Annual Report of the Travel Agency Commissioners
Submitted by the Travel Agency Commissioners

PART I

I. Introduction

The Travel Agency Commissioners ("TAC") are:

- Mrs. Verónica Pacheco-Sanfuentes TAC - 1
- Mr. Andreas Körösi TAC - 2
- Mr. Jo Foged TAC - 3

This year the Commissioners held their annual meeting at the beginning of March, 2013 in Hong Kong, China.

The following pages detail the cases that have been dealt with since the last Annual Report, so the period covered is from September 2012 to August 2013. Considering the amount of cases that have been reviewed during this reporting period, in order to make the reading of this Report more manageable, it has been divided in two parts: **Part I** is covering generalities of the matters taken care of, as well as some Observations derived from them; and, **Part II** is covering the summary of cases that were reviewed by the Commissioners, whether they lead to formal Decisions or not; in addition, some statistics are also being provided about cases fully reviewed, but where no formal decisions were rendered, as agreed by the Parties.

II. Work Handled

During this reporting period only one (1) oral hearing was held and it was conducted in Area 1. In the rest of the cases sufficient written evidence was available and both Parties had agreed that a Decision could be rendered without the need for oral hearings. When considered appropriate by the Commissioners, scheduled conference calls were arranged and sufficient for the Parties to reach an agreement or for the Commissioner to render a Decision without holding an oral hearing with the Parties' consent (pursuant Rule No. 8 of the Rules of Practice and Procedure[1]). It is important to note that cost containment was

[1] This particular Rule has been in effect since 1988

achieved, particularly during this period considering the unusually high volume of cases handled and resolved in Areas 2 and 3 without conducting oral hearings.

In light of the proposed changes in Resolution 820e, particularly the amendment to Paragraph 2.6 (PACONF36 Agenda item number **R5**) it is worth underlining to the "PAPGJC" and to the "PACONF" that the Commissioners have been implementing the above mentioned Rule No. 8 since the beginning of their tenure (2009), in every single process that has been reviewed by each one of them; always allowing the Parties not only the opportunity to have oral hearings, when they so desire or when the Commissioner had considered it appropriate under the circumstances, but also inviting the Parties to have scheduled conference calls where cases have been (i) either solved without the need of an oral hearing, (ii) agreements have been reached or (iii) punctual accords between the Parties have been established, as the summary of cases in Part II of this Report are clearly demonstrating.

This is why the Commissioners do not understand IATA Legal Services' wording in its proposal to the PACONF[2] when it recommends the need for the Travel Agency Commissioners to <<***be obligated*** *to offer the parties the opportunity to hold a scheduling conference by telephone call or other means to reach an agreement or alternatively to issue an order regarding the procedures to be followed for the hearing of the matter, and to set a timetable*>>, when this has precisely been the regular practice at this Office. The Commissioners would like IATA to substantiate the statement that the aforementioned process has not been applied.
In fact, in a case in Kosovo (decision A2/2013-04, summarised in Part II of this Report) it was IATA's representative who expressly refused to have the oral hearing that had been specifically requested by the Agent.
As a matter for reflection, the Commissioners would like to ask the Conference if IATA's action in this case should be considered as an Agent's *de facto* violation of its "right for an oral hearing" by the rejecting Party to have it.

Following this same line of reasoning, the Commissioners would like to point out that they have always urged the Party who have asked for a review to include the other Party in all correspondence with this Office and they have ensured that copies of the submissions, related material and/or evidence is properly copied to both Parties. Furthermore, in no cases have Decisions been reached without having both Parties had full access to the other Party's submissions and evidence as well as the possibility to timely rebut them. The Commissioners are confident that IATA immediately would have asked for clarification/correction of this oversight in case it would had happened.
The Commissioners would very much appreciate IATA's Legal Services to substantiate the statement according to which <<*the Agency Administrator had not been provided with copies of the Agents' requests prior to the Travel Agency Commissioner issuing his decisions*>>, stated in page 1 of 1, item R5 of the PACONF/36 Agenda.

[2] Reference is made to page 1 of 1 – item R5 of the PACONF Agenda First Transmittal document.

The Commissioners have kept their website updated (www.travel-agency-commissioner.aero) and continue improving its display in order to make it more user friendly. It is available in both English and Spanish, in addition to some decisions in French as well, since that has been the language used during those procedures.

III. Observations

(a) As it has come to the attention of the TAC in several reviews[3], it has proven to be essential for Agents and Member Airlines to receive from IATA proper information about the reasons behind a Notice of Irregularity ("NoI") when the first ones are served with this type of communication, and the Members are served with copies of them. Often, as explained below, Member Airlines are inclined to believe, when NoI leading to Suspension or Default are issued, that they **are caused by Agents posing a credit risk.** However, evidence shows that the majority of the reviews done this year have been of "administrative character" where no Member Airlines' funds were at imminent risk.
We respectfully encourage the Conference to bring a remedy to this situation by mandating the need for IATA to indicate in the text of the NoI the exact grounds that originated such Notices and ensure that that same information is conveyed to Member Airlines.

(b) In time critical situations (*id est*, where an Agent will lose its ticketing authority unless a particular action is taken on the deadline date and consequently seeks interlocutory relief), the current requirement under sub-paragraph 2.3 of Resolution 820e to acquire the agreement of the Parties to waive their right to an oral hearing can cause a delay.
In such situations where it is clear that an oral hearing would hinder rather than help resolution of the matter, the TAC should have the ability to proceed with a decision basing it on the written submissions of the Parties only.
PACONF consideration of this suggestion would be appreciated.

(c) Due to a large amount of cases where an accumulation of Instances of Irregularity have led to the removal of an Agent's ticketing authority involving administrative clarification issues, such as, but not limited to, payment of IATA annual fee or Financial Statements uploaded via BSP*link* problems (*id est*, missing an attachment, a signature or other issues **not affecting the Agents actual financial situation clarified within "minutes" and thus not risking Member Airlines' funds**), the punishment does not fit the crime, in the opinion of the TAC. In such a circumstance a monetary fine could be considered as being more appropriate.
Consideration of that suggestion would be welcomed.

[3] Please refer to Part II of this Report for details

(d) As it has surfaced in various reviews[4], it is obvious that postings on BSP*link* are not enough as a mean to properly communicate notices to Agents, this action, in order to meet the applicable Resolutions' requirements, needs to be complemented by the following:

- an email sent directly to Agent's management (as prescribed in Section 12.4 of the BSP Manual for Agents) and, when possible,
- a phone call to the manager conveying the message/instructions in local language.

The combination of these three ways of communication will constitute the undoubtedly "proof of dispatch", as required by Resolution 824, Section 16.

It is worth to note that these steps take particular relevance in markets where the local language is NOT English and Agents have barely or not at all fluency in that language.

(e) There is no doubt about IATA's ability –and actually the need- to implement the Prejudiced Collection of Funds' rules[5], whenever a risk factor would call for it, but, it is also crucial when there are no Member Airlines' funds at risk (i.e. when administrative issues have caused the NoI) to give "reasonable time" (between 24H and no more than 2 business days) to the Agent to explain the situation before public notification is sent out to Member Airlines. This "window" would also allow IATA the opportunity to verify/rectify the decision of withdrawing the ticketing capacity and sending the NoI when it was based on incomplete or sometimes even inaccurate information that did not justify the implementation of such a drastic action, and, thus, avoiding the severe damages (good will & financially wise) that this decision causes to Agents.

As it has been pointed out in various Decisions, there is a need for the Stakeholders to consider the actual time that takes for Agents to get their ticketing capacity back, since it does not only depend on IATA's re-instatement but on the individual re-instatement that each Member Airline eventually does, and considering that they often are under the impression that the withdrawal was due to financial insecurity, they ask for additional BG from Agents.

A potential solution to address this issue, depending on the circumstances, could be for IATA to immediately remove the ticketing capacity, when need it to, but not to notify the Airlines until the referred time frame for "explanation" or further "investigation" from its own side would have expired.

(f) In regards to item **R2** of the PACONF/36 Agenda, based on the evidence provided by all the cases that have been reviewed during this reporting period touching this subject[6], it is an unquestionable reality that 30 days as time frame for Agents to provide a financial security is **not always enough** time for them to comply. The

[4] Details in Part II of this Report

[5] Res. 818g, Section 1.8

[6] Kindly refer to the summary of cases exposed in Part II

banking system has demonstrated, in most parts of the world, that 30 days, considering the current banking requirements (*id est,* updated financial statements) is not a reasonable time frame to get a financial security in place. Nevertheless, if the Conference decides to adopt IATA's proposal, the Commissioners would like to respectfully suggest at least considering those 30 days as **business days** instead of calendar days.

(g) Through item R4 of the PACONF/36 material a new Resolution is been proposed to the Conference. This Resolution No. 010 "Interpretation and Hierarchy of Rules Pertaining to the Sales Agency Programme" is placing **Local Financial Criteria**, a norm that is the result of the consensus reached between Airlines and Agents, based on the peculiar circumstances of every given local market and approved by the Conference, **below** <<all other Resolutions of the Conference>>. This proposal is giving predominance to a general rule over a particular one, which is contrary to an interpretation principle according to which <<"***lex specialis derogat generali"*** - specific law prevails over (abrogrates, overrrules, trumps) general law>>[7]. The Commissioners respectfully encourage the Conference to reconsider this proposal.

IV. Clarification

(a) Due to the importance of these rules' application and the impact that its interpretation might cause, the TAC seek clarification from the Conference in regards to the following conflicting Resolution's texts:

- On one hand, Res. 818g, Section 13.3 prescribes a time frame <<***no earlier than 15 days*** after the date of the notice>> for the suspension of an Agent to take place, allowing the Agent time to respond and thus IATA to correct, sometimes its own mistakes, before the damage is done;
- On the other hand, Res. 818g, Attachment "A", Paragraph 1.7.5.2 states that <<***immediately*** upon a fourth instance of Irregularity>> being recorded, the Agent is to be suspended as Default Action has to be implemented.

Guidance on this matter would be appreciated.

(b) TAC would like to seek clarification from the Conference in regards to Interlocutory Relief ("IR") Decisions.

TAC's view is, if Member Airlines' funds are not at risk, an IR Decision aims at staying IATA's actions and restoring the Agent's *status quo* before IATA's intervention, in order to provide the TAC with the needed time to make a sustainable and conscious formal Decision about the core of the matter being reviewed.

IATA's view, as it has been recently demonstrated by a refusal to temporarily reinstate an Agent after an IR Decision, is that it does not matter if the Agent actually represents a financial hazard or not, the Agent has to provide a BG (which sometimes

[7] Black's Law Dictionary

can be even more than €1.2million) to get its ticketing rights back, regardless the reason behind the "suspending NoI".

It seems as if IATA's definition of "funds at risk" is that any ticket sold, even not yet subject for Remittance is a risk which has to be covered by a BG. Consequently, when IATA issues a NoI –regardless the reason- (*id est*, late payment of IATA annual fee, or missing an attachment when uploading Financial Statements), and the Agent has accumulated 4 Irregularities, a BG is a precondition for IR even if the Agent clearly can demonstrate both willingness and ability to pay its debts.

This stand effectively makes any TAC Decision for IR practically meaningless, causing the Agent great damage should the final Decision be in the Agent's favour.

We respectfully urge the Conference to clarify and state their views on the IR concept as such and specifically on the "definition" of Member Airlines' funds at risk in the context of an IR.