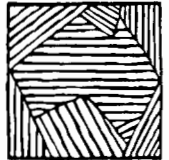


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A·F·T·A
THE AUSTRALIAN
FEDERATION
OF TRAVEL AGENTS
L I M I T E D

ABN 72 001 444 275

May 4, 2004

Australian Competition & Consumer Commission
Mr Tim Grimwade
General Manager
Adjudication Branch Australia
PO Box 1199
DICKSON ACT 2602

FILE No:

DOC:

MARS/PRISM:

By email: adjudication@accc.gov.au

Dear Sir,

Applicants for Authorisation lodged by the Department of Industry, Tourism and Resources relating to the preferential/exclusive treatment of accredited tourism businesses (A90912 and A90913)

We refer to your letter of 31 March 2004 informing the Australian Federation of Travel Agents Limited ("AFTA") of the above applications.

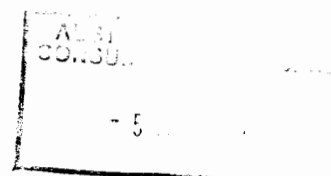
AFTA makes the following submissions in response to the applications. In doing so AFTA opposes the granting of authorisation insofar as the conduct and arrangements the subject of the applications apply to travel agents.

AFTA

AFTA is the national representative body for all Australian travel agents. Whilst membership is not compulsory, AFTA represents over 60% of all licensed Australian travel agents which are responsible for over 90% of the industry turnover in dollar terms.

AFTA's policies are established by a national board of directors in conjunction with a chief executive. AFTA is a member of the Universal Federation of Travel Agents, being the agents' world body and a number of other international associations. In addition, AFTA sits on the Commonwealth Government's Department of Transport Advisory Group and the Australian Taxation Office Tourism Advisory Committee.

AFTA has previously made a number of submissions to the ACCC in respect of applications of interest to its members.



The Application

The Commonwealth Department of Industry, Tourism and Resources on behalf of the state or territory tourism authorities of Victoria, Tasmania, South Australia, Western Australia, Australian Capital Territory and Northern Territory together with the Australian Tourist Commission propose to enter into an agreement or arrangement which will have the effect of granting "exclusive" and "preferential" access to a range of tourism services.

The applicants submit that the public benefits, *inter alia*, will be:

- Improved business efficiency amongst participating businesses;
- Improvement in the quality of services; and
- The supply of better information to consumers and business to permit informed choices in their dealings.

The applicants seek authorisation so as to allow only tourism businesses to participate in their promotional, marketing and wholesaling activities where the tourism business is accredited under a program endorsed by the Australian Tourism Accreditation Association (ATAA). Of relevance to AFTA's members is the fact that the promotional, marketing and wholesaling activities include:

- Joint involvement in advertising, website listings and links, signage and other branding;
- Trade familiarisations;
- Making reservations for consumers;
- Making recommendations to consumers about tourism services;
- Inclusion in databases;
- The racking of brochures;
- The wholesaling of tourism services.

It is proposed that preferred treatment may also include:

- Providing discounts to all accredited operators;
- Providing accredited businesses with greater prominence in the applicants' promotion activities such as highlighting listings on the applicants' websites.

From the foregoing it is clear that the applicants contemplate that travel agents being a "travel business" will be required to obtain accreditation before receiving promotional and wholesale

services, discounts or other preferential access to promotional and wholesaling services. AFTA notes that the submission in support of the applications does not address this point directly.

The Travel Agent Industry in Australia

The Commission has recently undertaken an extensive review of the travel agent industry in Australia as part of the Commission's Authorisation No. A90791 in respect of the International Air Transport Association Passenger Agency Program¹. AFTA refers to Section 3 of that Authorisation in respect of the data currently before the Commission regarding the industry size and financial performance.

Underlying rationale for the proposed conduct

The applicants submit that the conduct the subject of the applications for authorisation is required so as to address "market failures" which have an effect on the tourism market. These failures are summarised as being:

- Shortages of information about the quality of tourism product and associated business practices leading to poor business and consumer decisions;
- Unethical or inefficient business practices of a few inbound tour operators which have a negative effect on the quality of tourism product and consequently affect the reputation of all operators (emphasis added);
- Assisting in rationalising accreditation under a single recognisable banner.

AFTA notes that the submission lodged with the Commission of Tourism Victoria in support of Notifications N40553 and N40554 gives as a reason for the proposed conduct (being conduct of a similar nature to the conduct of these applications) the need "to strengthen the tourism sector by encouraging the take-up of membership to industry bodies within the tourism sector". The submission goes on to assert that:

"The existence of a healthy tourism sector requires strong representative bodies that:

- Represent industry views and interests;
- Are a vehicle for communication of industry issues/matters;
- Provide a representative and authoritative voice to government on industry issues; and

1. Application for Revocation and Substitution of Authorisation A90408, International Air Transport Association Passenger Agency Program, 13 November 2002 Authorisation No. A90791.

- Ensure individual operators are informed as to industry trends, practices and other relevant issues.”²

In AFTA’s opinion none of these factors justify the authorisations which are sought insofar as they apply to travel agents. The reasons put forward justifying the proposed conduct do not have applicability to travel agents.

Regulation of Travel Agents

The National Competition Policy Review of the National Scheme for the Regulation of Travel Agents³ found that the current system of regulation governing travel agents is *strong* regulation⁴.

Travel agents are subject to multi-tiered regulation covering nearly all aspects of their business.

The compulsory national scheme of licencing is enacted in various travel agents statutes in all states and the *Agents Act* 1968 in the ACT. Only the Northern Territory is not part of the national scheme. As noted in the National Competition Policy Review, regulation has two elements: a licensing process directed at service and quality standards and a compulsory consumer compensation scheme directed at protecting consumers from financial loss in the event of the travel agents default. The compensation scheme is administered by the Travel Compensation Fund (“TCF”).

As part of the national scheme travel agents must therefore obtain a licence under the relevant Act and be admitted as a member of the TCF.

As noted by the National Competition Policy Review the objectives of existing regulations are:

- To protect consumers against financial loss arising from the failure of travel agents to account for monies deposited with them; and
- To ensure a minimum standard of service delivery in the travel agent industry.

The national scheme requires the holder of a travel agent’s license to be a fit and proper person and to undertake training programs and hold specific levels of experience and competency.

In addition, in the event a travel agency chooses to become accredited with IATA then the travel agency and its principal must be subject to further regulation and accountability.

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2. Submission to the Australian Competition & Consumer Commission by Tourism Victoria in support of Notifications of Exclusive Dealing, N40553 and N40554 dated 21 February 2003, p.7
 3. National Competition Policy review of the National Scheme for the Regulation of Travel Agents, prepared for the Ministerial Council on Consumer Affairs, Centre for International Economics, Canberra and Sydney, March 2000
 4. Ibid p.xii

On any objective review it is clear that travel agents in Australia are subject to vigorous regulation and review.

Evaluation of Application

Application A90912 is made under subsection 88(1) of the Trade Practices Act 1974 ("the Act").

Application A90912 is made under subsection 88(8) of the Act. Evaluation of the applications is to be done in accordance with the statutory test set out in subsections 90(6) and 90(7) of the Act.

That test requires that the Commission not make a determination granting an authorisation unless it is satisfied in all the circumstances that:

- (a) The provisions of the proposed arrangements would or be likely to result in a benefit to the public; and
- (b) That the benefit would outweigh the detriment to the public constituted by any lessening of competition that would result if the proposed arrangements were made and the provisions concerned were given effect to.

Market Definition

It is submitted that the Commission in assessing the applications should consider the relevant markets in which the conduct the subject of the applications will apply.

The applicants identify three specific markets being:

- (i) The tourism promotion market;
- (ii) The tourism wholesaling market;
- (iii) The tourism accreditation market.

In the tourism wholesaling market three of the applicants have their own wholesalers selling in direct competition with industry wholesalers. Statistics provided by the applicants show that the Tasmanian and Northern Territory Government owned businesses control a significant part of the wholesale market in their respective state or territory:

Tasmania's Temptations 40-45%

Territory Discoveries 25%

AFTA submits that given the nature of the conduct which is the subject of the applications a detailed and precise market analysis should be undertaken so as to identify the relevant areas of competition.

Public Detriment - Effect on Competition

AFTA takes issue with the applicants' assertions that public detriment from the proposed conduct is considered to be at worst minimal. AFTA sets out as follows factors which in our opinion would result in a lessening of competition:

- (1) The requirement for accreditation will have the effect of becoming a compulsory requirement; only accredited tourism businesses will be entitled to participate in the applicants' promotional, marketing, and wholesaling activities. Many of those activities are part and parcel of a travel agent's business and to be excluded from offering the applicants' services would impact on an agent's financial viability. Further, and as is noted in clause 8.2 of the submissions the tourism commissions of Tasmania, South Australia and the Northern Territory also act as tour wholesalers. As proposed by the applicants non accredited travel agents would therefore be excluded from making reservations for these products (and would be prohibited from racking brochures).
- (2) Contrary to what is stated in clause 6.2 of the submissions there is currently competition between the applicants in what might be best described as the domestic tourism market. For example, when Tourism Victoria advertises extensively in New South Wales it is for the purpose of directing tourism to the state of Victoria as opposed to travel to other states or territories or even overseas. While each applicant may service the needs of business within their own jurisdiction there is an inherent competition between each jurisdiction.
- (3) As the commission has previously noted⁵ whenever suppliers of a service or product collaborate on distribution of those products or services to the retail market there is the potential for the arrangements to impact on competition in the retail market.
- (4) The proposed conduct would be potentially anti-competitive to the extent that:
 - (a) There is a potential that travel agents would be disadvantaged by not having access to the applicants' products on sale to the public; and
 - (b) There will be a negative impact on the operating costs of travel agents and therefore creating a further barrier to entry into the markets.

Costs

Travel agents are already subject to significant costs as a result of regulation.

The National Competition Policy Review found that when considered relative to profits the costs of compliance with TCF regulations are substantial: equivalent to between 32 and 61% of profits

5. Authorisation No. A90791 paragraph 7.31

for smaller travel agents (those having an annual turnover of less than \$1 million). For larger travel agents (with an annual turnover in excess of than \$3 million) the costs of compliance as a proportion of profits range between 2 and 9% of profits ⁶. It should be noted that around 36% of travel agents have turnovers less than \$1 million per year ⁷.

The TCF has recently compiled figures showing that as at 31 December 2003 73% of all travel agent members have a turnover of less than \$3 million per annum.

AFTA submits that the implementation of a further layer of accreditation with its associated costs would inevitably give rise to further costs and burdens on travel agents and would negatively impact on agents' ability to compete.

Reduced Choice

The failure of travel agents to become accredited would mean they will be prohibited from selling the applicants' wholesale products to the public. This would lead to less choice for consumers.

Net Benefits - Section 7

AFTA takes issue with the applicants' assessment of the net benefits from accreditation as they apply to travel agents and as set out the section 7 of the submissions:

(1) Benefits to participating tourism businesses:

Many of the benefits listed in Section 7.1 are factors considered and dealt with in the context of a national licensing regime for travel agents. For example it is difficult to perceive how accreditation of travel agents could "enhance reputation amongst other businesses including credibility within the tourism distribution network" when travel agents are already licensed. In addition, it is difficult to see how "greater customer confidence and satisfaction" would arise merely from accreditation when the purpose of the national licensing scheme is to provide consumers with the confidence that they are dealing with qualified and financially viable travel agents.

(2) Benefits to consumers:

Similarly, accreditation will provide consumers with no greater assurance when they deal with a licensed travel agent as is already in place through the national licensing scheme. To suggest that consumers would be exposed to less risk because of the implementation of accreditation ignores the provisions of the compensation scheme and statutory obligations on travel agents.

6. Ibid p.55

7. Ibid p.14

(3) Benefits to industry

It is difficult to see how the travel agent industry could become more competitive or better regulated. The purported benefits as set out in submissions would not apply insofar as travel agents are concerned merely by reason of the imposition of accreditation.

Costs from the Adoption of Accreditation - Section 7.1

Apart from the proposed accreditation fees it is submitted that the compliance costs will be significant. A review of the accreditation requirements (and in particular the Australian Tourism Accreditation Standard) means that substantial time and resources will need to be allocated in the preparation of documentation, training of staff and applying for accreditation. It is acknowledged by the applicants that the preparation of an application must involve assembling relevant licenses, permits and insurance policies, preparing business and marketing plans, accounting systems, booking procedures, staff appointment policies, customer care procedures, environmental policies (where applicable) and documented safety and emergency procedures. It is difficult to see how the applicants can sustain their assertion that the overall costs of becoming accredited would be in the order of only \$500.00 for the first year. The further assertion that applicants for accreditation could make use of "off the shelf" computer packages totally ignores the complex computer systems utilised by travel agents especially with the interfacing with airline computer reservation systems and highly developed back office systems.

Costs to consumers

AFTA challenges the assertion made by the applicants that the net effect of accreditation on prices is estimated to be minimal. It is inevitable that travel agents who are forced to incur these additional costs will pass them on to consumers wherever possible.

Net Public Detriment

AFTA is of the opinion that the exclusive and preferential access conduct is potentially anti-competitive and for the reasons set out in this submission will have a detrimental impact in the relevant markets. It is submitted that the stated public benefits do not outweigh the public detriment.

While AFTA accepts that some public benefit will flow from a system of accreditation of unregulated tourism operators, this does not detract from AFTA's primary submission that authorisation should not be granted in respect of travel agents.

AFTA is of the opinion that the applicants have misunderstood the public detriment which would flow from travel agents not becoming accredited and therefore being denied the right to sell the

applicants' wholesale products or to participate in the applicants' promotional and marketing activities.

It is submitted that the applicants reference to current market failures and unprofessional practices would not be avoided merely by reason of an accreditation process; travel agents are already subject to rigorous regulation and the imposition of a further layer of accreditation would impact negatively on travel agents' ability to commercially operate.

Given the role travel agents play in the sale of domestic wholesale programs and the promotion of domestic travel, a disadvantaged travel agent industry would impact on the markets for tourism promotion and tourism wholesaling.

AFTA is also concerned that the additional costs of compliance would create greater barriers to entry into the industry.

It is therefore submitted that should the Commission be mindful of granting authorisation then such authorisation should not extend to the applicants' dealings with licensed travel agents.

Yours faithfully

A handwritten signature in black ink, appearing to read "Mike Hatton", with a long, sweeping horizontal stroke extending to the right.

Mike Hatton
Chief Executive