Travel Agency Commissioner – Area 2

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TAC Mediation: Member Airline *vs*. XXX Tours - Alleged abuse of fares rules

Note: the original format of this document has been adapted, for posting it into the restrictive access part of the Travel Agency Commissioners' website, in order to protect the confidentiality of the information and the identity of the Agent involved.

Dear Parties,

ADM issues are commercial matters and, thus, NOT governed by Resolutions. Consequently, all disputes have to be finally resolved bilaterally. This part of the "Travel Agency Commissioner's authority" is currently under discussion between the stakeholders.

As such, "my decision" is only a recommendation and, hopefully, will give the Parties a broader view and understanding when finally settling the dispute bilaterally.

Arguments and evidence have been submitted by both sides in writing and at the Oral Hearing, they have been extensive and compelling. Resolutions do give guidance but are not 100% conclusive.

When both Parties want to find an amicable solution in cases such as this one, the Travel Agency Commissioner normally looks, amongst others, at the following factors before deciding:

- Have the fare rules presented by the Member Airline been clear or do they leave room for "interpretation"?

- Have the rules been communicated in a clear and exhaustive way?

- Can it be established that the Agent **should have realized** that violation of rules is a possibility when contracting sub-agents and by that **actively taken steps** to avoid abuse, or has the violation been done in "good faith".

- Has the Carrier been vigilant, since this type of irregularity is not "unique", and frequently followed up Agents with "consolidator contracts" to **actively** inform them that they in fact do violate fares rules?

- INSTEAD of leaving this "control" to a Third Party, whose "**incentive"** is mainly to "profit from fares abuse" and not to "**correct timely**" undesired behaviour.

- That Third Party will, off course, regardless the settlement between the Parties, want to have "its share" of the imposed € 300 / segment.

- Based on previous similar cases dealt with by the Commissioner, where the level of "third Party recovery fee" has been disclosed, my "decision" does also take that aspect into consideration.

- In this case the imposed fee, as it has been presented, is calculated per segment, which is also a factor to ponder when deciding.

- What period of time do the ADMs represent? (1 months, 3 months, or even past the 9 months allowed in Resolutions?). Please note: the responsibility to follow fare rules have no 9 months limit - the limit is only regarding the right to claim the irregularity as an ADM through the BSP.

- Has the Carrier, as "it is customarily done by other Carriers", implemented a "robot system detecting violations" (as in this case Married Segments & City Pair abuse) and, consequently, has it notify the Agent through an SR message before ticketing, or even preventing automated ticketing?

- And by that substantially mitigating the Agents' "abuse" (and cost for both Parties) if the volumes are high, as in this case?

These were some of the "basics" to be considered and, as mentioned *supra*, both Parties have presented ample of additional arguments to support their stances.

The claim from the Member Airline is for the travel period May 2017 - Jan 2018 and represents "recovery fees" of approximately € 600,000. The claim is not calculated on actual loss but rather a fixed "per segment fee".

Rules governing Agents' responsibilities are mainly outlined in Resolution 822 § 2, Resolution 824 §§ 3.3-2.5, Resolution 830a §1, and, also quoting Resolution 832 §1.1.1(a): "… *monies for sale against which an Agent issues Standard Traffic Documents shall be deemed due by the Agent to the BSP Airline whose ticketing authority is used when they are issued and shall be settled in accordance with the provisions of this section*."

By that XXX Tours at all times is responsible for sales done also by subagents on their STDs.

Having said the above, I also take into consideration that XXX Tours has taken all relevant steps to avoid future abuse immediately after having been made aware of the abuse done by its sub-agents.

It is worth noting that establishing actual financial damages, caused by the violation of fare abuse in question, would be a vital part in a public court case.

Best of the Commissioner's experience, the actual damage, if it would have been calculated as the "additional cost for the nearest available booking class" would have been substantially less than the € 300 per segment fee. This topic has also been discussed by the Parties and has been taken into consideration.

I am apportioning liability on both sides, mainly because:

- The Member Airline is no stranger to that other Carriers do have "robots detecting fare & ticketing abuse" and that would have given instant or early feedback, thus mitigating the loss for both Parties.

- The requested € 600.000, does NOT represent the actual loss, which per definition cannot be established, but rather a "fee" which according to me, **is reasonable should the offence have been on a "lesser scale"(*id est*, detected earlier).**

- The "abuse" was difficult to detect timely, which is substantiated by the Agent's claim and not refuted by the Member Airline, where "*not even its Help Desk could detect it*" (email dated 22 March 2018).

- The Member Airline was aware of the risk XXX Tours has taken upon itself by contracting sub- agents to maximize sales - in the best interest of both Parties.

- Additionally, I assume that the requested amount is not only part of a "cost recovery" issue for the Member Airline, but one important objective by imposing this high amount to a valued Agent, is also "an aim to send a clear signal" to the Local Market that abuse will not be tolerated.

After having "probed both Parties' sentiments" to finally settle, I have landed in the following "recommendation":

  - The total amount to be repaid should be € 200,000 (without any interest or fees added),

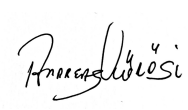
  - € 50,000 upfront before the end of October 2018,

  - The remaining € 150,000 is to be paid upon the signature of a repayment agreement, which is to be settled via BSP, in maximum 12 installments starting not later than January 2019.

I assume some cost recovery from its sub-agents will be possible for XXX Tours.

Since I also believe that there is huge value for the Member Airline in communicating this agreement to the Local Market, provided both Parties agree, and without mentioning XXX Tours by name, I will approach the concerned Travel Agency Associations and ask them to "inform all their Agents" accordingly. The final text will be subject to approval from both XXX Tours and the Member Airline.

Stockholm 27 September 2018



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