

Decision 37/2018

Travel Agency Commissioner - Area 2

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

Applicant: OLINET SARL (trading as **O VOYAGES**)
IATA Code # 39-2 1014 6
Côte d'Ivoire

Respondent: International Air Transport Association (IATA)
Torre Europa
Paseo de la Castellana, número 95
28046 Madrid, Spain

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.

Background

Olinet Sarl was defaulted on 07 March 2018, and its Passenger Sales Agency Agreement ("PSAA") was terminated on 04 June. Reason given by IATA: "*Agent had not followed the terms in the Repayment Agreement*".

Olinet Sarl claiming that they have "receivables" which should be deducted from the final instalment turned to this Office asking for a review.

The receivables are "**refunds validated by BSP Participating Airlines**" but not accepted by IATA to be set off against the debt to these same Airlines "... *since it had not been agreed when the repayment agreement was signed*".

During the course of the review it has come to light that the Repayment Agreement §2.b sets a deadline of 25th April: "*to take refunds, ADMs and ACMs into consideration*". *Olinet Sarl* **did** raise refunds before 25th April. Refunds raised directly to Member Airlines because they were suspended from BSP since 07 March. Most of **IATA Member Airlines ignored to respond**, and by that no adjustment about factual debt was made in the Repayment Agreement.

Further more, IATA Member Airlines well aware of that *Olinet Sarl* is suspended from BSP; they claim that they can **ONLY** issue credit notes **AFTER** an Agent is reinstated into the BSP.

Olinet Sarl did settle all the remaining debt, except of "**by IATA Member Airlines validated refunds**", on 01 August 2018.

Since this Office already had initiated a discussion with IATA about the possibility to "set off debts" and did not reach consensus, the issue was elevated to the Stakeholders.

Considerations and Decision

This Office's view is:

- That set off between "debts" should be considered in Repayment Agreements, even if they surface after an agreement had been signed;
- No interest nor fees should be paid by Agents for those amounts;
- Local law mandating the right to set off debts should be acknowledged by IATA even if this right surfaces after the Agreement is signed;
- The "signing of the Repayment Agreement" should not in itself, as IATA claims, be perceived as if the Agent has "waived its rights". This would acknowledge the stressful situation (being suspended) when the Agreement was signed;
- If circumstances not foreseeable when signing the Agreement, including "a deadline for installments" change, the Agent should be allowed the right to extend the agreement to repay **at least until the deadline established in Resolutions**.

A "*petit comité*" meeting with IATA, Representatives of Stakeholders and this Office was held in Geneva on the 21st of August to, amongst other topics, discuss the "TACs' scope" in regards to "set off between amounts owing in IATA Repayment Agreements" signed between the Agent and IATA.

The Stakeholders present did not agree with The Commissioners' view.

The Stakeholders confirmed IATA's stance that the Repayment Agreement presented by IATA and signed by Agents should not be "reviewed nor altered" by the Commissioners, and by that as this Commissioner sees it, also disregard the views of Member Airlines wanting to support the set off of debts, and disregard what potentially "local law" mandates. It was suggested by IATA that Agents rather should resolve the issue "in local court".

Considering the above **it is hereby decided:**

- That unless all debts are settled according to the Repayment Agreement;
- IATA's decision to terminate the PSAA should stay.

This Decision is effective as of today.

Decided in Stockholm, on August 28th, 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 12 September 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.