

**Brian P. Barrow**  
**TRAVEL AGENCY COMMISSIONER**

A3/2009/01

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bpb/09i09

**DECISION**

**In the Matter of:**

PARAS Marketing (t/a PARAS Travels) Co. Pvt. Ltd  
48, Jatindra Mohan Avenue  
Kolkata 700006  
West Bengal  
India  
(IATA Numeric Code: 1 435519-1)

Applicant

vs

Agency Administrator IATA  
IATA Regional Office for Asia/Pacific,  
111 Somerset Road, #14-05 Somerset Wing,  
Singapore Power Building  
Singapore - 238164  
Singapore

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 acting Agency Commissioner for Area Three, per the provisions of Resolution 820d.

**Parties**

2. The Applicant is Paras Travels, an IATA Accredited Agent since August 2002. It has one Approved Location, that identified above. The Applicant also conducts travel agency business at its offices in New Delhi, Bhubaneswar, Durgapur and Ranchi, which are not, however, Approved Locations of the Agent.

3. The Respondent is the Agency Administrator of the International Air Transport Association ('IATA'), acting for Member airlines of that association 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 233 or so Members that include administering the Agency Programme and managing the Billing and Settlement Plan ('BSP') in India. The BSP is an industry centralised sales reporting and settlement system linking Accredited Agents to BSP Airlines. The Agency Administrator has particular responsibility for the management of these activities. In parallel with the standard IATA BSP the Respondent also administers an almost identical settlement system covering Indian domestic air transportation sales.

4. IATA divides the world into Areas One, Two and Three. The Agency Administrator's main base in Area Three, Asia & South Pacific, is Singapore. The country field office for India, which exercises management responsibility for the BSP India, is in Mumbai.

5. The Agency Programme consists principally of resolutions adopted by the IATA Passenger Agency Conference. They lay down the rules, regulations and procedures governing business relations between IATA Accredited Agents and IATA Members. The programme is directed by the Agency Administrator, an IATA official, or his recognized representative, as defined in Resolution 866 - Definitions of Terms used in Passenger Agency Programme Resolutions.

#### Contract

6. The Passenger Agency Conference is composed of those IATA Members (i.e. airlines) who appoint a delegate to it. Per the IATA Articles of Association, it is an autonomous entity within IATA, created on the authority of the Annual General Meeting. The Provisions for the Conduct of the Traffic Conferences lay down that Conference Resolutions, and only such resolutions, are binding on all Members that operate passenger services, whether or not they have appointed a delegate to the Conference. The IATA Secretariat is also required to apply and abide by Conference Resolution requirements. The Travel Agency Commissioner is similarly bound to apply those resolutions and to limit findings of fact and conclusions in accordance with them.

7. The contractual instrument in this matter is the Passenger Sales Agency Agreement (Resolution 824), signed by the Applicant. Under that agreement, IATA signs and acts for those of its Members that thereafter appoint the travel agent signatory as their sales agent. Incorporated into that agreement are Resolution 810i - Passenger Sales Agency Rules - India, Resolution 832 - Reporting and Remitting Procedures and the BSP Manual for Agents (Attachment 'I' to Resolution 850). Per §2.1(a) of the Passenger Sales Agency Agreement, the above resolutions are reproduced in the Travel Agent's Handbook, periodically published by the Agency Administrator and made accessible to Accredited Agents via an IATA website.

8. In the above-mentioned BSP Manual for Agents, there are thirteen core chapters common to all IATA BSPs, that contain standard material approved by the Passenger Agency Conference. There is also for each individual BSP a dedicated Chapter 14 for “Local Procedures/Information”. That local material complements the core text but, not being approved by the Passenger Agency Conference, it cannot replace, amend or in any way change what has been laid down by the Conference. The entire current edition of BSP Manual for Agents, per the Passenger Sales Agency Agreement, §2.1(a) and §2.2, is to be published to Accredited Agents. This was formerly done by printed publications but is now done by electronic medium.

#### Authority for Review

9. The provisions of §1 of Resolution 820e, - Reviews by the Travel Agency Commissioner, allow an Accredited Agent to seek review by the Agency Commissioner in circumstances described in the body of that paragraph. Specifically, per §1.1.10, ‘an Agent who considers that the Agency Administrator has not followed correct procedure, as delegated by the Passenger Agency Conference, to that Agent’s direct and serious detriment’ may seek a review. The Applicant has relied on that provision to bring its request and the undersigned has accepted to conduct a review.

#### BSP India Profile

10. The BSP India was first implemented in 1996, solely for international sales. A domestic increment to the BSP India was added in 2006. Per recently published IATA data, 64 IATA Member airlines and 5 non-IATA airlines participate in the BSP India. About 2583 IATA Agent Locations, 22 General Sales Agents but no non-IATA sales intermediaries report and remit through the BSP India, which in 2007, accounted for gross sales of just under USD6.7 billion. That made it the 12<sup>th</sup> most important BSP in terms of throughput.

#### International & Domestic BSP India

11. The BSP India was implemented in 1996, in accordance with Resolution 850. The reporting and remitting terms are those of Resolution 832, whereby settlement of the half-monthly BSP Billing is to be made as follows:

<u>Billing Period</u>	<u>Remittance Date</u>
‘1 <sup>st</sup> fortnight’	last day of month
‘2 <sup>nd</sup> fortnight’	15 <sup>th</sup> day of next month

12. In 2004, the Passenger Agency Conference adopted Resolution 810d – Domestic Agency Programme in India. The Conference records show that the purpose of that resolution is to permit IATA Members and ‘other domestic air carriers’ participating in BSP India to include their ‘domestic agents’ in the Agency Programme, in order that they can report and remit domestic air transportation sales through BSP India. That resolution was implemented in 2006.

13. There is an as yet unexplained disconnect between what the Passenger Agency Conference agreed and authorized and what was subsequently done to apply the Conference’s decision. Instead of domestic agents being admitted, as such, to BSP and subjected to

appropriate rules, as is done in other BSPs that include domestic transportation sales, those domestic agents were instead invited to become Accredited Agents and they, along with already Accredited Agents that also sold domestic air transportation, were asked to execute an 'Addendum' to their IATA Passenger Sales Agency Agreements.

14. That Addendum, it was explained, emanated from the Respondent's Geneva main office and was signed in each case by the senior Area Three representative of the Agency Administrator, the regional director.

15. The Respondent has not been able to show that the Addendum was adopted by the Passenger Agency Conference. As the Addendum does not appear in any Conference authorized publication, it is not established that the Conference is aware of its existence.

16. By the terms of §2 of the Addendum the Domestic BSP Remittance Dates are set locally (i.e. not by the Passenger Agency Conference which has sole power to decide BSP Remittance Dates for international BSPs) and are supposedly set out in 'the Domestic BSP Manual for Agents'. In fact, those terms and conditions appear in Chapter 14 (Domestic) of the BSP Manual for Agents, a locally edited and published complement to the Conference-approved BSP Manual for Agents. Chapter 14 does not replace or supersede any of the contents of the thirteen official Conference-approved chapters of that publication.

17. The edition of Chapter 14, dated September 2008, lays down at §14.20: Reporting Calendar (Standard) the following remittance rules:

<u>Billing Period</u>	<u>Remittance Date</u>
'1 <sup>st</sup> fortnight'	25 <sup>th</sup> day of month
'2 <sup>nd</sup> fortnight'	10 <sup>th</sup> day of next month

18. Thus periods of credit collectively extended to Agents under the Domestic BSP are always five days shorter than those set by the Conference for the same Agents with respect to the International BSP. The ability of IATA Members and other BSP Airlines to set discrete settlement terms solely for domestic air transportation sales has not been called into question during this proceeding.

19. The Addendum, at §3, states that where the Agent "is declared in default in connection with either the international or domestic sales, the consequences of default shall apply to both the international and domestic sales". Because of the difference in Remittance Dates between the Domestic and the International BSP, the above provision creates a concealed conflict between regulations.

20. §3 of the Addendum does not distinguish between default where the Agent is unable to meet its fiduciary obligations and monies are still owing to BSP Airlines, on the one hand, and 'technical' default stemming from an Agent incurring four instances of irregularity within twelve consecutive months, but where no monies are owed to BSP Airlines, on the other hand. Furthermore, §3 creates a situation where minor lateness in payment under the Domestic BSP, even when rectified 'immediately' and not in any way a violation of Resolution 832, is deemed to generate instances of irregularity that are counted against the Agent for purposes of

Resolution 832. In the context of BSP India, an Accredited Agent declared in ‘technical’ default to five domestic service airlines, can thus give rise to its being cut off from conducting normal business with more than 60 international carriers whose reporting rules have not been infringed and whose financial interests are not endangered.

21. As written, the logic of §3 would thus require four instances of irregularity to be registered in the same Billing Period, two where the Agent is, say, one day late in settling the Domestic and then, another two if the Agent is one day late in settling the International BSP Billing for that period. That would trigger immediate default action, even when the BSP Airlines’ monies have all been settled on demand.

22. In the present case, however, at no time were monies due under the International BSP paid late and late payment of the Domestic BSP Billing was made, by the bank’s own admission, the same day as the demand was made by the Respondent (i.e. well ahead of the close of bank working hours next day, as provided in the BSP Manual for Agents).

#### Credit Risk Insurance

23. Under the Agency Programme provisions an Accredited Agent can be required to put up a financial guarantee. It can be either a bank guarantee or an acceptable insurance to cover credit at risk. In India a policy has been taken out with the United India Insurance Company Ltd whereby the Respondent includes certain Agents, at their expense, in a group umbrella scheme. The Applicant is one of the many Agents in India that are covered by that policy.

#### Industry Capping of Standard Traffic Document Stock

24. A peculiarity of BSP India is the decision of BSP Airlines there to monitor collectively and control the quantity of Standard Traffic Documents, each Approved Location of an Accredited Agent may hold and issue in a month. The administration of that activity is entrusted to the Respondent’s BSP Management but the formula devised for it was decided by the BSP Airlines in consultation with the travel agent representatives. The aim of Industry Capping, as it is called, is to provide BSP Airlines with protection against the eventuality of an Agent issuing tickets way beyond its capacity to pay for them, so leaving the airlines exposed. The scheme has broad industry support and its machinery, diligently managed, is flexible enough, on paper, to accommodate most Agents’ operational needs.

25. The Applicant alleges that the Industry Capping rules as they are now published in Chapters 14, differ significantly from those collectively agreed and are being administered in a hostile manner, which is seriously hampering its ability to conduct business. It challenges the correctness of the Respondent’s conduct which it asserts is seriously hurting its business activities.

#### Parallel Civil Lawsuit

26. In addition to its request for review before the Travel Agency Commissioner, the Applicant has pending a suit against NACIF, an IATA Member airline, in the Kolkata High

Court. That suit was filed in September 2008 and seeks to restrain the airline from discontinuing sales commission payments to the Applicant. The Respondent in this review has been cited as second defendant in that suit, filed by the Applicant, by virtue of a provision of the Indian Code of Civil Procedure, as a device to implicate other Member airlines of IATA that similarly ceased or announced impending cessation of payments of sales commissions to Accredited Agents.

27. Although the above civil action is of incidental concern only in the present Travel Agency Commissioner review, it has coloured the thinking and actions of the Respondent vis-à-vis the Applicant. The existence of the civil suit was brought to notice by the Respondent in support of its assertion of the Applicant's alleged 'propensity to litigate'. It has, however, been disregarded by the undersigned in conducting the review and arriving at the decision.

### Review Approach Taken

28. In the lead up to the hearing conducted in Mumbai on 11<sup>th</sup> December 2008, there was an extensive exchange of communications in writing between the undersigned and the Parties. It was conducted with a view to clarifying the several issues. As a result, the undersigned was able to draw up an appreciation document in which he sought to define and clarify the issues. That document was circulated to the Parties ahead of the hearing and was, itself, the subject of further clarifications by them during the hearing.

29. At the hearing, the Petitioner was represented by its director, Mr Rajesh Argawal, with the help of Mr Ajay Prakesh, general secretary of the Travel Agents Federation of India (TAFI) and Mr Hari Dewnant, another IATA Agent with a TAFI connection. The Respondent was represented by Mr Rodney D'Cruz, IATA Manager Passenger Services India, with Mr Sunil Chopra, IATA Country Manager for India present.

30. Although much documentation had been submitted, principally by the Applicant, prior to the hearing, documents were also produced at the hearing by the Respondent. After the hearing, further documents were submitted, at the request of the undersigned, with a view to validating assertions and clarifying areas of disagreement that emerged in the course of the hearing.

### Facts

#### A - Instances of Irregularity and Default Action taken

31. As a consequence of the Applicant having allegedly settled late the first of its October 2007 and the second of its November 2007 Domestic BSP billings (there are two Domestic and two International BSP Billings per calendar month), it ruled by the Respondent to have incurred four instances of irregularity and was thereupon declared in default on 13<sup>th</sup> December 2007. As explained above, under the rules as applied in India, default in the Domestic BSP also counts as default in the International BSP. As a result, the Applicant was deprived by the Respondent of the ability to issue Traffic Documents on behalf of all BSP India Airlines until all monies outstanding on all sales effected up until the date of default declaration had been settled and the Applicant's financial position had been reviewed (at the Applicant's expense) and deemed to be satisfactory by the Respondent.

32. The Applicant's tardiness was repaired on the day of demand to pay.

33. It is relevant that in 2007, the Applicant was covered by the credit risk insurance policy earlier described. Prior to the default action, the quantum of that insurance guarantee stood at INR19.16 lakhs. After the financial review conducted by the Respondent, the Applicant was required to increase the quantum to INR27.44 lakhs, to reflect the increased volume of the Applicant's air passenger transportation sales since the level had originally been set.

34. However, notwithstanding the above strengthening of the financial guarantee, the Applicant's Industry Capping entitlements were both considerably reduced and only after intervention of its trade association with the Respondent was an increase made, but still short of the previous entitlement levels, which were in accordance with the industry formulae. As the Applicant understood the rules that was incorrect procedure on the part of the Respondent.

#### B - Notice of Cancellation of Credit Risk Insurance Coverage

35. On 13<sup>th</sup> October 2008, at a time when there was no perceived threat of financial irregularities on the part of the Applicant, who was, however, increasingly pressing the Respondent to restore its Industry Capping entitlements to *status quo ante*, the Respondent informed the insurance company of a risk of impending litigation between the parties. The insurance company thereupon issued 90 days notice of termination of the Applicant's coverage.

36. The Respondent claims that diligence and the terms of the policy required it to notify the insurance carrier "of any event likely to influence a prudent insurer whether or not to accept a risk or determine the premium at the inception of the policy and at all times during the term of the policy of circumstances that have an influence on or have a potential to influence the risk of Default".

37. The relevant insurance policy documents were called for by the undersigned and examined, after the hearing. Also called for and examined were the communications from the Applicant to the Respondent leading up to the 13<sup>th</sup> October letter mentioned above, which led the Respondent to conclude "The captioned agent has sent us a communication foreshadowing legal recourse, demanding additional ticketing authorization in view of the sum insured under the captioned policy". The main thrust of those communications was to complain of continuing delays in adjusting the Industry Capping entitlements and to ask for the names of the Respondent's Singapore superior and of the Travel Agency Commissioner.

38. The inference to be drawn from the contents of the 13<sup>th</sup> October letter was clear to the insurance carrier, as demonstrated by its immediate issuance of notice of cancellation of the Applicant's name from the policy.

#### Findings

39. The imposition on the Applicant of instances of irregularity for the late 2007 Domestic BSP incidents was not in accordance with correct procedure. The Applicant's bank

acknowledged fault in one of the incidents and in both, the monies due were actually paid on the day the Clearing Bank presented the Applicant's cheques for clearance. At no time were BSP Airlines' funds at risk.

40. The arrangements locally in place in India whereby instances of irregularity under the Domestic BSP although not constituting irregularities under the provisions of Resolution 832 (i.e. the International BSP), nevertheless count for purposes of establishing 'technical'<sup>1</sup> default under that resolution, are not in accordance with correct procedure as laid down by the Passenger Agency Conference.

41. The application of the locally agreed Industry Capping rules since early 2008 has been inconsistent and prejudicial with respect to the Applicant. That has contributed to the serious impairment of the Applicant's ability to conduct business, evidenced by the downturn in its BSP ticketing sales throughout in 2008.

42. It is understood that IATA's official policy is one of 'zero tolerance' towards travel agent fiduciary violations of Agency Programme rules. In executing that policy the Respondent's India BSP Management has on occasions, insofar as the present review is concerned, exercised a degree of zeal with respect to the Applicant's real or perceived shortcomings, which involved, inadvertently or otherwise, actions that were not in accordance with correct procedure. Examples include:

- a) foreshortening the prescribed 'immediate payment' demand time limit of close of business of the Clearing Bank (i.e.15.00 hours) on the first day following demand, as laid down in the BSP Manual for Agents at §9.4, to 10.00 hours on the first day;
- b) requiring the Applicant to effect remittance by a single cheque, on grounds that a single cheque represents 'best practice', in disregard of the fact that Agents frequently, for practical reasons, have to operate several bank accounts simultaneously;
- c) unilaterally deciding that the test of the Applicant's ability to meet its BSP Billing obligations is what is on its bank account, as the opening balance, on the Remittance Date, when the BSP Billing payment will be called at mid-afternoon, prior to close of banking business; (in the instant case the Applicant garnished the account in the course of that day to meet the BSP Billing obligations).

43. Additionally, there have been actions of the Respondent that appear to fail the test of due diligence. Examples include:

- a) after the Applicant had remitted all monies due up to the date of declaration of default, failing to pay those monies on to creditor BSP

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<sup>1</sup> The term 'technical' is used here, informally, to distinguish a default stemming from accumulated instances of irregularity, for whatever reason, from defalcation as such, where monies have not been paid and remain outstanding.



- Airlines, in some cases the delay was several months, understandably to the Agent's direct and serious detriment;
- b) undocumented changes were made to Chapter 14, particularly with regard to Industry Capping entitlements;
  - c) successive editions of Chapter 14 have been issued by the Respondent without bringing to Accredited Agents' notice the fact of such publication;
  - d) material has been included in local Chapter 14 that does not belong there since it is properly covered in the core chapters of the BSP Manual for Agents.

44. Passenger Agency Conference authority for the use of Addendum to the Passenger Sales Agency Agreement, which purports to amend the terms of that agreement, has not been established. Its use is accordingly found not to be in accordance with correct procedure as laid down by the Passenger Agency Conference.

45. The reasons advanced by the Respondent to provoke the United India Insurance Co. Ltd to issue notice of cancellation of the Applicant's coverage under the umbrella insurance scheme administered by the Respondent on behalf of the industry, are found to be unconvincing and without valid contractual basis. The only litigation, threatened or actual, is the civil lawsuit described above, which has not been shown to have a bearing on the Applicant's standing *qua* Accredited Agent.

46. The circumstances in which the December 2007 default action was carried out by the Respondent render that action unsound in fact. It was furthermore, not in accordance with Passenger Agency Conference Resolution 832.

#### Decision

47. The procedural basis for declaring the Agent in default in late 2007 with respect to both the Domestic BSP and the International BSP having been found flawed, the four instances of irregularity and the default action are hereby ruled to be null and void. All their IATA Agency Programme consequences shall therefore be immediately halted, reversed and corrected by the Respondent.

48. The Applicant's Industry Capping entitlements shall be immediately reinstated to pre-December 2007 levels and then reviewed and adjusted, without delay, to conform with the entitlements code to be confirmed by the responsible industry body.

49. The Respondent shall, in writing, immediately and unconditionally, withdraw the letter sent to the United India Insurance Company Ltd on 13th October 2008 and shall at the same time instruct the insurance company to revoke its notice of removal of coverage of the Applicant under the umbrella insurance scheme. The Respondent shall simultaneously copy in the Applicant on the above written communication.

50. The body responsible for setting the Industry Capping rules for BSP India shall be convened urgently by the Respondent, with a view to that body exercising its mandate and responsibilities of spelling out clearly what the rules are and how they will henceforth be monitored, to avoid recurrence of the kinds of problems brought to light in the course of this review proceeding. A copy of the resultant report shall be sent by the Respondent to the undersigned, upon publication.

51. The 2007 alleged instances of irregularity having been annulled and voided, the comparable incident concerning the Applicant's payment of the second Domestic BSP Billing of November 2008 shall be deemed to be the first in a twelve months period. It remains open to challenge, on grounds of procedural defect.

52. In future, successive issues of Chapter 14 of the BSP Manual for Agents shall be duly brought to the knowledge of all Accredited Agents in India and any amendments to procedures contained therein shall be correctly cleared with the industry body or authority concerned, ahead of publication.

53. Neither the Applicant nor the Respondent is liable to pay any fee or costs to the undersigned in respect of the present decision.

54. If the Applicant is aggrieved by the present decision, it is entitled under Resolution 820e, 4.1 to seek review of it by arbitration.

55. Although, as it presently stands, Resolution 820e does not provide for recourse to arbitration on a Travel Agency Commissioner decision by the Agency Administrator, that is about to change, by virtue of an amendment adopted several months ago by the Passenger Agency Conference. In anticipation of the requisite government approvals, being granted for that change and in application of the discontinuing powers vested in the Travel Agency Commissioner, per Resolution 820e, 3.2, the Respondent, if aggrieved by the present decision is hereby afforded by the right to seek review of it by arbitration, should it so elect, in writing to the undersigned, within 30 days of the date of publication of the present decision.

Decided this 9<sup>th</sup> day of January 2009, in Geneva.

Brian Barrow  
Travel Agency Commissioner

Note: To ensure timely receipt by the Parties, an electronic copy of this decision has been sent in advance, with the original signed copy following in the post.