



SOCIETY OF IATA PASSENGER AGENTS LTD.

~~1603, 16/F., Regent Centre, 88-Queen's Road Central, Hong Kong.~~

Tel: (852) 2869 8601 Fax: (852) 2868 1939 E-mail: olau@pacific.net.hk

Room 1203, Fu Fai Commercial Centre, 27 Hillier Street, Sheung Wan, Hong Kong.

26 March, 2010

Chairman and Members,
Legislative Council Panel on Economic Development,
The Legislative Council,
Legislative Council Building,
8 Jackson Road, Central,
Hong Kong.

Re : Reduction in Commission for Travel Agents by Airlines

We are enclosing the Society of IATA Passenger Agents' Ltd. (SIPA's) relevant correspondences with Air France and KLM as well as the decision of the Hon. High Court of Kerala, India between the IATA Agents Association of India (IAAI) and 16 Major Airlines for your perusal.

As Air France and KLM will reduce their commission to zero effective 16 April 2010 it clearly breaches the IATA Passenger Sales Agency Agreement Clause 9 under "Remuneration" quote "For the sale of air transportation and ancillary services by the agent under the agreement, the Carrier shall remunerate the agent in a manner and amount as may be stated from time to time and communicated to the agent by the Carrier. Such remuneration shall constitute full compensation for the services rendered to the Carrier."

If Air France and KLM have received the Approval from Civil Aviation Department (CAD) to implement Zero Commission under what criteria was the approval given, especially without any consultation.

According to Hongkong Civil Aviation Department - Operating Permit - Clause 3(e) quote "The commissions to be paid by the carrier to any agent in respect of tickets sold or air waybills completed by that agent for carriage between that country and Hongkong on any service operated under this permit shall be such commissions which have been approved by the DCA and the aeronautical authorities of that country."

The fact that "Commission" (without qualification or modification) is expressly included in the Air Service Agreement as being a matter requiring approval, suggests that provision of agency commissions is an implicit part of any fare submitted to CAD for approval.

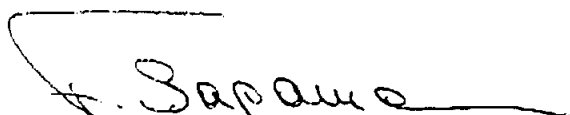
If this is not so, then the inclusion of the word "commission" makes no sense and is misleading to those members of the travel industry who believed they could look to CAD for some protection when airline fares are approved for offer in the market place.

Surely the whole approval process was put in place to ensure orderly marketing and to give some form of safeguard to ALL the parties concerned. Those parties include travel agents, through the requirement for CAD to approve commissions.

Since the IATA Resolutions in Hongkong and India are similar except with different numericals, the words "Transaction Fee" do not appear in the IATA resolution and if Zero Commission is implemented consumers have to pay extra money for transaction fee which can be any amount.

The relevant authority should therefore ask Air France and KLM to abide to the stipulated IATA Rules and abolished the Zero Commission as well as monitor the airlines that deviate from what was approved.

Yours sincerely,



FRANCIS BAGAMAN
CHAIRMAN
SOCIETY OF IATA PASSENGER AGENTS LTD.

c.c. Mr. Paul Tse
Mr. Michael Wu
All SIPA Members

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A S I A

No. 1603/March 19 - 25, 2010



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Round one to Indian agents

DGCA ruling nixes zero com push in India

By Anand and Madhura Katti
MUMBAI India's Director General of Civil Aviation (DGCA) has ruled in favour of travel agents in the long-running battle between the agency community and 16 airlines pushing for zero commission in the country.

In an order released on March 12 through the High Court of Kerala, the DGCA ruled that travel agency commission was lawful under Indian and International Air Transport Association (IATA) rules, could not be replaced by transaction fees, and had to be an integral part of airlines' tariffs.

The DGCA has asked the 16 airlines to reply by March 18 and contact its office if they needed clarification. It however refrained from specifying commission levels, saying it would leave this to airlines and agents to determine.

The ruling came in response to a contempt of court case filed on February 15 by the IATA Agents Association of India (IAAI) when the July 15, 2009 verdict of the


Kerala High Court was not implemented within the stipulated four-month deadline. The court had instructed the DGCA to rule on the matter.

IAAI president Biji Iapen said: "We thank DGCA for setting an example and passing the order on the legality of commissions for travel agents. We're glad our commissions will be restored."

The battle for commissions has been raging since 2008 when 16 airlines moved to zero. Air India, Jet Airways and Kingfisher Airlines reverted to three per cent commission after a December 2008 agent boycott.

Singapore Airlines (SIA) and SilkAir have however been boycotted since December 27, 2008. Great India Tour Company chairman EM Najeesh said: "My company has lost (around) US\$1 million by not selling SIA/SilkAir."

India Association of Tour Operators president Vijay Thakur said: "Through this historic order, the DGCA ensures that even the smallest agent can also survive."



Motoring through

Hertz International's new president Michel Tande, who took the steering wheel on January 1 this year, is taking the car rental giant onto new roads. Karen Yue takes a ride with him to see what's in store - see page 6

TTG Asia Daily ✓

Pick of the biggest news from last week's bulletin

March 9 • Hong Kong agents defeated in zero com battle Hong Kong agents have lost a fierce battle to keep Air France and KLM from implementing zero commission on April 1. The airlines' spokespersons said their application for zero commission had been approved by the government. The airlines will lower their published fares to give travel agents a margin to work out their own fee structure.

March 10 • Indonesia offers grace period on VOA switch Indonesian resort destinations Batam, Bintan and Karimun have been given a three-month transition period to wean off the single Visa on Arrival (VOA) facility. The grace period would allow tour operators holding contracts with overseas partners with the seven-day visa to adjust to the change. The US\$10 seven-day VOA was removed in January, forcing short stay visitors to avail of the US\$25, 30-day VOA.

Minimal tourism fallout from Thai protests

By Sirima Eamtak
BANGKOK Tourism stakeholders believe the impact of the latest round of political protests that started on March 12 would be short-lived, provided the demonstrations, which were still ongoing at press time, would end quickly and without violence.

Regional markets were far quicker to react to the situation than longhaul ones. Tour operators specialising in the European, Scandinavian and Australian 26-MAR-2010 12:59



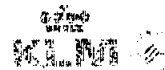
Jumpol: tours still running

THA president Prakit Chinamouprong said hotels in other Thai destinations, particularly Phuket, continued to enjoy healthy occupancy at Bangkok hotels stemmed mainly from Asian markets, especially China and Japan.

Prakit added. Association of Thai Travel Agents (ATTA) secretary general Junpol Chadawadhi said arrivals at ATTA's Suvarnabhumi Airport counter had dropped but this was expected, given the current political tension. Arrivals on March 14 were a thousand fewer than the counter's regular daily tally of 8,000 visitors. Junpol added that ATTA members would continue to operate city tours to three

by either road or river. These areas are close to the protest sites on Ratchadamnoen Nok and Ratchadamnoen Klang roads, which remained closed to traffic at press time. Junpol said although the number of tourists taking the tours had fallen from its usual 8,000 a day to around 4,000 on March 14 and 15, the tours operated without glitches. "This shows that Thailand is a democratic country. While a

kok city tours on March 15 and 16 to spare tourists from being ensnared in massive traffic jams, according to managing director Christoph Mueller. "But so far, (there have been) no cancellations. We have just been receiving several requests (for updates) on the situation," said Mueller. Vichit Prakobgosol, president of the Thai-Chinese Tourism Alliance Association, said bookings for the China group series scheduled for March 15 and 16 were

**AIRFRANCE**15th March, 2010

Dear Trade Partner,

Revised date for AFKL GDS fare upload & implementation of 0% Commission

Due to technical reasons, the new GDS fares can only be uploaded on 1st April. As a result, a decision is made to implement the zero percent commission on 16th April instead of 1st April so that the trade will have sufficient time to work out its fee policy.

Thank you for your kind attention.

Air France KLM
Hong Kong Macau

**SOCIETY OF IATA PASSENGER AGENTS LTD.**

1602, 16/F., Regent Centre, 88 Queen's Road C., Central, Hong Kong.
Tel : (852) 2869 8601 Fax : (852) 2868 1939 E-mail : olau@pacific.net.hk
RM 1203, 12/F., FU FAI COMMERCIAL CENTRE,
No 27 HILLIER STREET,
SHEUNG WAN, HONG KONG.

28 September 2009

Ms. Florence Calla,
Regional Manager, Hongkong & Macau,
Air France & KLM,
Room 801-3 Vicwood Plaza,
199 Des Voeux Road C.,
Hong Kong.

Dear Florence,

Re : Zero Commission Policy on Air France and KLM

Your progressive reduction of agency commission to Zero contravenes what has been stipulated in the IATA Passenger Sales Agency Agreement if you are a BSP Member.

Clause 9 of the IATA Passenger Sales Agency Agreement under "Remuneration" quote "For the sale of air transportation and ancillary services by the agent under the agreement, the Carrier shall remunerate the agent in a manner and amount as may be stated from time to time and communicated to the agent by the Carrier. Such remuneration shall constitute full compensation for the services rendered to the Carrier.

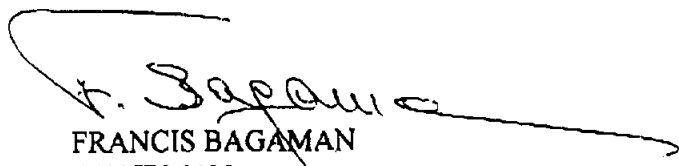
If IATA Interline and multilateral service charges of 9% are still being paid to the issuing carrier and if service charges or commissions for all services provided by Consolidators, Credit Card Companies, GDS and IATA Clearing House are being paid, how can you expect ordinary Travel Agents to work for love!

Furthermore, in the IATA Resolutions new or old the words "Transaction Fee" do not appear in any Clause.

It is difficult to condone when service charge on Airport Tax paid by the Governments are being retained by your carriers which rightfully belong to the travel agents that perform the transactions!

I sincerely hope you will seriously consider rescinding your announcements, otherwise you leave the travel agents no alternative but to take more drastic action.

Yours sincerely,



FRANCIS BAGAMAN
CHAIRMAN
SOCIETY OF IATA PASSENGER AGENTS LTD.

c.c. MR. PAUL TSE
MR. JOSEPH TUNG - TIC
ALL SIPA MEMBERS



31st August, 2009

BSP, GDS and All Travel Agents Concerned:

Dear Business Partners,

Please be informed that effective 1st October 2009 Air France and KLM Royal Dutch Airlines will revise the standard agency commission from the current 5% to 3% for departure out of Hong Kong. This new remuneration policy is applicable to tickets issued in Hong Kong and Macau at all published fares on display in the GDS and plated on Air France (057) or KLM (074) documents.

Reminder for SOTO tickets:

Please be reminded that since 1st January 2009, zero commission has been introduced for SOTO tickets with departure from outside Greater China.

However, SkyTeam Euro Pass and SOTO tickets issued within the Greater China region and for departure from the Greater China region, including Mainland China, Hong Kong, Taiwan and Macao, will remain subject to the new remuneration policy aforementioned.

We would like to extend our sincere gratitude for your kind understanding and continued patronage.

Air France KLM
Hong Kong and Macau



SOCIETY OF IATA PASSENGER AGENTS LTD.

1805, Bonham Trade Centre, 50 Bonham Strand East, Sheung Wan, Hong Kong.
Tel : (852) 2869 8600 Fax : (852) 2869 8386 E-mail : adminassoc@ctimail3.com

17 September 2008

Ms. Florence Calla,
Regional Manager, Hongkong & Macau,
Air France & KLM,
Room 801-3 Vicwood Plaza,
199 Des Voeux Road C.,
Hong Kong.

Dear Florence,

Re : Reduction of Agency Commission from 7% to 5%

I have received with much regret your two circulars from Air France and KLM dated 16 September 2008 regarding the reduction of commissions.

As you have already decided on the reduction why bother to ask Mr. Paul Tse and the undersigned's views during yesterday's breakfast meeting!

If Air France and KLM want the good will and support of the members of the Society of IATA Passenger Agents (SIPA) in future business dealings, they certainly have strange ways of showing them!

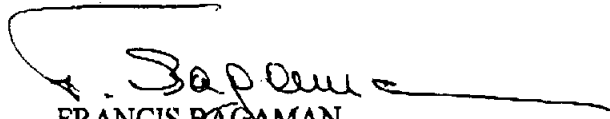
SIPA fails to find any logic in the whole vexatious episode. Are Air France and KLM really reducing their costs (the original justifications for the cuts?) It seems barely credible that worthwhile savings can be achieved, while instead, Air France and KLM have reaped a harvest of industry hostilities and distrusts.

I need hardly add that SIPA's members are extremely angry and disillusioned, seeing Air France and KLM's unfriendly moves as kicks to their trade partners at a time when they are fighting on all sides against threats to their survival.

As Hongkong business is done under Hongkong Laws, SIPA would ask if Air France and KLM actions conform in all respects to local regulations.

I look forward to your rescinding your circulars, otherwise you leave SIPA members no alternative but to take the necessary and appropriate actions.

Yours sincerely,



FRANCIS BAGAMAN
CHAIRMAN
SOCIETY OF IATA PASSENGER AGENTS LTD.

c.c. Mr. Paul Tse

Mr. Stephen Kwok, Acting Assistant Director-General (Air Services)
Mr. Ronnie Ho, Chairman, Travel Industry Council of Hongkong
Chairman, Hongkong Association of Travel Agents
Chairman, The Federation of Hongkong Chinese Travel Agents Ltd.
Chairman, Hongkong Association of China Travel Organizers Ltd.
Chairman, Hongkong Japanese Tour Operators Association Ltd.
Chairman, International Chinese Tourist Association Ltd.
Chairman, Hongkong Outbound Tour Operators & Association Ltd.
Chairman, Hongkong Taiwan Tourist Operators Association Ltd.
All SIPA Members



Hong Kong, 16 September 2008

All Travel Agents Concerned

Dear AF Partners,

Over the last few years major changes have taken place in the travel business environment. Due to soaring costs in the airline industry, worsened by high oil price level, we are obliged to review our cost structure in all aspects in order to maintain and to develop our operations to and from Hong Kong.

Effective 1st October 2008 Air France will align with China on its agent commission level policy from 7% to 5%. The new remuneration will be applicable for all tickets issued in HKG & Macau on AF (057) documents for all published fares, e.g. IATA fares as well as carrier-coded fares displayed in GDS.

We would like to extend our sincere gratitude to your dedication and hard work on promoting Air France in Hong Kong and we look forward to work together with you to ensure a smooth transition for this inevitable change and to continue our fine and constructive cooperation.

Yours sincerely,

Air France
Hong Kong and Macau



Hong Kong, 16 September 2008

All Travel Agents Concerned

Dear KLM Partners,

Over the last few years major changes have taken place in the travel business environment. Due to soaring costs in the airline industry, worsened by high oil price level, we are obliged to review our cost structure in all aspects in order to maintain and to develop our operations to and from Hong Kong.

Effective 1st October 2008 KLM Royal Dutch Airlines will align with China on its agent commission level policy from 7% to 5%. The new remuneration will be applicable for all tickets issued in HKG & Macau on KLM (074) documents for all published fares, e.g. IATA fares as well as carrier-coded fares displayed in GDS.

We would like to extend our sincere gratitude to your dedication and hard work on promoting KLM in Hong Kong and we look forward to work together with you to ensure a smooth transition for this inevitable change and to continue our fine and constructive cooperation.

Yours sincerely,

KLM Royal Dutch Airlines
Hong Kong and Macau

b(1) - 2(B)

amerloyd@pacific.net.hk

x

IATA AGENTS ASSOCIATION OF INDIA

Central Secretariat

39/6800, C-3, 5th floor, Vallamattam Estate, Ravipuram, Cochin-682 015
Tel : 0484 3117789 / 4022205 email : president@iaai.in ceo@iaai.in hq@iaai.in | www.iaai.in

IAAI/233-10/BE/COMM

11th March, 2010

FLASH NEWS**FLASH NEWS****FLASH NEWS****IAAI REGAINS COMMISSION FOR IATA AGENTS**

To: All IATA Agents

Dear All

Praise be to all our Gods!

We have an immense feeling of pride, satisfaction, achievement and pleasure in informing you that the DGCA has confirmed by an Order that Airlines operating in India HAVE to pay Commission to IATA Accredited Travel Agents.

WE PROMISED YOU COMMISSION !

A detailed mail will follow.

With regards
for IAAI National Board

Biji Eapen
President

x

Association by the agents for the agents

Information from ESET NOD32 Antivirus, version of virus signature database 4937
(20100311)

2010/3/12

b[1] - 2(B)

amerloyd@pacific.net.hk

P R E S S R E L E A S E

By

IAAI – IATA AGENTS ASSOCIATION OF INDIA, COCHIN**Sub: Commission regained****Three cheers to the Hon. High Court of Kerala!****Three cheers to the DGCA!**

IAAI has won a historic war against 16 BIG foreign airlines (Singapore Airlines, Lufthansa, British Airways etc) that refused lawful commission to Travel Agents. DGCA has issued order stating that Travel Agents' commission:

- Is Lawful as per Indian and International (IATA) rules
- Cannot be replaced by Transaction Fee
- Has to be integral part of Airlines' Tariff

The ruling of DGCA followed a Contempt of Court case filed by IAAI before the Hon HC of Kerala on 15 Feb 2010. The HC directed DGCA to look into the legalities of the issue and pass appropriate order implementing National Law.

Earlier on 13 Jul 2009 the HC had issued a verdict upon a writ petition filed by IAAI confirming the legitimacy of Commission. All except 16 major foreign Airlines followed HC ruling. It was this anomaly that IAAI challenged.

Travel Agency commission (a) 9% was in force throughout the world which was reduced in 2005 to 5% on mutual agreement in India. Later in 2008, commission was reduced to zero and instead airlines suggested that Travel Agents collect an extra "Transaction Fee" from passengers.

IAAI realized that "zero commission" was:

- Illegal
- Would make Travel costly for Indian passengers
- Sabotage Travel Agents' Community
- Did not suit Indian climate

Consequently IAAI led a nation-wide agitation against erring foreign airlines which was duly supported by political parties, national leaders such as Prof. KV Thomas, Ramesh Chennithala, Dr. Sebastian Paul, Prakash Karat supporting the move. Brinda Karat raised the question in the Parliament and Civil Aviation Minister Praful Patel amended the Aircraft Rules accordingly. National Carriers immediately re-instated 3% commission.

Yet, 16 major Foreign Airlines stood unchallenged.

2010/3/13

The stand off has finally been settled with the intervention of Hon IIC of Kerala instructing DGCA to enforce our law and DGCA releasing directives accordingly yesterday, copy attached.

For IAAI Director Board
Biji Eapen
National President, IAAI

_____ Information from ESET NOD32 Antivirus, version of virus signature database 4940
(20100312) _____

The message was checked by ESET NOD32 Antivirus.

<http://www.eset.com>

सभी संचार महाविद्यालय तथा
 विभाग के प्रधान से संबंधित होने
 चाहिए, उन से नहीं।
 धारा : "सूचक विभाग"
 All communications should
 be addressed to the Director
 General of Civil Aviation, by
 title, NOT by name.
 Telegrams : "ADRCIVIL."

सरल कुमार
 मातृ विभाग विभाग
 सहायक संचालक मातृ विभाग
 भारतीय संचार विभाग, कलकत्ता-700022 के समान
 पं. दिल्ली-110003
 GOVERNMENT OF INDIA
 CIVIL AVIATION DEPARTMENT
 OFFICE OF THE
 DIRECTOR GENERAL OF CIVIL AVIATION
 TECHNICAL CENTRE, OPPOSITE RAIPUR AIRPORT
 NEW DELHI-110003
 Telephone No. 462415, 462407, 462298

No.5/103/2010-IR

Dated the 11th March, 2010

To
 Shri T.P.M. Ibrahim Khan,
 Assistant Solicitor General of India,
 Ernakulam Distt.
 Kochi, Kerala State.

Subject:- Contempt Case (Civil) No. 180 of 2010 filed by Biji Eapen and another,
 alleging disobedience of the order dated 13.7.2009 of the Hon'ble High
 Court in W.P. (C) No. 16551 of 2009

Sir,

I am directed to refer to your letter dated 15th February, 2010 on the above
 subject and to say that the Director General of Civil Aviation has complied with the
 direction of the Hon'ble High Court of Kerala by passing an Order dated 5th March,
 2010. A copy of the Order is enclosed

2 You are requested to file the compliance report with the Hon'ble High Court.

Yours faithfully,


 (Sunil Kumar)

Dy. Director (Regulations & Information)
 For Director General of Civil Aviation

End: As above.

Copy to: IATA Agents Association of India, (IAAI), Represented by its
 President, Mr. Biji Eapen, C/o. Speedwings Travel & Cargo (P) Ltd.,
 Sreekandath Road, Ravipuram, Cochin - 682016.

1 of 7

No. AV. 26012/2008-TE
Government of India
Office of the Director General of Civil Aviation
Technical Centre, Opp. Safdarjung Airport
New Delhi - 110 003

.....
Dated the 5th March, 2010

**ORDER OF DIRECTOR GENERAL OF CIVIL AVIATION PURSUANT
TO ORDER OF THE KERALA HIGH COURT IN**

WP(C) 16551 of 2009(L)

1. A Writ Petition No. 16551 of 2009 was filed by the IATA Agents Association of India (IAAI) in the Hon'ble High Court of Kerala challenging the zero commission policy adopted by some international airlines in India. It was contended by the Petitioners that as per rule 135 (2) of the Aircraft Rules 1937, an airline has to fix the tariff in accordance with the rules and while fixing the tariff, the commission payable to the travel agents should also be taken into account and the price reflected in the ticket. It was further contended that barring some airlines, who had adopted a zero commission policy, the rule was being complied with by all airlines. The writ petition was directed against the airlines that were not following this rule. It was also stated by the petitioners in the writ petition that they had taken up the matter with the Government of India by way of representations (copies of which were attached with the petition as exhibits P3 and P4). In its judgment dated 13th July 2009, the Hon'ble High Court of Kerala directed the DGCA to look into the representations contained in exhibits P3 and P4 and take a decision in accordance with law.

2. In order to give a fair opportunity to both the parties before deciding the case, hearing was held in DGCA on 07/09/09 at which the representatives of the airlines following zero commission policy, as well as those belonging to IATA Agents Associations, were invited. Views of both sides were heard at length.

3. The main thrust of the arguments taken by the representatives of the airlines through hearing and their various letters to DGCA is that the IATA Resolutions 8101 (10) and 824 (9) give complete flexibility to the airlines to fix any rate of commission and that they could fix even zero percent as the rate of commission as long as they communicated the same to the agents well in time. They also contend that this matter primarily fall under the realm of commercial dealings and they had full freedom to decide how they wanted to do their business. They also argued that the times have changed and the world was moving towards net fare (transaction fee) model and it would be advisable for India to follow suit. They further stated that the 'net fare model' has been in place in India for last 10 months and has been operating smoothly, as per their knowledge, without causing any problems to the agents. One airline representative opined that the net fare model was beneficial for the agents as they could charge from the customer any amount of their choice as transaction fee. The airline representatives accepted that they were still paying commissions in many countries, but insofar as India is concerned, they maintained that the transaction fee model was more suited for a

market of the size obtaining in India. As regards the legal provisions contained in the Aircraft Rules, 1937, the contention of the airlines is that the fares are deregulated in India and the principal objective of rule 135 is to bring transparency in display of fares. According to them, the definition of "tariff" provided in clause 54 A of rule 3 is merely a definition stating that tariff includes the commission, but the same cannot be construed as a mandate for payment of commission. One airline representative argued that DGCA should not intervene in this matter as the article on tariffs in the bilateral agreement between India and the concerned country has eliminated the requirement of tariff filing and approval. The same representative also referred to Paragraph 10.4.1 of IATA Resolution 810i and argued that since this Para starts with the words "Where commission is payable to an agent", it means that the airlines do have the option of not paying any commission. Finally, some airline representatives also opined that the introduction of the zero commission did not mean that they had eliminated commissions totally, as they were still paying commissions on the basis of productivity and that they believed that this was the right way to induce the agents to work hard and show higher degree of professionalism. It was also stated by some airlines that the airlines industry was facing financial problems due to the economic downturn and the zero commission system was serving them well in the current scenario.

4. The main contention of the IATA Travel Agents, as contained in the exhibits P3 and P4 annexed to the writ petition and also in the hearing held on 07/09/09, is that commission is the legitimate right of the travel agents under IATA Resolutions 810i (10) and 824(9), which clearly provide for payment of commission/remuneration to agents for sale of the tickets on behalf of the principals (IATA member airlines). It is only the rate of commission that is left to be decided by the airline concerned depending upon commercial considerations. According to them, it is wrong on the part of the airlines to reduce the commission to zero and force them to recover a charge from the passenger in the form of a transaction fee, as the agency agreement is between the agent and the airline and the passenger is not a party to it. They also contend that besides the aforesaid IATA Resolutions, the payment of commission to the agents by airlines is also a statutory requirement in India as the same is provided in the Aircraft Rules, 1937. According to them, the definition of "tariff" given in clause 54A of rule 3 of the Aircraft Rules, 1937 makes commission an integral part of the tariff to be fixed by an airline in accordance with rule 135(1) of the Aircraft Rules, 1937. The Travel Agents Associations have laid considerable emphasis on the point that the zero commission policy of the airlines not only contravenes the relevant IATA Resolutions, but also runs counter to the provisions of the Aircraft Rules, 1937, and DGCA's intervention is called for to put an end to further contravention of the rules. They also argue that India should not be compared with USA and European countries as the conditions under which the agents had to work in India, particularly in small towns, were entirely different, and thousands of small agents would perish due to the zero commission dispensation being adopted by airlines. They further claim that the same airlines that are stressing on zero commission in India are paying commission in many other countries. They submitted a list of 84 countries where commission is still being paid to agents. Further, it was stated by the representatives of the agents that the IATA Resolutions provided for payment of 6% commission for interline sale i.e. an airline selling a seat of another airline is entitled to collect 6% commission from that airline and the airlines are showing no qualms in collecting this commission from each other. Finally, it was also pointed out by the Agents Associations that these airlines were following double standards and violating the

market by giving handsome commissions to certain selected agents in the name of productivity and these favoured agents were ruling the roost by striking deals with other agents at their sweet will.

5. The matter has been considered by DGCA in light of the provisions of the Aircraft Rules 1937 and the relevant IATA Resolutions. Due weightage has been given to the arguments of both sides as set out in the preceding paragraphs. It may be stated in the first instance that the interventions made on behalf of the airlines during the hearing held on 07/09/09 gave an indication that rule 135 of the Aircraft Rules 1937 is being interpreted by the airlines in a perverse way. It is, therefore, necessary first to clarify the import and purpose of the rule. The correct position is that this rule has two distinct sub-rules (parts). The first part lays down that the airlines shall establish a tariff and the second part relates to the display of such tariff. These two parts are mutually exclusive and operate in their respective areas independently. It is therefore wrong to say that the primary purpose of rule 135 is to ensure transparency in display. A careful reading of the rule will show that the rule is meant to serve two purposes, namely, establishment of tariff and display of tariff to ensure transparency. Both the purposes are equally important. The establishment of a tariff is a separate exercise to be carried out under sub-rule (1) of rule 135 and while establishing a tariff under that sub-rule, an airline has to bear in mind the definition of "tariff" as given in clause 54A of rule 3. On the other hand, for display and advertisement of the tariff under sub-rule (2) of rule 135, the definition of "tariff" has no role as this part only deals with the display of the established tariff in a particular manner to ensure transparency. In other words, the law contained in the first part of rule 135 (read with clause 54A of rule 3) mandates that at the time of establishing the tariff an airline shall include in it the commission payable to the agents, whereas the law as contained in the second part of rule 135 requires that the tariff so established shall be displayed in the manner prescribed under that part.

6. Having dwelt upon the purpose and scheme of rule 135 of the Aircraft Rules, 1937, it now needs to be determined as to whether it is lawful for an airline to establish a tariff under sub-rule (1) of rule 135 without including any commission payable to the agents. The answer to this limited question is affirmative, as the rule does not say that there shall be paid a commission to the agents. It only stipulates that the tariff shall include the commission payable to the agents. So, if there is no commission payable, the same will naturally not be included, and the tariff so established, without the commission, shall be displayed and advertised in accordance with sub-rule (2). However, it would be oversimplification of the issue if the enquiry were to be limited to that. The enquiry will remain incomplete unless the next logical question is also examined, that is, whether it is lawful for the airlines or the agents to charge from a customer a "transaction fee" that is neither established under sub-rule (1) nor displayed under sub-rule (2). A bit of reflection on the rules will lead us to the conclusion that the answer to this question is negative. The reasons for this negative answer are twofold. Firstly, it has to be appreciated that a law reflects the policy of the Government on the concerned subject and the policy in the case of sub-rule (1) of rule 135 is that an airline should establish a tariff and that tariff should include the commission payable to the agents. Reducing the commission to zero percent and then levying a transaction fee that is not reflected anywhere in the relevant law is a colourable exercise that goes against the government's policy and violates the legal provisions contained in sub-rule (1) of rule 135 read with the definition of "tariff" given in clause 54A of rule 3. Secondly,

levying of transaction fee also contravenes sub-rule (2) of rule 135, as it is a charge over and above the consolidated fare to be displayed or advertised under that rule. The policy behind sub-rule (2) is consumer protection and it aims at providing complete transparency to a passenger regarding the cost of a ticket. Therefore, once a consolidated fare has been displayed on the website or in an advertisement in a newspaper, levying of any extra charge defeats the very purpose of transparency and thus cannot be supported in law. In brief, it may be stated that the zero commission system adopted by some airlines in India and levying transaction fees in lieu commission and which does not have any legal authorization makes it contrary to law. In other words, the 'net fare' or 'the transaction fee model' is not sustainable under the relevant law since charging of transaction fee, which is an integral part of this model, contravenes the relevant provisions of the Aircraft Rules, 1937.

7. During hearing, the issue of IATA resolution has been raised by both parties. Resolution 810f covering the Agency programme in India and the Resolution 824 dealing with the Agency agreements are relevant here. Section (10) of Resolution 810f provides that commission or amount of other remuneration paid to Agents shall be as may be authorized from time to time by the carrier provided that the Agent complies with the applicable rules governing sale of transportation. There is a parallel provision in Section (9) of Resolution 824, which says that for the sale of air transport and ancillary services by the agent the carrier shall remunerate the agent in a manner and amount as may be decided by the carrier and communicated to the agent. It also says that such remuneration shall constitute full compensation for the services rendered by the agent. When these two resolutions are read together, it becomes clear that under the IATA system, agents undertake the sale of air transportation on behalf of the carriers in accordance with the rules governing such sale and in lieu of this service rendered by the agents, the carriers are required to pay them commission or any other remuneration that will constitute full compensation for the services rendered by the agents. While it is true that the amount of commission or remuneration payable to the agents has not been quantified in these resolutions and the airlines are free to decide it from time to time and communicate the same to the agents, yet the basic principles stand out clearly, that is to say, the agents have to undertake the sale in accordance with rules and the airlines in turn have to pay them commission/remuneration and such remuneration shall constitute full compensation for the services rendered by the agents. Seen in this light, the stand of the airlines that these IATA Resolutions give them the freedom to reduce the commission to zero percent looks unjustifiable since if that contention is accepted, the agents would be left without any compensation for the services rendered by them to the airlines and the entire system may collapse. The explanation of the airlines to this objection is that they have given the agents the freedom to charge 'transaction fee' from the passenger, which constitutes a good compensation for them. Regrettably, this explanation does not carry weight as the IATA resolutions envisage that the compensation should flow from the airline to the agent and not from the passenger to the agent. Even the latest edition of the IATA Passenger Conference Resolutions Handbook (30th June 2009) shows these resolutions in the same way as before. It may also be worth adding here that IATA Resolution 780b provides for payment of 8% commission for interline sales i.e. the transporting carrier has to pay to the selling carrier 8% of the cost of transportation as commission, and all carriers are following this resolution scrupulously without any fuss.

8. It is also considered necessary to deal with and dispose of the reference made by one airline representative to the bilateral air services agreement between India and the country of that airline. It is true that the article on tariffs in the bilateral agreement provides for deregulation of tariffs, which means that the designated airlines are not required to file tariffs with the aeronautical authorities, or obtain their approval for the same. But there is nothing so special about this provision as the national law of India on the subject, as contained in rule 135 of the Aircraft Rules 1937, also reflects the same policy. The airlines are neither required to file tariffs nor obtain approval of DGCA for the same. In other words, the quantum of a tariff is not to be looked into by DGCA. But it does not mean that there shall be no tariff established by the carriers. The same logic applies to the commission. The quantum of commission is not the concern of DGCA. But that does not mean that there shall be no commission. In this view of the matter, there appears to be no conflict between the tariff provision of the bilateral air services agreement and the national laws of India on the subject.

9. The examination of this subject will remain incomplete without giving due consideration to the impact of the zero commission system on the consumer interest. It appears that this system is detrimental to the consumer interest in more than one way. Firstly, since the zero commission system is loaded with a transaction fee, the consumer has to pay extra money in the form of transaction fee. Secondly, an unscrupulous agent can charge an exorbitant amount as transaction fee from the customer. Thirdly, this system is giving rise to market dominance by some big agents, who are paid hefty amounts by the airlines in the name of productivity. This phenomenon too is not in the interest of the consumer as it reduces competition among agents. Overall, it may be seen that the impact of the zero commission system does not help consumers. The zero commission system coupled with transaction fee (i.e. the net fare model) is not as per law and is devoid of merit from the consumer point of view.

ORDER

The IATA Agents Association of India (IAAI) in their application dated 23/2/2009 (Exhibit P₃) have requested to reinstate 5% commission on gross fare by taking remedial measures so that respondents foreign airlines reinstate Agency Commission. The IAAI has also requested to set up a regulatory Board for airline operators in India to ensure the working of airlines as per IATA resolution and also to mandate airlines to declare and file their airfares, taxes, surcharges, commission etc. to enable DGCA to monitor and control the same.

In Exhibit P₄ the IAAI have stated that airlines should comply with IATA resolutions and statutory provisions. They have requested that 14 named airlines be required to fix tariff as per the Aircraft Rules and pay commissions to them as per IATA resolution.

Hon'ble High Court of Kerala, vide their Order dated 13.07.2009 have directed DGCA to look into Exhibits P₃ & P₄ and decide these in accordance with law. During examination of the matter as referred to DGCA in Exhibits P₃ & P₄, the issue of transaction fee has also come to the light, which is being charged by the Agents from the consumers at the

behest of the airlines following the Zero Commission policy of these airlines. It may be clearly stated here that the existing rule 135 of Aircraft Rules, 1937 does not prescribe transaction fee as a part of tariff to be determined by airlines and also does not require consumers to pay the transaction fee as a part of air tariff. However, DGCA is not concerned with the transaction fee being charged by agents on account of services (other than air ticket) if any, being provided by them to their customers. The practice being enforced by the named airlines is not in accordance with Aircraft Rules, 1937.

Further, Rule 135(1) requires airlines to determine tariff which by definition includes commission. Rule 135 (2) has been amended recently by the Government vide Notification GSR No 254(E) dated 16.04.2009 to require airlines to display a 'single consolidated fare' and give its break-up also for consumer's benefit. It is clear that the statutory position under rule 135 clearly requires airlines to determine tariff in accordance with law, including commission payable to agents. The existing law also requires airlines to display total fare & its components. In view of the foregoing, analysis and legal provisions, the named airlines are directed to ensure compliance of existing statutory provisions regarding determination of tariff as per rule 135(1) and display of the fare and the components as per rule 135(2) and (2A).

It may also be clarified that DGCA has also set up a monitoring mechanism in DGCA to ensure compliance of the provisions of rule 135 by the airlines. However, it is made very clear that as per rules DGCA can not lay down quantum of commission payable by airlines to agents. It is entirely up to the airlines to take a decision in this regard in consultation with agents taking in to account various commercial factors such as the market conditions, the cost of the Agents' establishments, etc & statutory definition of 'tariff'. But the commission can not be replaced by transaction fees.

The application of WAI dated 23/2/2009 and 28/05/2009 (P₃ & P₄) are disposed off accordingly.

Additionally, DGCA also prescribe the above directives for its general applicability to air transport operators.

Nasim Zaidi
(Dr. Nasim Zaidi) 5/09
Director General of Civil Aviation

End: List of Airlines

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DCA/ 199/

HONG KONG CIVIL AVIATION DEPARTMENT

OPERATING PERMIT

In pursuance of Regulation 20A of the Air Transport (Licensing of Air Services) Regulations, the Director of Civil Aviation (DCA) hereby grants permission to

to use aircraft for the carriage in Hong Kong of passengers and cargo (including mail) separately or in combination for hire or reward on a scheduled journey on the following route:

I	II	III	IV
<u>POINTS OF DEPARTURE</u>	<u>INTERMEDIATE POINTS</u>	<u>HONG KONG</u>	<u>POINTS BEYOND</u>
POINTS IN	POINTS IN SOUTH-EAST ASIA*	- HONG KONG -	- <u>GROUP A</u> <u>GROUP B</u> A POINT IN

* In this context, "SOUTH-EAST ASIA" means .

2. Amendments to the above route may not be put into effect until this permit has been correspondingly amended.

3. This permit is granted subject to the following conditions:

(a) shall operate only those services which are set out in the schedules approved by the DCA;



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- (b) ~~THE CARRIER~~ shall obtain prior approval of the DCA before using any leased aircraft on the services authorised under this permit;
- (c) Without the prior approval of the DCA, ~~THE CARRIER~~ shall not enter into any code-sharing arrangement with any airline or airlines on any service operated to, from or via Hong Kong including -
- i) permitting or facilitating any such service to be advertised, marketed, held out or conducted as a code-shared service in conjunction with another airline; or
 - ii) permitting any service operated under this permit to carry the airline designator code of another airline;
- (d) For carriage between the (NAME OF COUNTRY) and Hong Kong on any service operated under this permit ~~THE CARRIER~~ shall charge only those tariffs which have been approved by the DCA and the aeronautical authorities of ~~THE COUNTRY~~. For carriage between Hong Kong and a State other than ~~THEIR OWN COUNTRY~~ on any service operated under this permit ~~THE CARRIER~~ shall charge only those tariffs which have been approved by the DCA and, where appropriate, the aeronautical authorities of the other State;
- (e) The commissions to be paid by ~~THE CARRIER~~ to any agent in respect of tickets sold or of air waybills completed by that agent for carriage between ~~THAT COUNTRY~~ and Hong Kong on any service operated under this permit shall be such commissions which have been approved by the DCA and the aeronautical authorities of ~~THAT COUNTRY~~. The commissions to be paid by ~~THE CARRIER~~ to any agent in respect of tickets sold or of air waybills completed by that agent for carriage between Hong Kong and a State other than ~~THAT COUNTRY~~ on any service operated under this permit shall be such commissions which have been approved by the DCA and, where appropriate, the aeronautical authorities of the other State;
- (f) Tariffs and commissions shall be filed with the DCA in such form as the DCA may specify;
- (g) For the purposes of conditions (d), (e) and (f) above, the term "tariff" means one or more of the following:



- i) the fare charged by an airline for the carriage of passengers and their baggage on scheduled air services and the charges and conditions for services ancillary to such carriage;
- ii) the rate charged by an airline for the carriage of cargo (excluding mail) on scheduled air services;
- iii) the conditions governing the availability or applicability of any such fare or rate including any benefits attaching to it;

and the term "commission" means the level of remuneration to be paid for agency services and the conditions on which the level depends but excluding remuneration or conditions for agency services in connection with the carriage of mail;

(h) The services authorised under this permit shall not be held out or shown in timetables, Computer Reservation Systems or any advertisement:

- i) in a way which is in any respect inconsistent with the terms of this permit; or
- ii) as being a continuation of or as providing a through service with any other services provided by ~~THE CARRIER~~ to or from a point not named in this permit;

(i) ~~The Carrier~~ shall at all times take adequate and effective precautions in relation to security and safety and shall comply without delay with all reasonable directions given by the DCA from time to time in that regard.

4. This permit shall come into force on March 1999 and, unless previously revoked or suspended, shall remain in force until 30 October 1999.

(R J Adcock)
for Director of Civil Aviation

Date: March 1999