



Australian
Competition &
Consumer
Commission

Determination

Application for Minor Variation of Authorisation A90791

Lodged by

INTERNATIONAL AIR TRANSPORT ASSOCIATION

In respect of the IATA Passenger Agency Program

Date: 16 June 2005

Commissioners: Samuel
Sylvan
Martin
Smith
Willett
King

Public Register no. C2005/94



1. The Application

- 1.1. On 23 December 2004, the International Air Transport Association (the IATA) lodged an application 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 concern the IATA Passenger Agency Program (the 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.

Application for minor variation lodged on 23 December 2004

- 1.5. IATA seeks the following minor variation to authorisation A90791:
 - that Determination A90791 be amended by inserting the text set out at 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.
- 1.6. IATA submits that the effect of the variation is to update Appendix B to Determination A90791 to extend the authorisation to amendments to 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 that are applicable in Australia.
- 1.7. The specific resolutions the subject of IATA's application for minor variation are outlined in Annexure A to this determination.

Interim authorisation

- 1.8. IATA also requested interim authorisation of its application for minor variation.
- 1.9. On 8 February 2005, the ACCC denied interim authorisation in light of IATA's non-compliance with a condition of authorisation A90791. The ACCC considered it difficult to assess IATA's request for interim authorisation when a condition of authorisation had not been complied with, which created uncertainty over the authorisation which IATA was seeking to vary.
- 1.10. The ACCC notes that the issue of non-compliance was dealt with in a determination made by the ACCC dated 16 May 2005 which varied a condition of authorisation.
- 1.11. In a letter dated 18 May 2005, IATA requested the ACCC to reconsider its decision to deny interim authorisation. However, this determination varying authorisation in accordance with IATA's application for minor variation has superseded IATA's request for interim authorisation.

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. Section 91A(4) of the Act 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

- 3.1. The ACCC sought submissions from interested parties on IATA's application for minor variation. A submission was received from the Australian Federation of Travel Agents (AFTA).
- 3.2. Both IATA's and AFTA's submissions are referred to in more detail in the ACCC's evaluation.

4. ACCC Evaluation

Resolution 800b

- 4.1. Resolution 800b is a new resolution which consolidates the rules and procedures for satellite ticket printer locations from resolution 816. It also details requirements applicable to accredited agents in Australia regarding the custody, issue and minimum security standards of traffic documents. Further, resolution 800b details the change of ownership, legal status, name and location provisions to satellite ticket printer locations. The overall purpose of the resolution is to enable accredited agents to print traffic documents at a satellite ticket printer or ticket delivery location.
- 4.2. IATA submitted that the impact of the changes is rather than having all the regional sales agency rules relating to satellite ticket printers, there is now a proposed global resolution which is a single point of reference. IATA further submitted that the proposed changes to the rules for satellite ticket printer locations will have a liberating effect on the IPAP and clarify and simplify many of the rules. IATA submitted that in public benefit terms the proposed resolution is positive because it makes access to the system more transparent.
- 4.3. AFTA submitted that the proposed provisions of resolution 800b are inconsistent with the findings of the Accreditation Review Committee, which was established at the direction of the ACCC as part of the granting of authorisation A90791 in 2002. AFTA further submitted that the adoption of the Accreditation Review Committee's recommendation will conflict with sections 4.1(a), (b) and (c); 5.2 and 5 of Resolution 800b.
- 4.4. The ACCC granted authorisation A90791 subject to a review being undertaken and completed by 5 December 2004 of the conditions imposed by IATA through its IPAP for travel agents in Australia to obtain and retain IATA accreditation. Authorisation was also subject to the recommendations of the review being implemented by 5 December 2005.
- 4.5. The Travel Industry Accreditation Review Committee (TIARC) was established for this purpose and its final report included a number of recommendations including at 13(c):

“[R]ules on premises security, driven largely by the need to secure traffic documents, should be liberalized, including by deletion of the requirement for a safe and for windows and skylights to be secured.”

- 4.6. Recommendation 13(g) of the final report states:

“[I]n lieu of prescriptive security requirements, in the event of loss or theft of traffic documents in an Agent's custody the Agent should be liable for their subsequent fraudulent or improper use until such time as the Agent becomes aware of such theft or misuse and reports the missing documents in writing to the Billing and Settlement Plan who should immediately list them in the Industry Tickets Services Blacklist.”

- 4.7. IATA's application for minor variation was lodged on 23 December 2004 and related to resolutions agreed at an IATA Passenger Agency Conference held in May 2004. In relation to AFTA's submission on this matter and the claim of inconsistency with the TIARC Review, the ACCC would not have expected IATA's application for minor variation as lodged to have adopted the TIARC recommendations at that stage.
- 4.8. That said it would seem to be open to the ACCC, when considering any minor variation application in relation to outcomes from the IATA 2005 Passenger Agency Conference, to take into account potential conflicts with the recommendations of the TIARC Review.
- 4.9. Further, the ACCC notes that the recommendations of the TIARC final report must be implemented pursuant to a condition of authorisation A90791 at the earliest opportunity but no later than 5 December 2005.
- 4.10. The ACCC also notes IATA's advice in its letter to the ACCC of 22 February 2005 that its secretariat is working to prepare resolution amendments reflecting the report recommendations.
- 4.11. The ACCC considers that the proposed resolution is not inconsistent with the existing resolution 816 regarding security requirements, noting that resolution amendments to reflect the TIARC report recommendations would need to be implemented by 5 December 2005.
- 4.12. Therefore, the ACCC is satisfied that resolution 800b is a minor variation and would not result, or be likely not to result, in a reduction in the net benefit to the public caused by authorisation A90791.

Resolution 816(2) and (3)

- 4.13. Resolution 816(2) provides a list of countries to which the resolution is applicable. Resolution 816(3) details the rules and procedures providing for satellite ticket printer locations.
- 4.14. IATA proposes to amend resolution 816(2) to include Papua New Guinea covered by the resolution. IATA also proposes remove the rules and procedures providing for satellite ticket printer locations from resolution 816(3) to reflect the introduction of resolution 800b. The issue of satellite ticket printer locations as it applies to resolution 800b is dealt with above.
- 4.15. The ACCC is satisfied that the proposed variations to resolution 816(2) and 816(3) are minor in nature.
- 4.16. The ACCC considers that the variations are technical amendments and would not result, or be likely not to result, in a reduction in the net benefit to the public caused by authorisation A90791.

Resolution 816(9)

- 4.17. Resolution 816(9) requires that when a refund is made on a fare or charge for any transportation, if the commission or other remuneration has already been paid, any amount in excess of the recomputed commission or remuneration shall be paid back, unless the commission or other remuneration to be recalled on any partially used traffic document is USD 6 or less.
- 4.18. IATA proposes to amend this resolution to remove the requirement that *"...unless the commission or other remuneration to be recalled on any partially used traffic document is USD 6 or less."*
- 4.19. IATA submitted that the amendment removes reference to a fixed value of amounts owing on partially or wholly refunded tickets. IATA further submitted that this is a minor change and reflects improvements in accounting and bookkeeping procedures.
- 4.20. AFTA submitted that the amendment places a further financial burden on travel agents as it removes the monetary threshold on the amount that an airline may recall.
- 4.21. The ACCC notes that in effect the proposed amendment removes a threshold amount and will require travel agents to pay back excess commission or remuneration, even when the amount is USD 6 or less. Agents previously did not need to repay excess commission or remuneration. There is no impact on consumers whose entitlements are not affected by the amendment or variation.
- 4.22. The ACCC considers that the proposed amendment to this resolution would constitute a minor variation and would not result, or be likely not to result, in a reduction in the net benefit to the public caused by authorisation A90791.

Resolution 816(10)

- 4.23. Resolution 816(10) terms sets out criteria for whether a new passenger sales agency agreement is required and the associated procedures.
- 4.24. The IATA proposed amendments to resolution 816(10) relate to changes of ownership or legal status of travel agents that determine whether or not a new passenger sales agency agreement is required, and procedures for those changes. IATA submitted that the changes are technical only and consist of minor editorial amendments.
- 4.25. AFTA did not submit any objections to the amendments in respect of this resolution.
- 4.26. The ACCC is satisfied that the proposed variations to resolution 816(10) are minor. The ACCC considers that the proposed amendments to this resolution are editorial amendments and would not result, or be likely not to result, in a reduction in the net benefit to the public caused by authorisation A90791.

Resolution 866

4.27. Resolution 866 contains definitions of terms used in the IPAP resolutions. IATA proposes to add, amend or delete certain definitions to resolution 866. Broadly, the amendments are to:

- Add a definition of 'days'.
- Amend definitions for 'neutral traffic document' and 'satellite ticket printer location'.
- Remove definitions for 'agency supervisor board' and 'agency supervisory list' and 'inclusive tour'.

4.28. IATA submitted that the change is a technical change only and clarifies terms used in the existing IPAP resolutions applying in Australia.

4.29. AFTA did not submit any objections to these amendments.

4.30. The ACCC is satisfied that the proposed variations to resolution 866 are minor. The ACCC considers that the proposed changes further clarify this resolution and would not result, or be likely not to result, in a reduction in the net benefit to the public caused by authorisation A90791.

Conclusion

4.31. The ACCC considers that the variations sought by IATA are minor and would not result, or be likely not to result, in a reduction in the net benefit to the public caused by authorisation A90791.

5. Determination

The application

5.1. On 23 December 2004, IATA lodged an application for minor variation of authorisation A90791 under section 91A of the *Trade Practices Act 1974*.

5.2. Authorisation A90791 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 concern 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 authorisation A90791 lodged in its application of 23 December 2004:

- that Determination A90791 be amended by inserting the text set out at 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.

The statutory test

- 5.4. 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 result, or would be likely not to result, in a reduction in 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

- 5.5. Pursuant to section 91A(3) of the Act, the ACCC makes a determination varying authorisation A90791 as follows:
- that Determination A90791 be amended by inserting the text set out at Schedule 2 to IATA's application for minor variation of authorisation A90791 dated 23 December 2004 (other than the section entitled 'impact of changes') at the end of and to form part of Part 2 of Appendix B.
- 5.6. This determination is made on 16 June 2005. If no application for review of this determination is made to the Australian Competition Tribunal (Tribunal) in accordance with section 101 of the Act, this determination will come into force on 8 July 2005.
- 5.7. If an application for review is made to the Tribunal, this 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

Outline of changes set out in Schedule 2 of IATA's application for minor variation lodged 23 December 2004

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

No	Title	Outline of changes ¹	Impact of changes / competitive effect and public benefit
800b	Satellite Ticket Printer and Ticket Delivery Locations	<p>Substitution for paragraph 3.5 of Resolution 816 in Appendix B Part 1. A new resolution consolidating the requirements for the inclusion of a satellite ticket printer in an agent's accreditation under the various resolutions worldwide into a single resolution. As a result the requirements applicable in Australia, which are currently set out in paragraph 3.5 of Resolution 816 and in Resolution 816aa, will be incorporated in this new resolution.</p> <p>The new resolution will bring about three changes to the existing arrangements in Australia. First, the application process, including the appeal mechanism, has been clarified and made more transparent. Second, the application of the change of ownership, legal status, name and location provisions to satellite ticket printer locations has been clarified. Third, the existing minimum security standards have been tailored to satellite ticket printers with the following consequences:</p> <ul style="list-style-type: none"> • the inspection process has been clarified; • the limits on supplies of unprinted tickets have been simplified; and • the consequences of a satellite ticket printer location failing to meet the standards have been 	<p>Rather than all the regional sales agency rules containing similar rules relating to satellite ticket printers there is now a global resolution which is a single point of reference.</p> <p>The resulting changes to the rules for satellite ticket printers will have a liberating effect on the programme. Currently satellite ticket printer locations are generally just expressed to be subject to the general rules applicable to accredited agents. The changes adapt those rules to the circumstances of satellite ticket printer locations and in doing so clarify and simplify many of those rules.</p> <p>In public benefits terms the new resolution is positive because it makes access to the system more transparent for satellite ticket printer locations.</p> <p>It is neutral in terms of competitive effect.</p>

¹ This outline is provided for general guidance only. The full text of the new and amended resolutions, indicating the amendments made, is set out in IATA's application of 23 December 2004.

No	Title	Outline of changes ¹	Impact of changes / competitive effect and public benefit
		relaxed. The new resolution also incorporates the provisions of Resolution 800t in relation to ticket delivery locations. Resolution 800t does not apply in Australia.	
816 (2)	Passenger Sales Agency Rules - South West Pacific	Amended to include Papua New Guinea in the area covered by the resolution.	This change is a technical change only. It is neutral in terms of competitive effect.
816 (3)	Passenger Sales Agency Rules - South West Pacific	Amended to remove the rules and procedures in relation to accreditation of satellite ticket printer locations to reflect the introduction of Resolution 800b (see above).	This change is a technical change only. It is neutral in terms of competitive effect.
816 (9)	Passenger Sales Agency Rules - South West Pacific	Amended to remove references to a fixed value of amounts owing on partially or wholly refunded tickets.	This is a minor change, and reflects improvements in accounting and bookkeeping procedures.
816 (10)	Passenger Sales Agency Rules - South West Pacific	Amended to make editorial changes to improve the overall drafting and clarity of the provisions setting out which changes of ownership or legal status of an accredited agent require a new passenger sales agency agreement, and which such changes do not.	The changes are technical only and consist of minor editorial amendments. These changes are neutral in terms of competitive effect.
866	Definitions of Terms Used in Passenger Agency Programme Resolutions	Substitution for definitions in resolutions contained in Appendix B Part 1. Resolution amended to insert a definition of 'days' and to amend the definitions of 'Neutral Traffic Document' and 'Satellite Ticket Printer Location'. Also amended to remove the definitions of 'Agency Supervisory Board', 'Agency Supervisory Board List' and 'Inclusive Tour' however these terms are not contained in any resolutions applicable in Australia..	This change is a technical change only. The new and amended definitions clarify terms used in existing Passenger Agency Programme resolutions applying in Australia. It is neutral in terms of competitive effect.

