

Regulations Against Unfair Competition Acts in the Civil Air Transportation Market

(Promulgated by the General Administration of Civil Aviation of China Order No. 47 on February 27, 1996)

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Chapter I General Provisions

Article 1. In accordance with Civil Aviation Law of the People's Republic of China, Counter-Unfair Competition Law of the People's Republic of China and other relevant laws and administrative rules, these regulations are formulated to maintain normal order in the civil air transportation market in the Country, to encourage and protect fair competition, to prevent unfair competition, to protect the lawful rights and interests of operators, passengers and shippers and to safeguard the healthy development of civil air transportation market.

Article 2. These regulations apply to the legal persons and other business organizations engaged in civil air transport operations within the territory of the People's Republic of China.

Article 3. All legal persons and other business organizations engaged in civil air transport operations shall observe the State laws, the administrative rules and the regulations of the General Administration of Civil Aviation of China, act upon the principles of free will, equality and bona fide, compete fairly, ensure flight safety, strive for regular flight and provide high quality services.

Article 4. The General Administration of Civil Aviation of China (hereinafter, CAAC) is generally responsible for supervising and inspecting unfair competition acts in the civil air transport market in the whole country. The relevant functional departments under CAAC shall, according to division of duties, strengthen the supervision and inspection over unfair competition acts in the civil air transport market.

The regional civil aviation administrations (hereinafter, the regional administrations) are responsible for supervising and inspecting unfair competition acts in their respective regions.

Article 5. The working personnel of CAAC and those of the regional administrations shall not support or harbor unfair competition acts.

All organizations and individuals are encouraged, supported and protected to conduct social supervision over unfair competition acts in civil air transport market.

Chapter II Unfair Competition Acts

Article 6. An air transport enterprise shall not commit any of the following unfair acts in its operations:

- (1) without authorization, raising or reducing air tariffs in violation of the relevant regulations relating to domestic air tariff control by the State and CAAC;
- (2) offering bribes with property or other interests, violating the regulations of CAAC relating to the ceiling commissions for sale agency, offering sales commissions to the trading counterpart(s) [passengers or shippers], establishing sale agents without approval, or taking any other improper marketing actions, to sell its passenger tickets or tonnage;
- (3) for the purpose of selling its own passenger tickets or tonnage, preventing or restraining sale agents from selling passenger tickets or tonnage of other air transport enterprise(s), or without approval of the competent authority, incorporating a sale agent as its subordinate sale branch;
- (4) restraining passengers or shippers from selecting carriers freely with a view to excluding other air transport enterprises, except those acts prescribed otherwise by the State;
- (5) imposing restrictions on the regular operations of other air transport enterprises or sale agents by taking advantage of computer applied system or communication network that is under its control;
- (6) acquiring the services of air transport support enterprises by offering charges above the service charge standards prescribed by CAAC or offering bribes with property or other interests;
- (7) causing damage to competitors by buying over their servants or agents.

Article 7. An airport authority shall not commit any of the following unfair acts that cause damage to other enterprises in its air transport support operations:

- (1) by claiming undue reasons in respect of sales, checking, aircraft loading agency or other matters, imposing improper restrictions on takeoff or landing of aircraft of an air transport enterprise, or refusing to contract with an air transport enterprise to provide support services that are in its range of business;

- (2) taking exclusive or discriminatory actions against an air transport enterprise who has no agreement for ground service agency with it;
- (3) without authorization, setting chargeable items and standards that it is not entitled to determine, thus causing damage to passengers, shippers or its users [air transport enterprises];
- (4) by taking advantage of its superior position, violating the principle of equality, mutual benefit and reaching unanimity through consultation, imposing unfair provisions in the agreement for ground services or other service agency agreement concluded with its counterpart;
- (5) expanding its business or excluding competitors by offering bribes with property or other interests;
- (6) in a public bidding for airport services or operation of commercial facilities, intentionally raising or reducing the bid price in collusion with the bidder.

Article 8. Any sale agent shall perform strictly the sale agency agreement concluded with an air transport enterprise and shall not commit any of the following unfair acts in its agency operations:

- (1) acting beyond the limits of agency authorized by the air transport enterprise and infringing upon the lawful rights and interests of the air transport enterprise or other sale agents;
- (2) soliciting passengers and shippers by bribery, offering sale commission to the counterpart outside the tickets or the accounts, or other improper marketing means;
- (3) while selling passenger tickets, controlling seats by making false reservations, thus infringing upon the lawful rights and interests of the air transport enterprise or other sale agents;
- (4) demanding or accepting agency service charges inconsistent with the relevant regulations of CAAC.

Article 9. All enterprises engaged in civil aircraft maintenance, air fuel supply, air material supply, aviation accounting, aviation computer system and other services for air transport, as well as air traffic control organizations, shall provide quality support for air transport and shall not commit any of the following unfair acts:

- (1) without authorization, setting chargeable items and standards that it is not entitled to determine, thus causing damage to their users [air transport enterprises];
- (2) demanding or accepting bribes of property or other interests;

(3) by claiming undue reasons, imposing restrictive or restraint conditions for providing or refusing to provide the support services that are in its range of business;

(4) Discriminating against air transport enterprises or treating them dissimilarly;

(5) With regard to air traffic control organizations, air fuel supply agencies or other support enterprises, operating charter transport.

Article 10. Where two or more enterprises of different kinds listed above in these Regulations commit unfair competition acts enumerated in these Regulations by way of combination or coordination, they shall be punished according to the respective provisions in these Regulations.

Chapter III Supervision and Inspection

Article 11. CAAC and the regional administrations shall, in accordance with Article 17 of Counter-Unfair Competition Law of the People's Republic of China, exercise supervisory and inspecting power over unfair competition acts in the civil air transport market.

Article 12. When a relevant functional department under CAAC or a regional administration is examining or inspecting an unfair competition act, the enterprise (organization) to be examined or inspected or other related parties shall report the relevant situation and information accurately, and shall not give false information or conceal the truth unreported.

Article 13. In case of an unfair competition act, any organization or individual may lodge a charge with or report the case to CAAC or the relevant regional administration. No one may obstruct or hold the report back. Upon receiving the charge or the report and promptly organizing an investigation and handling, CAAC or the regional administration shall notice the person who lodged the charge or reported the case of the endings of the investigation and handling, and shall keep the secret for him if he requires.

Chapter IV Penalties

Article 14. Any violator of the provisions of subparagraph 1 of Article 6, subparagraph 3 of Article 7 or subparagraph 1 of Article 9 of these Regulations shall, in accordance with the relevant provisions of Counter-Unfair Competition Law, be ordered to stop the illegal acts, be confiscated of the unlawful earnings, and shall be concurrently punished by a fine of not more than 200,000 yuan but not less than 10,000 yuan. Under aggravating circumstances, the violator shall be punished by stopping flights on part of its air routes, and even further, revoking its operation certificate.

Article 15. Any violator of the provisions of subparagraph 2, 6 or 7 of Article 6, subparagraph 5 of Article 7 or subparagraph 2 of Article 9 of these Regulations shall, in accordance with the provisions of Article 22 of Counter-Unfair Competition Law, be ordered to stop the illegal acts, be confiscated of the unlawful earnings, and shall be concurrently punished by a fine of not more than 200,000 yuan but not less than 10,000 yuan. Where a crime is constituted, the violator shall be subject to criminal prosecution according to law.

Article 16. Any violator of the provisions of subparagraph 3, 4 or 5 of Article 6, subparagraph 1, 2 or 4 of Article 7 or subparagraph 3, 4 or 5 of Article 9 of these Regulations shall, in accordance with the provisions of Article 23 of Counter-Unfair Competition Law, be given a warning, be ordered to stop the illegal acts, be confiscated of the unlawful earnings, and shall be concurrently punished by a fine of not more than 200,000 yuan but not less than 50,000 yuan according to the seriousness of the case.

Article 17. In case of violation of the provisions of subparagraph 6 of Article 7 of these Regulations, in accordance with the provisions of Article 27 of Counter-Unfair Competition Law, the bid shall be null and void, and the violator shall be punished by a fine of not more than 200,000 yuan but not less than 10,000 yuan according to the seriousness of the case.

Article 18. Anyone who commits any of the acts enumerated in Article 8 of these Regulations shall, in accordance with the provisions of Article 22 or 23 of Counter-Unfair Competition Law, be ordered to stop the illegal acts and be confiscated of the unlawful earnings. The violator shall be held liable for the damage caused to the interested party and shall be simultaneously punished by circulating, warning, or suspending business for consolidation, and in addition thereto a fine of not more than 200,000 yuan but not less than 10,000 yuan, and even further, revoking its sale agency operation certificate. Where a crime is constituted, the violator shall be subject to criminal prosecution according to law.

Article 19. Where a business branch established by a foreign airline that is engaged in civil air transport sales activities within the territory of China violates the laws or the rules of China or the provisions of these Regulations, CAAC shall, according to the seriousness of the case, punish the violator by warning, ordering correction within a defined time, fine, and even further, revoking its operation certificate.

Article 20. If a party disagrees with the punishment decision by CAAC or a regional administration, he may appeal for reconsideration to the competent authority within 15 days after receiving the punishment decision. If he still disagrees with the decision on the reconsideration, he may bring a suit before a people's court within 15 days after receiving the decision on the reconsideration. He may also directly bring a suit before the people's court.

Article 21. In case that a functional department or working personnel under CAAC or a regional administration responsible for supervising or inspecting unfair competition acts neglects his duties, abuses his power, or practices favoritism and embezzlement, he shall be subject to disciplinary sanction according to law.

Where a crime is constituted, he shall be subject to criminal prosecution according to law.

Chapter V Supplementary Provisions

Article 22. These regulations shall go into effect as of the date of promulgation.