Travel Agency Commissioner – Area 1

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Re.: **Clarification of the decision rendered August 23rd, 2017**

Parties: Applicant: ***Astra Travel SAE***
vs.
Respondent: **IATA**

In accordance with Resolution 820e, s. 2.10 the Parties have requested a clarification of the *supra* identified decision. The following paragraphs will provide such clarification in the same order in which the items have been presented by the Applicant, as well as the commentaries made by the Respondent.

1. **Grounds for review**

The Applicant claims that, from his perspective, the Travel Agency Commissioner's (hereinafter referred to as "TAC") decision did not, I quote: <<… *explicitly indicate according to Reso 820e 1.1.2 details of IATA's incorrect response to Astra's Original Application*…>>.

I respectfully disagree with this statement. I consider having expressed myself with enough clarity in Chapter I (pages 1 and 2) when the decision refers to:

(i) The fact that the Applicant had <<*sought a review of the Respondent's denial to its application to establish a Branch Office Location (term defined in Resolution 866) in the United Kingdom*...>>, which clearly refers to the scenario described in **s. 1.1.2** of Resolution 820e; and,

(ii) The decision also explicitly refers to the fact that the Respondent denied such application <<… *based on the wrong reasons*…>>, which refers to **s. 1.1.10** of Resolution 820e, since having given **wrong reasons** for a rejection implies a breach of the proper procedure that should have been followed, which in that respect was not followed by the Respondent. Even more so, the decision specifically indicates that the original denial of the Applicant's request was a **mistake**, which the Europe Agency Manager, once the issue came to her attention, she amended it and tried to move

forward in order to properly assist the Applicant in its process onwards.

Furthermore, both issues were not only openly admitted by the Respondent, but also expressly mentioned in the decision (Chapter III, page 3).

Still pertaining **s. 1.1.10** of Resolution 820e, the Applicant states, I quote: <<*Astra Travel SAE objects to TAC's justification of IATA damaging conduct by stating it is a "mistake"* …>>, and thus, asks this Office <<… *to amend the word "Mistake" to "negative conduct" and command IATA to change their permanent mistreatment to TAs*>>:

- The word "mistake" will not be changed, since from this Commissioner's perspective, based on the evidence on file, this was what happened: an unintentional misjudgement, a human error. Nothing else.

- Other than an unfortunate and certainly avoidable lack of clear communications from the Respondent's staff at the beginning of the Applicant's process, it was not proven during the course of the review procedure any malice nor purposely negative conduct from the Respondent's side nor any "*flagrant abuse*", nor any repetitive conduct that could be perceived as cementing a wrongful behaviour or pattern.

Conversely, it seems to me that what the Applicant is looking for is a vindictive language to be used in the Decision, which I deem not only inappropriate for this Office to use, but completely uncalled for.

The Applicant also argues that the Respondent, once the case reached this Office, provided a <<*current new argument relevant to the interpretation of Reso 866, which was never raised prior to TAC intervention*>>. Indeed, the evidence confirms this fact, which was never denied by the Respondent. It is also important to point out that once that interpretation was raised by the Respondent, the Applicant was given ample opportunity by this Office to rebut it or to amend its application if so wished, since other ways to achieve its purpose (namely, to operate as an Accredited Agent in the United Kingdom) were shown to him, **yet the Applicant persisted in his initial views and actions**, thus, I see no violation of the Applicant's right to make proper responses and a full defence.

Therefore, the decision stands as it is. No further clarifications are deemed conducive regarding the above-mentioned topics.

2. **"Branch Office Location" concept/alleged unfair treatment towards the Applicant *vis à vis* its European counterparts operating in Egypt**

The Applicant claims different issues pertaining Chapter V, I'll address them as follows:

(a) In regards to the scope of the *Branch Office Location*'s concept and analysis, as defined in Resolution 866:

The Applicant is absolutely right when stating that my analysis is <<… *applicable to all different areas and concerned regions…*>> regarding the accreditation procedure of Head Offices when applying to open a "*Branch Office Location*". Resolution 866 is indeed of general application, which means that applies equally to all regions where the Agency Programme has been implemented.

(b) In regards to the anti-competitive practices attributed to the Respondent:

As I clearly reiterated (since this topic had already been indicated to the Applicant at very early stages of the procedure and reiterated again during the Oral Hearing, yet the Applicant persists in bringing these subjects to my attention!) in the decision in question, Chapter I (2), I specifically wrote that <<… *this Office lacks jurisdiction to deal with any matter pertaining anti-competition Law and, therefore, all such claims were not part of the review nor will they be considered in this decision>>.*

Therefore, it is not for this Office to determine whether or not the Respondent has engaged in anti-competitive practices, by allegedly treating differently the Applicant ("*unequal treatment*") with respect to its European counterparts who would have operations in Egypt, which applications would had been done by different entities, and, thus not in compliance with the defined terms of "*Branch Office Location*", specified in Resolution 866.

Nonetheless, in order to preserve the good procedural order of this review procedure and the accuracy of the evidence provided by the Parties, considering that I have analysed and thoroughly looked in to each and every piece of evidence that was submitted by the Parties, I consider my duty to set the record straight, and, therefore, **I hereby declare that it is inaccurate** for the Applicant to infer that it was somewhat "proven" by Ms. Al-Abbadi's testimony that European Agents have been treated differently from the Applicant. He states: <<*We can confirm that actual entity of Branch Office Location in Egypt, for European HQ are not the same entity*>>. This was not either actually proven in this review procedure nor was it part of the subject matter altogether, as already explained *supra.*

And for the record, Ms. Al-Abbadi's testimony does not state any fact pertaining that alleged differentiation. On the contrary, she specifically stated that the parameters stated in Resolution 866 were the ones applied in the MENA Region for accreditation of European Agents looking to operate as Branch Offices in the region.

3. "Main concerns" addressed between the Parties – IATA's portal issues

As of the Applicant's claim concerning a supposed second call from Ms. Dovgan to Ms. Costanzo in order to <<*resolve outstanding issues*>> pertaining the application, which never seemed to have taken place and, hence, that <<*no mutual understanding was reached between the Parties*>>, considering that the Respondent did not deny this affirmation, I hereby order the Respondent to address the <<*oustandings issues*>> with the Applicant's dedicated personnel and effectively set up a convenient time for both of them (Mrs. Dovgan and Ms. Costanzo) to have a conference call for such purpose.

As of the UK Application Guide itself, despite the "alerting note" that the Respondent argued as being inserted in the document in the following terms, I quote:

> <<*Before applying for a Branch Abroad in another country other than your Head Office is located in, please verify the possibility of such is covered by local law and regulations of the country you are seeking to operate in*>>

With all due respect, and looking at this case as evidence, it is obvious that such a statement falls short in being clear enough for Agents from different regions aiming at applying to set up a "*Branch Office Location*" in the UK, in the terms defined by Resolution 866, in addition to the potential UK Laws that would also be applicable.

In light of the above, I strongly encourage the Respondent to undertake the needful steps to amend this wording and make it as clear as possible, in order to avoid for other Agents what the Applicant has been through, in its attempt to get a legally established and operating "*Branch Office Location*" in the UK.

4. **Arbitral procedures**

In regards to the procedure to follow in case of seeking a review by Arbitration, from the International Court of Arbitration, which seats at the International Chamber of Commerce ("ICC"), such procedure is stated in s. 4 of Resolution 820e in detail, as well as in s. 14 of Resolution 824.

Vancouver, September 12th, 2017