



Determination

Applications for Minor Variation of Authorisation A90791

Lodged by

INTERNATIONAL AIR TRANSPORT ASSOCIATION

In respect of the IATA Passenger Agency Program

Date: 20 October 2004

Commissioners: Samuel
Martin
Smith
Willett
King

Public Register no. C2004/56; C2004/1026

1. The Applications

- 1.1. On 24 December 2003 and 15 July 2004, the International Air Transport Association (IATA) lodged applications for minor variation of Authorisation A90791 under section 91A of the *Trade Practices Act 1974* (the Act).
- 1.2. IATA is the international trade association of most airlines operating international air services in the transport of passengers, mail or cargo. Its members are estimated to account for over 95% of international passenger travel to and from Australia.

Authorisation A90791

- 1.3. Authorisation A90791 was granted by the Australian Competition and Consumer Commission (ACCC) on 13 November 2002 under a Determination which also revoked an existing authorisation (A90408). Both A90791 and A90408 concerned the IATA Passenger Agency Program (IPAP).
- 1.4. The IPAP provides a system for the sale and distribution of air transport through travel agencies. The IPAP is embodied mainly in resolutions passed by IATA airline members at IATA Passenger Agency Conferences. The program has three core elements:
 - an accreditation scheme which enables licensed agents to sell tickets on behalf of airlines;
 - a process of appointing agents to represent airlines; and
 - a system for managing the reporting and payment of ticket sales.
- 1.5. The ACCC authorised elements of the IPAP which it regarded as having minimal anti-competitive risk for eight years with authorisation extending to changes in those parts of the program in that period.
- 1.6. The other elements of the program were authorised for four years with authorisation not extending to changes in those parts of the program. The ACCC's authorisation applied to the year 2000 version of the IPAP Conference Resolutions Manual which took account of Resolutions passed at conferences up to and including the 2000 IATA Passenger Agency Conference.
- 1.7. The ACCC's authorisation of the IPAP was conditional on IATA taking action in a number of areas including reviewing the conditions of accreditation for travel agents.
- 1.8. The first approach by IATA for a minor variation of Authorisation A90791 as a result of resolutions passed at the IATA Passenger Agency Conferences in 2001 and 2002 was lodged on 24 December 2002. On 5 March 2003, the

ACCC varied Authorisation A90791 in accordance with the minor variation sought by IATA.

Application for minor variation lodged on 24 December 2003

- 1.9. As a result of Resolutions passed at the 2003 IATA Passenger Agency Conference, IATA seeks the following variation to Authorisation A90791:
- that Determination A90791 be amended by inserting the text set out in Schedule 2 to the Application at the end of and to form part of Part 2 of Appendix B.
- 1.10. The specific resolutions the subject of this application for minor variation and for which authorisation is sought are outlined in Annexure A to this Determination.

Application for minor variation lodged on 15 July 2004

- 1.11. As a result of Resolutions passed at the 2004 IATA Passenger Agency Conference, IATA seeks the following variations to Authorisation A90791:
- that Determination A90791 be amended by inserting the text set out in Schedule 2 Part A to the application (other than the section entitled 'impact of the changes') at the end of, and to form part of, Part 2 of Appendix B; and
 - that Determination A90791 be amended by inserting the text set out at Schedule 2 Part B to the application (other than the section entitled 'impact of the changes') at the end of, and to form part of, Part 3 of Appendix B.
- 1.12. The specific resolutions the subject of this application for minor variation and for which authorisation is sought are outlined in Annexure B to this Determination.

Interim authorisation

- 1.13. The applicant also requested interim authorisation for the proposed minor variations.
- 1.14. On 3 June 2004, the ACCC granted interim authorisation for IATA's application for minor variation lodged on 24 December 2003, except for Resolution 800f (Framework for the Development of Agent's Financial Evaluation Criteria).
- 1.15. On 4 August 2004, the ACCC granted interim authorisation for IATA's application for minor variation lodged on 15 July 2004.

2. Statutory provisions

- 2.1. Section 87D of the Act defines a minor variation as a single variation that does not involve a material change in the effect of the authorisation.
- 2.2. Section 91A of the Act provides that the ACCC must, if it is satisfied that the proposed variation is a minor variation, invite submissions from interested parties. After consideration of the application and any submissions received, the ACCC may make a Determination varying the authorisation or dismissing the application.
- 2.3. Under sub-section 91A(7) of the Act:
 - a) if a person applies for 2 or more variations:
 - (i) at the same time; or
 - (ii) in such close succession that the variations could conveniently be dealt with by the ACCC at the same time; and
 - b) the ACCC is satisfied that the combined effect of those variations, if all were granted, would not involve a material change in the effect of the authorisation;

the ACCC may deal with all of those variations together as if they were a single minor variation.
- 2.4. Section 91A(4) provides that the ACCC may grant a minor variation to an authorisation granted under section 88(1), where it is satisfied that the variation 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.

3. Submissions

IATA

- 3.1. IATA stated in their submissions in support of their applications that the proposed amendments to Authorisation A90791 concern changes which either:
 - improve the IPAP for airlines and agents, or
 - are of a technical or drafting nature.
- 3.2. IATA submitted that each of the changes liberalises the relevant provisions by providing IATA accredited agents with greater flexibility in operating their businesses, without reducing the level of protection required by the airlines for making credit available to agents. IATA further submitted that the effect of these changes on competition is not expected to be significant, but any likely effect would be to increase the ability of IATA accredited agents to compete with one another.
- 3.3. IATA submitted that the variations would not result, and would not be likely to result, in either 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, or a reduction in the benefit to the public that arose from the original authorisation.

Resolution 800f

- 3.4. IATA submitted that Resolution 800f merely sets out a recommended framework for the development of an agent's financial evaluation criteria to be applied as a guideline for the establishment and/or review of the local financial criteria in all markets, subject to local conditions that may apply. The guideline is intended to promote and, where possible, standard set of rules for agency accreditation.
- 3.5. IATA submitted that guidelines for the standardisation of financial evaluation criteria are in the public interest. They improve the efficiency of the accreditation process, thereby reducing costs for airlines and agents, set sensible guidelines for prudential credit protection to the benefit of the airlines and the agents and make the whole process more transparent.
- 3.6. IATA submitted that where local conditions require something more (or less) than the guidelines propose, that is accommodated. If for instance, the prudential risk in Australia is assessed as being lower than in other parts of the world, the financial criteria actually applied in Australia can reflect that.
- 3.7. IATA submitted that the guidelines will have no adverse effect on competition, it is more likely to have a beneficial effect on competition by eventually moulding more efficient local criteria to the benefit of agents and airlines.

Interested parties' submissions

- 3.8. The ACCC sought submissions from a wide range of interested parties concerning IATA's applications for minor variation.

Australian Federation of Travel Agents

- 3.9. The Australian Federation of Travel Agents (AFTA) submitted that in its opinion the variations to Resolutions 816, 820e, 842, 866 and 878 are minor and agreed with IATA that such variation would improve the IPAP for airlines and agents, or are of technical or drafting nature. However, in AFTA's opinion Resolution 800f does not constitute a minor variation.
- 3.10. AFTA submitted that Resolution 800f imposes additional burdens on travel agents in obtaining and retaining IATA accreditation and potentially will have a negative impact on the performance of travel agents.
- 3.11. In AFTA's opinion the provisions of Resolution 800f create an additional barrier to the entry of the relevant markets by imposing upon travel agents unjustifiable onerous financial burdens and puts travel agents at a competitive disadvantage with airlines and non-accredited agents.
- 3.12. AFTA noted that Authorisation A90791 is conditional upon a review being undertaken by the Travel Industry Accreditation Review Committee (TIARC). AFTA submitted that there is great potential for conflict between the new Resolution 800f and possible recommendations to come from the TIARC, and that potential implementation of the TIARC's recommendation may be constrained if Resolution 800f is authorised by the ACCC.

Air New Zealand Group

- 3.13. The Air New Zealand Group fully supported IATA's application of 15 July 2004.

NSW Department of Tourism, Sport and Recreation

- 3.14. The New South Wales Department of Tourism, Sport and Recreation in response to IATA's application of 15 July 2004 supported the amendments on the basis that they are minor and have potential for greater competition.

4. ACCC Evaluation

- 4.1. In its Determination dated 13 November 2002 the ACCC accepted, subject to certain conditions being met, that the key elements of the IPAP in the form of the accreditation system, the agency appointment process and the IATA Billing and Settlement Plan (BSP), as they apply in Australia, provide clear and significant public benefits.
- 4.2. The ACCC noted that some benefits flow directly to consumers through promoting an agency system which results in increased consumer information and choice and which encourages competition between airlines. Consumers are also likely to benefit, in competitive markets where savings are passed on, from lower fares as a result of efficiencies accruing from avoiding airline to agent credit assessment, negotiation and appointment processes. Similar benefits would accrue from the efficiencies of the BSP in providing a single system for the distribution of funds from agents to airlines.
- 4.3. The ACCC noted that the extent of the public benefits generated by the IPAP is directly related to the form of the resolutions constituting the IPAP. Any changes to resolutions which, for example, negatively impacted on the ability of agents to enter or remain in the accredited agency system could ultimately impact on competition between airlines and/or agents and identified benefits.
- 4.4. The ACCC noted that it is apparent that the presence of a healthy and vigorous travel agent industry in Australia is essential to achieving effective competition between airlines for business involving Australian consumers.
- 4.5. The ACCC has examined the proposed amendments to the resolutions the subject of the applications for minor variation and is satisfied that, in the context of the total set of resolutions pertaining to the IPAP, that none of the amendments and the new resolutions are likely to have a negative public benefit impact or detrimentally affect competition between airlines for passenger travel, or between airlines and travel agents for the sale of such travel.
- 4.6. In contrast the resolutions are likely to have a positive impact on agents in Australia. The interim report of the Travel Industry Accreditation Review Committee (TIARC) made a series of recommendations and some of those recommendations as they apply to Australia were included in IATA's application for minor variation, including amendments to Resolution 816(3) to remove provisions which may have been interpreted as restricting accredited agents to operate during normal business hours and to remove the prohibition on an agent in Australia to share premises with another agent.
- 4.7. Although not a recommendation of the TIARC, IATA also proposed to amend Resolution 816(3) to expand the categories of acceptable security that agents can provide in order to fulfil the required financial evaluation criteria.

- 4.8. In relation to Resolution 800f (Framework for the Development of Agent's Financial Evaluation Criteria), the ACCC has previously expressed the view that this new Resolution might not constitute a minor variation. In doing so the ACCC did not grant interim authorisation for this Resolution. The ACCC indicated that this decision should not be taken as an indication that a similar decision would be made in its final Determination.
- 4.9. In light of further consideration and supporting submissions made by IATA, the ACCC is now satisfied that new Resolution 800f is in fact minor. In forming this view the ACCC took into account IATA's position that new Resolution 800f is only a recommended framework and can accommodate local conditions as they apply in Australia.
- 4.10. The ACCC was also mindful that Authorisation A90791 was granted subject to a number of conditions being satisfied, including a review, to be completed by 5 December 2004, of the conditions imposed by IATA through its Passenger Agency Program for travel agents in Australia to obtain and retain IATA accreditation.
- 4.11. Authorisation A90791 requires the review to be undertaken jointly by airlines and agents (with equal representation from each group and including a representative of the Australian Federation of Travel Agents) under an independent Chairperson.
- 4.12. Authorisation A90791 requires recommendations arising from the review and related to the IPAP which are directed at improving the efficiency or reducing the operating costs of, or burdens on, accredited agents to be implemented at the earliest opportunity but no later than 5 December 2005.
- 4.13. In addition, the ACCC considers that the requirements set out in Authorisation A90791 should ensure that Resolution 800f would not constrain the implementation of any recommendations from the review. The ACCC would expect that should Resolution 800f conflict with any recommendations from the review, these would be identified by the review committee in their report.
- 4.14. In conclusion, the ACCC is of the view that the proposed minor variations would not reduce the public benefits flowing from the original authorisation. The ACCC also considers that the public detriment stated in the original Determination would not be increased by the proposed minor variation. Consequently, the ACCC is satisfied that the minor variation would not be likely to result in a reduction to the extent to which the benefit to the public recognised in Authorisation A90791 outweighs any detriment to the public identified in Authorisation A90791.

5. Determination

The applications

- 5.1. On 24 December 2003 IATA lodged an application for minor variation to Authorisation A90791 under section 91A of the *Trade Practices Act 1974*. On 15 July 2004 IATA lodged a further application for minor variation to Authorisation A90791 under section 91A of the *Trade Practices Act 1974*.
- 5.2. Authorisation 90791 was issued by the ACCC on 13 November 2002 as part of a Determination which also revoked an existing Authorisation (A90408). Both A90791 and A90408 concerned the IATA Passenger Agency Program which provides a system for the sale and distribution of air transport through travel agencies.
- 5.3. IATA seeks the following minor variation to the Determination of A90791 lodged in its application of 24 December 2003:
 - a) that Determination A90791 be amended by inserting the text set out at Schedule 2 to the Application at the end of, and to form part of, Part 2 of Appendix B.
- 5.4. IATA seeks the following minor variation to the Determination of A90791 lodged in its application of 15 July 2004:
 - a) that Determination A90791 be amended by inserting the text set out at Schedule 2 Part A to the application (other than the section entitled 'impact of the changes') at the end of, and to form part of, Part 2 of Appendix B; and
 - b) that Determination A90791 be amended by inserting the text set out at Schedule 2 Part B to the application (other than the section entitled 'impact of the changes') at the end of, and to form part of, Part 3 of Appendix B.

The statutory test

- 5.5. Pursuant to section 91A(4) of the Act, for the reasons outlined in section 4 of this Determination the ACCC concludes that the minor variations would not be likely to result in a reduction to the extent to which the benefit to the public recognised in Authorisation A90791 outweighs any detriment to the public identified in Authorisation A90791.

Conduct authorised

- 5.6. Pursuant to section 91A(3) of the Act, the ACCC varies Authorisation A90791 in accordance with the minor variations sought by IATA.
- 5.7. This Determination is made on 20 October 2004. If no application for review of this Determination is made to the Australian Competition Tribunal

in accordance with section 101 of the Act, this Determination will come into force on 11 November 2004.

- 5.8. The interim authorisation granted by the ACCC on 3 June 2004 and 4 August 2004 will remain in force until this Determination comes into force.
- 5.9. If an application for review is made to the Tribunal, the Determination will come into force:
 - a) Where the application is not withdrawn - on the day on which the Tribunal makes a Determination on the review and grants authorisation;
or
 - b) Where the application for review is withdrawn - on the day on which the application is withdrawn.

Annexure A

Schedule 2 to IATA application dated 24 December 2003

AUTHORISED 2003 AMENDMENTS TO OR SUBSTITUTIONS FOR THE RESOLUTIONS SPECIFIED IN APPENDIX B PART 1

[This schedule provides an overview only. It is to be read in conjunction with the actual Resolutions. If there is any inconsistency the actual Resolutions apply.]

No.	Title	Outline of changes¹
800f	Framework for the Development of Agent's Financial Evaluation Criteria	New resolution setting out a recommended framework for the development of an agent's financial evaluation criteria to be applied as a guideline for the establishment and/ or review of the local financial criteria in all markets, subject to local conditions that may apply. It is intended to promote a consistent and where possible, standard set of rules for agency accreditation.
816	Passenger Agency Sales Rules - South West Pacific	Amended to remove the definitions of terms from this resolution. All definitions applicable to Passenger Agency Conference Resolutions are now contained in a single new Resolution 866 (see below).
820e	Reviews by the Travel Agency Commissioner	New resolution consolidating the procedures for reviews conducted by the Travel Agency Commissioner under the various resolutions worldwide into a single resolution. As a result the procedures applicable in Australia which are currently set out in Resolution 816e will be incorporated into Resolution 820e. In addition to the existing arrangements under Resolution 816e, the new resolution: <ul style="list-style-type: none">• clarifies many of the existing procedures• introduces new grounds of review for agents who believe their commercial survival is threatened by a decision by an individual IATA member, or who are aggrieved by an impending amendment to their passenger sales agency agreement• enables an IATA member to request a review where it objects to the approval of a particular application for accreditation.
832	Reporting and Remitting Procedures	Amended to make numerous editorial changes to improve the overall drafting, reduce the complexity of and clarify the resolution.

¹ The outline is provided for general guidance only. The full text of the new and amended resolutions, indicating the amendments made, is attached to IATA's application dated 24 December 2003.

No.	Title	Outline of changes ¹
842	Network Agent	<p>New resolution introducing a new classification of accredited agent. The new classification of "network agent" is directed at large agents who have been accredited for at least 3 years and with no history of consistent irregularities or default. Classification as a network agent entitles an agent or group of agents to automatic approval of branch offices. The resolution sets out:</p> <ul style="list-style-type: none"> • the criteria for qualification and retention; • application procedures including forms and fees; • procedures on change of ownership; • procedures for review of a rejected application including review by the Travel Agency Commissioner and arbitration; • provisions in relation to capacity, indemnity and waiver incorporated from the Passenger Sales Agency Rules. <p><i>Note: This resolution has been included as it may impact on Resolution 816(3) which is included in Appendix B Part 1</i></p>
866	Definitions of terms used in Passenger Agency Programme Resolutions	<p>New resolution consolidating all the definitions of terms and expressions used in resolutions of the Passenger Agency Conference into a single resolution.</p> <p><i>Note: This resolution has been included as it defines terms and expressions used in resolutions contained in Appendix B Part 1.</i></p>
878	General Concurrence	<p>New resolution clarifying the procedures and form to be used by airlines for the depositing of a statement of general concurrence.</p> <p><i>Note: This resolution has been included as it supplements the general concurrence provisions contained in Resolution 816(4), which is included in Appendix B Part 1.</i></p>

Annexure B

Schedule 2 Part A to IATA application dated 15 July 2004

AUTHORISED 2004 AMENDMENTS TO OR SUBSTITUTIONS FOR THE RESOLUTIONS SPECIFIED IN APPENDIX B PART 1

No.	Title	Outline of changes²	Impact of changes
816 (3) Paragraph 3.4.3	Passenger Sales Agency Rules - South West Pacific	<p>Amended in relation to Australia to remove provisions which may have been interpreted as restricting accredited agents to operating during normal business hours only.</p> <p>Also amended in relation to Australia to remove the prohibition on an accredited agent sharing premises with another agent. Premises are now permitted to be shared provided that the agents concerned are separate legal entities and separately identify their transactions, tickets and reservations sales.</p>	<p>These amendments will have a liberalising effect on the programme in Australia.</p> <p>The existing premises requirement under Resolution 816, paragraph 3.4.3, prescribes requirements for accredited agency premises which are out of date with current business practices.</p> <p>These amendments will enable an accredited agent to share premises with another agent and to operate outside of normal business hours, which may assist in reducing operating costs and financial burden for accredited agents.</p>

² This outline is provided for general guidance only. The full text of the new and amended resolutions, indicating the amendments made, is attached to IATA's application dated 15 July 2004.

Annexure B (continued)

Schedule 2 Part B to IATA application dated 15 July 2004

AUTHORISED 2004 DECISIONS OF THE GENERAL ASSEMBLY SOUTH WEST PACIFIC MADE USING POWERS DELEGATED PURSUANT TO RESOLUTIONS APPEARING IN APPENDIX B PART 1

No.	Title	Outline of changes ³	Impact of changes
816 (3) Paragraph 3.4.3	Passenger Sales Agency Rules - South West Pacific	Amended in relation to Australia to remove provisions which may have been interpreted as restricting accredited agents to operating during normal business hours only. Also amended in relation to Australia to remove the prohibition on an accredited agent sharing premises with another agent. Premises are now permitted to be shared provided that the agents concerned are separate legal entities and separately identify their transactions, tickets and reservations sales.	These amendments will have a liberalising effect on the programme in Australia. The existing premises requirement under Resolution 816, paragraph 3.4.3, prescribes requirements for accredited agency premises which are out of date with current business practices. These amendments will enable an accredited agent to share premises with another agent and to operate outside of normal business hours, which may assist in reducing operating costs and financial burden for accredited agents.
	Locally Established Criteria for Accreditation and Retention of Agents - South West Pacific	Australian locally established criteria for financial evaluation of agents amended to expand the categories of acceptable security to include bonds and guarantees issued by other than authorised insurers.	This amendment will have a liberalising effect on the programme in Australia. It means that agents now have more options in the form of security that they can provide in order to fulfil the financial evaluation criteria.

³ This outline is provided for general guidance only. The full text of the new and amended resolutions, indicating the amendments made, is attached to IATA's application dated 15 July 2004.