

## Decision 24 / 2019 Travel Agency Commissioner - Area 2

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### **Applicant: AERTICKET S.L.U. (78 2 3154-3)**

Avenida de Alemania, 4 – 1ºB  
07003 Palma de Mallorca, Spain

Represented by Mr. Stephan Ebert, CEO

### **Respondent: IATA**

Torre Europa  
Paseo de la Castellana, número 95,  
28046 MADRID, Spain

Represented by Mrs. Olena Dovgan, Manager Accreditation

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## **I. The Case**

Based on an alleged “Change of Ownership” (“CoO”) IATA has requested The Applicant (“Aerticket”) to provide an additional Financial Security (“FS”) of € 1,882,000 to keep the current remittance frequency and the current Remittance Holding Capacity (“RHC”).

Aerticket claims no actual CoO, or change in Management, has occurred contrary to IATA’s claim and seeks a decision to overturn IATA’s decision for additional Financial Security (“FS”) to keep its current Remittance Holding Capacity (“RHC”) and frequency to remit.

## **II. The core of the Applicant’s arguments in summary**

Quoting the Applicant, presenting their view about “the change”: “... *this change has not implied any modification of the legal nature of AERTiCKET, S.L. neither a real change of ownership of the Company, since the parent companies behind remain the same as before...*”

“...*absorption of our direct parent company by a 100% subsidiary company of the company which has always exercised effective control since the establishment of AERTiCKET S.L.U..*”

A before and after “change” of the Company status (*estructura anterior and actual*) for easy overview is attached.

*“... the local financial criteria for change of ownership just applies in case of change in the effective control of the company...”*

### III. The core of the Respondent’s arguments in summary

Quoting the Respondent:

*“As per notice of change ... submitted by the agent 100% of shares are transferred from Aertrade International Holdings BV (Netherlands) to Aerticket International Holding GmbH (Germany).”*

*“In accordance with Resolution 812, Section 10.3, the disposal or acquisition of shares representing more than 30%, is qualified as major change ...”*

*“Even if the parent company is the same, the direct owner of the agent has changed. Aertrade International Holdings BV (Netherlands) and Aerticket International Holding GmbH (Germany) are different legal entities.”*

*“Previously the agency was managed by one legal entity, after the change it is managed by another legal entity.”*

*“At the end, Aerticket SLU is controlled by Aerticket International Holding GmbH (Germany) which is unknown company for us.”*

*“Therefore, the request for financial security should stay.”*

### IV. Oral Hearing

Both Parties have agreed to waive their right to an oral hearing and to allow this Office to reach a Decision based on the written information and evidence submitted by, and communicated to, both Parties. (Resolution 820e §2.3)

### V. Considerations leading to Decision

Resolution 812, § 10 thoroughly “discusses” what should be considered change entailing risk (10.3) and what can be accepted as a “non-risk” change.

Elaborating on IATA’s main argument I quote Resolution 812 § 10.3.1.1 (b) (iii): *“the disposal or acquisition of shares representing more than 30% of the total issued share capital of the Agent **by any person** that had the effect of vesting the control, as defined by applicable law, of the Agent **in a person in whom it was not previously vested.**”*

The Spanish Local Financial Criteria (“LFC”) under § 2 B states:

*” All Agents **who have a change in ownership** must submit a bank guarantee to IATA in accordance with the Resolutions ...”*

Furthermore, under the same §, it is also stated: *“The above-mentioned financial requirements will not apply in the event of a transfer of ownership inter vivos o mortis causa up to the second degree of kinship or affinity by marriage...”*

It is arguable, to say the least, if this can strictly be applied in this case, but **it demonstrates a will in the LFC to exclude situations** where a “transfer of shares between the living” who at the same time are “family “or as in this case are“ the same physical people” should entail the consequences as requested by IATA.

The core issue is what is intended by Conference as the governing body, in the wording “change in ownership”, and what is not, by the Stakeholders when the current Resolutions, including the Spanish LFC, were adopted.

The main objective in all Resolution text, as this Commissioner sees it, is to safeguard Member and BSP Participating Airlines funds. At no point has the financially satisfactory status of Aerticket been put in question.

“Changes” in Resolution texts are exclusively targeting changes where **control of the company or its Management has been vested in “new owners or new managers” who did not have that “power” before the change. Or where the liability of the persons involved has been reduced as a consequence of the “change”**.

This is also manifested in Resolution 812 § 10.3.1.1 (b) (iii) by adding the requisite that the change must have: *“the effect of **vesting the control**, as defined by applicable law, of the Agent **in a person in whom it was not previously vested”***.

Taking notice of IATA’s important claim: *“At the end, Aerticket SLU is controlled by Aerticket International Holding GmbH (Germany) which is unknown company for us”*.

My consideration includes that IATA has not convinced this Office why for IATA the “unknown company Aerticket International Holding GmbH”, **who is the “end owner”** before and after the change, constitutes a greater risk after the change.

Finally, since there is no absolute clarity to be found in Resolutions if “change of ownership” also includes “changes” were no new physical owners are introduced, or no “powers have been vested in anybody not already having that power”, nor any changes in Management has occurred, as in this case, I also have to consider the *Contra Proferentem* rule. This rule is a legal doctrine in contract law, according to which any clause considered to be ambiguous should be interpreted in favor of the interest of the party that has not created it. In this case it is the Applicant.

## VI. Decision

Having carefully considered the Resolutions and the evidence presented by the Parties, mainly based on findings in this review that “control of the company” has not been vested in persons who did not already have those powers before the change.

It is hereby decided as follows:

- Provided that the “change” has and will not alter Aerticket’s legal nature with respect to its responsibilities and obligations under applicable law.
- Provided the financial risk assessment “after the change” is found satisfactory meeting the Spanish LFC.
- The RHC as it was prior to IATA’s decision should prevail and
- The Financial Security, if any, prior to IATA’s decision should be applied

**This Decision is effective as of today** and in accordance with Resolution 820e, § 2.9, any Party may ask for: *“an interpretation of the decision or correct in the decision any error in computation, any clerical or typographical error, or any error or omission of a similar nature.”*

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 07 September 2017.**

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, it can request a revision of it by the majority of the Commissioners in office, pursuant to Resolution 820e, § 2.10; after which, if still considers being aggrieved, as per Resolution 820e, §4, the Party has the right to seek review by Arbitration in accordance with the provisions of Resolution 824, §14.

I would be grateful if both Parties could acknowledge receipt of this decision.

Kind Regards,



Andreas Körösi  
Travel Agency Commissioner  
(for Europe, Middle East & Africa)

## CLARIFICATION

### 1. Commissioner's decision to allow the clarification requested by IATA:

September 12, 2019

Dear Mr. Chiavon and concerned IATA team,

After having re-examined the documents and statements done by the Parties, I do agree with your statement and will allow AERTICKET to present the documents needed to "prove beyond doubt" that the control of the company has not changed as a result of the "change".

Dear Mr. Exel,

I find IATA's statements:

*"We consider that the agent needs to prove that there is no change in control **with valid legal documents** and .... the control of Aerticket SLU has not changed at all as a result of the major change in shareholding"*

**relevant and crucial** to uphold my decision and will allow you until end of Business 20th of September, 2019 to present the needed official documents.

Best regards

Andreas Körösi  
Travel Agency Commissioner (Europe, Middle East & Africa)

### 2. Commissioner's decision based on the information submitted by the Agent:

September 21, 2019

Greetings to all,

Dear Mr. Ebert,

Thank you for providing the evidence. I have read it and find it credible.

Dear Mr. Chiavon and concerned IATA team,

Please confirm if this is acceptable for IATA or clarify why not.

Thanks and Best regards,

Andreas Körösi  
Travel Agency Commissioner (Europe, Middle East & Africa).