



**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.**

Issued by the Department of Transportation
on the 14th day of February, 2020

Served: February 14, 2020

In the Matter of the

**Petition of the Travel Technology Association,
American Society of Travel Advisors and the
Global Business Travel Association to Modify
Order DOT-2012-4-18**

Docket DOT-OST-2012-0058

ORDER TO SHOW CAUSE

By this Order, the U.S. Department of Transportation tentatively grants, in part, the petition submitted by the Travel Technology Association, American Society of Travel Advisors and the Global Business Travel Association, collectively the “Petitioners,” on April 9, 2019, requesting the Department of Transportation to modify the procedures for review and approval of Notices of Tier 1 Agreements submitted by the International Air Transport Association (IATA), and tentatively denies the balance of Petitioners’ petition for modification of IATA agreement review procedures.

Background

Filing Procedures for IATA Agreements

By Order 2012-4-18, served April 13, 2012 (the Order), the Department granted IATA an expanded exemption from Condition #2, one of the conditions in the IATA by-laws that requires IATA to file all agreements, resolutions, and recommended practices for appropriate action by the Department before they may be implemented by IATA members. The exemption is designed to facilitate prompt implementation of routine but essential standard-setting and interline coordination agreements without antitrust immunity, while preserving the public notice and regulatory options. The Order established a three-tiered system for the filing of IATA agreements. The first tier (Tier 1) includes all traffic conference agreements, except those included in tiers two and three. IATA may declare Tier 1 agreements effective 30 days after filing unless the Department extends the review period for another 60 days. Detailed requirements for supporting material that must accompany Tier 1 agreements are listed in Appendix A to the Order. The second tier (Tier 2) consists of agreements in specific subject

areas that are listed in the Order that the Department wishes to review on a case-by-case basis before implementation. After review, the Department may approve, disapprove, or exempt each Tier 2 agreement. The third tier (Tier 3) consists of recommended practices, agreements, or resolutions that IATA still wishes to file with the Department for approval and, optionally, antitrust immunity under Title 49 U.S.C. §§ 41308 and 41309. Tier 3 filings must await the Department's review and appropriate action before implementation.

Petitioners' Request for Procedural Changes

Petitioners assert that the Tier 1 process is not effective for stakeholders who are not members of IATA but who are affected by IATA agreements wishing to consider and comment to the Department on the implications of IATA Conference resolutions, because of the relatively brief (30 day) review period for Tier 1 submissions and the volume of resolutions that are presented to the Department in a single submission. Petitioners note that IATA determines whether an agreement falls within the purview of Tier 1, as defined in Order 2012-4-18, and that IATA's discretion in this regard is not always well-exercised. Petitioners describe their limited ability to inform IATA decisions, and assert that their access to final agreements may not be realized until IATA formally submits them to the Department (where they are filed in the instant docket under DOT-established procedures). As examples of IATA resolutions having substantial impacts on the distribution community, Petitioners cite IATA Resolution 787 addressing New Distribution Capability, which the Department determined would be addressed as a Tier 2 matter with an opportunity for public comment before DOT issued first a 'show cause' and then a final order approving it with conditions; and the 'One Order' resolution which was approved under the Tier 1 process.

Petitioners propose the following procedural changes which they say would allow for more meaningful stakeholder and consumer input and would improve current processes, contending that they would not be burdensome on IATA: (1) Extend the Tier 1 30-day review period to 90 days, unless the Department requires an additional review period or re-filing in a separate docket; (2) Modify the list of Tier 2 subjects in Order 2012-4-18, to include "18. Booking Sale or Distribution of Airline Services/Products," in order to bring under Tier 2 review any resolution that may affect entities doing business in the distribution sector that are not members of IATA, *e.g.*, ticket agents, including TMCs, travel advisors and/or GDS's; (3) Require that IATA electronically serve copies of agreements submitted to the Department under any of the three tiers to persons or entities that have advised the Department and IATA in advance that they wish to receive them at the same time IATA submits them to the Department. Taking these actions will result in a more transparent and meaningful review process for IATA agreements, according to Petitioners.

Response of IATA and follow up pleadings

IATA responded briefly to the Petition in an October 2019 IATA status report submitted on a separate matter involving Tier 1 resolutions, now resolved by Order of the Department (*see* Order 2019-12-11), stating that the Department's review process has worked effectively for seven years and has provided the Department with the ability to perform meaningful and timely reviews, as it was designed to do. In that separate matter, which involved two of the three

Petitioners in the instant matter, the Travel Technology Association and the American Society of Travel Advisors provided their joint status report in which they pointed out that IATA had not yet formally responded to the April 9 Petition, disagreed with IATA's summary response to the Petition, and reasserted that the proposed changes to the overall review process for IATA resolutions were desirable and would not be burdensome.

Tentative Decision

The Department has considered the Petitioners' proposed changes to the review process established by Order 2012-4-18 for IATA resolutions, and with one exception, tentatively finds that they are not changes we deem necessary to ensure appropriate Department review of IATA Tier 1 and Tier 2 agreements.

We agree with Petitioners that a longer period than 30 days is appropriate in reviewing IATA's Notices of Tier 1 Agreements in light of the trend we see in the increasing volume of resolutions contained in IATA's Notice of Tier 1 Agreement submissions. This is not something cured simply by breaking the submissions down into multiple smaller submissions. Rather, the Department and stakeholders would benefit from having additional time within which to conduct their review. However, rather than the 90-day total time the Petitioners proposed, we tentatively find that an additional 30 days for this purpose beyond the current 30 days should generally be sufficient. Thus, in total, we would impose a 60-day waiting period on Tier 1 Agreements submitted for review before they may be declared final by IATA and, as currently is the case, the Department may extend this review period if we deem it necessary. All other terms and conditions applicable to Tier 1 Agreements provided in Appendix A to Order 2012-4-18 would remain unchanged.

With respect to modifying the list in Appendix B of Order 2012-4-18, we noted in that Order that we reserved the right to do so from time to time through issuance of an advance notice in the master docket. However, we tentatively do not find sufficient reason to include within the coverage of Appendix B any resolution that may affect entities doing business in the distribution sector that are not members of IATA, *e.g.*, ticket agents, including TMCs, travel advisors and/or GDSs, as Petitioners have proposed. IATA has previously and recently certified to the Department that the standards adopted by the October 2018 Passenger Services Conference are binding on IATA member airlines through their membership in IATA and are not binding on any other party. *See* the August 14, 2019 Report on the Status of Discussions Between the International Air Transport Association, the Travel Technology Association, the American Society of Travel Advisors, and the Global Business Travel Association Regarding IATA Notice of Tier 1 Agreements Filing, at page 2, in the instant docket. Based on that certification, we see no need to submit those agreements to the additional scrutiny and review required for Tier 2 Agreements. If IATA were to violate that commitment, we could revisit the issue.

With respect to Petitioners' third proposal – requiring that IATA electronically serve Notice of Agreements in any Tier class on those requesting it when IATA submits Agreements to the Department – we note that the electronic docketing system exists so that the interested public has immediate access to all docketed submissions, whether for notice-and-comment rulemaking or other non-rulemaking purposes, and we tentatively find no rationale for singling out IATA's

submissions to the public docket for additional service requirements. Petitioners may wish to use the “Sign Up for Email Alert” function available on the regulations.gov website under “How to Use Regulations.gov” in order to receive periodic alerts pertaining to the instant docket.

Our action is being taken under assigned authority at 14 CFR §385.13.

ACCORDINGLY,

1. We tentatively grant the Petitioners’ proposal to revise the Department review period referenced in Order 2012-4-18, Appendix A, for Tier 1 Agreements, from 30 days to 60 days, wherever it appears;
2. We tentatively deny all other requests proposed by Petitioners in their April 9, 2019 Petition;
3. We direct all interested parties to show cause why we should not make final our tentative decisions in paragraphs 1 and 2, above;
4. Objections or comments on our tentative decision shall be filed no later than 21 days from the issuance date of this order, and replies, if any, shall be filed no later than 7 business days thereafter; and
5. We will serve this order on IATA, Petitioners, and the Department of Justice (Transportation, Energy & Agriculture Section, Antitrust Division).

By:

Brian Hedberg
Director
Office of International Aviation

(SEAL)

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