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

Issued by the Department of Transportation
on the 27th day of November, 2002

Air Luxor, S.A.

**Violations of 49 U.S.C. §§ 41301, 41712, and 14
CFR 212.9**

Served November 27, 2002

OST-2002-12273 - / 3

CONSENT ORDER

This consent order concerns the unauthorized operation of flights between Alexandria, Louisiana and Islamabad, Pakistan. and Atlanta, Georgia and Cairo, Egypt, by Air Luxor, S.A. (Air Luxor), a carrier holding exemption authority, that constitute violations of 49 U.S.C. §§ 41301 and 41712, and 14 CFR 212.9. This order directs Air Luxor to cease and desist from future similar violations and to pay compromise civil penalties.

Section 41301 requires that a foreign carrier hold permit authority from the Department, or appropriate exemption authority, in order to engage in foreign air transportation, Under 14 CFR 212.9, foreign air carriers must receive a statement of authorization prior to performing a Fifth Freedom flight, which is a flight from the U.S. "carrying traffic that originates and terminates in countries other than the carrier's home country, regardless of whether the flight operates via the home country." (14 CFR 212.2). A violation of these provisions also constitutes an unfair and deceptive practice and unfair method of competition prohibited by 49 U.S.C. § 41712.

Air Luxor, which is based in Portugal, has received authority from the Department to conduct foreign charter air transportation. On **August 24, 2000**, Air Luxor tiled an application for renewal of its exemption from the provisions of 49 U.S.C. § 41301 authorizing it to operate between Portugal and points in the United States (OST Docket No. 98-4163).¹ By a Notice of Action Taken dated September 12, 2000. Air Luxor was granted the requested authority for two years, subject to the condition that the carrier must apply for specific authorization under 14 CFR Part 212 prior to conducting any Fifth Freedom flight.

¹ Air Luxor originally filed for exemption authority on July 23, 1998. This request was granted on **August 7, 1998**, and was subsequently renewed in 1999.

Despite the conditions specified in 14 CFR Part 212, Air Luxor performed two Fifth Freedom flights without obtaining the prior authorization required by its exemption. The first flight was between Atlanta, Georgia and Cairo, Egypt on June 12, 2002. The second flight was between Alexandria, Louisiana and Islamabad, Pakistan on June 27, 2002.

In mitigation and explanation, Air Luxor states that it is fully informed **as** to its responsibilities with the Department and has generally complied with its obligations. Air Luxor asserts that the individuals handling the flights in question were not well prepared and assumed that, since the flights were being operated on behalf of an agency of the U.S. Government, no further authorization from the U.S. Government would be necessary.* Air Luxor also states that both flights were accommodated on an expedited basis to satisfy the U.S. Government. Air Luxor also asserts that there was no intention to evade its regulatory obligations, and it had no motive to do so.

The Aviation Enforcement Office views seriously the obligation of all carriers to observe the statutory prohibitions on unauthorized charter operations and the responsibility of carriers to abide by the terms of their exemption authority. Accordingly, we have carefully considered all of the information available, including that provided by Air Luxor, S.A., but continue to believe that enforcement action is warranted. In this connection and in order to avoid litigation, the Aviation Enforcement Office and Air Luxor, S.A. have reached a settlement of this matter. Without admitting or denying the violations described above, Air Luxor, **S.A.** consents to the issuance of this order to cease and desist from future violations of 14 CFR **Part** 212 and 49 U.S.C. §§ 41301 and 41712 and to the assessment of \$2,500 in compromise of potential civil penalties otherwise assessable. Of this total penalty amount, \$1,500 shall be due and payable within 15 days of the date of issuance of this order. The remaining \$1,000 penalty amount shall be suspended for one year following the date of the issuance of this order. and then forgiven, unless, during that one-year period, Air Luxor, **S.A.** violates this order's cease and desist provision **or** fails to comply with the order's payment provisions, in which case the entire unpaid portion of the \$2,500 penalty shall become due and payable immediately, and the carrier may be subject to further enforcement action. The Aviation Enforcement Office believes this compromise is appropriate, serves the public interest, and creates an incentive for all operators to comply fully with the requirements of 14 CFR **Part** 212 and 49 U.S.C. §§ 41301 and 41712.

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 The flights were chartered **by** the United States Department **of** Justice.

2. We find that Air Luxor, S.A. has violated 49 U.S.C. § 41301 and 14 CFR Part 212 by performing Fifth Freedom charter air transportation without obtaining a statement of authorization from the Department for such air transportation;
3. We find that by engaging in the conduct and violations described in paragraph 2 above, Air Luxor, S.A. has engaged in an unfair and deceptive practice and an unfair method of competition in violation of 49 U.S.C. § 41712;
4. Air Luxor, S.A. and all other entities owned and controlled by it, or under common ownership and control with Air Luxor, S.A. and their successors and assignees, are ordered to cease and desist from future violations of 14 CFR Part 212 and 49 U.S.C. §§ 41301 and 41712;
5. Air Luxor, **S.A.** is assessed a civil penalty of \$2,500 in compromise of the civil penalties that might otherwise be assessed for the violations found in paragraphs 2 and 3 of this order. Of this total penalty amount, \$1,500 shall be due and payable within 15 days of the date of issuance of this order. The remaining \$1,000 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, Air Luxor, S.A. violates this order's cease and desist provision or fails to comply with the order's payment provisions. in which case the entire unpaid portion of the \$2,500 penalty shall become due and payable immediately, and the carrier may be subject to further enforcement action. Failure to pay the compromise assessment as ordered will subject Air Luxor, S.A. to the assessment of interest, penalty, and collection charges under the Debt Collection Act, and to possible enforcement action for failure to comply with this order; and
6. Payment of the civil penalty described above 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.

This order will become a final order of the Department 10 days after its service unless a timely petition for review is filed or the Department takes review on its own initiative.

By:

ROSALIND A. KNAPP
Deputy General Counsel

(SEAL)

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