



**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 July, 1997

Aires del Sur S.A.

Served July 10, 1997

**Violations of 49 U.S.C. 41301
and 41712**

CONSENT ORDER

This order concerns violations by Aires del Sur S.A. (Aires del Sur), a foreign airline of Argentina, of 49 U.S.C. 41301, which requires Departmental authority for foreign air carriers to hold out or otherwise provide all-cargo services to or from the United States, and 49 U.S.C. 41712, which prohibits unfair and deceptive practices and unfair methods of competition. This consent order directs Aires del Sur to cease and desist from future violations and to pay a compromise civil penalty.

Aires del Sur is licensed by the Government of the Republic of Argentina to engage in "non regular international air cargo transportation on narrow & wide-body freighters." The carrier does not hold any permit or exemption authority from the Department to operate to or from the United States.¹ However, in the *Official Cargo Guide, Worldwide Edition*, (OCG) for March-April 1995, Aires del Sur, which is described in the OCG as a "certificated air carrier," held out scheduled all-cargo service in the Miami-Buenos Aires market. In the edition of the publication for October-November 1996, the carrier continued to hold itself out as providing this direct foreign air service. We have also received information that indicates that Aires del Sur is shown on an air waybill issued by Aires del Sur S.A. International Enterprises Group (IEG) as the first carrier for the carriage of cargo between Miami and Buenos Aires on April 19, 1995.

¹ On December 30, 1993, Aires del Sur filed applications for a foreign air carrier permit (Docket 49341) and exemption authority (Docket 49342) to conduct nonscheduled all-cargo services between Argentina and the United States. The carrier's applications remain pending.

Listing direct foreign air service in the OCG or providing direct foreign air transportation to the public or otherwise holding out direct foreign air transportation service to the public when a company does not have any U.S. authority to do so is a violation of 49 U.S.C. 41301. Under section 41301, a foreign carrier must hold permit authority under 49 U.S.C. 41302 or exemption authority under 49 U.S.C. 40109 from the Department to sell or otherwise provide foreign air transportation. From the standpoint of the requirements of 49 U.S.C. 41301, the advertising or holding out of service, as well as the actual operation of air service, constitutes the provision of air transportation. Any violation of 49 U.S.C. 41301 would also be an unfair and deceptive practice and unfair method of competition in violation of 49 U.S.C. 41712. Under 49 U.S.C. 46301, as amended, violations of the statute may subject Aires del Sur and its principals to civil penalties of up to \$1,100 for each violation and \$1,100 per day for each continuing violation.

In mitigation, Aires del Sur states that it has never provided any unauthorized air transportation between the United States and Argentina. Aires del Sur admits that it is shown on an air waybill issued by IEG as the first carrier for the carriage of cargo between Miami and Buenos Aires on April 19, 1995. Aires del Sur acknowledges that until recently IEG, a registered freight forwarder with which Aires del Sur has on-going business relations and which serves as the General Sales Agent in the U.S. for Aires del Sur, customarily provided its customers blank in-house air waybills printed with the names and the common U.S. address of both companies. The carrier claims that its "D4" designation code was mistakenly listed on the air waybill as the direct carrier by the agent that referred the shipment to IEG for forwarding. Aires del Sur states that it was not involved in any way in the transportation of this shipment and that no consumer or public injury resulted from this clerical error.

The carrier asserts that it is routine practice for authorized freight forwarders to furnish such air waybills to customers, who then fill them out to reflect the particulars of the shipments that they tender the forwarder for actual transportation. Nevertheless, in the interest of avoiding any possible confusion in this area, Aires del Sur states that IEG has discontinued the distribution of the air waybills with Aires del Sur's name on them and instead now distributes air waybills clearly reflecting the name/designator code of the direct air carrier from whom it currently charters capacity.

Aires del Sur admits that it has listed scheduled all-cargo service in the OCG in the Miami-Buenos Aires market under its "D4" designation code for many years. The carrier states that it initially submitted this schedule to the OCG in August 1993, and filed to renew the schedule, month after month, because it believed that it was necessary in order for the carrier to retain its "D4" designation code. Aires del Sur states that it has since learned that it is not in fact necessary for carriers to publish schedules in the OCG in order to retain their two-letter

designator code and that it has canceled the publication of its schedules in the OCG, effective with the April 1, 1997, edition.

In order to avoid litigation, and without admitting or denying the alleged violations, Aires del Sur has agreed to a settlement of this matter with the Office of Aviation Enforcement and Proceedings. Aires del Sur consents to the issuance of an order to cease and desist from future violations of 49 U.S.C. 41301 and 41712, and to an assessment of \$10,000 in compromise of potential civil penalties. Of this amount, Aires del Sur will pay \$5,000 within 15 days of the issuance of this order, as set forth below. The remaining \$5,000 shall be suspended for one year after the issuance of this order and shall be forgiven unless Aires del Sur fails to comply with the payment provisions of this order, or commits other violations of 49 U.S.C. 41301 or 41712, or this order during that year, in which case the unpaid portion of the penalty shall become due and payable immediately.

We believe that this compromise assessment is appropriate and serves the public interest. It represents an adequate deterrence to future noncompliance with 49 U.S.C. 41301 and 41712 by Aires del Sur, as well as by other carriers.

This order is issued under the authority contained in 49 CFR 1.57a and 14 CFR 385.22.

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 Aires del Sur S.A. violated 49 U.S.C. 41301 by holding out direct scheduled all-cargo service in the Miami-Buenos Aires market;
3. We find that Aires del Sur S.A. violated 49 U.S.C. 41712 by engaging in the conduct described in paragraph 2, above;
4. We order Aires del Sur S.A. and all other entities owned or controlled by or under common ownership with Aires del Sur S.A., and their successors and assignees, to cease and desist from further violations of 49 U.S.C. 41301 and 41712, as described above;
5. Aires del Sur S.A. is assessed \$10,000 in compromise of the potential civil penalties that might otherwise be assessed for the violations described in ordering paragraphs 2 and 3 of this order. Of this amount, \$5,000 shall be paid within 15 days of the issuance of this order. The remaining \$5,000 shall be suspended for one year after the issuance of this

order and shall be forgiven unless Aires del Sur S.A. fails to comply with the payment provisions of this order, or commits other violations of 49 U.S.C. 41301 or 41712, or this order during that year, in which case the unpaid portion of the \$5,000 penalty shall become due and payable immediately; 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 attached instructions. Failure to pay the penalty as ordered will subject Aires del Sur S.A. to 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 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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