who chose to retain the value of their ticket and use it for a different travel date would also receive a \$50 discount on each rebooking. The press release further stated that in the event a customer preferred a refund in lieu of retaining the ticket value and rebooking, the customer could request a refund, but Lufthansa also indicated that it was experiencing processing issues and referenced the circumstances of the pandemic. Staffing and technical issues and the large number of refund requests led to thousands of consumers waiting for many months before receiving the refunds to which they were entitled. As a result, thousands of consumers experienced significant harm from the extreme delay in providing refunds to those consumers.

Response

Lufthansa states that due to the unforeseeable and extraordinary effects of the COVID-19 pandemic, it was forced to cancel thousands of flights in 2020, especially during the initial months of the pandemic. Lufthansa states that within weeks the company was at risk of insolvency, only managing to avoid such a scenario by a state-backed loan facility, which has since been repaid. Lufthansa states that its internal and external service providers saw an unimaginable rise in incoming refund requests of more than 4,500% daily compared to pre-pandemic levels, which was equivalent to the workload of two-and-a-half months coming in every day.

Lufthansa explains that despite many obstacles such as governmental restrictions affecting staffing of service centers, lack of passenger data due to bookings through intermediaries, and system limitations due to the unprecedented number of claims coming in, Lufthansa at all times used its best good faith efforts to accommodate any passenger seeking a refund for their cancelled flights, and at no time were customers refused their right to a refund of their ticket, if eligible, or forced to accept vouchers or travel credits instead of refunds.

Lufthansa states that in response to the unforeseen number of customer requests, it started developing new IT capabilities and significantly increased its manual workforce in customer service centers around the world to process record numbers of refunds every month. Lufthansa notes that between March 2020 and September 2022, it provided a total of \$5.3 billion in refunds, of which \$802 million were paid out to customers in the United States. Lufthansa asserts that its backlog of refund requests in the United States was mostly cleared by November 2020, and since then, Lufthansa has been processing the majority of its refund requests in accordance with all applicable regulations and regular timeframes, without any significant interruptions.

Lufthansa states that in addition to the above-mentioned immediate and responsive measures, Lufthansa decided to provide so-called “voluntary refunds” to hundreds of thousands of customers who had booked a non-refundable fare but wished to cancel or change their flight, which at the time of the request was still scheduled to depart on time, without any legal requirement to refund

such passengers. Lufthansa asserts that between March 2020 and September 2022, Lufthansa issued voluntary refunds to U.S. consumer in the amount of USD \$27 million. During this period Lufthansa also asserts it waived most of its fare restrictions, all rebooking fees, allowed date and routing changes, extended expiration dates and offered an additional \$50 bonus to consumers that chose to rebook their travel or opt for a travel voucher.

Lufthansa asserts that it relied upon the Department's guidance as published in its Enforcement Notices, stating, *inter alia*, that the Department would use enforcement discretion and not take action against airlines if they made good faith efforts to provide refunds in a timely manner.¹² Lufthansa further asserts that at all times, it demonstrated good faith efforts by its immediate actions and measures implemented to improve its refund processes and mitigate the effects of the pandemic on its passengers. Lufthansa submits that no significant harm, as alleged by the Department, was caused to its customers as a result of refund delays during the relevant time period.

Finally, Lufthansa states that it fully and willingly cooperated with the Department's investigation at all times and in good faith. Lufthansa agrees to this consent order for settlement purposes only and to avoid further litigation and related costs. Lufthansa makes no admission of fault or violation of any statute, law, or regulation.

Decision

OACP views seriously Lufthansa's violations of 49 U.S.C. § 41712 and 14 CFR Part 259. Accordingly, after carefully considering all the facts in this case, including those set forth above, OACP believes that enforcement action is warranted. In order to avoid litigation, Lufthansa consents to the issuance of this order to cease and desist from future violations of 49 U.S.C. § 41712 and 14 CFR Part 259 and to the assessment of \$1,100,000 in compromise of potential civil penalties otherwise due and payable pursuant to 49 U.S.C. § 46301. The compromise assessment is appropriate considering the nature and extent of the violations described herein and serves the public interest. It establishes a strong deterrent to future similar unlawful practices by Lufthansa and other carriers.

This order is issued under the authority contained in 49 CFR Part 1.

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 by significantly delaying the payment of refunds to passengers for flights to or from the United States that Deutsche Lufthansa AG cancelled or significantly changed, Deutsche Lufthansa AG engaged in an unfair practice in violation of 49 U.S.C. § 41712;

¹² OACP does not view Lufthansa's actions as consistent with the Enforcement Notices because Lufthansa took many months to provide refunds to thousands of consumers.

3. We find that failing to adhere to its customer commitment related to providing prompt refunds, Lufthansa violated 14 CFR 259.5(b)(5), which also constitutes a violation of 49 U.S.C. § 41712;
4. We order Lufthansa and its successors and assigns to cease and desist from further violations of 49 U.S.C. § 41712 and 14 CFR 259.5;
5. We assess Deutsche Lufthansa AG \$1,100,000 in compromise of civil penalties that might otherwise be assessed for the violations described in paragraphs 2 and 3 above. Of this total amount, \$550,000 shall be due and payable within 30 days of the issuance of the order. The remaining \$550,000 shall be credited to for refunds that Deutsche Lufthansa AG provided to passengers with non-refundable tickets for flights to or from the United States who chose not to travel and were not entitled to refunds under U.S. law;
6. We order Lufthansa to pay within 30 days of the issuance of this order the penalty assessed in ordering paragraph 5, above, through Pay.gov to the account of the U.S. Treasury. Payment shall be made in accordance with the instructions contained in the Attachment to this order. Failure to pay the penalty as ordered shall subject Lufthansa to the assessment of interest, penalty, and collection charges under the Debt Collection Act and to further enforcement action for failing 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:

KIMBERLY GRABER
Deputy Assistant General Counsel
for the Office of Aviation Consumer Protection

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