

## **Decision 28/2018**

### **Travel Agency Commissioner - Area 2**

Andreas Körösi  
P.O. Box 5245  
S-102 45 Stockholm, Sweden

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**Applicant: AERTiCKET Conso GmbH ("Aerticket")**  
IATA Code # 23 2-7340 1  
Germany

**Respondent: Aeroflot**

ADM Dispute

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#### **NOTE:**

This summarized decision is being posted as the Parties have received it. Occasional requests for clarification are not posted. However, should any Stakeholder requests it, a copy of such clarification will be sent to her/him.

#### **Decision:**

Both Parties have agreed for this Office to review and decide.

#### **Background**

The issue is if *Aeroflot* ("SU") can keep or should refund "third party taxes or fees" such as taxes or fees imposed by Government or Airports, when the passenger is a "No Show".

SU claims that this is a serious breach of contract and: *"In result of NO SHOW Airline has to cover operational cost related to GDS services and cannot dispose of the reserved seats at its own discretion. Having refunded 3<sup>rd</sup> party taxes the Agent (in case of NO-SHOW) formally violated the requirement for mandatory cancellation of seats"*.

*Aerticket*, by referring to a ruling done by the Regional Court of Frankfurt, claims that according to German Law this would be unlawful and, hence, the ADMs issued by SU should be withdrawn.

#### **Considerations and Decision**

In general, an Airline can in its "fares and tariffs rules" or in any other "published rule" (e.g. ADM rules) basically impose any condition or amount as fee to recover costs or simply to make a profit. This would be the subject of a bilateral agreement, which an Agent can accept or refrain from by not using that "specific ticket" or Airline.

Having said the above, the Resolutions (Resolution 010 § 4.1) are very clear when stating that the number one source to apply is "*any local law*". This means that if there is a German law "contradicting" the rights for an Airline allowed according to the Passenger Sales Agency Agreement ("PSAA"), German Law prevails.

After having read the verdict number 14.12.2017 (2-24 O 8/17), ruled by the Landgericht Frankfurt am Main (*Wettbewerbszentrale vs. EasyJet*), it is clear that German Law considers not to refund taxes and third party fees, when there is a no-show, as: "*... unlawful, as it constitutes an undue disadvantage for consumers. EasyJet, on the other hand, would gain profits by retaining money for costs that did not accrue*".

*EasyJet* has appealed this decision, and no final ruling has been rendered so far. Hence, it has not yet come into force in Germany.

Having said the above, and given European Consumer rights' strong legislation standing, I find it unlikely that a higher court will repeal or invalidate that decision.

Also considering that a "no show" does not add "operational costs" of any kind, and those "operational costs" when doing the pricing must have been taken into account, I cannot see why SU, above of the fares part of the ticket price, should keep "taxes and fees" from a third party.

Nothing impedes SU to charge an administrative cost recovery refund fee when there is a no show. But this would have to be clearly communicated to Passengers and Agents.

Based on the above, **it is hereby decided** that:

- The refunds done by *Aerticket Conso GmbH* are valid and the ADMs issued by SU have to be withdrawn;
- SU is hereby ordered to issue ACMs corresponding to the ADMs, which have been ordered to "be withdrawn".

SU is free to approach this Office again, should the outcome of the *easyJet* appeal be in favour of the Airline, and I will reverse or amend my ruling accordingly.

Dear IATA team,

Please retract and credit *Aerticket* the value of the concerned ADMs should they already have been processed through BSP.

**This Decision is effective as of today.**

Decided in Stockholm, on June 16<sup>th</sup>, 2018

Andreas Körösi  
Travel Agency Commissioner  
IATA-Area 2

In accordance with Resolution 820e § 2.10 any Party may ask for an interpretation or correction of any error in computation, any clerical or typographical error, or any error or omission of a similar nature which the Party may find relevant to this decision. The time frame for these types of requests will be maximum 15 calendar days after receipt of this decision. Meaning as soon as possible and **not later than June 30<sup>th</sup>, 2018.**

Please also be advised that, unless I receive written notice from either one of you **before** the above mentioned date this decision will be published in the Travel Agency Commissioner's secure web site, provided no requests for clarification, interpretation or corrections have been granted by this Commissioner, in which case the final decision will be posted right after that.

Please note that if after having asked for and obtained clarification or correction any Party still considers aggrieved by this decision, as per Resolution 820e §4, the Party has the right to seek review by Arbitration in accordance with the provisions of Resolution 824 §14.

Please let me know if any of the Parties requires a signed hard copy of this decision and I will send one once the time for "interpretation or correction" has elapsed.