

立法會
Legislative Council

LC Paper No. CB(1)1222/08-09
(These minutes have been seen
by the Administration)

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Panel on Economic Development

Minutes of meeting
held on Monday, 23 February 2009, at 10:45 am
in Conference Room A of the Legislative Council Building

- Members present** : Hon Jeffrey LAM Kin-fung, SBS, JP (Chairman)
Hon Starry LEE Wai-king (Deputy Chairman)
Hon Albert HO Chun-yan
Hon Fred LI Wah-ming, JP
Hon CHAN Kam-lam, SBS, JP
Hon Emily LAU Wai-hing, JP
Hon Albert CHAN Wai-yip
Hon Vincent FANG Kang, SBS, JP
Hon Andrew LEUNG Kwan-yuen, SBS, JP
Hon WONG Ting-kwong, BBS
Hon Ronny TONG Ka-wah, SC
Hon CHIM Pui-chung
Hon Paul CHAN Mo-po, MH, JP
Hon Tanya CHAN
Hon IP Wai-ming, MH
Hon Mrs Regina IP LAU Suk-ye, GBS, JP
Hon Paul TSE Wai-chun
Dr Hon Samson TAM Wai-ho, JP
- Members absent** : Dr Hon David LI Kwok-po, GBM, GBS, JP
Hon Abraham SHEK Lai-him, SBS, JP

**Public officers
attending**

: Agenda Item IV

Mr Kenneth CHENG Kin
Principal Assistant Secretary for Financial Services and
the Treasury (Treasury)

Mr Stephen KWOK Kwai-yuen
Assistant Director-General of Civil Aviation (Air
Services)

Mrs Laura ARON
Assistant Commissioner for Tourism

**Attendance by
invitation**

: Agenda Item IV

Society of IATA Passenger Agents Ltd

Mr Francis BAGAMAN
Chairman

Mr Joseph KAO Wing-leung
Deputy Chairman

Mr Paul ZIMMERMAN
Director

Mr Larry LO Fai-wah
Director

Travel Industry Council of Hong Kong

Mr Ronnie HO
Chairman

Mr Joseph TUNG
Executive Director

Board of Airline Representatives in Hong Kong

Mr James TONG
Executive Committee Member

Mr Louis LI
Secretary

Concern Group of Travel Industry in Hong Kong

Mr Tim LEE
Chief Executive Officer

Clerk in attendance : Ms Debbie YAU
Chief Council Secretary (1)6

Staff in attendance : Ms Angel SHEK
Senior Council Secretary (1)1

Ms Michelle NIEN
Legislative Assistant (1)9

Action

I Confirmation of minutes and matters arising

(LC Paper No. CB(1)755/08-09 - Minutes of special meeting held on
16 December 2008

LC Paper No. CB(1)786/08-09 - Minutes of meeting held on
16 December 2008)

The minutes of the two meetings held on 16 December 2008 were confirmed.

II Information papers issued since last meeting

(LC Paper No. CB(1)707/08-09(01) - Tables and graphs showing the
import and retail prices of major
oil products from January 2007 to
December 2008 furnished by the
Census and Statistics Department

LC Paper No. CB(1)850/08-09(01) - Administration's paper on Digital
Trade and Transportation Network
Limited)

2. Members noted the above information papers issued since the last meeting.

III Items for discussion at the next meeting

(LC Paper No. CB(1)801/08-09(01) - List of outstanding items for discussion

LC Paper No. CB(1)801/08-09(02) - List of follow-up actions)

3. Members noted that the Transport and Housing Bureau proposed to brief the Panel on "Merchant Shipping (Safety) (Amendment) Bill 2009" at the next meeting to be held on 30 March 2009, and that the Commerce and Economic Development Bureau would also propose one to two items for discussion at the meeting. Members agreed that the Chairman and the Clerk would follow up with the Administration and finalize the agenda for the next meeting.

IV Collection of air passenger departure tax and fuel surcharge by travel agents

(LC Paper No. CB(1)410/08-09(02) - Administration's paper on collection of air passenger departure tax and fuel surcharge by travel agents

LC Paper No. CB(1)801/08-09(07) - Paper on collection of air passenger departure tax and fuel surcharge by travel agents prepared by the Legislative Council Secretariat (Background brief)

LC Paper No. CB(1)410/08-09(01) - Hon Paul TSE's paper on collection of air passenger departure tax and fuel surcharge by travel agents (English version only)

LC Paper No. CB(1)658/08-09(01) - Letter dated 14 January 2009 from Society of IATA Passenger Agents Ltd. (English version only))

Presentation by deputations

4. The Chairman welcomed deputations attending the meeting and invited them to present their views. Members noted the submission from Jebesen Travel Ltd which did not attend the meeting (LC Paper No. CB(1)801/08-09(06)).

Society of IATA Passenger Agents Ltd (SIPA)
(LC Paper No. CB(1)801/08-09(03))

5. Mr Francis BAGAMAN, Chairman, SIPA reflected the opinion of SIPA that the present situation of collecting the air passenger departure tax (APDT) was unjust and unfair to travel agents because it imposed an additional burden on them without compensation. He expressed concern that according to IATA BSP-HK Airlines Circular, by not collecting the APDT at ticket issuance, agents might suffer financial loss due to short collection since the Computer Reservation System would not guarantee fare for manually priced tickets. However, BSP-HK Airlines might have overlooked that as stipulated in the Passenger Sales Agreement, paragraph 9 of Resolution 824 under "Remuneration", the carrier should remunerate the agent for the sale of air transportation and ancillary services in a manner and amount as might be stated from time to time and communicated to the agent by the carrier. On fuel surcharge, Mr BAGAMAN said that while the commissions to be paid by the carrier to any agent in respect of tickets sold should be such commissions which had been approved by the Civil Aviation Department (CAD), fuel surcharge had been excluded from the airfare and travel agents were deprived of their rightful commissions. Although SIPA members were allowed to charge a service fee of no less than \$30 per ticket for collecting surcharges, taxes or other charges on behalf of airlines or the government, the majority of air passengers declined to pay the fee as it was not on the air ticket. Mr BAGAMAN said that SIPA looked forward to "fair business practice and fair remuneration". He called on Panel members to consider their grievances and mediate for the travel agents.

Travel Industry Council of Hong Kong (TIC)
(LC Paper No. CB(1)801/08-09(04))

6. Mr Ronnie HO, Chairman, TIC highlighted the industry's request for a reasonable remuneration to compensate those travel agents that had performed the tasks on airlines' behalf. He referred to the chronological table attached to its submission which summarized actions taken by TIC between 1993 and 2006 with regard to the collection of APDT by travel agents. TIC had also made a formal proposal to the Government in 2006 for an administration fee to be paid to travel agents for collecting the tax. He stressed that the \$30 service fee per ticket was a fee that travel agents charged their customers for providing a one-stop service for payment of a number of charges collected by the many different parties, both local and overseas. The fee could hardly compensate the workload and the financial costs involved. TIC held the strong view that an administration fee should be paid by the Government to travel agents for the collection of APDT.

Board of Airline Representatives in Hong Kong (BARHK)
(LC Paper No. CB(1)801/08-09(05))

7. Mr James TONG, Executive Committee Member, BARHK considered that

the current mechanism for the collection of APDT had benefited the travelling public and provided a cost-effective service to the Government. The administration fee paid by the Government to the airlines for the collection of APDT was based on a cost-recovery principle. However, if any current collection process and related activities were to be changed and required to be undertaken by the airlines, it may become necessary to revise the amount of the administration fee. The airlines considered that it was entirely a matter of the Government to determine if any remuneration should be paid to an agent or any other parties. Mr TONG further said that fuel surcharge and associated remuneration were a commercially sensitive issue, BARHK was not in a position to discuss or express views on the matter.

*Concern Group of Travel Industry in Hong Kong (CGTI)
(LC Paper No. CB(1)856/08-09(01))*

8. Mr Tim LEE, Chief Executive Officer, CGTI noted that up to 90% of the air tickets sold by airlines were issued by travel agents which had borne the additional workload as well as the related financial costs and risks. Notwithstanding this, the Government had not taken into account the travel agents' costs when agreeing the administration fee with the airlines. Noting that currently, the administration fee paid by the Government to the airlines was about \$2.78 (representing 2.322%) for every \$120 of APDT collected, CGTI considered that about 1% should be paid to travel agents for performing the task. Given the international oil prices had dropped from US\$140 to US\$30 (the 2005 level) per barrel, Mr LEE requested the airlines and CAD to stop imposing fuel surcharges on air passengers with effect from 1 April 2009. He considered that fuel surcharge was part of airlines' operating costs, it should not be designated under the column of "tax collected" on the air ticket as this would reduce the commissions payable to travel agents.

Preliminary response by the Administration

9. The Chairman invited the Administration to provide a preliminary response to deputations' views. The Assistant Commissioner for Tourism noted that in addition to collecting APDT and fuel surcharge on behalf of local airlines, travel agents also collected on behalf of overseas airlines various charges, including airport taxes imposed by other countries and insurance charges. These tasks had increased the workload and cost of travel agents. The Tourism Commission hoped that the travel agent industry would discuss and reach mutual agreement with the airline industry on the arrangement and remuneration of collecting APDT and fuel surcharge.

10. The Assistant Director-General of Civil Aviation (Air Services) (Asst DGCA) advised that airlines' tariffs, including airfares, surcharges and, generally speaking, commissions, were subject to the approval of CAD, the aeronautical authority in Hong Kong, under the existing bilateral Air Services Agreements

(ASAs). Airlines should establish the tariffs that they wished to charge and file such tariffs with CAD. CAD would consider the tariff applications in accordance with ASAs' provisions, by taking into account such relevant factors as the airline's operating costs, reasonable profits, passengers' interests and the tariffs charged by other airlines operating services on the same routes.

11. The Principal Assistant Secretary for Financial Services and the Treasury (Treasury) (PAS/FS&T) said that according to section 11 of the APDT Ordinance (Cap 140), an airline operator might, with the approval of DGCA, appoint an agent in Hong Kong to act on its behalf. He understood that such agents were mainly appointed by overseas airlines which did not have local offices. The agents so appointed would take up the full range of duties of the operator concerned, including maintaining proper records of passengers embarking on the operator's aircraft, and furnishing returns to DGCA with details of passengers and aircraft departure as well as such other information relating to APDT or its collection. CAD would also recover any amount of APDT payable from the airline operator or its agent appointed with the approval of DGCA.

Discussion

12. Mr Paul TSE declared that he was the owner of a travel agency. The Chairman also declared that he was a shareholder and non-executive director of a travel agency.

APDT

13. In reply to Mr Paul TSE, PAS/FS&T clarified that a travel agent which collected APDT on behalf of an airline operator would not be regarded as the airline's agent under section 11 of the APDT Ordinance, if it did not carry out the other duties (e.g. keeping records of all passengers aboard an aircraft and furnishing returns to DGCA) imposed on the airline operator by the Ordinance. He also confirmed that CAD did not receive any applications from airlines to appoint travel agents as their agents under section 11 of the APDT Ordinance.

14. Mr Ronny TONG noted that section 10 of APDT Ordinance required the Financial Secretary to authorize the payment to an airline operator of an administration fee for collection of the tax. The Ordinance was however silent on whether and how the airlines should apportion the administration fee between themselves and travel agents which collected APDT on their behalf. Given the lack of bargaining power of travel agents, Mr TONG asked about the Administration's measures to help travel agents secure a fair deal with the airlines on the collection of APDT, such as consider reviewing section 10. The Chairman also asked about the apportionment of the administration fee between the airlines and the travel agents.

15. PAS/FS&T said that APDT Ordinance had not stipulated the apportionment

of the administration fee when the airlines entrusted the collection of APDT to another party, such as travel agents. The Government was thus not in a position to intervene into the contractual agreement between the two sides. While the Government had worked out the administration fee based on the data provided by the airlines, it was not certain about the costs incurred by travel agents for collecting APDT, and whether the commissions currently paid by airlines to travel agents covered such costs.

16. Mr Ronny TONG said he was unconvinced of the explanation. He said that the present arrangement was apparently very unfair to travel agents and the Government should take up the issue with the relevant parties. As the airlines did not have to make any extra effort in the collection of APDT, Mr TONG suggested that the payment of administration fee should be abolished to save public resources.

17. Sharing Mr TONG's concern, Ms Emily LAU considered that the administration fee should be paid to the party who actually collected the tax. As the submission of TIC pointed out that the matter had dragged on for 16 years since 1993, she called on the Administration to deal with it expeditiously to end the disputes.

18. PAS/FS&T responded that although air passengers might acquire air tickets at different sales points, only the airlines were able to keep track of the actual departure of air passengers. Moreover, there were more than 1 500 travel agents in Hong Kong and some in overseas, it was impracticable for the Administration to arrange administration fees to be paid to each of them. He reiterated that the collection of APDT by travel agents was a commercial arrangement between airlines and travel agents.

19. Mr Albert CHAN considered that given the actual operating environment had changed whereby air tickets were no longer issued by the airlines but travel agents, the Government should enter into a new agreement with travel agents on the collection of APDT. He expressed grave concern that the Administration was indifferent to the problem as it did not arrange senior officials to attend the meeting to address the concerns raised by deputations and members.

20. PAS/FS&T remarked that APDT was being collected in a cost-effective manner under the existing arrangement. The airlines had full autonomy to appoint or authorize any parties to collect APDT on their behalf and agreed on contractual terms of their own accord. If a travel agent was appointed by an airline to carry out all the latter's duties under the APDT Ordinance, the Government could in fact pay administration fee to that travel agent.

21. Mr Paul CHAN considered that travel agents had played a proactive role in the collection of APDT without proper compensation. To uphold the principle of fairness, the Government should ensure that no party would suffer loss in policy implementation. He sought explanation on how the administration fee (i.e. about

\$2.78 (or 2.322%) for every \$120 of APDT collected), which was payable by the Government to the airlines for the collection of the tax, had been worked out, and whether the fee exceeded the current costs incurred by the airlines in undertaking the task.

Admin

22. PAS/FS&T advised that the Administration would review with the airlines the level of the administration fee whenever adjustment was made to APDT. The airlines had to provide detailed information on the costs involved, and the Administration would verify the data with the airlines thoroughly before finalizing the administration fee. The Chairman requested the Administration to provide the information requested by Mr Paul CHAN.

23. Mr Paul TSE expressed grave concern about Government's inaction since 1998 in dealing with the unfair situation faced by the travel agents which had shouldered the financial risks in relation to the collection of APDT. He requested the Administration to review the current arrangement and compensate the travel agents accordingly, otherwise, the travel agents might consider refusing to collect the tax on behalf of the airlines.

Service charge paid by consumers to travel agents

24. Mr Fred LI was gravely concerned that consumers were forced to pay a service charge of \$30 per ticket as a result of the disagreement between the airlines and travel agents on the payment of administration fee for the collection of APDT.

25. Mr Ronnie HO of TIC responded that TIC issued a directive on 16 September 2005 to allow its members to charge a service fee of no less than \$30 per ticket for collecting surcharges, taxes or other charges on behalf of the airlines or the governments concerned. While the fee was meant to compensate the workload involved and recover the operating costs of the travel agents, the collection of such fee was not guaranteed. Highlighting the difficult operating environment faced by travel agents nowadays, Mr HO said that some of them could hardly survive as the airlines had sought to reduce its commissions from 7% to about 5% on airfares which were dropping recently. Mr Joseph TUNG, Executive Director of TIC added that so far, TIC had not received any complaints about the collection of the \$30 service fee.

26. Mr Paul ZIMMERMAN, Director of SIPA remarked that travel agents charged their customers a service fee of \$30 for the one-stop service they provided. It was not a charge for the services provided by the travel agents for the Government in the collection of APDT. Mr Francis BAGAMAN of SIPA advised that since the \$30 service fee was not listed on the air ticket, some air passengers were reluctant to pay the fee.

Fuel surcharge and commissions

27. Mr Paul TSE asked about the role of CAD in airlines' payment of commissions to travel agents. Asst DGCA advised that pursuant to ASAs, an airline had to apply for CAD's approval if its payment of commissions to travel agents would form part of the airline's tariff. Subsequent upward or downward adjustment of commissions was also subject to CAD's approval.

28. Mr Paul TSE expressed grave concern that CAD had allowed airlines not to pay commissions on fuel surcharges to the travel agents. Mr Tim LEE of CGTI expressed concern that airlines should adjust their airfares upward to absorb the rise in aviation fuel prices to enable travel agents to obtain the relevant commissions. CAD should not allow the designation of the fuel surcharge under the column of "tax collected" on the air ticket, as it would exploit travel agents' right to earn commissions on fuel surcharges.

29. Asst DGCA responded that CAD had not received any applications from airlines about payment of commissions on fuel surcharges. The submission of applications or otherwise was a matter to be decided by airline operators. He pointed out that it was an international practice that airfare and fuel surcharge were two separate items of aviation tariff, and fuel surcharge was imposed to enable airlines to partially recover the increase in operating costs due to fluctuations in aviation fuel prices.

30. Mr Paul TSE urged the Administration to consider stipulating a condition in licences requiring the airlines to incorporate fuel surcharge into the airfare such that commissions would be payable to travel agents. Asst DGCA advised that under the existing legislation, CAD was authorized to grant operating permits to airlines with conditions to implement the relevant provisions of ASAs. As ASAs had not required the incorporation of fuel surcharge into the airfare, it was inappropriate to attach such a condition to operating permits.

31. Ms Emily LAU referred to her recent experience that airfare and fuel surcharge had taken up almost equal portion in the aviation tariff. She agreed with CGTI's view that in response to the drastic drop in international oil prices, air passengers should no longer be made to pay fuel surcharges, in particular in view that the Mainland airlines had stopped imposing fuel surcharges since 15 January 2009.

32. Mr Fred LI raised similar concern and considered that aviation fuel constituted part of airlines' operating costs, CAD should only approve the collection of fuel surcharge when there was a sudden surge in the market prices. Mr Albert CHAN asked about the Administration's measures, if any, to prevent fuel surcharges being "quick going up, slow coming down".

33. Asst DGCA advised that the Singapore prices of aviation fuel had dropped by 64% from its peak of US\$3.96 per gallon in July 2008 to US\$1.42 per gallon in January 2009. The fuel surcharges approved by CAD during the corresponding

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period had been reduced by 70% to 74%, which had fully reflected the downward adjustment of the market prices of aviation fuel. He added that fuel cost was part of an airline's operating cost and it was a common international practice for airlines to recover the additional fuel cost due to the fluctuation in fuel prices through collecting a fuel surcharge from air passengers.. CAD would only approve the levy of fuel surcharges for a short period in response to the fluctuation in aviation fuel prices. The Chairman requested the Administration to provide information on the corresponding levels of aviation fuel prices for passenger fuel surcharges imposed since the first approval to collect such surcharges was given by CAD in March 2003.

Admin

34. Mr CHIM Pui-chung opined that the sale of air tickets should be market-led. He suggested the Administration to consider incorporating passenger fuel surcharge into the aviation tariff, and airlines should be given the discretion to adjust the tariff level in accordance with fluctuations in aviation fuel prices. Consumers would then make informed decisions and choose the suitable airlines. As aviation tariffs for the same routes served by different airlines were not the same across the board, CAD was not in a position to consider and approve applications for imposing fuel surcharges. Asst DGCA reiterated that airlines' tariffs were subject to the approval of aeronautical authorities and CAD had to consider fuel surcharge applications submitted by airlines in accordance with the existing bilateral ASAs.

35. Mr Paul CHAN raised concern that as some airlines would issue air tickets one to two months before the actual flight took place, they might manipulate the time gap and impose fuel surcharges when the international aviation fuel prices stood at high levels.

36. Asst DGCA said that different airfares might have different ticketing conditions and a passenger could choose an airfare with ticketing conditions acceptable to him. He also confirmed that it was an international practice to collect the passenger fuel surcharge at the time when the air ticket was issued. An air passenger would not be required to make additional payment if the fuel surcharge levied at the time of flying was higher than that when the air ticket was issued or reimbursed if the fuel surcharge was subsequently reduced.

Conclusion

37. In conclusion, the Chairman urged the Administration to take note of the grave concerns expressed by the travel industry and Panel members, and conduct a review on the current arrangement in respect of the collection of APDT and fuel surcharge by the travel agents. The Panel could follow up the issue at future meetings after members had perused the Administration's written response to the concerns and issues raised at the meeting.

V Any other business

Admin

38. Mrs Regina IP noted from the Panel's "List of outstanding items for discussion" that the Administration would brief the Panel on Aberdeen Tourism Project in the second quarter of 2009. As the hotel development projects in Wong Chuk Hang was not part of the Aberdeen Tourism Project, she requested the Administration to provide an information note on the progress of the hotel development projects.

39. There being no other business, the meeting ended at 12:10 pm.

Council Business Division 1
Legislative Council Secretariat
2 April 2009