Annual Report of 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 in mid-February in Honolulu.

The following pages detail the cases that have been dealt with since the last Annual Report, with the period covering from September 2014 to August 2015. 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 at 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:

Area 1 – **70**
Area 2 – **289** (**including** 43 cases handled by TAC 1 as Deputy)
Area 3 – **142** (**including** 16 cases handled by TAC 1 as Deputy)

This number is categorised in each Commissioner's Report.

During this reporting period two oral hearings were held: one in Quito, Ecuador and the other in Toronto, Canada. 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 or it was decided so by the Commissioner with the Parties' consent. 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.

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 to Agents and general public in both English and Spanish. For the first time in their tenure, the TACs made an evaluation about "cost effectiveness" of the website. Statistics showed that in May 2015 alone 1,673 unique users had entered the TAC website. Unquestionably a remarkable number and, without doubt, justifying the existence of a well updated TAC website.

Formal Decisions are, once posted in the secured part of the website, available only to PAPGJC Members. Decisions are posted 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

Before bringing any matter to the Conference's attention, the Commissioners greatly welcome the notable change in IATA´s approach to cases of "administrative" nature. This new approach has resulted in a more efficient way of solving matters at hand, often with very little intervention from the Commissioners.

The Commissioners applaud the future changes in the Resolutions involving a **differentiation between irregularities of an administrative nature from those where Member Airlines' funds could be at risk** and the consequences that each one generates.

1.- Change of Ownership, Legal Status, Name or Location – Resolution 818g Section 10

(a) *5 Days Scope – removal of ticketing authority*

The TACs support the current amendment (Resolution 10.12.1) allowing Agents 5 calendar days to comply in order to avoid removal of ticketing authority. Several recent requests to review "a change" have proved that Agents DO respond to the best of their ability, but sometimes the submissions are incomplete and sometimes the change is 10 or even more years old.

IATA regularly allows a certain flexibility to substantiate, but it is the TACs' view that, **as long as there have been no Irregularities** (where Airlines' moneys have been at risk *i.e.* late remittance) and Agents have been trading for years without notifying the change, the "administrative errors" committed by Agents should not entail suspension and default action, unless it is obvious that the Agent is unwilling to comply. **A "substantial" recovery fee should instead accompany a delay**.

(b) *Bank Guarantee ("BG") request*

The TACs acknowledge the possibility enshrined in a few LFC (such as the UK) where an Agent is allowed to ask for a new credit rating and, if satisfactory, no additional BG is required, **BUT this is not a "standard" facility in most LFCs**. The current stage of most LFC mandates the submission of a BG when an Agent has filed a late notification of a change of ownership or when IATA detects that a change has occurred and it has not been notified.

Furthermore, the demand of this BG does not take into consideration the time period that might have elapsed between the actual change and the date of the late notification nor when IATA discovers same.

Reality reflects that in many cases the request for a BG not only seems inadequate, since the change might have occurred 10 years ago without the Agent having presented any risk to Member Airlines nor having committed any irregularity that could have been "covered" by a BG, but often represents a particularly heavy financial burden for sound Agents.

The TACs would like to propose the following amendment to the BG request itself, since we consider that such request can sometimes be disproportional to the administrative nature of the fault committed.

The BG should be waived in the following cases:

- When no financial-risk related irregularities would have been committed by the Agent since the time of the change;
- When the change had occurred more than two years ago;
  (The rationale behind this term is based on the fact that IATA's financial reviews are performed annually covering almost 1.5-1.8 years of trading and, normally, are requested to last one (1) year, after which, in principle and provided certain conditions are met, the Agent is no longer compelled to provide any BG;)
- When the management has remained the same despite the change

Since it is an Accredited Agent's obligation to report to IATA any change of ownership, legal status, name or location within a given time frame, an administrative fee should be levied on Agents that fail to comply with this obligation[1].

[1] As it has being proposed to this 37/PACONF – R11 Agenda item (first transmittal)

Best of the TACs understanding, an overwhelming majority (meaning 85% to 90%) and maybe more of tickets processed through BSP, at least in some of the larger markets in Europe, are originated from Agents (OTAs, Consolidators, Large Tour Operators, TMCs, etc.) owned by Financial Institutions trading on one or several stock markets around the world. And given the upcoming introduction of the € 16 "Distribution charge" by an Airline effective as of 01 September, it is not a bold guess that more smaller Agents will turn to Consolidators for ticketing services, despite having their own IATA accreditation.

Unfortunately, we do not have an answer to this problem, but this insight should give a better understanding why the TACs find the very comprehensive and somewhat strict wording of Resolution 818g Section 10 "troublesome" when it basically only is enforced towards "small fish" Agents considering Member Airlines' total funds being a risk.

2.- Resolution 818g Attachment "A" - § 2.2.2 Settlement of Amounts Due

There are unfortunately Agents who due to fraudulent behaviour cause financial damage to Member Airlines. But it is the TACs' experience that a vast majority of Agents, defaulted due to non-payment, are so due to circumstances which they did not have full control over.

Most Agents want to clear their names and repay, but do not always have the capability to meet the requirements of **at least** 50% down payment as mandated by Resolution 818g Attachment "A" § 2.2.1 (i) or (ii).

The TACs' general view is pragmatic, whatever can be salvaged should be salvaged, and Resolution 818g Attachment "A" § 2.2.2 provides the opening for these Agents to repay according to their ability. The TACs strongly support this "opening".

Unfortunately, today´s wording of this § is unclear and the TACs would like to have the Conference reconsider the whole provision. The TACs suggest that more flexibility would be given to IATA, because IATA has the knowledge and competence to evaluate case by case and to determine the unique circumstances of each default.

Naturally, it is up to the Agent to propose "*a fraction"* and a "*repayment schedule"*. Depending on the outstanding amount the TACs have accepted at least 20% - 25% as "a fraction". This ratio has been used when the debt has been "substantial"; the smaller the debt the higher percentage the down payment should be.

The wording: <<*… such alternative repayment schedule* ***shall*** *extend over no more than 12 months…>>* is sometimes a hindrance and deters Agents from even presenting a repayment plan.

Another topic to consider in this provision, which causes uncertainty, is **WHO** shall present this alternative to Member Airlines.

Is it the Agent´s responsibility to present this alternative and make sure that it is a <<*unanimous agreement of the BSP Airlines to whom the outstanding amount is due*>> or should IATA "submit" it on behalf of the Agent?

The TACs view is that IATA definitely has the tools, and is in a far better position, to **convey** the Agent´s "proposal" to Member Airlines than the Agent.

Finally, as the § is written today, **ONE** Member Airline (with maybe 5 % claim of the total) can veto the proposal even if 20 other Member Airlines have consented. **The TACs suggest that this "veto" be amended.**

To streamline IATA´s work (by not chasing responses from Airlines who sometimes are not having a response as No. 1 priority when the amount is "small"), the TACs suggest that a "No-reply" from a Member Airline should be considered as a consent to the repayment agreement put forward by IATA.

This will in no way diminish Member Airlines' right to discard the proposal - e.g. if a majority, representing the total amount due, rejects then there is no deal.

3.- Resolution 818g – Section 2.2.1.2 – Beyond LFC

Resolution 010 is in § 4.1 establishing the hierarchy of sources. In that very same Resolution, § 2 states: <<*… this Resolution applies, unless an express contrary intention appears...*>>.

Upon being requested to review a recent case, the TACs consider that a clarification is needed from the Stakeholders.

In the case at hand, despite the Agent having met all the requirements of the LFC in an European country, which LFC had been "strengthened" in numerous occasions during the past years, an Agent was requested to supply an additional Financial Security ("FS") to be able to continue monthly remitting as this Agent had done for many years.

The provision invoked by IATA was Resolution 818g – Sec 2.2.1.2**,** more specifically the wording**:** <<*Additionally, IATA has the right to review at any time… the Financial Security provided under this Subparagraph shall be in accordance with these Sales Agency Rules,* ***but it may go beyond the established Local Financial Criteria***>>.

This amendment was introduced in the 36th edition of the Resolutions Manual and the TACs are highly concerned that this "interpretation" becomes common practice.

It is imperative, as per the current stage of applicable Resolutions, for Agents to be aware of the consequences of their actions – in this case, the annual or random assessment of their

financial standings.

The LFC is the result of a consensually agreed on process approved by PAConf, consequently, except in situations where, as stated in Resolution 800f <<*… markets which raise financial concern>>,* the existing LFC in a "mature" market should be the prevailing guideline for Agents and IATA risk assessors alike.

The TACs fully support, should IATA have special concerns with individual Agents, where it would be necessary to: <<***go beyond the established Local Financial Criteria***>>. But the TACs cannot agree when this provision is used without cause and is randomly applied.

It is worth to consider the principle of Law according to which a *special law* (LFC) should always prevail over a *generic provision* when referring to the same topic.

The TACs are asking the Stakeholders to clarify the contradiction of Resolutions presented herein, mainly to avoid that the case under review would set a precedent for IATA to be applying Resolution 818g – Sec 2.21.2 indiscriminately. The TACs doubt that IATA´s "interpretation" would stand the scrutiny of a Civil Court, should an Agent choose to challenge it.

4.- *Bona Fide* Bank error letter requirements

Payment on time is a fundamental part of an Agent´s set of obligations. There is an increasing number of cases where Resolution's requirements to accept *Bona Fide* Bank Error (Resolution 818g Att "A" 1.7.4.3) is not possible for Agents to meet. **Banks simply do not always "comply"** with the detailed requirements of the referred text. Formal and infomal Decisions in Areas 1 and 2 (e.g. Area 2-2014/13,14, 16 and 2015/01, 03,08,10) are illustrating the above. It should also be noted that in some cases the "bank error" could be attributed to IATA´s bank.

The TACs suggest a change in the Resolution's text. When banks refuse to cooperate, it should be considered enough evidence for *Bona Fide* Bank Error when Agents can substantiate that: (a) there have been enough funds available by Due Date in their bank accounts; and, (b) the payment instruction to their Bank should have been done on time, meaning allowing the bank enough time to execute by Remittance Date.

5.- Reference to the TAC facility in each IATA's Notice of Irregularity

The TACs understand that IATA now makes mention of the TAC facility in **all** Notices of Irregularity.