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Commission**

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17 March 2005

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Dear «Salutation»

International Air Transport Association – Passenger Agency Program Applications for Minor Variation to Authorisation A90791

The Australian Competition and Consumer Commission (the ACCC) has received applications for minor variation to authorisation A90791 from the International Air Transport Association (IATA). These applications relate to changes to the Passenger Agency Program in Australia and to a condition of authorisation of that program.

Background

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 was granted by the ACCC on 13 November 2002 and concerns the IATA Passenger Agency Program (IPAP). The authorisation process in the *Trade Practices Act 1974* (the Act) allows the ACCC to grant immunity from the application of many of the restrictive trade practices provisions of the Act. In order to grant authorisation the ACCC must be satisfied that the public benefit arising from the particular conduct outweighs any anticompetitive detriment arising from the conduct.

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.

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. 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. The ACCC's authorisation of the IPAP was conditional on IATA taking action in a number of areas.

Since 2000, subsequent annual IATA Passenger Agency Conferences have passed resolutions amending elements of the year 2000 version of the IPAP Conference Resolutions Manual. On 5 March 2003 and 20 October 2004, the ACCC varied authorisation A90791 in accordance with the minor variations sought by IATA.

The Act allows a party to an existing authorisation to apply for a minor variation to that authorisation. Before the ACCC can progress an application for minor variation, it must be satisfied that the variation is in fact minor and does not involve a material change in the effect of the authorisation.

If the ACCC accepts a potential variation as minor, it may only make a minor variation to an existing authorisation if it is satisfied that, in all the circumstances, 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.

In assessing the likely impact of an application for minor variation on the existing overall benefit to the public of an authorisation, the ACCC undertakes a public consultation process seeking comments on the application from interested parties. Following the consultation process, the ACCC issues a final decision. No draft decision is issued in response to minor variation applications.

Condition of authorisation A90791

Authorisation A90791 was granted subject to a number of conditions, including the following:

Within two years of the date this determination comes into force, entry into general concurrence by an airline is to be conditional upon the airline providing a statement of reasons to both the agency and the Executive Council Australia in relation to any agency in Australia which it refuses Traffic Documents or Carrier Identification Plates or from whom it withdraws such Documents or Plates.

The above condition was to be implemented by 5 December 2004, but was not complied with by the due date. The ACCC considers that non-compliance with a condition is a matter of serious concern. Under s.91B(3) of the *Trade Practices Act 1974*, where a condition to which an authorisation is expressed to be subject has not been complied with, the ACCC may initiate a process which could lead to the revocation of the authorisation.

The ACCC has raised this issue with IATA and in response IATA has lodged an application for minor variation seeking to substitute the existing condition with a new condition as detailed below.

IATA's application of 11 March 2005

On 11 March 2005, IATA lodged an application for a minor variation which proposes to substitute the text of the above condition with the following:

By 1 August 2005, the IATA Passenger Agency Conference resolution establishing and governing the IATA Passenger Agency Programme as it applies in Australia (i.e. Resolution 816) is to include a provision to the effect that IATA member airlines who have entered general concurrence in relation to Australia are to provide a statement of reasons to any IATA accredited agent in Australia, if requested by the agent to do so in writing, where the airline either declines to provide the agent with ticketing authority or carrier identification plates or from whom the airline withdraws such authority or plates.

IATA submits that the effect of this variation is to:

- make the requirement a stand alone requirement, rather than a condition of general concurrence;
- remove the requirement that the statement of reasons also be given to the IATA Executive Council Australia;
- correct minor technical inaccuracies in the original condition; and
- extend the date for compliance from 5 December 2004 to 5 August 2005 to allow the matter to be voted on by airlines at the 2005 IATA Passenger Agency Conference.

IATA further submits that the variation 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.

The ACCC considers the issues raised by IATA's proposed changes to the condition to be:

- whether it is more appropriate to have wider circulation of a statement of reasons provided to an accredited agent (for example through the Executive Council Australia), or for such a statement to remain restricted to the parties involved; and
- whether a statement of reasons should be provided to accredited agents only if requested rather than automatically.

A copy of the application is attached.

IATA's application of 23 December 2004

IATA seeks the following minor variation to Authorisation A90791:

- that Determination A90791 be amended by inserting the text set out in Schedule 2 to this application (other than the section entitled 'impact of changes') at the end of and to form part of Part 2 of Appendix B.

IATA indicated that the effect of the variation is to update Appendix B to Determination A90791 to extend the authorisation to amendments and substitutions for the resolutions listed in Part 1 of Appendix B to Determination A90791 adopted by IATA's members at the meeting of the IATA Passenger Agency Conference in May 2004 and that are applicable to Australia.

IATA submits that the proposed changes liberalise the provisions relating to satellite ticket printers by separating them from the general sales agency rules and thereby clarifying and simplifying them. IATA further submits that the remaining changes covered by the application are minor or technical changes only and thus the effect of the changes covered by the application is expected to be neutral.

IATA also applied for interim authorisation pending the ACCC decision on it. On 8 February 2005, the ACCC decided not to grant interim authorisation to the minor variation. The ACCC considered it difficult to assess the request for interim authorisation while discussions are ongoing concerning compliance with a condition of authorisation and where there is uncertainty with the authorisation which IATA seeks to vary.

A summary copy of IATA's application for minor variation, including Schedule 2, is enclosed. A copy of IATA's full submission is available on the ACCC's website at <http://www.accc.gov.au/content/index.phtml/itemId/565201>

Your views are sought

When the ACCC authorised the IPAP in November 2002, it concluded that the IPAP generated a net benefit to the public (subject to certain conditions). The ACCC is required when assessing the applications for minor variation to determine whether the proposed 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 authorisation A90791 outweighs any detriment to the public caused by the authorisation.

To assist the ACCC in its consideration of IATA's applications you are invited to make a written submission to the ACCC regarding the likely public benefits and effects on competition of the proposed variations to authorisation A90791, and in particular the issues identified above by the ACCC.

The ACCC asks for submissions to be in writing so they can be made publicly available. Submissions are placed on a public register and may be also placed on the ACCC's website located at <http://www.accc.gov.au>.

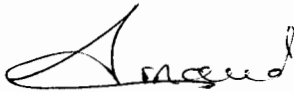
Should you lodge a submission with the ACCC you may request that information included in the submission be treated as confidential and not placed on the public register or website. The ACCC may take confidential information into account during its assessment of an authorisation application. Guidelines for seeking confidentiality are enclosed for your information. Submissions should reach the ACCC by **cob Monday 4 April 2005** and should be addressed to:

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

Submissions can also be lodged by e-mail to adjudication@acc.gov.au or faxed on (02) 6243 1211.

Should you have any query about this matter, please do not hesitate to contact me on 02 6243 1049 or Jason Byrne on 02 6243 1279.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Isabelle Arnaud', with a stylized flourish at the end.

Isabelle Arnaud
Director, Adjudication

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