



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

Issued by the Department of Transportation
on the 2nd day of April, 2020

Served: April 2, 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
DOT Order 2012-4-18**

Docket DOT-OST-2012-0058

FINAL ORDER

By this Order, the U.S. Department of Transportation makes final its tentative conclusions, as set forth in Order 2020-2-8, an Order to Show Cause, regarding 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. The petition sought modification of the Department’s procedures for review and approval of Notices of Tier 1 Agreements submitted by the International Air Transport Association (IATA).

Background

Filing Procedures for IATA Agreements

The procedures for the Department’s review and approval of IATA agreements were established in 2012 by Order 2012-4-18, served April 13, 2012 (the Order). In that Order, the Department granted IATA an expanded exemption from Condition #2, one of the conditions imposed on the Department’s approval of 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' Requests

Petitioners proposed the following procedural changes: (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 travel management companies (TMCs), travel advisors and/or global distribution systems (GDS's); (3) Require that IATA electronically serve copies of agreements submitted to the Department under any of the three tiers on 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.

Tentative Findings on Petitioners' Requests for Procedural Changes

In Order 2020-2-8, the Department tentatively found that the first of the modifications proposed by the Petitioners, lengthening the review period for Tier 1 Agreements, would be beneficial to the Department and stakeholders. However, the Department tentatively found that 60 days rather than the proposed 90 would generally be sufficient.

The Department did not deem the two other proposed procedural changes to be necessary. Regarding the requested move of distribution related agreements from Tier 1 to Tier 2, we pointed to IATA's certification that the standards adopted by the October 2018 Passenger Services Conference were binding on IATA member airlines, but not on any other party. Based on that certification we saw no need to submit those agreements to the additional scrutiny and review required of Tier 2 Agreements.¹ Regarding the petitioners' proposal that IATA provide electronic service to those requesting it, we noted that the electronic docketing system gave the interested public immediate access to all docketed submissions and tentatively found no rationale for the additional service requirements the petitioners were requesting.

Responsive Pleadings

Travel Technology Associates (TTA) and the American Society of Travel Advisors (ASTA) submitted joint comments supporting the Department's tentative decision to extend the 30-day review period to 60 days, noting that, as stated in the Order to Show Cause, the Department could further extend the review period if it deemed it necessary. They also did not oppose the

¹ Order 2020-2-8, at 3.

Department's tentative decision to deny their proposal for electronic service for those requesting it.

However, TTA and ASTA take issue with the Department's tentative determination not to recategorize distribution-related agreements as coming under Tier 2. They assert that many IATA agreements directly impact the distribution sector and are likely to raise significant competitive, consumer and other issues. They argue that while IATA resolutions are binding only on their member airlines, they may significantly impact non-IATA members, notably travel agencies and other entities engaged in the distribution of airlines services, and those entities are commercially compelled to follow IATA resolutions in order to do business with IATA airlines. However, should the Department not change its tentative findings on this proposal, TTA and ASTA ask that the Department, upon request and as appropriate, extend the review period or determine that an IATA resolution is more properly classified as a Tier 2 matter requiring separate docketing and case-by-case review.

IATA submitted a reply opposing any change to the Tier 1 procedures established in Order 2012-4-18. IATA considers that a 30-day extension of the review period (for a total of 60 days) would amount to an unreasonable delay in the realization of the benefits of the resolutions; that the volume of Tier 1 agreements has remained stable and, as measured by the number of pages submitted, has declined; and that because IATA agreements are developed in an open environment they are already known to TTA and ASTA as they are developed, and that TTA and ASTA could request an extension of the review period on the small percentage of agreements where they perceive a valid concern rather than delaying the effectiveness of all Tier 1 agreements. IATA rejects the proposal to shift distribution-related agreements to Tier 2, describing it as a transparent means of imposing procedural obstacles that would provide TTA and ASTA with increased leverage in negotiating with the airlines. Finally, IATA agrees that imposing electronic service requirements is an unnecessary burden and supports the Department's tentative decision in this regard.

Decision

We have decided to finalize our tentative decision, as set forth in Order 2020-2-8, without change. We found no persuasive reason in the record to alter our tentative findings.

In its reply, IATA has argued that the burden of reviewing agreements is directly proportional to the number of pages involved in their presentation. This has simply not been our experience. In performing our "due diligence" review of amendments to existing resolutions or recommended practices, we regularly compare them with those in effect. Our review may require reference to multiple Conferences and IATA Manuals. A Tier 1 submission may involve several different Conferences, extensive minutes of meetings, and other supporting material that must be reviewed in context. The Department's review, particularly for new resolutions and recommended practices, may involve review by a number of Department offices with relevant subject matter expertise.

Against this background, we continue to believe, as we tentatively found, that extending the existing 30-day period for an additional 30 days would be beneficial. Given that the planned actual effective or implementation date for Tier 1 agreements is often months in the future, we are not persuaded that allowing ourselves 60 rather than 30 days in which to complete our "due

diligence” review is unreasonable. Should IATA have occasion to submit a Tier 1 filing with a tight deadline, it can ask for expedited handling; however, this would be appropriate on an exceptional basis, and should not become routine, and should it occur we would expect IATA to include with its submission all necessary documentation to facilitate the Department’s and any interested party’s review. Also, as stated in the Order to Show Cause, and as currently is the case, the Department may extend the 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 so as to shift certain Tier 1 Agreements to Tier 2, we do not find the arguments of TTA and ASTA to be compelling. However, as TTA and ASTA pointedly state, they will be vigilant in reviewing Tier 1 submissions and can raise concerns with the Department that a distribution-related agreement should more properly be classified as a Tier 2 matter, requiring case-by-case scrutiny in a docket. The Department will certainly consider any such concerns they might raise.

As no objections have been made on the Department’s tentative decision not to require IATA to specially serve interested parties electronically, we make our decision final in that regard.

ACCORDINGLY,

1. We make final our tentative findings and conclusions as stated in Order 2020-2-8, and revise the Departmental 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 deny all other requests proposed by Petitioners in their April 9, 2019 Petition; and
3. We will serve this order on IATA, Petitioners, and the Department of Justice (Transportation, Energy & Agriculture Section, Antitrust Division).

This action is taken pursuant to authority duly delegated under the Department’s regulations, 14 CFR 385.13.

Persons entitled to petition the Department for review of this notice, under 14 CFR 385.30, may file petitions within seven days after the date of service of this order. Our action is effective immediately, and the filing of a petition for review will not stay this action.

By:

Brian Hedberg
Director
Office of International Aviation

(SEAL)

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