

## **When Collaborating with Online Tour Agencies, How to Prevent and Handle Disputes in Contracts<sup>1, 2</sup>**

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### **ABSTRACT**

Travel industry has faced many new issues and disputes as the Online Tour Agencies (OTA) has emerged and become a main trend to sales and distributions of tour operators. With new channels to improve sales, many tour operators and providers are willing and eager to work with OTAs. However, as indeed more potential clients are reached through the efforts of OTAs, many disputes also appeared during the partnership. Most of the reasons behind are commissions related, privacy and intellectual property breach or other issues related to interest of either party, which are actually prevented and properly handled through a comprehensive contract.

Therefore the aim of this paper is to find out what kind of disputes clause can be considered and applied in drafting a contract between OTAs and tour operators. By comparisons of several references the multi-attributes decision analysis will be used to see which one is better practice in travel industry.

The findings show that while they all share some common standing in regulating disputes. Some part of each alternative will give some weights on the final preferred options for industrial players to consider when they want to enter a contract to extend their business with OTAs.

In summary, risk attitudes, decision making and disputes procedures compliance will be three major components to reflect to what extend both parties prepare ready to cater for foreseen and unforeseen risks and potentials disputes arising from the risks. Travel industry is changing with the clients' ideas and habits. So it is necessary to adjust providers and OTAs cooperation in order to provider quality service and responsive after-service to their clients.

**Keywords:** Online tour agency, tour operators, distribution channels, contractual disputes, Agent-Tour Operator Relations

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## **INTRODUCTION**

More and more brick-and-mortar traditional tour agencies extend their distributions channels to online services. It is a smart move to follow the trends with the rise of technological and global economic advances. Mostly people, for personal leisure or business trips, will search a destination on the searching engine and many major online tour agencies will come out.

Online tour agencies (OTAs) is a new norm of e-tourism arises and becomes a trend. First it is vital to understand the difference between tour operators and online tour agencies (OTA). A tour operator provides designed or tailored services for customers 'trip to or at a destination, including the signing contracts or agreements, booking and accommodations either separately or in a package as a or more product sold to the end-user, the customer, or the travelers. Tour operator can be a hotel group, a cruise trip provider, a city tour provider, or operator providing services of transportation, guides, meals and airline flights.

The mechanism of online tour products sales channels are booming with great momentum. OTA takes prides in their powerful sales and marketing approaches and serves a platform that sells different tour products and service, and the tour operators or tour providers. Travelers, or the customers benefit a lot from multiple travel products.

Complains by customers happens against either the direct tour operators or the OTAs where the products and services are sold. In most cases customers are the victims that have nowhere to get a refund or a responsible responses. These are dependent on the contractual relations established by the OTAs and tour operators.

Therefore this paper is intended to answer the following questions:

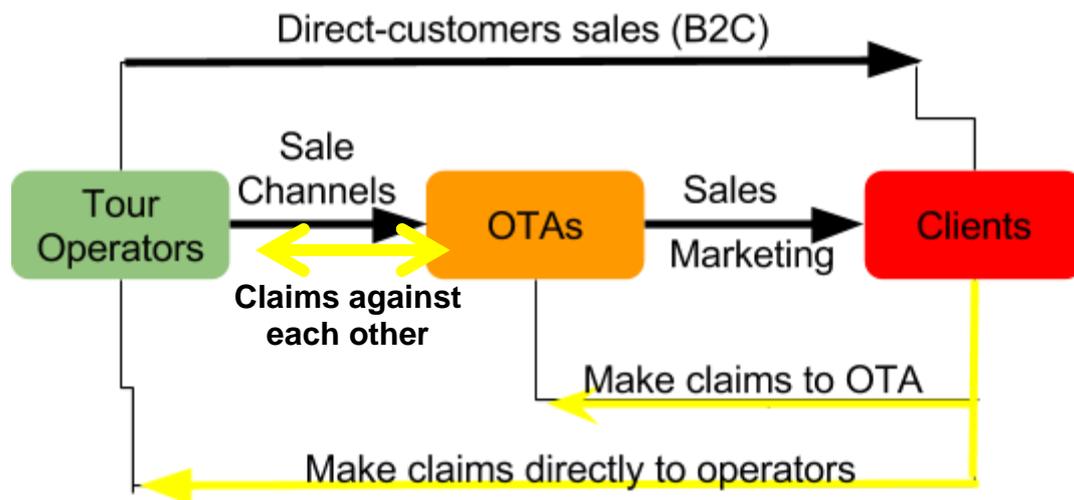
- 1) What are common clauses for claims and disputes in the contracts between OTAs and tour operators?
- 2) What are the unresolved disputes and how they arose?
- 3) How to improve dispute resolutions in contracts?

## **STEP1. OBJECTIVE/PROBLEM STATEMENT**

Most cases, disputes arose due to reasons like commissions, breach of privacy or improper use of property right. This paper has been designed to answer the following questions arising from these factors and discuss alternatives on how to prevent and resolves these disputes.

With more competitive travel products coming out fast, business partnerships are set up with a faster speed too, sometimes neglecting the consideration of comprehensive solutions in dealing with disputes and claims in their service contracts. If you browse through the review section on OTAs website and some websites like consumer affair where feedback and complaints are shared and reviewed against certain products and services, many customers are complaining their losses and disappointment for a trip against some major OTAs like booking.com and Expedia. The problems behind the complaints are worth a further look from the contract

perspective between service providers and OTAs. Tour operators turn to the OTAs for expansion of sales networks and distributions channels. Relationship among parties in selling and buying travelling products can be illustrated as below:



Graphic: Relationships among buyers, OTAs and sellers, by author

To find the cure for the problems, it is a key to understand the roles in the partnerships. Online tour agencies, also known as OTAs, are working with varied tour operators. OTAs earn revenues by requiring commissions from the tour operators that place their products and services on the OTAs' platforms to sale. It is simple working relationship. However what makes it complex is how to guarantee the service delivered in tact compared with the direct sale from tour operators. It involves obligations and responsibility for both the seller and the buyer, while the OTAs' role in between plays critically in terms of a smooth and successful transactions and experience, in order to gain sustainable recognition and trust from them.

However, as an emerging new sector in travel industry, there is no well-established regulations and guidelines in online e-tourism development, unlike industries like construction and engineering, where there is a dozen of well-drafted and tested guidelines and practices to follow and refer to.

Many reasons and factors interrelated in the disputes between OTAs and tour operators. Their issues, once happened, take long period of time and cost to respond to and successfully resolve due to the inaccurate clause statements in the contracts.

## METHODOLOGY

### STEP2. FEASIBLE ALTERNATIVE SOLUTIONS

First, what are the Alternative Solutions? To better consolidate a sustainable and mutually beneficial partnership, OTAs and tour operators should negotiate the specific clauses in their

contracts and bilateral obligations. In particular, based on fairness and goodwill, risk anticipation and disputes resolutions should be carefully considered, discussed and agreed in the contracts to be binding for future reference. Disputes resolutions should be also stated in the contracts. The three elements consist of the alternative solution for them to better perform the contract and serve their clients.

The three aspects in contracts to determine if the solutions are feasible or not are:

1. Risk attitudes: according to different specific operational activities, both parties should anticipate foreseen risks and what impacts are there from these risks;
2. Decision making: confronted with risks and disputes, who should do what and how?
3. Disputes solutions procedures: in case of disputes there is a set of procedures and binding resolution in place.

Then the attributes to measure, assess or evaluate each alternative are the following:

- the American Institute of Architects (AIA)
- the Project Resource Manuel of the Construction Specifications Institute (CSI)
- the Engineers Joint Contract Documents Committee (EJCDC) EJCDC
- the International Federation of Consulting Engineers (FIDIC), FIDIC
- the Consensus Docs

The author will apply non-compensatory model technique to compare these attributes and find out better and best solutions for OTAs and tour operators to consider when drafting contracts in order to reduce and eliminate the complexity of disputes.

### **STEP.3 DEVELOPMENT OF FEASIBLE ALTERNATIVES**

#### **DEVELOPMENT OF OUTCOMES**

##### *Outcomes of Risk attitudes*

The reason to emphasize risk factors on disputes is that parties take it for granted that their responsibilities are limited on selling and buying. The contractual obligation between determines how well the buyer receives required information and the performance of a product or service. Therefore the consideration of what risk may happen during the triangle relationship among the buyers, sellers and the OTAs and how to handle and minimize matters in travel industry.

A standby risk management plan will be in place and updated within the period of the contract. Both parties need converge their previous experiences into a contract drafting on how to prevent and minimize the risks probability and impacts.

##### *Outcomes of Decision making*

When risks happen, or disputes happen, who are the stakeholders to be affected? Who should do what, these are questions to be considered in the partnership with OTAs. Otherwise, it misses the right time and places to solve the problems, resulting unnecessary legal resort in the end.

*Outcomes of disputes resolutions*

Dispute resolutions are guiding OTAs and tour operators to react against any accidents or issues. With binding or non-binding resolutions, involved parties are clear what should do next and what to expect.

**STEP4. SELECTION CRITERIA TO ACCEPT OR REJECT THE ALTERNATIVE SOLUTIONS**

By reviewing historic contracts and articles available for the public to access about disputes with OTAs, the author will strive to find out the best and worse practices in contract specifications in travel industry, considering issues and disputes happened previously. The selection criteria should be

1. How each party treat the contractual obligations in solving disputes
2. Parties have consensus on decision-making processes.
3. Parties' compliance with the contract on disputes resolutions.

The selected attributes are compared in terms of disputes definitions and resolutions. Signing parties need considering their risk attitudes, who make decisions when claims and disputes happen, and how to react against them.

Selection Attributes	AIA vs FIDIC	AIA vs EJCDC	AIA vs ConsensusDoc	AIA vs CSI	EJCDC vs CSI	EJCDC vs FIDIC	EJCDC vs ConsensusDoc	CSI vs FIDIC	CSI vs ConsensusDoc
Risk attitudes	Worse	Equal	Equal	Equal	Equal	Better	Better	Worse	Equal
Owners' decision making	Equal	Worse	Better	Worse	Worse	Better	Equal	Worse	Better
Procedures compliance	Better	Better	Worse	Equal	Better	Better	Worse	Better	Worse
DOMINANCE ?	NO	MAYBE	MAYBE	MAYBE	YES	YES	MAYBE	MAYBE	MAYBE

*Multi Attribute Decision-Making Tool, By Author*

In summary, the sequence of priority to consider in disputes between OTAs and tour operators are:

EJCDC--CSI--FIDIC--ConsensusDoc--AIA. The following section will explain in details on the selection of the accepted attributes.

## **FINDINGS**

### **STEP5. ANALYSIS AND COMPARISON OF ALTERNATIVES**

In this section, we analyse the table above using dominance technique to compare a best solutions to refer to. Each alternative will be analyzed baseline on the three attributes.

First, AIA, American Institute of Architects, regulated and updated industry-wide standards. In its document it states that a claim is a demand or claim by one party against another requiring an change for the contract documents, cost, time, or others in the contract. The risk attitude is demonstrated through the common agreements among the contractor to indemnify the owner and Architecture/Engineers against all third-party claims that will result from the contractor's performance of work on the project. In this sense, disputes from third party are prevented and avoided. For OTAs such disputes waiver is necessary to protect from complaints from clients in using of services and products. But for tour operators they need think about what risks are involved in their part and how these are connected with the OTAs.

In AIA Integrated Project Delivery A Guide, there are featured difference in risk taking, decision making and disputes resolutions. Under the section of multiparty agreement (MPA) and the subcategory of Risks and Rewards, disputes resolutions are subject to different forms of agreements including Project Alliance, Single Purpose Entities and Relational Contracts. Depending on the nature of specific tour sectors, OTAs can consider having different contracts to better serve the business partnership and achieve more commissions.

Then the EJCDC has a clear regulation on disputes from claim process to final resolution. One point that is worthy reminding is that it states the contractors shall continue the work and proceed the progress schedule during all disputes or disagreement with the owner. In the case of this paper, OTAs and tour operators should also consider that their disputes should not interrupt ongoing services sold to clients.

Third we refer to ConsensusDocs. A third party should be involved in case of any unsolved disputes. It also advises direct discussions between two parties for resolving disputes. If the dispute remains unresolved after 2 weeks of discussion, which sets the maximum time-frame, then the parties will move forward to the other options of solutions as stated in the contracts, which involves mediation, arbitration, and litigation.

When properly implemented, the process for claims and disputes supports the orderly, timely resolution of construction issues on which the owner and contractor disagree. Conversely, when claims and disputes are improperly implemented or when their contractual procedures are ignored, the project can become very challenging

Fourth in the Project Resource Manual an unresolved claim may lead to a dispute and the claims are initial requests for changes on contract sum or time. It indicates that claims or any means of changes come first, with an intent of changing. It is advised that early notifications by the party who makes the claim and then both parties conduct prompt handling of the claim help to minimize the effect of the claim, which also reduces the possibilities to escalate a claim into a dispute. When disputes do happen, parties should refer to the contractual obligations on how to

react against disputes. Usually specific Methods of Alternative Dispute Resolution will be chosen and adopted. ADR provisions can prevent a single party from initiating litigation and provide a suitable method for economically and expeditiously addressing disputes.

## **STEP 6. SELECTION OF THE PREFERRED ALTERNATIVE**

A basic view on what factors behind the disputes of OTAs and tour operators before a best solutions is proposed. OTAs have a simple priority on how to sell more to gain more commissions, which is a common practices with many tour operators. But it is a flaw too. It is too focused on its sales and marketing that many differentiated details are ignore, on both clients and tour operators partners sides. Issues on share of profits, mainly about the commissions, improper use of intellectual property right, data and privacy breach. The technical operations on OTAs side also affect adversely to the tour operators' own operations. All these risks and disputes are not stated on how to handle in their contracts. As they normally have one standard contracts to sign and start, without thinking on possible risks. OTAs may have single standard contracts with different tour operators which may not a good practice. Different tour operators offer services with specific conditions and requirements. These conditions and differences should be clear in their contracts with OTAs to make sure that messages are conveyed.

Based on the understanding on past cases and disputes happened, the best solution is about the more proactive and serious risk attitudes, clear decision making process and agreed disputes solutions procedures. In this sense, the disputes statements in Project Resource Manual are best suited into the said industry. It clearly defines

## **STEP 7 .PERFORMANCE MONITORING AND POST-EVALUATION OF RESULTS**

The adoptions of relevant practices in Project Resource Manuel will help to alert both parties to be aware of what risks and potential claims may arise during their partnerships. These will be varied in different specific sectors, i.e., aviation, restaurants and hotels, tour providers, etc. To finalize an agreed contracts both parties need discussions and consent on what risks are there and how to response to them when happened. Then specific procedures in reacting against them should be clearly stated and in place. Any happened claims and disputes should be handled in compliance with the contracts and updated if there is any change. Lessons learned should be recorded and updated in contracts too.

Before the comparison, it looked that standard contracts between OTAs and tour operators are alike and there is no differentiation. After analysis, it turns out that there should be more specific conditions binding between them in line with industrial background, for example, if there is a required period to start and end the disputes, or is there any residual risk after the disputes are handled and resolved.

In summary, in reference to guideline of project resource manual, it helps to eliminate missing connections in disputes relation, and therefore it is worth of considering when drafting a contract in tour industry.

## CONCLUSIONS

OTAs and tour operators should take more serious attitudes to the contracts, especially the standard commission service contract provided universally by OTAs to all different tour operators. From tour providers' point of view, it is of their benefit to consider their risks and possible claims from previous experiences, to include these into the contract in a way to better manage future disputes. To do that, tour operators can learn from Project Resource Manual that consider the form of agreements in line with industrial conditions, the timeline to responses, who to talk to and how to process. These simple logic will help them handle complex claims and disputes.

## FOLLOW ON RESEARCH

The follow on research will be on the compliance and quality of the disputes resolution. To have the clauses in place does not represent successful completions of disputes. To further discuss more tailored practices in travel industry, further specific studies will be focused on cases on how to comply with contracts and the quality of the performance.

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