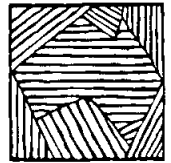


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A·F·T·A
THE AUSTRALIAN
FEDERATION
OF TRAVEL AGENTS
LIMITED

ABN 72 001 444 275

May 26, 2004

The General Manager
Adjudication Branch
Australian Competition and Consumer Commission
PO Box 1199
DICKSON ACT 2602

FILE No.
DOC:
MARS/PRISM

By email: adjudication@acc.gov.au

Dear Sir or Madam,

**International Air Transport Association (IATA)
Application for Minor Variation to Authorisation A90791**

We refer to your letter of 12 May 2004 regarding the above application.

The Australian Federation of Travel Agents (AFTA) makes the following submissions in respect of IATA's application.

Minor Variations

In AFTA's opinion the amendments and or substitutions to resolutions 816, 820e, 842, 866 and 878 are minor. AFTA concurs with the IATA application in respect of these resolutions that such variation would:

- (a) Improve the IATA Passenger Agency Program for airlines and agents; or
- (b) Are of technical or drafting nature.

As a result the variations would not result, or would be likely not to result, in a reduction in the extent to which the benefit to the public of the authorisation outweighs any detriment to the public caused by the authorisation. Those public benefits have been canvassed in some detail in the Commission's authorisation A90791.

However AFTA disputes that resolution 800f, which is a new resolution amounts to a minor variation.

27 May 2004

Resolution 800f - Framework for the development of Agents' Financial Evaluation Criteria

This is a new resolution which was adopted at the Passenger Agency Conference (PACConf) held in Geneva in July 2003. As AFTA has previously put before the Commission travel agents do not have a vote at that PACConf and the ability to put before PACConf the views of the travel agency industry is limited.

AFTA also notes the Commission's comments at paragraph 9.18 of Determination A90408 in which the Commission identified the difficulty it has in assessing benefits associated with future variations to resolutions in respect of a system authorisation in that IATA could introduce new resolutions which are anti-competitive in nature. As a result the Commission in granting authorisation did not extend the authorisation to amendments of or substitutions for the resolutions specified in Appendix B as they appeared in the IATA Passenger Agency Conference Resolutions Manual 22 Edition (subject only to the rights contained in Section 91A of the Trade Practices Act 1974 in respect of minor variations to the authorisation).

It is not apparent from IATA's application that resolution 800f either amends or is substituted for any resolution contained in Appendix B of Authorisation A90791.

It is submitted that resolution 800f imposes additional burdens on agents in obtaining and retaining IATA accreditation and potentially will have a negative impact on the performance of travel agents.

It should be added at this point that it is precisely for this reason that AFTA submitted to the Commission previously that authorisation should be in respect of a set of resolutions and not extend to an authorisation of a system as initially sought by IATA.

Resolution 800f:

- has not been the subject of negotiations between IATA and travel agents;
- is a further example of a resolution being imposed upon agents;
- places an unnecessary additional financial burden on travel agents;

- puts travel agents at a competitive disadvantage with airlines and non-accredited agents.

We set out specific concerns regarding 800f:

Clause 2.1 - Bank Guarantee or Insurance Guarantee

It is unreasonable to require the guarantee to be open ended given that the guarantee is being given in respect of the agent's first two years of trading as an accredited agent.

Clause 4 - Criteria for Evaluation of Agents' Audited Financial Statements

What IATA seeks to impose is obligations far greater and onerous than accepted accounting standards in Australia. AFTA objects to the provisions in Clause 4.2(a) which provides that in computing the agent's net equity adjustments be made to write down to zero assets such as:

- Unquoted investments - clause 4.2(a)(iii);
- All encumbered assets - clause 4.2(a)(iv).

An agent may have an investment in a company which is not publicly listed. There is no basis for the exclusion of such an asset in an agent's balance sheet.

An agent may have encumbered real property while still maintaining equity. The agent may also have an asset which is subject to a charge, for example for the purposes of a guarantee given to the Travel Compensation Fund. It is an unreasonable condition that such assets be excluded from calculating an agent's equity.

Clause 4.2(b)

There seems to be no logical basis for requiring the net equity to be greater than the sum of Long Term Debt and other Long Term Liabilities. It is quite common for agents to purchase the premises from which they operate. Such premises are a major asset of the agency yet may be subject to a mortgage. An agency may still have excess equity in the property but on IATA's criteria this equity would not be available in assessing the credit worthiness of the travel agent.

Clause 4.3 Net Current Assets

IATA seeks to exclude from Current Assets:

- stock and work in progress - clause 4.3.1(a); and
- deposits or guarantees given to third parties other than IATA - clause 4.3.1(b).

Again it would appear IATA is seeking to impose conditions which depart from current accepted accounting standards in Australia.

No explanation has been provided to travel agents (or for that matter, the Commission) justifying the provisions of resolution 800f.

In AFTA's opinion the provisions of resolution 800f create an additional barrier to the entry to the relevant markets by imposing upon agents unjustifiable onerous financial burdens. It is submitted the imposition of resolution 800f will negatively impact on the performance of travel agents which, as the Commission has previously noted, operates on low margins and is particularly vulnerable to external events.

IATA's application in respect of resolution 800f is all the more surprising given that the Commission has made authorisation conditional upon a review being undertaken of the conditions imposed by IATA through the Passenger Agency Program for travel agents to obtain and retain IATA accreditation.

New Resolutions 850m and 890

AFTA is of the opinion that resolutions 850m and 890 fall outside the terms of Authorisation A90791 and cannot be considered minor variations for the purposes of the application currently before the Commission. However AFTA is of the view that resolution 850m has minimal anti-competitive risk and will improve the Passenger Agency Program particularly in respect of the processing of agency debit memos.

AFTA does have concerns in respect of resolution 890. This is a new resolution and was not included in the resolutions before the Commission in the making of determination A90791.

As previously submitted to the Commission travel agents:

- are suffering from a continuing reduction of commission paid to them by airlines;
- are being forced to find alternative sources of revenue for selling airlines' services such as transaction fees;
- are subject to increased direct competition for sales especially through the Internet.

The provisions contained in resolution 890 impose additional, and it is submitted unnecessary, conditions on agents transacting credit card sales on behalf of airlines. These concerns are set out as follows:

Clause 2.1.2

It is not practical to have the card company to be a party to an agreement between the card holder and the agent. The inclusion of this requirement negates the entire resolution.

Clause 2.1.5

Clause 2.1.5 does not authorise the agent to include in the charges the agent's fee or additional charges imposed by the agent notwithstanding that airlines are increasingly removing commission payments. As currently formulated the resolution will require an agent to put through two charges for each transaction: one charge being for the air component and the second charge being for the agents' fee or charges.

This will impose additional costs on agents in making the transaction and reconciling or resolving any subsequent disputes with consumers arising over the double charge to the card. Airlines to date have refused to allow agents to include a service fee as part of the transaction for the airline ticket.

The transaction for the agent's fee will be subject to the terms of the agent's merchant agreement and the imposition of any fees imposed by the card issuer.

Whilst a failure by an airline to provide the service the subject of the credit card transaction which has been processed using the merchant agreement of the IATA member will not impose a liability on the agent, the agent will be liable to the consumer

in respect of its service fee.

It is submitted this is an unreasonable imposition and has potential to affect travel agents' ability to compete in the relevant markets.

Interim authorisation

AFTA does not oppose interim authorisation in respect of the variations set out in Schedule 2 of the application with the exception of resolution 800f.

For the reasons set out herein AFTA opposes the granting of interim authorisation for resolution 890.

We also wish to bring to the Commission's attention that IATA has printed and distributed the 2004 Agent's handbook which includes the amendments, variations and additions the subject of the application before the Commission. Whilst there is a notation that the amendments, variations and additions are subject to the Commission's final determination this has created confusion which is likely to increase in the event the application is unsuccessful in the whole or in part.

In AFTA's view IATA should not be permitted to publish resolutions in the Agent's handbook until such times as the amendments, variations and inclusions have received authorisation.

Yours faithfully

A handwritten signature in black ink that reads "Mike Hatton". The signature is written in a cursive style and is positioned above a long, thin horizontal line that extends to the right.

Mike Hatton
Chief Executive