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MINTER ELLISON BUILDING 25 NATIONAL CIRCUIT FORREST
GPO BOX 369 CANBERRA ACT 2601 AUSTRALIA
DX 5601 CANBERRA www.minterellison.com
TELEPHONE +61 2 6225 3000 FACSIMILE +61 2 6225 1000

13 May 2005

BY COURIER

Mr Scott Gregson
General Manager, Adjudication
Australian Competition & Consumer Commission
470 Northbourne Avenue
DICKSON ACT 2602

Dear Mr Gregson

**International Air Transport Association - Passenger Agency Programme
Application for minor variation of authorisation A90791 dated 10 March 2005**

Please find enclosed IATA's response to the submission to the ACCC by the Australian Federation of Travel Agents Limited dated 9 April 2005 on IATA's application for minor variation dated 10 March 2005.

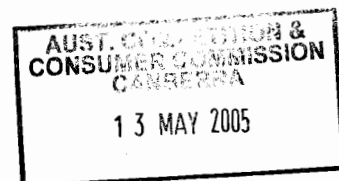
Should you have any queries in relation to this response submission, please do not hesitate to contact me on 6225 3200.

Yours faithfully
MINTER ELLISON


Cathryn Lane
Senior Associate

Contact: Cathryn Lane Direct phone: +61 2 6225 3200 Direct fax: +61 2 6225 1200
E.mail: cathryn.lane@minterellison.com
Partner responsible: Russell Miller Direct phone: +61 2 6225 3297
Our reference: CML.RVM 26-1323799
Your reference: C2005/479

enclosure



International Air Transport Association
Application for minor variation of authorisation A90791
IATA Passenger Agency Programme

RESPONSE TO THE AUSTRALIAN FEDERATION OF TRAVEL AGENTS
SUBMISSION DATED 9 APRIL 2005

1. Introduction

- 1.1 This response is made by the International Air Transport Association (**IATA**) to the submission to the Australian Competition and Consumer Commission (**ACCC**) by the Australian Federation of Travel Agents Limited (**AFTA**) dated 9 April 2005.
- 1.2 This response deals only with that part of AFTA's submission that responds to IATA's application for minor variation dated 10 March 2005. IATA will provide a separate response to the part of AFTA's submission that is concerned with IATA's application for minor variation dated 23 December 2004.

2. Specific comments

- 2.1 IATA's detailed responses to each element of the AFTA submission are set out in the table below.

International Air Transport Association
Montreal, Canada
12 May 2005

**INTERNATIONAL AIR TRANSPORT ASSOCIATION
APPLICATION FOR MINOR VARIATION TO A90791**

**DETAILED IATA RESPONSE TO THE
AFTA SUBMISSION DATED 9 APRIL 2005**

In this table IATA has reproduced the Australian Federation of Travel Agents Limited (AFTA) submission dated 9 April 2005, so far as it relates to IATA's minor variation application dated 10 March 2005, in full and provided IATA's comments on each paragraph.

Para	AFTA submission	IATA response
1.	We refer to your letter of 17 March 2005 and the applications for minor variation of authorisation lodged by the International Air Transport Association (IATA) in respect of the Passenger Agency Program (PAP). The Australian Federation of Travel Agents (AFTA) makes the following submissions in response to the said applications.	No comment required.
2.	These submissions respond to the IATA submissions which form Schedule 3 to the Application dated 11 March 2005 and 23 December 2004.	No comment required.
3.	<p>The Commission in its determination (Authorisation 90791) at clause 9.30 stated: 'Given the potential significance for an accredited agent which has signed the PSAA of being denied plates by an airline in general concurrence, and given the inconsistency between an airline entering general concurrence and denying an agent plates, the Commission proposes to make authorisation conditional upon IATA within two years of the date of this determination taking effect:</p> <ul style="list-style-type: none"> • making entry into general concurrence by an airline conditional upon the airline providing a statement of reasons to both the agency and the Executive Council Australia (EXCAU) in relation to any agent in Australia which it refuses plates or from which it withdraws plates'. 	The ACCC had proposed a similar condition in the Draft Determination. At the pre-determination conference IATA raised concerns about the proposed condition based on both its practical effect and on IATA's lack of ability to comply with it. A number of airlines also raised serious objections to the proposed condition at the conference. Following the pre-determination conference IATA lodged a submission on this issue with the ACCC.
4.	<p>IATA both in response to the draft determination and at the pre-determination conference stressed that the regulations which govern the PAP are determined by member airlines and not by IATA.</p> <p>As the Commission noted at paragraph 9.31 of the determination, at the 2002 IATA Passenger Agency Conference (PAConf) the delegates agreed to communicate to agent representatives of the Global Consultative Committee (GCC) that they were prepared to accept a revised version of the Passenger Sales</p>	This is an accurate summary of the position. IATA staff implement the rules and manage the Passenger Agency Programme on behalf of member airlines.

Para	AFTA submission	IATA response
	Agency Agreement (PSAA) which included a provision whereby a carrier which refuses to place its 'Traffic Documents' or 'Carrier Identification Plates' with an agent or subsequently withdraws them, then for that carrier to provide the agent with the reasons in writing.	
5.	Notwithstanding the agreement reached at the 2002 PAConf the revised PSAA containing the above provision was never adopted by the IATA membership.	There were a number of reasons that the revised PSAA was not adopted at the 2002 meeting of the Passenger Agency Conference. One of the principal reasons was that the travel agent representatives on the Global Consultative Committee requested the Conference not to adopt it.
6.	<p>At paragraph 2.2 of the IATA submission reference is made to a statement made by Mr Hatton at the pre-determination conference to the effect that travel agents had no problems with Qantas in Australia regarding the question of issuing of plates. Whilst that accurately reflected the position as at the date of the pre-determination conference, that position has now changed: AFTA is aware of incidences where an IATA accredited travel agent has been refused plates by Qantas on the basis that the airline has determined that the agent lacked financial viability notwithstanding the fact that the agent had met the IATA financial criteria as part of the accreditation process.</p> <p>The commission should further note that Qantas is the only full IATA member operating in the Australian domestic market, and therefore enjoys a dominant position in this market for domestic sales made through the GDS and BSP mechanism.</p>	<p>IATA is not in a position to respond to this claim without further details. In any event, as both the airlines and IATA have previously informed the ACCC, a range of commercial considerations dictate how an airline responds to a request for plates: see paragraphs 5.4-5.8 of IATA's supplementary submission dated 31 July 2002.</p> <p>The point that AFTA is seeking to make is not clear. In any event, the statement that Qantas is the only IATA member airline offering domestic services in Australia is inaccurate: both Qantas and Regional Express are IATA member airlines. In addition, any suggestion that participation in the BSP is restricted to IATA members is also incorrect. Non-IATA member airlines can and do participate in the BSP both in relation to domestic and international sales.</p>
7.	In answer to paragraph 2.2 of the IATA submission, what IATA does not highlight of course is that the introduction of the Billing and Settlement Plan (BSP) into a country reduces the necessity for an airline to have a physical presence in that market. Under pre-BSP conditions member airlines had the onerous task of distributing and controlling their own ticket stocks with all the associated risks. Under BSP conditions that situation changed as it was now possible, using the BSP, for an airline to provide all accredited agents in a BSP country with its plates in the hope of picking up sales which would otherwise not have been available to it. Historically, especially in Europe, under pre-BSP	<p>In paragraph 2.2 of its submission, IATA simply reminded the ACCC of what airlines with a smaller presence in Australia informed Commissioner Jones at the pre-determination conference:</p> <ul style="list-style-type: none"> • that a range of commercial considerations dictate how an airline responds to a request for plates; • these include the support the airline is able to provide the agent given its staff levels in Australia and the nature and scope of business the agent is likely to introduce to the airline; • they could not serve a large number of

Para	AFTA submission	IATA response
	<p>conditions it was an individual airline ticket stock which was most widely distributed amongst agents in a country which tended to be used by default on behalf of non-ticket depositing airlines. This created valuable cash flow and market intelligence advantages stemming from such windfall transactions. The introduction of BSP of course provided agents with airline neutral tickets.</p>	<p>agents who might want their plates; and</p> <ul style="list-style-type: none"> that in any event the agents are not disadvantaged because they can and often do deal through consolidators.
8.	<p>It is submitted that once distributed, airline plates are self-sustaining and do not need airline support. If airlines wish to provide that support then that is a marketing decision made by the airline in its own self interest. The BSP machinery and the agent as the ticket issuer does most of the work. However, a physical presence by an airline in a market is not a requirement of BSP.</p>	<p>IATA is not suggesting that in order to participate in the BSP an airline must have a physical presence in Australia. Rather, the existence and extent of an airline's physical presence in Australia, and the management of its plates, are commercial matters for the airline.</p>
9.	<p>At paragraph 2.3 of the IATA submission IATA restates that all IATA does is to implement rules and manage the program on behalf of member airlines, and that ultimately it is the members who determine the provisions for the conduct of the IATA Traffic Conferences. With respect to IATA this is a disingenuous argument. The original application (No. A90791) was lodged by IATA seeking authorisation for the IATA PAP. Authorisation was subsequently granted subject to the imposition of conditions. It is insufficient for IATA to then respond that it has no ability to implement resolutions required as a condition of the granting of authorisation whilst its members still take the benefit of the authorisation.</p>	<p>IATA objects to AFTA's assertion that IATA is being disingenuous. The fact is that IATA has no power to change the rules applicable to any of its programmes. The relevant resolutions are under the control of, and can only be amended by, resolutions of member airlines participating in the IATA Passenger Agency Conference. The fact that the application for authorisation A90791 was lodged by IATA is not inconsistent with this position. That application was made on behalf of IATA's member airlines as well as IATA itself (and also extended to participants in the consultative bodies established by the Conference and the General Assembly, such as the Executive Council).</p>
10.	<p>AFTA is not aware of any instance where an IATA Traffic Conference has refused to accede to a condition imposed by a regulator as part of the granting of approval to a Conference Resolution. To the contrary, AFTA can provide a number of examples in which the requirement of a government regulator has resulted in IATA Traffic Conferences making the requisite changes.</p>	<p>IATA is committed to working in cooperation with governmental authorities. As it is currently doing with the ACCC condition, this includes working with its member airlines to achieve support for changes to implement conditions imposed by regulators.</p>
11.	<p>The creation of Resolution 814 (the Area 2 precursor to Resolution 816) which approximately 20 years ago liberalised the agency program in Europe, was done at the behest of the European Commission (EC). The EC made it clear to IATA that any resolution not containing the criteria the EU spelt out to the Passenger Agency Conference (PACConf) would be disapproved and disciplinary action might thereafter be expected. On that occasion, an EC official</p>	<p>Resolution 814 was adopted by the IATA Passenger Agency Conference in 1990 and addressed a number of conditions placed on the immunity for the Passenger Agency Conference in Europe. As with the changes required by the ACCC condition, these changes had to be adopted by the Conference, not IATA. Just as it did in relation to the adoption of Resolution 814, IATA is working now to convince the Conference to adopt the necessary changes.</p>

Para	AFTA submission	IATA response
	addressed a session of PAConf in person. Resolution 814 was adopted by the PAConf.	
Action since authorisation		
12.	AFTA is critical of IATA's attempt to implement the condition. IATA was aware of the two years implementation requirement placed on it by the Commission and yet did not act until shortly before the expiry of the two year term. The resolution was put to a mail vote of IATA members. AFTA understands there were 26 votes against the resolution. As the Commission will be aware, a resolution determined by mail vote will fail if there is a single vote against it.	<p>IATA has acknowledged that it has acted in a less timely manner than it or the ACCC might have wished in this matter, and has explained the reasons for this in its submission in support of the application: see paragraphs 6.1-6.2 of that submission.</p> <p>Any implication that by putting the matter to a mail vote meant that due to the requirement for a unanimous vote the changes would be more difficult to have adopted is incorrect. A unanimous vote is also required to pass resolutions at a meeting of the Conference.</p>
13.	The Commission is aware that the next PAConf is to be held in June this year in Singapore. IATA has provided the Commission with no information (other than to say that it does not wish to risk a second mail vote) as to what steps it has taken to have a resolution in respect of the condition put before the June PAConf, or whether there is sufficient time under the IATA regulations to distribute a resolution for consideration at the PAConf. Indeed IATA states that 'it will not be an easy task to convince airlines to do so'.	<p>IATA has informed the ACCC by letter dated 10 May 2005 that proposed amendments to Resolution 816 to give effect to the substitute condition that IATA is seeking have been included in the agenda for the meeting of the Passenger Agency Conference which will be held in Singapore from 7 to 9 June 2005.</p> <p>IATA has not stated, as AFTA suggests, that in relation to putting a resolution before the June Conference meeting "it will not be an easy task to convince airlines to do so". This is taken from paragraph 2.5 of IATA's submission in support of its application to substitute a new condition, where IATA in fact stated "it <u>would</u> not be an easy task to convince airlines to do so" and was in reference to implementation of the existing condition. As is made clear in that submission, IATA accepts that the ACCC's intention behind the existing condition is sensible and believes that, notwithstanding the rejection to date, it can probably achieve airline support for changes to the Passenger Agency Programme as it applies in Australia to meet that objective: see para 3.5.</p>
14.	The PAConf regulations allow for a government regulator or a party with an interest in an agenda item to attend the PAConf and address the meeting. Should it be necessary the Commission could send a representative to the Singapore PAConf in order to inform IATA members of the Commission's requirements in order for the PAP to be authorised in this country. This may be a solution to the problems IATA have alluded to in paragraph 2.7 of its submissions.	<p>The reasons that IATA's members have not implemented the condition to date are explained in detail in IATA's submission in support of this application, and are unrelated to any lack of awareness as to the requirements for authorisation.</p> <p>IATA does not believe there is any need for the Commission to address the upcoming meeting of the Passenger Agency Conference on the matter but should the Commission wish to send an observer to that meeting it would be welcome to do so. Arrangements have of course been made previously for ACCC observers to attend IATA Conference meetings including the 2002</p>

Para	AFTA submission	IATA response
		meeting of the Passenger Agency Conference.
<i>The condition-essential issue</i>		
15.	In response to paragraph 3.1 of the IATA submission, the Commission identified that the obligation to provide reasons should be automatic upon the decision being made to refuse or withdraw plates and should be given by the airline concerned: it was not intended that a prerequisite for giving reasons must be a request by the agent. Further, the obligation to provide reasons was contemplated in clause 4.1 of the now abandoned revised PSAA.	IATA is not aware of the source of AFTA's assertion that the ACCC has identified that the obligation to provide reasons should be automatic upon the decision being made to refuse or withdraw plates. There is no such statement contained in Determination A90791. The wording of clause 4.1 of the proposed revised PSAA simply stated that the agent was "entitled to be informed in writing of the reason". Whether or not this indicated an obligation to provide reasons or an entitlement to request reasons is ambiguous, but in any event has no relevance to the condition contained in A90791.
16.	AFTA notes that at paragraph 3.2 of the IATA submission that IATA does no more than state it 'can probably' achieve airline support for the changes required by the Commission as a condition of authorisation. However IATA is not prepared to tell the Commission that its members will do all things necessary (including the passing of the appropriate resolutions) to comply with the conditions of authorisation.	IATA cannot compel its members to take any action in relation to the Passenger Agency Programme. As explained above, the fact is that IATA has no power to change the rules applicable to any of its programmes. The relevant resolutions are under the control of, and can only be amended by, resolutions of member airlines participating in the IATA Passenger Agency Conference. Assuming that the technical difficulties that are associated with the condition as currently formulated are addressed, it remains a matter for IATA's members, rather than IATA, to implement the changes necessary to meet that modified condition. IATA believes, however, that the underlying objective of the current condition is sensible and that by resolving the technical problems associated with the existing condition IATA can probably achieve the support needed from its members to implement that objective.
<i>Problems with the condition as formulated</i>		
17.	The following submissions address the 'problems' identified by IATA in its submission. In AFTA's opinion, subject to one exception, the problems identified by IATA in fact do not arise.	Each of AFTA's submissions are addressed below.
<i>Conditioning General Concurrence - 'General Concurrence' not limited to Australia</i>		
18.	General concurrence is a country by country mechanism. A review of every list published by IATA in the Travel Agent's Handbooks shows that few airlines issue a single letter to IATA proclaiming that they generally concur worldwide to all appointments. As the Commission will be aware, the Travel Agent's Handbook is published either nationally or for	General concurrence is, as IATA explained in its submission, a worldwide mechanism. It is a facilitative arrangement which makes the agent appointment process simpler and more efficient for airlines and agents. As part of the facilitative nature of general concurrence, although an airline wishing to use the facility can do so worldwide it is not obliged

Para	AFTA submission	IATA response
	regions but not globally. Therefore the term 'worldwide facilitative mechanism' is misleading.	to do so. An airline's statement of general concurrence can cover one, two or all three of the IATA "Areas" into which the world is divided for the purposes of IATA resolutions. It also has the option to exclude specific countries within a selected Area. The decision on where in the world an airline may wish to use the general concurrence facility is a commercial consideration for that airline. The fact that the Travel Agent's Handbooks are published on a country or regional basis has no relevance to the worldwide nature of the general concurrence mechanism.
19.	<p>The Commission's attention is drawn to the schedule regarding General Concurrence published by IATA in the Travel Agent's Handbook applicable for Australia. To assist the Commission a copy of the Schedule which appears at pages 121 - 122 of the Travel Agent's Handbook Resolution 816 Edition (January 2003) is attached. IATA states:</p> <p style="padding-left: 40px;">'The following Member Airlines have deposited a statement of general concurrence with the Agency Administrator for the appointment of Accredited Agents in Area 3 in accordance with the provisions of Section 4 of the Passenger Sales Agency Rules - SWP'.</p> <p>In other words the general concurrence is in respect of Area 3 only.</p>	See IATA comments at paragraph 18 above.
20.	<p>The Commission's attention is also drawn to the notes which form part of the Schedule which specify limitations placed by specific airlines on their general concurrence. For example Air Canada has limited its general concurrence in relation to Bangladesh, India, Nepal, Pakistan, and Sri Lanka, and other airlines have similarly limited their general concurrence in various areas.</p>	See IATA comments at paragraph 18 above.
21.	<p>It follows from the above that member airlines have lodged separately with the Agency Administrator a general concurrence applicable for Area 3 only.</p>	See IATA comments at paragraph 18 above.
22.	<p>The schedule makes reference to 79 airlines having signed the general concurrence for Area 3 out of a total IATA membership of 248 (see schedule I to the IATA submission). When one takes into account this statistic together with the limitations laid down in notes 1 to 10 to the Schedule, it is difficult to see how IATA can maintain the position that general concurrence 'is a worldwide facilitative</p>	See IATA comments at paragraph 18 above.

Para	AFTA submission	IATA response
	mechanism'.	
23.	In reply to paragraphs 4.2(a) (iv) and (v), many airlines' statements of general concurrence have been in place, untouched for many years. AFTA suspects that if those records were to be audited one would find many gaps and omissions. For example, the Commission could enquire as to how many members who have joined IATA, say in the last five years, have actually filed a letter of general concurrence. Further, IATA asserts that 130 airlines have issued letters of general concurrence but IATA fails to mention how many are conditional or limited and why the remainder of the IATA membership (some 118 members) have not sent the Director General their letter. The simple answer of course is that airlines do not bother to do so.	As explained at paragraph 18 above, general concurrence is a facilitative mechanism. Whether or not an airline chooses to use it and where is a commercial matter for the airline concerned.
24.	IATA has chosen a construction of the condition in a way that it is simply not borne out by the facts. The wording of the condition does not give rise to two separate classes of airline members. Even if IATA's construction were to prevail the matter may be resolved by member airlines lodging new or revised general concurrences applicable to Australia. The problem is not one of feasibility as asserted by IATA but really one of convenience.	IATA has not chosen any particular construction of the condition. Instead, IATA has merely pointed out that, as the condition has been drafted, it is possible to be interpreted as only applying to airlines who actually enter general concurrence in relation to Australia after the date that the authorisation came into force, rather than all airlines regardless of date of entry into general concurrence. This ambiguity is one of the issues addressed in IATA's proposed substitute condition.
25.	Similarly, the construction placed by IATA on the condition that it applies to any airline, anywhere in the world, that enters into general concurrence whether or not the airline operates services to Australia, can simply be resolved by the lodgement of a new or revised general concurrence with any limitations imposed on it as the airline may require.	IATA is not placing any particular construction on the existing condition. The fact is that as currently drafted the condition is expressed to apply to any airline that has entered into general concurrence. There is no limitation to those airlines operating services to Australia.
<i>The meaning of 'Agency'</i>		
26.	The Commission in granting authorisation has made numerous references to the three core elements of the PAP, namely 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.	No IATA comment required.
27.	It is clear that the PAP is of and concerning <i>accredited</i> travel agents. Indeed the definition of 'Accredited Agent' which appears in Resolution 816 is expressed as: <i>'(sometimes referred to as 'Agent) means a Passenger Sales Agent whose name is entered on the Agency List.'</i>	No IATA comment required.

Para	AFTA submission	IATA response
28.	The condition that an airline must give reasons to an agent can only refer to an IATA accredited agent.	<p>In the absence of any express indication otherwise, it cannot be assumed that in using a term which happens to be a defined term for the purposes of IATA resolutions the ACCC is necessarily adopting the meaning under IATA's resolutions rather than the ordinary meaning.</p> <p>Furthermore, the condition in fact refers to an airline giving reasons to an agency, rather than an agent. While "Agent" means an accredited agent under Resolution 816, "agency" is not so defined.</p>
<i>Traffic Documents</i>		
29.	<p>Contrary to IATA's submissions there are definitions of 'Traffic Documents' within the IATA resolutions. For example PAConf Resolution 866 (and the subject of IATA's second application) has a definition for the term. The Commission only needs to refer to the definitions section of resolution 816 to find the following definition of 'Traffic Documents':</p> <p><i>'Means the following forms issued manually, mechanically or electronically for air passenger transportation over the lines of the Member or Airline and for related services, whether or not they bear a pre-printed individual Member's identification '</i></p> <p>The definition then goes on to provide a detailed description of:</p> <p>(a) Carriers' own Traffic Documents; and (b) Standard Traffic Documents.</p>	<p>IATA's submission was not that the term "Traffic Documents" was not defined in IATA resolutions. Rather, it was that the term was not defined for the purposes of the condition. As explained above, in the absence of any express indication otherwise, it cannot be assumed that in using a term which happens to be a defined term for the purposes of IATA resolutions the ACCC is necessarily adopting the meaning under IATA's resolutions rather than some other meaning.</p>
30.	<p>In response to the IATA statement that airlines do not place their own ticket stocks with agents, not all airlines are in the BSP and those who stay outside are entitled to deposit their own dedicated ticket stocks with their appointed agents.</p>	<p>AFTA is correct that any IATA member operating services to Australia that did not participate in the BSP Australia would place stocks of its own tickets with accredited agents. Currently, however, there are no IATA members operating services to Australia that do not participate in the BSP.</p> <p>Neutral IATA tickets are used for those airlines that do participate in the BSP. Stocks of IATA tickets are issued to the agents by IATA, and the airline provides ticketing authority in the form of plates or CRS connection.</p>
31.	<p>In the EU member states and because of a requirement of the EC, any BSP airline is at liberty to place its own tickets alongside the IATA Standard Traffic Documents. This is but another incidence of a regulatory condition being accepted by PAConf.</p>	<p>This provision was adopted as part of Resolution 814: see IATA comment at paragraph 11 above. It is not commonly used as the advantage of IATA neutral ticket stock is the cost efficiencies that it provides. An airline participating in a BSP will incur additional overheads when placing its own ticket stock with an accredited</p>

Para	AFTA submission	IATA response
		agent in addition to IATA neutral ticket stock.
<i>Executive Council</i>		
32.	Evidence was put before the Commission that the membership of the Executive Council Australia (EXCAU) had been altered so that travel agents had obtained equal representation. The EXCAU may make recommendations to the General Assembly South West Pacific (SWPGA) on matters within its jurisdiction, or on which the EXCAU would like the SWPGA to provide advice to PAConf. At the time of the making of the determination the EXCAU was the highest forum within the IATA hierarchy in which travel agents had equal representation.	<p>IATA does not understand to what evidence AFTA is referring. Over the period of time that IATA's application for authorisation A90791 was under consideration by the ACCC, and since that authorisation was granted, Resolution 816 has provided for equal agent and airline representation on the Executive Council Australia.</p> <p>For Australian accredited agents, the Executive Council is the highest consultative forum at the national level in the IATA Passenger Agency Programme. However, at the international level IATA has the Global Consultative Committee (GCC). The GCC also has equal agent and airline representation. Its membership includes the CEO of AFTA.</p>
33.	Having said that travel agents have for a number of years requested without success that the status of the EXCAU be changed to an Agency Programme Joint Council (APJC). An APJC has the authority to make local decisions on the PAP and such decisions are binding upon IATA members. The EXCAU as a consultative body can be overridden by IATA members at any time.	<p>In IATA's submission, AFTA's claims are irrelevant to the question before the ACCC.</p> <p>Leaving this aside, while AFTA has informally mooted the idea of the Executive Council Australia being changed to an APJC from time to time, as far as IATA is aware no request has ever been made to the Executive Council to consider such a proposal.</p> <p>It is correct that APJCs in some parts of the world have delegated authority to make decisions on local matters. This authority covers local criteria for financial standing and staff competence.</p> <p>As far as IATA is aware, all recommendations that have been made by the Executive Council have been accepted by the General Assembly South West Pacific and, where relevant, the Passenger Agency Conference.</p>
34.	IATA's response to agents' requests to change the status of EXCAU has been that the SWPGA always accepts a recommendation from the EXCAU and therefore the change of status is not necessary. However as was clearly evident when the agent delegates of the EXCAU recommended against the change in the BSP billing cycle to seven days IATA members implemented the new cycle in Australia contrary to agent delegates of the EXCAU's wishes	<p>In IATA's submission, AFTA's claims are irrelevant to the question before the ACCC.</p> <p>Leaving this aside, in relation to AFTA's statements as to requests to change the status of the Executive Council Australia see IATA's comment at paragraph 33 above.</p> <p>In relation to AFTA's statements about the change to the BSP billing cycle, IATA makes the following comments:</p> <ul style="list-style-type: none"> • this is not an example, as AFTA seems to suggest, of the South West Pacific General Assembly rejecting a recommendation from the Executive Council. While it is correct that this change was not agreed to in the Executive Council, the Executive

Para	AFTA submission	IATA response
		<p>Council did not make a recommendation against it; and</p> <ul style="list-style-type: none"> • although AFTA representatives did not agree to the change, they actively participated in meetings of the Council and a working group established by the Council to consider the issue of the change to the billing cycle. Ultimately, implementation of the change was delayed and numerous other measures, which provided benefit to agents, were introduced by airlines: see IATA's response to AFTA's submission dated 7 December 2001 at para 3.8.
35.	<p>Agents continue to have problems with the workings of EXCAU: for example there has been a constant refusal by the IATA members on the Council to allow AFTA delegate status (AFTA only enjoys observer status). It is AFTA's submission the cooperation at the EXCAU level is fragile and there is no guarantee that the cooperation will continue into the future.</p>	<p>In IATA's submission, AFTA's claims are irrelevant to the question before the ACCC.</p> <p>Leaving this aside, as far as IATA is aware no request has ever been made to the Executive Council to consider a proposal to allow AFTA delegate rather than observer status, nor is IATA aware of any informal suggestions by AFTA or agents to this effect.</p> <p>As the main consultative forum with Australian accredited agents, IATA believes that the Executive Council is an important part of the IATA Passenger Agency Programme in Australia. IATA has not received any feedback from either agents or airlines in Australia that would indicate that cooperation on the Council is fragile.</p>
36.	<p>Notwithstanding these problems with the functioning of the EXCAU, that body represents the highest level of consultative involvement for travel agents. As such the EXCAU can operate as an independent body to receive a statement of reasons from an IATA member airline. Whilst AFTA acknowledges that notification to the EXCAU is not without its potential problems this in itself should not be the basis for IATA's non-compliance with the Commission's requirement.</p>	<p>The requirement under the condition as currently formulated for airlines to also give reasons to the Executive Council is a fundamental problem for the reasons set out at para 4.2(e)(iv)-(vii) of the submission in support of IATA's application as follows:</p> <ul style="list-style-type: none"> • the disclosure may be defamatory of or damaging to the agent; • the agent representatives on the Executive Council are competitors of accredited agents, and as such disclosing the fact of refusal or withdrawal may amount to, and the reasons for refusal or withdrawal will amount to disclosure of sensitive commercial information to an agent's competitors; and • the Executive Council has no authority to do anything with the information.
37.	<p>The problems identified by IATA could be resolved as follows:</p> <p>(i) The members of the EXCAU could be governed by a code of conduct which would impose obligations of</p>	<p>The first of the measures suggested by AFTA does not satisfactorily address the problems identified in IATA's submission in support of its application.</p> <p>IATA believes that AFTA's proposal for reasons</p>

Para	AFTA submission	IATA response
	<p>confidentiality;</p> <p>(ii) AFTA strongly supports the concept that the reasons for refusal or withdrawal should be given to a third party. If the Commission was mindful of accepting IATA's submissions regarding notification to the EXCAU, a possible alternative would be to have the notification lodged with the Travel Agency Commissioner (TAC) or the Chief Executive Officer of AFTA.</p>	<p>to be provided to the Travel Agency Commissioner is a sensible solution to this issue and one that is likely to be acceptable to its members. As a result IATA has included it in the amendments to be considered by the Passenger Agency Conference at its June meeting.</p>
<i>Proposed alternative condition</i>		
38.	<p>AFTA does not agree with the proposed alternative condition as it shifts the onus onto the agent to request reasons for the granting or withdrawal of airline plates, rather than providing an obligation on the airline to provide them. This was not what the Commission contemplated in the original condition.</p>	<p>IATA does not agree that there is any clear statement in Determination A90791 either way.</p>
39.	<p>If the Commission is mindful of amending the form of the condition set out in paragraph 10.2(3) of the authorisation then AFTA submits the following should be included in the condition as amended:</p> <ul style="list-style-type: none"> • Deletion of the requirement that the request for a reason must be initiated by the agent; • If an IATA member airline which has entered into general concurrence determines to either refuse an agent Traffic Documents or Carrier Identification Plates or to withdraw such documents or plates the agent must be given reasonable notice of such an intention. In AFTA's opinion a reasonable period of notice would be 60 days; • During the notice period the agent would have the right to appeal the decision of the IATA member to the Travel Agency Commissioner; • As a concession AFTA will agree to the deletion of the requirement that the EXCAU be notified of any such decision to be replaced by an obligation to notify the Travel Agency Commissioner. 	<p>IATA believes that AFTA's proposal for the deletion of the requirement that an agent request reasons from an airline is reasonable and one that will be acceptable to its members. As a result IATA will be incorporating this in the amendments to be considered by the Passenger Agency Conference at its June meeting.</p> <p>IATA does not believe that there is any basis on which it could be suggested that AFTA's proposals for a 60 day notice period and right of appeal reflect the ACCC's original intention behind the condition. Nor does IATA believe that either of these proposals would be acceptable to its members. In addition, a right of appeal already exists under Resolution 820e which has been adopted since authorisation A90791 was granted. This resolution gives an agent the right to a review by the Travel Agency Commissioner where it considers that its commercial survival is threatened by an IATA member's individual decision preventing it from acting either as agent for or issuing traffic documents on behalf of that member.</p>
40.	<p>IATA has pointed out that in order to implement the condition an amendment to Resolution 816 is required. Notwithstanding that IATA has had more than two years to</p>	<p>As explained above, proposed amendments to Resolution 816 to give effect to the substitute condition that IATA is seeking have been included in the agenda for the meeting of the</p>

Para	AFTA submission	IATA response
	attend to this, the next opportunity to do so is the June 2005 PAConf IATA operates on a strict timetable for matters to be submitted to PAConf. AFTA understands that the due date for submissions has already passed. AFTA however assumes from the comments at paragraph 5.2 of the IATA submission that IATA is able to put this matter to the June 2005 PAConf notwithstanding the conference submission deadline.	Passenger Agency Conference which will be held in Singapore from 7 to 9 June 2005. Those proposed amendments also address AFTA's proposals in relation to providing reasons to the Travel Agency Commissioner and removing the requirement for agents to request reasons.
Status of current condition		
41.	AFTA has considerable concerns that the condition either in its current form or as the Commission may amend will not be adopted by IATA members. Clearly, if IATA submits the resolution to a mail vote it will fail for a second time.	As explained above, while due to technical difficulties IATA has been unsuccessful in its attempts to convince its members to make the amendments required by the current condition, IATA accepts that the intention behind the existing condition is sensible and believes that it can probably achieve its members' support for changes under its proposed substitute condition to meet that intention.
42.	AFTA submits that the Commission should mandate to IATA that the appropriate resolution be passed at the June 2005 PAConf and be given immediate effect upon successful passage through the PACONF. As we have attempted to set out in these submissions there are many examples where the wish of a regulatory authority has been acceded to by PAConf, and it is simply not acceptable for IATA to continue to assert that the Commission has no entitlement to impose such a condition, or that the IATA Secretariat has no power to convince its members to adopt a resolution.	For the reasons explained above, even if such a mandate were to be issued IATA would not be in a position to comply with it. The fact is that IATA has no power to change the rules applicable to any of its programmes. The relevant resolutions are under the control of, and can only be amended by, resolutions of member airlines participating in the IATA Passenger Agency Conference. IATA has not in its submission in support of this application made any assertion that the ACCC is not entitled to impose the condition. IATA expressly stated that it was putting any such arguments aside in order to focus on producing a substitute condition which IATA believes both meets the ACCC's intention and may be acceptable to its members.
43.	There is a very real risk that if a resolution does not go through the June 2005 PAConf then it will not be considered until the next PAConf in mid 2006 with an effective date of 1 January 2007. AFTA submits that a delay of this magnitude given that authorisation was granted on 13 November 2002 is unacceptable.	As explained above the matter has already been included in the agenda for the meeting of the Passenger Agency Conference which will be held in Singapore from 7 to 9 June 2005.
44.	In the circumstances AFTA is of the opinion that the Commission should address the June 2005 PAConf to convey to IATA members that the conditions are a prerequisite for the granting of authorisation.	See IATA comment at paragraph 14 above.
45.	AFTA submits that the proposed amendment to the condition is not minor as defined in Section 91 A of the Trade Practices Act 1974. The proposed amended condition is not a	IATA submits that the proposed change to the condition does meet the requirements of section 91A because: (a) it involves substitution of a condition that

Para	AFTA submission	IATA response
	<p>substitution of the condition as laid down by the Commission, nor does it give effect to the Commission's apparent original intention. To the contrary, the proposed amendment removes the obligation on airlines to give reasons and makes the giving of reasons only required if requested by an agent. Further, the draft could be interpreted as applying only to those airlines which have already entered into general concurrence in relation to Australia and not to airlines who in the future enter into general concurrence. The condition as imposed by the Commission should determine that entry into general concurrence by an airline is conditional upon the airline providing a statement of reasons.</p>	<p>gives effect to the ACCC's apparent original intention to ensure that IATA accredited agents in Australia are provided with reasons if an airline which has signed general concurrence decides to decline to provide ticketing authority to that agent or cancels that authority;</p> <p>(b) the substitute condition overcomes technical difficulties with the condition as originally drafted;</p> <p>(c) the substitute condition extends coverage of the requirement to all relevant airlines, regardless of when they entered general concurrence; and</p> <p>(d) the change does not lessen the public benefits arising from the IATA Passenger Agency Programme or increase any aspect of the competitive effect of the Programme. All of the public benefits found by the ACCC to arise and set out in the Determination continue to arise, unaffected by this condition. The Determination found only that the Programme had 'potential' anticompetitive effects - not actual or likely anticompetitive effects. The substitute condition does not change that.</p>
46.	<p>It is submitted that the proposed amendment goes to the essence of the condition and therefore should not be amended in the form as sought by IATA.</p>	<p>The proposed change to the condition does not alter the ACCC's apparent original intention to ensure that IATA accredited agents in Australia are provided with reasons if an airline which has signed general concurrence decides to decline to provide ticketing authority to that agent or cancels that authority.</p>