

DECISION 2009-04-08

Travel Agency Commissioner Area 2

Helene Cedertorn
Karlavägen 30
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Sweden

The Case:

Request for Review of Decision by the Agency Administrator the 16th Feb 2009 regarding bond requirement; now question of granting Review or not

Applicant:

Globepost Limited
Represented by Bhavna Lakhani, Company Secretary
Sabre Europe Management Services Ltd
23-59 Staines Road, Hounslow
Middlesex TW3 3HE, United Kingdom

Respondent:

Agency Administrator, United Kingdom
International Air Transportation Association, IATA
Represented by Mr Gilmartin, Country Manager UK & Ireland

Background, formalities etc:

By a letter the 16th of February 2009 IATA required a bond of 20,000,000.00 GBP to be submitted by the 16th of March by Globepost Ltd. The deadline for submission was later extended until the 16th of April. The bond was required on the grounds that the parent company of the agent (Lastminute.com group Services Ltd) showed loss and lack of profitability.

The Applicant requested a review by the Travel Agency Commissioner (hereafter TAC) in an email the 10th of March 2009.

The Respondent has maintained its position to require a bond.

The Applicant's Arguments in short summary

The Applicant states that it does not consolidate at UK level as its ultimate parent company is a US company. The accounts for all UK companies are consolidated within the financial statements of Sabre Holdings Corporation. The group of the Applicant is exempted from the requirement to prepare consolidated group accounts at the UK level under Section 228A of the Companies Act 1985 subsequently replaced by Section 401 of the UK Companies Act 2006. The Applicant has been profitable as can be evidenced by its financial statements for

the last three years and has not had to provide a bond for at least four years. The change of the IATA Travel Agent's Handbook was not highlighted when the resolution was adopted and there has been no correspondence or awareness on this issue by IATA. In addition there is a rationalization going on within the group looking to dissolve 30 dormant/non-trading holding companies, one of which is the Applicant's immediate parent company in the UK. The proposal is to transfer the ownership into a German holding company. IATA has provided information that this would imply a "significant change of ownership" and result in an even higher bond of 26,7 MGBP. This is merely an internal re-organisation. In particular moving the Agent does not affect the Company's financial standing. This provision gives IATA the option to introduce a bond where there is a major ownership change that impacts either the financial standing of the Agent or the type of person operating the business who may be inexperienced in the travel industry or without financial back up. Neither of which are applicable to this situation. Moving the Agent would also mean that UK requirements can be satisfied and the general requirement to provide a bond would not arise. Sabre Inc., the main US trading company, could provide a parent company guarantee.

The Applicant has submitted copies of the following documents:

Letter by IATA the 16th of February 2009

Financial statements of Sabre Holdings Corporation, Fiscal Year Ended Dec 31, 2008

The Respondent's arguments in summary

IATA's application of the financial criteria has been carried out within the required timescales including the grant of an extension of 30 days to enable the agent to arrange bonding; the action does not therefore unreasonably diminish the agent's ability to conduct business being fully aligned with the provisions of the PSAA with regard to failure to satisfy the financial criteria. IATA's review of the above's accounts for year ended December 2007 revealed a failure of the parent company (Lastminute.com Group Services Ltd) to meet both the profitability and liquidity requirements of the financial criteria. In these circumstances, a bond is required in every case. Therefore on 16 February 2009 IATA issued a bond request for GBP 20,000,000.00 to be issued within 30 days.

The agent states that the change to the financial criteria effective from January 2007 published in the Travel Agent's Handbook was not highlighted to them at the time. The Bulletin 108/2006, dated 11 December 2006, was distributed via BSPLink and highlighted the publication of the Travel Agent's Handbook 2007 edition and included a web site link to the online version. The process of communication of changes to the Travel Agents Handbook has been approved by the PAConf. According to Resolution 824, the Passenger Sales Agency Agreement (PSAA), the Agency Administrator is obliged to provide agents with subsequent editions of the Travel Agent Handbook containing all amendments. The method of communicating change has always been: 1. to include a summary of the salient aspects of change to that edition in the Forward; 2. to advise the reader of the Handbook to contact the local office for a copy of the criteria if they wish; 3. to inform all agents in the country of the publication of the Handbook. As each Handbook contains local criteria for a number of countries, (there are 43 countries in the Handbook covered by Resolution 818), there is no attempt by IATA to try and describe all changes to the local criteria as this would be impractical. Instead there is an expectation, which IATA consider to be reasonable, that the

agent will make itself aware of the conditions that may affect its relationship with the IATA rules.

With reference to the issue of transfer of ownership, any such transfer would not be in scope for consideration since the financial review must be based on the examination of a full set of the most recent audited annual accounts. Transferring the ownership of the accredited agent company within the group would constitute a change of ownership, therefore this action itself would trigger a bond requirement, the details of which were provided to the agent, which also notified a correction to the bond demand to GBP 20,035,000.00.

In view of Resolution 820e Section 2.7 coupled with the obligations of the agency administrator to follow resolutions, the Respondent submits that the application made by the agent for review on the grounds stated above be dismissed in accordance with Resolution 820e paragraph 2.1.1.

The Respondent has submitted copies of the following documents:

Copy of Bulletin 108/2006, dated 11 December 2006
Email correspondence between IATA and Ms Bhavna.

Rules of interest

To become an accredited agent an agent signs a Passenger Sales Agency Agreement (hereafter referred to as the Agreement) in accordance with IATA Resolution 824. In this contractual relationship the Director General of IATA represents the IATA Members (or in other words the IATA airlines) and acts for and behalf of these.

The Agreement stipulates that terms and conditions governing the relationship between the Carrier and the Agent are set forth in the Resolutions contained in the Travel Agent's Handbook (hereafter referred to as the Handbook) as published from time to time under the authority of the Agency Administrator. The Handbook is local and varies by country and incorporates, amongst other things, local financial criteria. These criteria form the basis for the financial review of agents in a particular country. - The financial criteria are consequently to be considered as part of the contractual relationship between the individual agent and the IATA Members.

The IATA Resolutions may change from time to time, as decided by the Passenger Agency Conference (hereafter referred to as PAConf). The PAConf has the overall decision making authority with regard to the IATA Resolutions. The Agency Administrator of IATA has no power to change, ignore or overrule a Conference Resolution. For the UK the local financial criteria are discussed and recommended by local Agency Programme Joint Council (consists of airline and agent representatives) and thereafter the criteria are proposed to the PAConf. It is ultimately the PAConf who has the power to make a decision, and by this adopt the financial criteria with the effect that the criteria forms part of the individual agent's contract.

The Agreement stipulates that the Agency Administrator shall provide the agent with subsequent editions of the Handbook and all amendments thereto. The agent shall be notified by the Agency Administrator of any amendments to the contents of the Handbook and such amendments shall be deemed to be incorporated in the contract unless within 30

days of receipt of such notification, the agent terminates the Agreement by written notice to the Agency Administrator.

The financial criteria for UK were changed, with regards to what is here of primary interest, effective from the 1st of Jan 2007. The same criteria were in effect also during 2008.

Travel Agency Commissioner Review – rules and conclusions with regards to this matter

The procedures under which the Travel Agency Commissioner (hereafter referred to as TAC) operates are contained in IATA Resolution 820e. The Commissioner shall initially decide whether or not a credible case for review has been made, according to section 1.2.3 of this resolution. - The first initial assessment by the TAC is therefore if the matter is a credible case for review or not. When doing this assessment the TAC needs to be careful in order to ensure that the rights of the Applicant are not diminished or set aside. It is therefore necessary to reflect upon if any grounds for review could potentially be of interest in the matter, based on the claimed circumstances, to ensure no rights are lost. It is also worth to note that the Travel Agency Commissioner does not have authority to overrule resolutions, or change the material content of any rules. The Passenger Agency Conference has the power to implement any rules or procedures it so wish.

- When reflecting on potential grounds for review I note that there have been a few TAC Reviews granted by the undersigned, with some circumstances that are similar to the circumstances in this matter. The previous reviews were based on Resolution 820e section 1.1.10 stating; The Commissioner shall review and rule on cases initiated by an Agent who considers that the Agency Administrator (as defined) has not followed correct procedures as delegated by the Passenger Agency Conference, to that Agent's direct and serious detriment. In these reviews I came to the conclusion that the UK Financial criteria in the specific situations were to be interpreted in favour of the agents, as there is a certain lack of clarity in the wording of the financial criteria that opens up to a discussion if it is the consolidated accounts of the group, or the parent company accounts as stand alone, that should be assessed. This situation is however different from the other cases, as the ultimate parent is US based and not, as in the other cases, UK based parent companies. As described above the Agent is bound by new versions of the Handbook, if notified by the Agency Administrator. If the text of the Handbook is unclear, or open to other interpretations, it could potentially lead to the conclusion that a rule shall be interpreted in the favour of the agent, depending on the individual circumstances. In this particular case I note that the text states "If your company is a subsidiary of another company or more than one company ("Parent Company"), registered in the UK, i.e. financial control is vested in one or more UK Parent Company (ies) you will need to submit a copy of the most recent annual accounts of these controlling company (ies). Such Parent Company Accounts will be considered in the determination of your financial standing as an Applicant or Agent. "(page 30 The UK Handbook).

- As the text is clear that a UK parent company accounts will be considered in the determination of the financial standing of an agent, and the Applicant has not brought forward any alternative interpretations to this text concerning the assessment of the UK parent company, I do not find that there is any possibility for the Applicant to be successful in a TAC Review on similar grounds as in previous cases.

Furthermore a review could potentially be granted on the grounds of Resolution 820e section 1.1.5. This section states that the Commissioner shall review and rule on cases initiated by an Agent who has received notice from the Agency Administrator of impending removal of the Agent or an Approved Location of the Agent from the Agency List, or of any action or impending action by the Agency Administrator with regard to the Agent, that unreasonably diminishes the Agent's ability to conduct business in a normal manner

In this case the bond is calculated in way that is laid down in the Travel Agent's Handbook. The calculation is based on the BSP turnover to reflect the money at risk and there are no circumstances that indicate that it is unreasonable in parity to the turnover or the size of the Applicant. The Applicant has been given an extension of the timeframe to submit a bond. I can therefore not find that a TAC Review could be granted on the grounds of resolution 820e section 1.1.5. The possibility that there might be a change of ownership within the group of the Applicant will not have any effect on a review of the IATA decision the 16th of February, as it is clearly so that the financial review is based on submitted accounts, and not on future events.

The Applicant has opposed of the interpretation of "significant change of ownership" and states that a change of ownership within a wholly owned group is not a significant change of ownership. This in itself could potentially be a question for review by the TAC. However the text in the Handbook is clear as significant change of ownership is defined as a total acquisition, or a transfer exceeding 49 % of the paid-up share capital, representing a change in control (see page 31 in The UK Handbook).

- There have been some recent changes in the criteria relating to bond requirements and change of ownership in the UK, and there is now a possibility to also take into account credit rating of an Agent obtained from a Credit Information company appointed by IATA. The Applicant may have the exact requirements from the Agency Administrator, to ensure the Applicant is fully informed of the details.

In summary I cannot find that there is any potential possibility for success for the Applicant in a Travel Agency Review on any of the grounds for review as laid out in Resolution 820e, based on the claimed circumstances. In light of the need to ensure the resources of the TAC Office are handled with care, and my obligation to initially decide whether a credible case for review has been made, I therefore dismiss this request for review in accordance with resolution 820e section 1.2.3.

Decision

The request for Travel Agency Review is dismissed.

Decided in Sundbyberg 2009-04-08

Helene Cedertorn

Sent this date by e-mail to Ms Bhavna Lakhani and Mr Gilmartin. Original signed copies will be sent to the parties by postal mail.

Note:

The parties may, if considered aggrieved by this decision, seek review by arbitration in accordance with the provisions of Resolution 818, section 12.