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

PART ONE

I. Introduction

The Travel Agency Commissioners ("TACs") 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 end of March at IATA's Geneva Offices. We accepted an invitation from the Passenger Agency Programme Global Joint Council ("PAPGJC") to a "Question and Answer" session, where important aspects of the Agency Programme and of the TACs work were discussed with the Council.

It is fair to say that after this session an important change has been noticed by the Commissioners with regard to IATA's manner in dealing with Agents' administrative errors or issues of an administrative nature where no Member Airlines' monies have been at risk, which in the past would have immediately led to a Notice of Irregularity being issued and perhaps even to Default action. This change has resulted in a considerable decrease in formal decisions, contributed to cost effectiveness, and has been highly appreciated by Agents, IATA staff and TACs' alike.

The Commissioners would also like to underline a recent improvement observed in the way some of IATA's **Customer Service Call Centers** have been dealing with Agents' requests, petitions and general inquiries, compared to the situation prevailing in the recent past. This factor has also contributed to a substantial decrease in TAC formal decisions, since issues are resolved at earlier stages (avoiding further damages) and in a more efficient manner for the benefit of both Parties.

The following pages detail the cases that have been dealt with since the last Annual Report, with the period covering from September 2013 to August 2014. Due to the number of cases reviewed during this period, and in order to ensure an accurate method of recording the result of our work, this Report has been divided into two parts:

Part ONE covers an overview of the matters dealt with, as well as some observations derived from them; and,

Part TWO covers the summary of cases reviewed by the Commissioners, whether they led to formal Decisions or not, and, whether or not a full review was necessary in order to resolve the matter in hand.

II. Work Handled

The total number of cases (including posted formal decisions and reviews finalised without formal decisions) dealt with during this period by the Commissioners was: **525**
This total was made up as follows:
Area 1 handled by TAC1 – **59** (3 Areas combined = 111)
Area 2 handled by TAC2 – **284** / handled by TAC1-Dep. TAC2**: 25 = 309**
Area 3 handled by TAC3 – **130** / handled by TAC1-Dep. TAC3**: 27 = 157**

This number is categorised in each Commissioner's Report.

During this reporting period five (5) oral hearings were held and were conducted in Area 1 (Guayaquil, Ecuador) and in Area 2 (one in London, two in Madrid and one in Lagos) respectively. In the remaining 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 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. 10 of the Rules of Practice and Procedure and Paragraph 2.6 of Resolution 820e). Since June 2014, pursuant to the amendment to Paragraph 2.3 of Resolution 820e, the Commissioners have also decided, based on their own judgement, when an oral hearing has not been necessary, and thus once communicated to the Parties and ensuring their agreement, a decision has been based on the written submissions only.

As in the past, the Commissioners have kept their website updated (www.travel-agency-commissioner.aero) and accessible in a user friendly fashion. It is available in both English and Spanish, in addition to some decisions in French when that has been the language used during those procedures and a translated version of the decision has been requested by a Party.

III. Observations

As detailed below, some of these observations were submitted to the Conference in our last year's Report and also briefly aired at the PAPGJC session referred to above.

Therefore, the Commissioners are bringing to the Conference's attention this time updated aspects of these as well as new observations that have arisen during this reporting period.

(a) <u>Minor Error Administrative rule</u>

The Commissioners welcome the initiative in the development of the "*minor error administrative*" rule as referred to in the First Transmittal of the PACONF/37 Agenda (R19), as a cost effective and practical way of handling these administrative matters. It is worth noting that this rule has been already practiced in Area 2 (case reference 2014/05 and in several cases solved without formal decisions).

(b) <u>Full and complete reinstatement – restoration of the *status quo* before suspension</u>

Following the withdrawal of ticketing authority, on being reinstated, it is IATA's procedure to activate access to a ticketing system only. This requires an Agent to seek re-appointment from all the BSP Airlines on whom it had ticketing authority pre-suspension. Member Airlines have the right to withdraw ticketing authority from an Agent if it wishes to do so as stated in Res. 818g § 2.5.1.3 and 3.5.1.

This practice, for which the TACs have not found any unambiguous Resolution mandate for, adds a further burden and business handicap to the Agent as it takes quite some time before the pre-suspension access to all Airlines is restored. It becomes also quite time consuming for IATA staff and TACs alike.

It is the TACs contention that the Agent should be re-instated in exactly the form it had pre-suspension. **If an Airline is concerned about an Agent's situation it can take its own action, as is provided for clearly in the Rules, and remove its appointment**.

(c) <u>Proportion between the fault committed and the sanction applied</u>

Due to a number of cases where an accumulation of Instances of Irregularity have led to the removal of an Agent's ticketing authority due to administrative clarification issues, such as, but not limited to, payment of the IATA annual fee or Financial Statements uploaded via BSP*link* problems (*id est*, missing an attachment, a signature or other issues **not reflecting the Agents actual financial situation and thus not risking Member Airlines' funds**), the punishment does not fit the crime, in the opinion of the TACs. In such a circumstance a monetary fine, intended to cover IATA's administrative cost, could be considered as being more appropriate than imposing Default actions and by that risking the Agents' commercial survival.

As an existing example of charging a fee for the extra administrative cost, it is worth pointing to the Local Financial Criteria for Germany, which states in part:

> *<<IATA will inform of the latest date for submitting the above documents reasonably in advance. In the case of late receipt an administration fee of EUR 100.00 + VAT will be payable immediately. Should a further grace period have expired, the IATA*

travel agent will be banned from the ticketing and refund system until further notice, at the same time a further fee of EUR 300.00 + VAT will be charged>>.

(d) <u>Content of IATA's notices</u>

Judging from the reviews that have come to the attention of the TACs[1], it has proven to be essential for Agents and Member Airlines to receive from IATA complete information about the reasons behind the issuance of a Notice of Irregularity ("NoI"). Often, as explained below, Member Airlines are inclined to believe, when a NoI leading to Suspension or Default is issued, that they **are caused by Agents posing an imminent credit risk.** However, evidence shows that the majority of the reviews have been of an administrative nature where no Member Airlines' funds were at imminent risk.

We respectfully encourage the Conference to resolve this situation by mandating the need for IATA[2] to indicate in the text of the NoI *the exact grounds that caused the Notice with express mention of the amounts involved* and ensuring that the *same information is conveyed to Member Airlines*.

(e) <u>Insufficiency of postings in BSP*link* only</u>

As has been discovered in various reviews[3], it is obvious that postings on BSP*link* are not enough as a method of adequately communicating notices to Agents in order to meet the applicable Resolution requirements. It needs to be complemented by the following:

- **an email sent directly to the Agent's management (as prescribed in Section 12.4 of the BSP Manual for Agents)** and, when possible, considering the severe consequences, preferably
- a phone call to the Manager conveying the message/instructions in the local language. It is worth noting that these steps are particularly relevant in markets where the local language is NOT English and Agents have negligible fluency in that language; or a third
- even most effective way called E-Sign (electronic signature) that would confirm receipt and acceptance.

This would without doubt constitute the "proof of dispatch to management" required by Resolution 824, Section 16.

For these reasons, the Commissioners would like to encourage the Conference to examine the proposal submitted by IATA's Regional Office Europe[4], since such an

[1] Please refer to Part II of the Report for details
[2] TACs acknowledge this being an administrative burden
[3] Details in Part II of the Report
[4] Item R10 of the PACONF/37 First Transmittal material, page 64 and the following

extremely important notice, concerning the contractual agreement, for an Agent as a notification which can lead to its ticketing authority's cancellation, should not be posted ONLY through BSP*link*, amongst other items constantly sent to Agents (and often considered as being irrelevant and nonessential (i.e. commercial offers from IATA) .

Furthermore, "special attention" to this vital information should not be restricted to just those Agents who have paid the enhanced version of BSP*link*. On the contrary, all contractual information should be effectively **communicated** to Accredited Agents at no extra cost.

(f) Avoiding "premature" notification to Member Airlines and the severe consequences that it entails for Agents

Resolution 818g Attachment "A" § 1.10.1 mandates: <<**the Agency Administrator shall immediately advise all BSP Airlines that the Agent is in default…>>.**

Most frequent reason for "default" is accumulation of NoIs and there is **NO distinction** if the NoI is prompted by an "excusable administrative error" (i.e. missing signature, upload technical problems, etc) or due to actually posing a financial risk to BSP Airlines.

There is no doubt about IATA's requirement to **immediately temporarily** suspend an Agent whenever a risk factor is identified. But, it is also crucial **when there are no Member Airlines' funds at risk**[5] (i.e. when invoking Prejudiced Collection of Funds due to a 10+ year old Change of Ownership –as in a UK case- or "small accounting irregularities" when remitting after a suspended BSP Airline mistake has caused the NoI leading to suspension) to allow a *reasonable time* (no more than 2 business days) to the Agent to explain the situation **before** notification is sent to BSP Member Airlines.

This "window" would allow IATA to verify/rectify the decision of withdrawing the ticketing authority when it sometimes was based on incomplete or inaccurate information that did not justify the implementation of such a drastic action, and, thereby avoiding the severe damage on good will adding also to the financial loss occurred as a consequence of the "wrongful" suspension and NoI **immediately communicated** to all BSP Airlines".

Also the reinstatement, by individually requesting ticketing authority back from BSP Airlines, as highlighted in this Report, is often an added burden to Agents and time consuming for IATA staff and TACs alike.

(g) Unreasonable time frame allowed to provide BG or clarifications

With regard to paragraph 2.2 of Resolution 818g, based on the evidence derived from the cases that have been reviewed during this reporting period involving this subject[6], it is a reality that 30 "calendar" days as a time frame for Agents to provide a financial security is often **not enough** for them to comply. It is suggested that "business" days

[5] And clearly this is the situation since Agent has been suspended from the BSP already

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

becomes the yardstick in order to avoid situations like the one that occurred in Spain where Agents were given 30 to 40 Calendar days starting mid-December to provide Financial Security. In reality those days were 7–12 Business days during a period when most of the banking decision-makers were on holiday.

(h) <u>Interlocutory relief decisions ("IR") – Mandatory bank guarantees ("BG") requests</u>

TACs have observed different situations where no BG should be demanded from Agents when IR is requested by the Applicant. These are:

- IATA has insisted that the TAC requests a BG (covering total Net BSP Sales) from an Agent as a condition to grant IR **in cases when precisely the BG itself is the subject of the review.** TACs consider that such a demand from IATA is a "catch 22" situation and has to be dismissed. IR should be granted without requiring any financial security **when it is obvious that Member Airlines' monies are not at risk.** Illustrative examples of this situation can be read in Area 2 Part II of this Report, decisions identified as A2/2013-63 and A2/2013-47;
- Also in **cases of an administrative nature**, where by definition, almost always no monies are at risk, TACs should have the discretion to grant IR without the need to require a BG from the Agent.
- Res. 818g 10.12.1 "Late notification of change of ownership or status": A BG is mandated for granting IR even if Agent has traded under the same "wrong" conditions for years, and in occasions even for decades, with an impeccable remittance history and otherwise also financially sound. (There is no mentioning that this §§ is only for "controlling shares", so for learning purposes it would be interesting to know how this §§ has been upheld for companies publicly trading on stock markets).

(i) <u>Reference to the TAC facility in each IATA's Notice of Irregularity</u>

In light of the number of cases received worldwide by TACs, where the first NoI does not refer to the TAC review option, and Agents having "unsuccessfully disputed the NoI directly with IATA", claiming not being aware of the TAC facility, it is suggested that that facility be routinely included in the first NoI letter. Such a reference already features in the second NoI when leading to default/suspension and subsequent letters.

(j) <u>Alternative repayment agreement</u>

When dealing with a defaulting Agent IATA offers mainly the 50 percent payment plus 6 monthly instalment agreement detailed in Sub-Paragraph 2.2.1 of Attachment "A" to Resolution 818g. In a number of cases the alternative provided for in Sub-Paragraph 2.2.2 of the same rule would be a solution and have the benefit of the total

amount of debt being recovered[7]. IATA's position sometimes seems to be that "fraction" equals a minimum of 30% and as this option requires contact with, and agreement from, all the debtor Airlines it is administratively burdensome and hence is not always offered. It is the TACs suggestion that this option is reviewed and altered to make the process more "user friendly" by not requiring Airline consultation. Especially considering that "not to be terminated" often seems to be the main incentive to settle debts and 10% to start with is better than nothing.

(k) Member Airlines' updated contact information

The Commissioners would respectfully like to encourage Member Airlines to keep updated the contact information that they are to post on BSP*link*. It has been brought to the attention of the TACs several cases where Agents worldwide claim that that information is outdated, turning in an almost impossible task the reach of a Member Airline using that tool.

(l) 818g § 2.1.8 - A trading ban for life

The Commissioners' experience is that a person that has been categorised in subparagraph 2.1.8 "Trading History" of Resolution 818g faces a life time ban of ever having an entity as an IATA Accredited Passenger Sales Agent.

Subparagraph 2.1.9 of the same Resolution gives the "Agency Services Manager" no or very little discretion in reviewing such a person's standing if the person was a director or had a financial interest in an Agency that has been removed from the Agency list. There is in fact very little room to provide evidence that those persons were not responsible for the acts or omissions that caused such removal.

There is no opening for cases where the removal from the Agency List has mainly been caused by "administrative" issues and not necessarily by mismanagement of BSP Member Airlines' funds.

The TACs would appreciate a review of this condition as in their opinion it is out of step with the conditions that apply in the broader commercial world.

(m) Member Airlines response to Agents (ADMs)

The Commissioners would like to bring to the attention of the Stakeholders a fact that they have been exposed due to Agents' requests for their intercession: Member Airlines are not timely, and sometimes not even responding at all, at Agents' requests or demands for clarifications/explanations when it comes to ADM matters.

We encourage the Conference to implement some remedies to this situation since it leaves Agents in a defenceless position.

[7] An example of the implementation of this alternative repayment schedule can be seen in **Decision dated 14 January 2014, Peshawar, Pakistan, and Decision dated March 3, 2014** from the same location, rendered by TAC1, acting in her capacity of Deputy TAC3.

IV. Clarifications

(a) Conflicting Resolutions' texts:

Due to the importance of these rules' application and the impact that its interpretation might cause, the TACs 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>>[8] 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.

The Commissioners' view on this matter, also considering the hierarchy of the sources involved pursuant Res. 010, is as follows:

- Clause No. 4.2 of the above mentioned Resolution, states that in cases of conflicting texts, or more precisely <<of any inconsistency between two sources of rights and obligations with respect to any matter specifically dealt by both the provisions of>> <<the higher-ranking source governs>>; hence, considering that Res. 818g has a superior ranking than Res. 818g Attachment "A", which as its own name indicates is a "derivation", an "appendix" to the principal text, this text being Res. 818g, the provisions of the latter prevails;
- Furthermore**, it is not only a matter of higher ranking but also a matter of principles** that ought to be respected:

  - Res. 818g Section 13.3 not only establishes a course of action when an Agent is to be suspended from the BSP but also determines a specific time frame for the sanction/suspension to take place, given the Agent a margin of maximum 15 days to explain its situation, as mandated in Section 2.6, which clearly states that <<in the event an Agent fails to comply with any of the requirements ... listed in the passenger sales agency rules ... suspension action may be taken in accordance with Section 13 of these rules>>;

  - Following this same line of argument established in Sections 2.6 and 13 of Res. 818g, it is essential to look at the content of the Preamble of Res. 818g (*General Principles for Review*), according to which <<the Agent shall at all times be able to enter in to discussion with IATA, to provide information to demonstrate its compliance and continued compliance with the terms of this Res. within the prescribed deadlines>>;

  Considering that pursuant Res. 010, Clause 6.3, the purpose of the preamble of a Resolution is <<to assist in explaining>> the <<purport and object>> of the Resolution

[8] An illustrative example of the benefits of implementing this provision can be read at Part II of this Report, Area 2, decision identified as A2/2014-04, France (decided by TAC1 acting as deputy TAC2).

itself; it is reasonable to state that the purpose of the above mentioned provisions (Sections 2.6 and 13.3), looked at through the guidance provided by the Preamble, is precisely to allow that necessary time for the Agent to demonstrate its compliance with the applicable rules **BEFORE** being punished, before the sanction being applied against it. Sustaining the contrary would imply a negation of the above mentioned provisions making nugatory the Agents' right to be heard, caring within it the undeniable, and mostly perceived as irreparable, damage that a suspension entails for a sound Accredited Agent.

Guidance on this matter would be appreciated.

b) BG request for the same sale twice

This is a frequently asked issue and subject mainly to many New Agents' concern since IATA requests for BG only reflects Agents' sales and not their financial status.

As also demonstrated in review A2/2013-62 the phenomena of Airlines asking BG despite Agent already submitting a BG for the same sale is adding to the burden.

The original TAC Decision in the above case was based on TAC2's assessment that sales covered by individual Airlines' BG cannot be considered "sales at risk". Especially taken into account the multiple references made in Resolutions where this issue is covered and IATA reserves the right towards Member Airlines to "exclude" amounts covered by individual BG, should an Agent dishonour its obligation to pay Member Airlines.

These sales are easily identified within the BSP system and when a Member Airline chooses not to honour/accept IATA´s financial assessment, these sales should be excluded when counting "sales at risk" to determine the accurate BG requested. Especially for New Agents since BG is imposed disregarding Agents actual financial status.

TAC2 changed the initial Decision, after request from IATA to clarify and correct, and making the TAC aware of the exact wording. When calculating BG for new Agents, Resolution text states "net BSP sales" and not as in other occasions when protecting Member Airlines' funds "sales at risk".

TAC2, acknowledging that this is a "politically sensitive" issue for IATA also stated that "policy making" is up to the Stakeholders when reversing the initial Decision which was in favour of the Agent. This has obviously been taken into consideration when amending Resolution 818g Sec. 2.1.4.2: <<… a BSP Airline may request a separate bank guarantee **on the grounds that the current Local Financial Criteria in the market require strengthening**>>. Hence, neither Spain, the UK nor any other "BSP mature" country should qualify for the above.

It is also questionable from a contractual legal point of view, since providing a BG is one of the most challenging and often costly commitments an Agent undertakes. NOT being

informed about the “risk” for a BG request twice for the same sale, when deciding upon signing or not signing the PSAA does not seem correct.

TACs urge the Stakeholders to reconsider and clarify Resolution text covering this situation.

c) Request for clarification - Resolution 820e 1.2.2.2

Any Party which is aggrieved by a decision, often also seriously affecting its commercial survival, should have the right to get the issue subject to be reviewed.
This is the fundamentals of Resolution 820e § 1.1 and 1.2.

Mainly from an administrative point of view, it is understandable that there is a 30 day requirement to submit this request.

Not fully understanding the rationality behind the ”10 days limit” in the above Resolution, the TACs respectfully ask the Stakeholders to clarify.

Resolution 820e 1.2.2.2 states:

> <<for review pursuant to the provisions of Subparagraph 1.1.7 of this Section, the request must be submitted **within 10 calendar days** of the withdrawal of the Standard Traffic Documents>>.

Resolution 820e 1.1.7 covers <<an Agent from whom stocks of Standard Traffic Documents have been withdrawn>> effectively meaning that this Agent does not pose a risk for further financial damage. Hence, and especially, since sometimes alleged “accounting irregularities”, after a more thorough assessment are cleared and Agent is reinstated.

The 10 day limit would in cases where the Agent does not reach a satisfactory solution directly with IATA impede an Agent to seek a TAC review after the 10 day limit had passed.

Nota Bene: also in these occasions the implementation of Business Days is recommended.