

Decision 2010-01-29**Travel Agency Commissioner Area 2**

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The Case:

Request for Review of Decisions the 25th Nov and 18th Dec 2009 by the Agency Administrator to require a bank guarantee of DKK 11 218 000.00; now question of granting review or not

Applicant:

PRT A/S
Rosenørns Allé 29 1., 1970 Fredriksberg C
Represented by Peter Rasmussen, Managing Director

Respondent:

Agency Administrator, Nordic & Baltic Region
International Air Transportation Association, IATA
Box 1242, SE- 171 24 Solna
Represented by Mr Daniel Shemi, Country Manager

Background, formalities etc:

In an e-mail dated the 13th of Jan 2010 (also original received by postal mail) PRT A/S requested review by the Travel Agency Commissioner in the above matter under the provisions of Resolution 820e section 1-1.1.10. PRT A/S also requested interlocutory relief from the requirement to provide a guarantee during the proceedings.

IATA initially required a guarantee of DKK 11 218 000.00 to be provided by the 26th of Jan 2010 on the basis that the agency was "non-rated" and therefore did not meet the local financial criteria. After a meeting and some communication between the parties IATA extended the deadline for providing the guarantee until the 15th of February, in line with what was requested by the Applicant, by communication dated the 18th of Dec 2009.

The Respondent has in an e-mail dated the 15th of Jan 2010 maintained its position that the requested guarantee should be provided and that the requested guarantee is based on the local financial criteria.

The Applicant has via e-mail the 21st of Jan 2010 submitted additional documentation and arguments.

The Applicants arguments in summary:

IATA requested a guarantee due to the fact that PRT A/S did not get a A-rating by Dun & Bradstreet. Dun & Bradstreet has rated the company on its 2008 financials. According to Dun

& Bradstreet PRT A/S in itself is a healthy and solid business/company, but its mother – Profil Rejser A/S had less than satisfactory result in 2008. In this regard it is important to note that Profil Rejser A/S along with all its subsidiaries was sold in April 2009 and has new ownership. The new owners have injected a larger amount of capital into Profil Rejser A/S.

Dun & Bradstreet has given PRT A/S an “IR” label (=non rated) in May 2009. According to Dun & Bradstreet PRT A/S is a financial sound company with an A-rating when viewed on its own, but nevertheless ends up with an IR rating, because the parent company has shown a less than satisfactory result in 2008, thus giving it a C rating.

IATA has based the request for guarantee solely on rating based on old financial statements and figures, all of which does not give a valid and correct picture of neither PRT A/S nor Profil Rejser A/S. This is a questionable decision and not in accordance with the Local Financial Criteria for Scandinavia.

IATA and their business partners (Dun & Bradstreet), must base their review of PRT A/S on the current capital structure and ownership rather than historical data which are no longer valid seeing as the company has been sold and re-capitalized since the time of these old data that has apparently been used as the basis of the decision by IATA and D&B.

In addition to the two explicit criteria in the Local Financial Criteria for Scandinavia (solvency and equity) a general credit rating is taken into account – at the moment this rating is made by D&B. In the text of the Financial Criteria it is the before mentioned numbers and the rating that determines whether or not an agency is met with the demand for a guarantee. In reality the rating is the single most important part of the assessment as anything under a “B” rating will result in a request for a guarantee. On the other hand, a good rating can make up for not fulfilling one of the two key figures. All this emphasis is placed on these rating from D&B, yet it is not possible to familiarize with the specific information, numbers or criteria that D&B takes into account when deciding what rating an agency gets. - This is further underlined and accentuated when the agency in question does not even get a rating but are presented with the “IR” label!

If PRT A/S fails to obtain an A-rating – e.g. because it was traded in 2009 - and IATA maintains the requirement of a guarantee, we want IATA to look objectively at the size of the guarantee. The problem is, that credit rating agencies may put a lot of emphasis on the fact that the company where sold and view this as a negative thing, resulting in a situation where PRT A/S might not get an A-rating, regardless of how much capital is put into it. A guarantee to the amount that has been requested at present is very disproportionate.

If PRT A/S fails to obtain an A, or above, rating in the current review such a rating could stand for another year, due to the fact that IATA places such an importance to the rating made by Dun & Bradstreet. The current owners of PRT A/S are more than willing to looking into other solutions rather than putting up a large guarantee to IATA – this could, amongst other possibilities, include another capital injection into the PRT A/S thereby further strengthening the company through an increased solidity. Whether or not this could have any impact on the credit rating or IATA's decisions towards PRT A/S, we find that IATA has an obligation, based on the Financial Criteria, to take into account any changes made to the capital structure of an agency at any time. Only through such an exercise will agency be met

with reasonable and correct demands for guarantees based on the de facto risk their sales of IATA member airlines and those airlines participating in the Billing and Settlement Plan.

If the current request for a guarantee is maintained, PRT A/S must be granted a realistic extension of the current deadline - January 26, 2010 now extended to February 15, 2010 - a normal review and subsequent rating would under normal circumstances be completed at the end of March. At the present time, PRT A/S has been asked to complete the same auditing 1½ months faster.

Profil Rejser A/S has had a dialogue with the Danish Travel Guarantee Fund (RGF). As a result of the poor results in 2008 RGF asked Profil Rejser A/S to provide an increased guarantee from September 2008 (i.e. before Profil Rejser was sold). A dialogue was initiated in August 2009 in order to normalize relations between Profil Rejser A/S and RGF through a capital injection made in connection to the sale of the company. In a meeting the 24th of Nov 2009 the same figures and business plans that were shown to IATA the previous day were presented. In light of the new information RGF decided that it would release the amount of increased guarantee and revert to the old conditions. The company is however put under increased surveillance, a demand that the new owners naturally accepts.

During Nov/Dec 2009 PRT A/S has had a number of dialogues with several credit rating agencies, all of which indicates that they do not, as a principle, review a company and look at its rating between two financial periods. This principle is held to ensure the individual credit rating agencies' neutrality.

PRT A/S and Profil Rejser A/S have always honoured the IATA BSP requirements and paid what was due on time - both before and after the change in ownership.

It is not possible to get a credit rating agency to make a new rating in the time between two financial periods.

IATA states that "the main idea behind using a credit rating companywas to have a more up-to-date view of the credit worthiness of an agent". - We do not agree with IATA on this point. The data that has been used to evaluate our company is old data from 2008 and with new owners, new capital and new management in the company the 2008-"up-to-date view" in this case, is very far from reality. Fact is that the company - with its owners - probably is more solid and secure than ever before. And at the same time the IATA sales has decreased over the past couple of years - e.g. from DKK 260 million in 2006 to DKK 121 million in 2009. Together this has decreased the risk for IATA very much.

The other part is the fact that we are not able to be informed from Dun & Bradstreet about the elements they are basing their rating on - and the weight the different elements has in the rating. If new management or new owners is pulling down on the rating, we are not sure to get the A-rating despite the capital injection and the higher solidity of the company, when we will be rated again within the next 3-4 weeks.

Generally in a case like ours - where a travel agency has been sold to new owners - IATA would get the best "up-to-date view" if they looked at the company on individual basis instead of using old data from Dun & Bradstreet based on a model, to which you can't get real insight.

The Applicant has submitted copies of the following documents:

- 1) D&B Standard report for PRT A/S stating a "not rated" character
- 2) Mail from D&B /Janne confirming why PRT A/S got the "not rated" character
- 3) Balance and result pr. 30. Nov 2009 in TH Administration A/S (previous Profil Rejser A/S)
- 4) Result pr. 31. December 2009 in PRT A/S
- 5) The financial report for PRT A/S (IATA licence holder) 2008
- 6) The financial report for Profil Rejser A/S (owner of PRT A/S) 2008

The Respondents arguments in summary:

IATA does everything it can within the scope of the Local Financial Criteria as well as the scope of IATA's Passenger Resolutions, to promote the mutual interests of all parties involved. Having said that it's important to note the need for transparent and consistent interpretation of the Local Financial Criteria. Below is the relevant part of the Local Financial Criteria upon which IATA base the risk assessment:

"The minimum financial criteria for Denmark, Iceland, Norway and Sweden fall into two areas, key figures and credit rating:

The key figures defined below for Equity (a) and Solvency (b) form the basis of a total consideration, but current credit rating of the company, obtained from a credit information company appointed by IATA/ASO, is also taken into account to form a complete evaluation of the financial status and credit worthiness of an applicant/Accredited Agent.

The credit rating so obtained for a specific Agent must at all times exceed the Dun & Bradstreet (D&B) 'B' rating (or the equivalent rating from another supplier).

An Agent that is rated as Dun & Bradstreet 'B' rating will be requested to submit a bank guarantee within 60 days, or take action to have their credit rating changed.

An Agent that is rated as Dun & Bradstreet 'C' rating will be requested to submit a bank guarantee within 30 days or take action to have their credit rating changed."

The main idea behind using a credit rating company in conjunction with the risk management of the Agency Program was to have a more up-to-date view of the credit worthiness of an agent.

This matter was initiated when Dun & Bradstreet reported a change in the board of directors of PRT A/S on May 19th 2009, and the credit rating was simultaneously changed from "AA" to "IR" ("ikke rated" meaning not rated). IATA did not take an immediate action on this credit rating change as changes from "A" and/or above rating to "IR" usually are the result of missing documentation or a minor technical or other error in the financial reporting. IATA monitors closely such a change of rating in order to verify the change is indeed temporarily. However, in this specific case IATA noticed that the classification "IR" remained for a period longer than a month. IATA therefore sent an email on Oct 23rd to the agency, requesting the agency to investigate what caused the "IR" and to solve the situation directly with Dun & Bradstreet in order for their credit rating to be set back to satisfactory level. The email stated that in case the rating was not upgraded to satisfactory level within two weeks, IATA would send a formal request to provide a bank guarantee. The agency replied to this email

on the 26th of Oct, stating that the agency had initiated contacts with Dun & Bradstreet in order to solve the rating issue. On Nov 12th 2009, IATA received an email where the agency requested to meet with IATA in Stockholm to discuss the issue. In order to have better understanding of the situation IATA inquired from Dun & Bradstreet to have a detailed reason for their "IR" classification of PRT A/S. As IATA understands it, Dun & Bradstreet choose not to rate the company at this stage and leave the decision for companies who wish to do business with the company until the financial status and structure of the company would be clearer. IATA then requested a rating report of the mother company Profil Rejser A/S, which showed that the credit rating of Profil Rejser A/S had been "C" since 19th of May 2009. IATA could still, according to the paragraph in the financial criteria quoted above, not accept the "IR" classification of PRT A/S without a bank guarantee.

IATA met with the agency on Nov 23rd at the premises of IATA in Sweden. The agency presented the ownership change that had taken place and the future plans of the corporate group. The agency also emphasized the fact that the new owners of Profil Rejser A/S had increased the solidity of Profil Rejser A/S by injecting capital.

As a result of this meeting the following mile-stones were agreed in order to resolve the matter in a satisfying manner, which would not jeopardize the integrity of the Local Financial Criteria on one hand and on the other would enable the reorganization of the group and the acquiring of an updated credit rating. These understandings were communicated by IATA to the agent:

- 1) The agent would try to present a satisfactory credit rating of PRT A/S from a different, and internationally acknowledged credit rating company within a month. That would be valid grounds for avoiding bank guarantee requirement according to the Local Financial Criteria.
- 2) In case a credit rating would not be possible within a short period the agent would have the option to arrange an insurance guarantee for a limited time, to cover airline funds at risk, until the next financial statement had been produced and credit assessed by Dun & Bradstreet is provided to IATA.
- 3) To have the 2009 financial statements of Profil Rejser A/S ready and audited already in January 2010, in order for the rating of PRT A/S to be upgraded before the guarantee deadline, which was set to Jan 26th 2010.

Following the meeting, an official bank guarantee request was sent to the agency by mail and email on the Nov 25th, stating the amount required in a bank guarantee (11 218 000.00 DKK) and the deadline for the guarantee to be in original in IATA office in Solna, 26th of Jan 2010. On Dec 16th IATA received an email from the agency requesting postponement for the submittal of the bank guarantee deadline until Feb 15th 2010. The agency had not been able to receive a credit rating based on the events in 2009 for PRT A/S from any credit rating company. The agent also stated that they had not arranged an insurance guarantee, due to that insurance companies also base their risk on credit rating companies. Attached to the letter was a confirmation from the auditor of PRT A/S and Profil Rejser A/S, that the audit of 2009 financial statements would be finalized approximately by week 6 in 2010, resulting in an expected rating change to be likely first by week 7 in 2010.

IATA by email on Dec 18th accepted the request and postponed the deadline to Feb 15th. The agent was requested to provide weekly updates on the audit of 2009 accounts from

week 4, in order to confirm that the audit would indeed be proceeding according to the provided schedule.

The agency confirmed this second extension of the deadline by email on Dec 18th 2009, and replied to IATA that IATA would be kept informed about the proceedings of the audit.

As per today the deadline of Feb 15th still applies for PRT A/S to either provide a bank guarantee of 11 218 000 DKK, or to have a satisfactory credit rating reported by Dun & Bradstreet, in order to avoid being set in financial review status, with closed ticketing functions.

In addition, IATA would like to clarify the guarantee amount issue. The local financial criteria of Scandinavia states: "*If an Accredited Agent fails to meet any of the criteria itemised in (a) or (b) above, he may, however, be approved or retained, provided that a bank or insurance bond or a letter of guarantee and undertaking is submitted in accordance with the following requirements:*

- the amount of the guarantee shall be 16%/10.6%/8.5% of the budgeted or actual turnover from ticket sales for IATA Member Airlines and Airlines participating in the Billing and Settlement Plan for 1/2/4 payments per month.

The amount should be calculated on net sales, i.e.:

- commission to be deducted

- credit card sales to be deducted"

The financial status of an agency does not decide the amount IATA is requesting in a bank guarantee, it merely decides if a bank guarantee is to be provided. When an agent needs to provide a bank guarantee, the amount must always follow the above quoted paragraph. In this case, since IATA realized that a guarantee would not be received until 2010 when all agents have been transferred to four remittances a month, the guarantee amount was set to the lowest level of 8,5% of the 12month net cash sales of the agent. At the time of the guarantee request, the most recent recorded 12 month sales figures were used in the estimation, which was DKK 131 974 000 (period Nov08-Oct09). 8,5% was then 11 218 000 DKK.

The Respondent has submitted copies of the following documents:

- 1) Letter from IATA to PRT A/S dated the 25th of Nov 2009
- 2) Letter from Profil Rejser A/S to IATA dated the 18th of Jan 2010
- 3) Letter from auditors dated the 15th of Dec 2009

Rules of interest:

To become an Accredited Agent an agent signs a Passenger Sales Agency Agreement (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 (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 (PACConf). The PACConf 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 Scandinavia (Denmark included) the local financial criteria are discussed and recommended by the local Scandinavian Agency Programme Joint Council (consists of airline and agent representatives) and thereafter the criteria are proposed to the PACConf. It is ultimately the PACConf 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, upon notification to the Agent.

Travel Agency Review – Rules and Conclusions with regards to this matter

The procedures under which the Travel Agency Commissioner (referred to as TAC) operates are contained in IATA Resolution 820e. The TAC 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. The initial assessment contains many aspects, one of which is to consider the potential for the Applicant to be successful or not in a TAC Review.

The request of the Applicant is based on Resolution 820e section 1.1.10 stating;

“...the Commissioner shall review and rule on cases initiated by:

...1.1.10 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 order to determine whether the decision under review was made in accordance with applicable Resolutions and based on credible fact. “

It is worth to note that the Travel Agency Commissioner does not have authority to overrule resolutions, or change the material content of any rules. The Commissioner is bound to the resolutions, and could not make any for example commercially based decisions, that deviates from the material content of any duly incorporated rules.

In this matter before us the parties share the same opinion on the series of events leading to the decision by IATA to request a guarantee. I have studied all submissions and all arguments provided by the parties.

Though I sympathize with the arguments of the Applicant I cannot find that IATA has made any procedural errors to the detriment of the Applicant. The local financial criteria clearly states:

“The credit rating so obtained for a specific Agent must at all times exceed the Dun & Bradstreet (D&B) ‘B’ rating (or the equivalent rating from another supplier).”

With this it is clear that if an Agent fails to obtain a rating it will not satisfy the local criteria. The present financial criteria do not provide for any alternative solution in this particular situation. Also the amount of the guarantee is calculated as laid out in the local criteria. - I therefore cannot find that there is any potential possibility for the Applicant to be successful in a TAC Review based on the arguments presented.

It would be a matter for the local APJC to discuss if the local financial criteria should be changed to reflect that the credit rating bureaus, according to the information provided in this particular case, do not normally change any ratings in between to financials years. This even if the company in question has raised additional capital or made other changes, with the effect that the risk has decreased significantly. The criteria in effect do not leave room for any such considerations. With this comment I leave this case.

Decision:

The request for TAC Review is dismissed, and consequently the request for interlocutory relief is dismissed.

The decisions by IATA stand.

Decided in Sundbyberg 2010-01-29

Helene Cedertorn

Sent this date by e-mail to: Mr Rasmussen and Mr Shemi.
Original copies will be sent via 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.