

29, Route de l'Aéroport  
P.O. Box 833  
CH-1215 Geneva 15 Airport  
Switzerland  
Phone: +41 22 799 3900, fax: +41 22 799 3902  
www.travel-agency-commissioner.aero

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**DECISION**

**In the Matter of:**

**Joker Tourism N.V.**  
H/O Boundless  
Geerdegemvaaart 96/98  
B-2800 Mechelen  
Belgium  
(IATA Numeric Code: 08-2 9507 0)  
Applicant

vs

**Agency Administrator**  
**IATA**  
International Air Transport Association  
33, Route de l'Aéroport  
P.O. Box 416  
CH-1215 Geneva 15 Airport  
Switzerland  
Respondent

**Introduction**

1. The Review giving rise to this decision has been made on the authority of IATA Resolution 820e, in which the powers and duties of the Travel Agency Commissioner are set out. The undersigned is the Agency Commissioner for Area Two, appointed in accordance with the provisions of Resolution 820d.

**Parties**

2. The Applicant is Joker Tourism N.V., an IATA Accredited Agent with registered office in Mechelen, Belgium. The Applicant has been in business 26 years and on the IATA Agency List since 1994. At the hearing, the Applicant was represented by Mr Bob Elsen, CEO; Mr Luc Callewaert, general manager and Mrs Katleen Hofmans, finance & administration manager. Prof. Roger Tiest, the Applicant's statutory public accountant, was also present.

3. The Respondent is the Agency Administrator of the International Air Transport Association ('IATA'), acting for Member airlines which have delegated certain functions to IATA. IATA exists by virtue of a Canadian Act of Parliament (Statutes of Canada 1945,

Chap. 51, as amended in 1975) and is the worldwide association of airlines that operate internationally. It performs common services for its 265, or so, Members that include administering the Agency Programme and managing the Billing and Settlement Plan ('BSP') in Belgium & Luxembourg. The BSP is an industry centralised sales reporting and settlement system. The Agency Administrator has particular responsibility for the management of these activities.

4. IATA divides the world into Areas One, Two and Three. The Agency Administrator's main base in Area Two – Europe, Africa & the Middle East is Geneva, Switzerland. The country field office for Belgium & Luxembourg, which exercises management responsibility for the Agency Programme in that territory, is situated in Brussels.

5. The Agency Programme consists principally of resolutions adopted by the IATA Passenger Agency Conference which lay down the rules and regulations governing business relations between IATA Accredited Agents and IATA Members.

6. At the hearing, the Respondent was represented by Mrs Valerie Jackson, Assistant Director, Agency Accreditation Services, Mr Richard Carton, Assistant Director, IDFS Financial Control and by Mr Alvaro Pons Garcia-Seoane, IATA Country Manager, Belgium & Luxembourg.

#### Contractual Considerations

7. The Passenger Agency Conference is composed of those IATA Members who appoint a delegate to it. Per the IATA Articles of Association, the Resolutions of the Passenger Agency Conference are binding on all Members that operate passenger services, whether or not they have appointed a delegate to the Conference. The IATA Secretariat is similarly bound by Conference Resolutions.

8. The contractual instrument in this matter is the Passenger Sales Agency Agreement (Resolution 824), signed by the Applicant. Under that agreement, IATA acts for those of its Members that appoint the travel agent signatory as their sales agent. Incorporated into that agreement, by virtue of §2, is Resolution 818 – Passenger Sales Agency Rules and Resolution 800f – Agents Financial Evaluation. The resolutions mentioned above are published in the Travel Agent's Handbook, a progressively updated publication, furnished by IATA annually, to all IATA Accredited Agents by electronic medium. The January 2007 edition of that publication applies to the review proceeding giving rise to this decision.

9. The financial criteria applicable to Approved Agents in Belgium were agreed in 1994, on the authority of Resolution 814 – Passenger Sales Agency Rules then in effect there. That resolution at §1 creates the Agency Programme Joint Council ('APJC') in each country/ies where it is applied. The APJC-Belgium & Luxembourg, acting on the authority of §1.1.2.2 defined criteria in respect of Accredited Agents financial standing. When Resolution 818 superseded and replaced Resolution 814 in EU member countries, in early 2006, the financial criteria were left *in situ* by the Passenger Agency Conference. They have thus remained effective and untouched, for 13 years and are to be found at pp.15-16 of the Travel Agent's Handbook. The criteria are however, to be construed since late 2003 in conjunction with Resolution 800f which took effect at that time.

10. The provisions of Resolution 820e, - Reviews by the Travel Agency Commissioner, at § 1.1.10, allow an Accredited Agent to seek review on grounds that the Agency Administrator has allegedly not followed correct procedure as delegated by the Passenger Agency Conference, to that Agent's direct and serious detriment. The Applicant has relied on that provision to bring its request for review and the undersigned has accepted to conduct a review.

11. Per § 17 of the Passenger Sales Agency Agreement, the law applicable to the contract is that of the principal place of business of the Agent.

#### Rules Governing Review

12. This review proceeding is conducted under Resolution 820e, amplified by the Travel Agency Commissioner's Rules of Practice & Procedure which are published on the website of the Travel Agency Commissioners. ([www.travel-agency-commissioner.aero](http://www.travel-agency-commissioner.aero)). The essence of this review is its simplicity and its aim to seek a rapid and practical outcome.

#### Facts

13. The Agency Administrator causes reviews to be conducted of Accredited Agents' financial situations. In Belgium, such reviews are conducted annually and are based on certified annual accounts provided by the Agents concerned.

14. The financial assessment aspects of the reviews are actually carried out by a third party accounting specialist who applies tests, including the mechanical ones of calculating certain financial ratios, according to the standards set out in the Travel Agent's Handbook.

15. In presenting its 2005/2006 accounts, the Applicant had shown that although it had invoiced travel at the time of sale, it entered in the books of the current financial year only those transactions for which travel commenced in the current financial year. It accrued the other 'not yet travelled' items to the following financial year. The Applicant and its statutory auditor are of the view that this approach reflects a conservative and careful management approach. They pointed out that the practice has been in place since Joker's beginnings.

16. The accrual of 'not yet travelled' revenues was first questioned by the Respondent when the 2004/2005 accounts were reviewed. When it was raised, however, the Applicant's statutory auditor, Prof. Tiefke had assured the Respondent that the practice was valid and that the resulting current ratio therefore fell within the IATA norms. His assurance was accepted at the time.

17. However, when the 2005/2006 accounts were reviewed by the Respondent, that previously accepted accounting practice of the Applicant was challenged anew and a ruling made by the Respondent that, as a result, the Applicant failed to meet the current ratio test, one of four that must be met annually to remain exempt from the financial guarantee requirement.

18. The Respondent thereupon called upon the Applicant to increase tenfold the quantum of financial guarantee that had been in place, unchanged, since 1994. The Applicant did so, under protest. The revised financial guarantee is €3,710,000 which the Applicant's bank furnished, on demand, on the strength of the Applicant's accounts.

19. The Applicant recognizes that the tests applied by the Respondent are useful, within limits but argues that they constitute a rule of thumb and do not necessarily give a complete and true picture of the financial standing of the enterprise, in every case. Where risk assessment is at play, several more criteria need to be weighed. The Applicant's bank in furnishing a large guarantee promptly and without demur, had evidently taken that wider approach.

20. Prof. Tiest pointed out that Belgium law requires that the schedule of accounts must be such that a 'true and fair view' is secured of the state of the enterprise's financial situation. An adjustment in the Applicant's schedule of accounts could readily be made to reflect accrued profits and corresponding undistributed assets should qualify for presentation in the accounts as longterm items. He asserted that when that was done an unequivocal positive outcome, even by current APJC-Belgium tests, would result.

21. The Respondent advised that it was through a misunderstanding on its part that the challenge to the 2004/2005 accounts was not followed through to finality at the time. It asserted that the challenge to the 2005/2006 accounts was in fact in strict conformity with the standards set by the APJC-Belgium and should be upheld.

22. The Applicant pointed out that the standards, as published in the Travel Agent's Handbook, contain an error in that they incorrectly defined liquidity ratio. The Respondent agreed that although such was the case but opined it had no material bearing in the matter in dispute.

### Considerations

23. In the course of the hearing, Mr Elsen revealed that although during the initial three years, the enterprise had made losses, in each of the ensuing 23 years it had returned a profit. He explained that the Applicant's policy is not to pay out dividends but, instead, to put profits into the company's reserves. In addition to operating a successful tour operating enterprise and travel agency, the Applicant supports through the Living Stone Centre, a non-profit co-operative set up jointly by Joker Tourism and the Catholic University of Louvain. LSC conducts studies into sustainable tourism in developing countries and promotes the concept of intercultural entrepreneurship. It works in cooperation with the R&D department of the university.

24. The Applicant has had in place, from the outset of its IATA accreditation in 1994, a bank guarantee of €371,480 which was not changed until IATA called for its increase to €3,710,000 in 2007. Recent management changes to the BSP Belgium have clearly given rise to a more methodical and conscientious application of the agent review rules, as a result of which the standards published in the Travel Agent's Handbook many years ago are now being enforced rigorously. Perhaps, had those standards been consistently applied to the Applicant between 1993 and 2006, an understanding would have been reached between the parties at a much earlier stage, so obviating the call for a review.

25. The Applicant asserts that its financial health and strength are above reproach but are being incorrectly perceived because of the stifling effect of the APJC-Belgium's rule of thumb standards.

26. The financial criteria set out by the APJC-Belgium in the early 1990s merit review, not only to correct the detected deficiency mentioned above but also to take account of Agency Programme changes that have taken place in the intervening period. If risk assessment is indeed, part of the goal that is being aimed for, then additional dimensions to the subject would need to be considered.

27. The Applicant undertook at the hearing to put to the APJC-Belgium, through its professional association, a proposal to correct the technical error in the published standards. That action could prompt the APJC-Belgium to review generally its now ageing criteria.

28. The Applicant's financial year ends on 30<sup>th</sup> September and the final statutory audited accounts will be available in the coming few months. It is understood they will be stated in a manner consistent with Belgian law and, in the light of what has emerged during this proceeding, the schedule of accounts would be adjusted in a manner likely to satisfy the Applicant.

### Findings

29. This case exemplifies the utility of the review procedure foreseen in Resolution 820e. Neither party is in the wrong and yet there remains between them an area of disagreement. The undersigned considers that area could be reduced and even eliminated by reviewing and updating the financial standards to be applied during the now annual review of Accredited Agents in Belgium.

30. It has not been asserted by the Respondent that a threat to the BSP Airlines' financial interests stems from the Applicant's financial situation. However, the detriment caused to the Applicant by the Respondent's sudden change of policy in construing the accounts was sufficiently serious to warrant the request for review.

31. It would be in the general interest that the Applicant's financial situation be reconsidered by the Respondent, in the light of the 2006/2007 final accounts.

### Decision

32. The review procedure followed by the Respondent in Belgium was correctly conducted as to form. However, it came to light during the proceeding that over the years there has been inconsistency in applying that procedure in Belgium. That has created patterns of behaviour and expectations that cannot now be lightly disregarded.

33. What was found correct on the part of the Applicant last year was faulted this year. In no previous year was the Applicant's accounting practice even questioned. Reasonable notice of the planned change of policy ought to have been given on the part of the Respondent.

34. The decision of the Agency Administrator is hereby placed in suspense. The Applicant is granted interlocutory relief from furnishing the additional tranche of bank guarantee but must continue to maintain that which the Respondent imposed in 1994.

35. Upon completion of the annual financial review based on the Applicant's 2006/2007 audited accounts the Agency Administrator shall make a fresh determination on the basis of APJC-Belgium standards, as they stand at the time of review.

36. In the event the Respondent's determination is that the Applicant satisfies all the requisite financial criteria then the requirement for the currently applicable bank guarantee of €371,480 shall be discontinued. In the event the determination confirms that the Applicant's financial situation warrants its providing a bank guarantee, the quantum shall be based on the Applicant's 2007 BSP sales turnover.

37. This decision is without prejudice to the outcome of any future financial review of the Applicant conducted by the Respondent on the authority of the Agency Programme.

38. There are no fees or costs payable by either party to the undersigned.

39. Under the provisions of Resolution 820e, § 4.1, if the Applicant feels itself aggrieved of this decision, it has the right to have the decision reviewed by arbitration, per the procedures set out in Resolution 818, § 12.

DECIDED, this 11<sup>th</sup> day of October 2007, in Geneva.

Brian Barrow  
Travel Agency Commissioner, Area 2

NOTE: With a view to achieving immediate action, this decision has been sent electronically to the parties. The original signed copies follow by registered post.