

Decision 2016-05-07

Travel Agency Commissioner - Area 2

Andreas Körösi
P.O.Box 5245
S-102 45 Stockholm, Sweden

Applicants:

1. Travel Affairs Ltd. (412 7908-1)
2. Travelshoppe Company Ltd (412 4598-2)
3. Uniglobe Fleet Travel (K) Ltd. (412 1014-2)

Represented by: Mr Abdulrazak Khalfan (CFO Fleet Travel)

Assisted by: Mr S. Manji (CEO KATA, Kenya Association of Travel Agents)

Respondent: International Air Transport Association (IATA)

King Abdullah II Street, Al Shaab Roundabout
Business Park, Building GH8
P.O. Box 940587
Amman 11194 Jordan

Represented by: Ms. Christine Hazboun, Assistant Manager & Deputy Manager
Agency Management

I. The Case

Interpretation mainly of §4 and § 5 in The Local Financial Criteria ("LFC") for Kenya, part of LFC "Eastern Africa (Kenya, Uganda and Tanzania). This Office does normally NOT interfere with interpretation issues regarding LFC, but does in this case after request from both Parties.

II. Background

The remittance frequency in Kenya has been changed from Monthly to Bi-monthly with effect from January 2016. The chart (§5) in the LFC **only** displays reduction in Bank Guarantee ("BG) when remitting on monthly basis.

Contradicting, according to The Respondent, "§4 and §5 in the LFC where the general conditions for a BG and a possibility for reduction are discussed.

III. The core of The Applicant's arguments in summary

All three Applicants have been trading for over 15 years without any default or irregularity and meet all the requirements for BG reduction specified in § 5 of the LFC. Therefore entitled to 80% discount on the amount of BG that should be asked from them. There is no logic, nor justice, in more frequent remittance leading to request for increased BG. This "interpretation" by The Respondent

has been introduced to the Kenyan market and not to the Tanzanian market (pre October 2014) which also is covered by the wordings in the same LFC.

IV. **The core of The Respondent's arguments in summary**

IATA has acted as mandated in the LFC. **The only chart** displayed in the LFC clearly states that the number of year's reduction is granted for Agents **on monthly remittance only.**

V. **Right to Oral Hearing**

This Commissioner has deemed that no Oral Hearing is needed to reach a conclusion. (Resolution 820e § 2.3)

VI. **Considerations leading to Decision**

The Applicant's statement regarding the practice in Tanzania pre October 2014 has not been refuted by The Respondent and is thus considered valid.

The Minutes of Eastern Africa APJC meetings held on 24 May 2013, 18 March 2014 and 19 March 2015 (provided by KATA assisting the Applicants) proves that there was no decision at those three APJC meetings supporting The Respondent's current interpretation of the LFC.

The below statement by the Respondent clearly indicates that the "reduced level of BG" would have been practiced should also a "chart" in the LFC have been labelled accordingly.

Quoting the Respondent from an email dated 14 February 2016:

"Moving to fortnightly remittance will grant agent a 40% reduction due to increased remittance frequency, and a further 40% (total of 80%) can be granted for agents remitting on weekly remittance."

THE ONLY reference is "monthly statement" in the current LFC chart. This absents of clarity does, according to This Commissioner, NOT nullify all other wordings in §4 and §5 of the LFC.

LFC §5 (a) – (h) does clarify the possibility of reduction and **there is no mentioning this should only apply for monthly remittance.**

LFC §5 (g) – allows Agents "15 and above years in business" – 80% reduction.

VII. Decision

Having carefully considered the Resolutions, the LFC covering Eastern Africa and other evidence presented by The Parties it is hereby decided as follows:

It is This Commissioners view that today's wording in the Eastern Africa LFC supports The Applicants interpretation of the LFC and that IATA should initiated an APJC meeting should they want to alter that interpretation.

For the time being, **IATA shall recalculate the amount of BG requested from the Applicants.**

Decided in Stockholm on 07, May 2016

Andreas Körösi
Travel Agency Commissioner Area 2

Right to ask for interpretation or correction

In accordance with Res 820e, § 2.10, any Party may ask for an interpretation or correction of any error which the Party may find relevant to this decision. The timeframe for these types of requests will be 15 days after receipt of the electronic version of this decision.

Right to seek review by arbitration

If considered aggrieved by this decision any Party has the right to seek review by arbitration in accordance with the provisions of Res 820e, Section 4 and Res 824, Section 14.

Note: The original signed version of this decision will be sent to The Parties by regular mail, once the above mentioned time frame has elapsed.