

(2) *Agent appointment to represent airlines*

7.190 The Commission is concerned that despite an agent having satisfied the comprehensive requirements of the accreditation process and signed the PSAA it can be arbitrarily denied plates for an airline which has signed the general concurrence. General concurrence purports to appoint all accredited agents as agent for airlines who have signed the concurrence.

7.191 In the first instance there is a concern that that agents who have passed accreditation could reasonably expect to be appointed to the major airlines that constitute the general concurrence. The second concern is that there is no requirement upon airlines to justify their actions. The unreasonable refusal of plates could have an anti-competitive impact.

7.192 The Commission's concerns come against the background where a major Australian consolidator has been refused access to the plates of a carrier in general concurrence for over two years.

## **8. Commission Assessment – Public Benefits arising from the Proposed Agreement**

8.1 The Commission must be satisfied that the Proposed Agreement results in a benefit to the public that outweighs any detriment arising from anti-competitive conduct.

8.2 There must also be a nexus between the claimed public benefits and the conduct for which the authorisation is sought.

### **8.1. Public benefits claimed by the Applicants**

#### **Provisions for the Conduct of IATA Traffic Conferences**

8.3 No specific benefits were identified for this conduct.

#### **Resolutions of the IATA Passenger Agency Conference**

8.4 For the purposes of examining public benefits associated with the conduct for which authorisation has been sought the PAConf resolutions will be grouped under four headings, as they were in the examination of competition issues, i.e.:

- agent accreditation
- agent appointment to represent airlines
- reporting and payment of ticket sales
- other resolutions

#### ***Agent accreditation***

##### ***Claims made by the applicant***

8.5 IATA claims that travel agents who participate in the IPAP have the benefit of:

- *an efficient method of appointment* to represent IATA member airlines and other BSP participants without the need to negotiate separate agency arrangements with each airline. IATA also claims that the IATA system reduces the cost of entry into the travel agent industry through a simple and cost effective appointment process compared with the alternative of each airline having to establish its own criteria and a separate system for accrediting agents itself.
- *efficient credit arrangements* under which the travel agent undergoes one assessment and is required to meet a single credit standard, rather than having to meet a variety of credit requirements which individual airlines might set. The agent does not have to enter separate credit arrangements with each airline on which the agent sells tickets.

- *an efficient method of issuing tickets* on any of the airlines the travel agent represents through the use of neutral IATA ticket stock rather than having to carry ticket stock for a multitude of airlines.

8.6 It is also claimed that airlines benefit from the IPAP in terms of *business efficiency* through having one central credit assessment and accreditation mechanism rather than each airline having to separately accredit travel agents. Airlines also benefit from access to a greater spread of agents than it would be economically feasible, especially for overseas airlines, to appoint if airlines had to appoint each agent separately.

8.7 IATA also claims that Australia benefits from participating in a *standardised distribution system* which operates throughout the world, developed to ensure that international airline tickets are distributed as broadly and efficiently as possible. Australia is also described as deriving benefit from the opportunity its airlines have to sell tickets in other parts of the world where they may be well established or well known through a system which they understand because it operates world wide. In particular they do not have to establish their own agency networks throughout the world.

8.8 IATA states that participation in the IPAP provides the opportunity for greater *employment* in travel agencies than would otherwise be the case by enabling accredited travel agents, large and small, efficient access to the right to sell airline tickets no matter whether they are located in city, suburban or regional Australia.

8.9 IATA additionally claims that participation in the IPAP gives rise to *small business benefits* by providing smaller travel agents with exactly the same access to an efficient system for booking and selling airline tickets as larger agents have. They also have the same opportunity to access up to 70 airlines and offer customers tickets on those airlines. It is observed that many travel agencies tend to be small, employing less than 20 people but they compete with some very large agencies with high turnovers. If the IATA agency system did not operate in Australia it is likely that many of the airlines would not deal with many of the smaller travel agencies and some of the airlines would not find it efficient to deal with any of them.

8.10 IATA further claims that the IPAP materially increases *consumer choice* by giving consumers a wider choice of destinations, airlines and ticket flexibility. Consumers do not have to go to different travel agents to access different airlines. It is also claimed that agents are able to provide *better information* to consumers because they are able to sell tickets on a number of competing airlines.

8.11 It is also stated by IATA that the IPAP *promotes equitable dealings* in the market by providing agents with access to a transparent and neutral accreditation scheme, entry to which is open to any travel agent which meets the objective criteria.

8.12 IATA claims *growth in export markets* is another public benefit stating that the IPAP facilitates inbound tourism providing travel agents facilities throughout the world for the efficient promotion of Australia as a travel destination and providing Australian airlines with access to over 56,000 travel agency outlets.

8.13 Finally IATA claims *consumer benefits* from the IPAP including lower costs of travel because of an efficient distribution and credit system, access to a wide range of travel agent locations, direct access to airlines that may only have a minor presence in Australia, the benefits of competition between airlines enhanced by an accessible neutral distribution system.

*Views of interested parties*

8.14 Ansett identified benefits to airlines from the accreditation process as follows:

- reduces financial risk by ensuring only financially viable agents are accredited;
- reduces fraud as agents are required to meet financial security standards;
- provides an unbiased and consistent approach to accreditation;
- allows airlines to decide if an agent is to be provided with an airline's plate.

8.15 Ansett also identified benefits to agents:

- agents are evaluated for accreditation by IATA not individual airlines;
- agents are required to supply one bank guarantee;
- Accredited agents can issue tickets on behalf of non accredited agents.

8.16 AFTA commented that the IPAP in providing a uniform method in which accredited travel agents can issue and account for air transport tickets provides a public benefit.

*The Commission's view*

8.17 The Commission accepts that the IATA accreditation system provides significant direct benefits to consumers through:

- encouraging competition between airlines by enabling individual travel agents to offer travel for sale across a range of airlines and routes; and
- enabling travel agents to act as one stop information centres for consumers.

8.18 The Commission also accepts that there are benefits in relation to business efficiency which could flow on to the public from:

- rationalising the costs of distribution of airline travel services through an efficient integrated arrangement between airlines and agents which obviates the need for agents and airlines to negotiate arrangements on a one to one basis; and
- a central credit assessment and accreditation mechanism rather than each airline having to separately accredit agents;.

8.19 While the Commission finds benefit in a single credit assessment and accreditation mechanism this should not be taken to imply that those benefits should be attributed to any particular form of such arrangements. It would be possible for such a scheme to be very restrictive or high cost in which case there could be

limitations on those benefits. It is also arguable, as suggested by Ansett, that the primary benefits of a credit assessment scheme flow to the airlines through minimising bad debts. It would need to be shown that those benefits flowed to the public before they could be recognised as public benefits.

8.20 The Commission is not necessarily convinced that the IPAP and the accreditation process can take credit for greater employment opportunities than would otherwise be the case. Certainly the IATA program has facilitated the establishment of multiple airline agencies across Australia. However to accept the IATA claim would be to attribute benefit for employment to IATA as against a range of other factors including a greater propensity for travel as a result of increased competition between airlines and lower fares. Acceptance of the claim would also assume the Commission had a view of how the agent industry would look in the absence of accreditation which through its efficiencies and market entry restraints may well have had a constraining influence on employment.

8.21 The Commission would find similar difficulty with small business benefits claimed from the accreditation scheme. While it is true that small business can enter the market through the accreditation scheme such businesses are increasingly finding themselves disadvantaged though lack of scale and purchasing power in an industry which is steadily becoming more concentrated. Under circumstances where the TCF has expressed concern at the viability of the 62% of travel agents which turn over less than \$2 million the Commission would be reluctant to attach significant weight to a small business benefit from IATA accreditation. Indeed most of the licensed agents which appear to choose to remain unaccredited and operate through consolidators are small businesses.

8.22 The Commission accepts that Australia broadly benefits from participation in a standardised global distribution system which facilitates the sale of travel overseas by Australian airlines. However the Commission in this determination is focussing on the benefits flowing from the IATA's conduct as it relates to the IPAP and accreditation in Australia. To recognise specific benefits overseas would be to pass judgement on the efficacy of IATA programs as they are applied in other countries. The Commission is not aware, for example, how efficient or restrictive the IPAP is when applied in say Malaysia or Dubai.

8.23 For IATA to claim growth in exports markets as a public benefit is to suggest that the IPAP provides some advantage to the Australian tourism market over other countries as result of the IATA program. In a standardised travel agent system it would seem to the Commission that other destinations have the same opportunity of being promoted by travel agents and chosen by tourists as a travel destination as Australia. Growth in tourism to Australia is more likely to have stemmed from Australia being extensively promoted as a holiday destination by Australian airlines and tourism bodies.

#### ***Agent appointment to represent airlines***

##### ***Claims made by the applicant***

8.24 IATA claims that travel agents benefit from an efficient method of appointment to represent IATA member airlines and other BSP participants providing

access to a large number of airlines and travel agents without the need to negotiate separate agency arrangements with each airline.

8.25 IATA also claims that airlines benefit from having access to a greater spread of agents than would be economically feasible, especially for overseas airlines, to appoint if the airlines had to appoint each agent separately.

8.26 The PSAA is described by IATA as an essential element of the IPAP. With over 34,400 accredited agents world wide operating through over 56,900 locations, the program could not operate if different airlines were to use their own form of agency agreement. Each airline would have to negotiate and sign an individual agreement with each agent it wished to appoint throughout the world.

*Views of interested parties*

8.27 No comments were made.

*The Commission's view*

8.28 The Commission accepts that, the content of the agreement aside, the existence of a standard agreement between agents and airlines considerably reduces costs to both airlines and agents and will ultimately be of benefit to the public.

8.29 The agency appointment process especially where applied through the general concurrence provision could also bring similar benefits.

***Reporting and payment of ticket sales***

*Claims made by the applicant*

8.30 IATA claims that travel agents benefit from the BSP through it providing an efficient method of accounting to the airlines for tickets sold rather than having to account separately to each airline. Without the IATA system each travel agent would need to report separately to each airline for whom it sold tickets and comply with the individual reporting requirements of each separate airline.

8.31 It is also claimed that agents benefit from the BSP being an efficient payment system, requiring one payment to IATA covering all sales made in each reporting period rather than separate payment to each airline. Without the IATA system each travel agent would need to account separately to each airline for whom it sold tickets and remit sales receipts separately to each airline.

8.32 Similarly IATA claims that airlines benefit from an efficient centralised method of accounting to the airlines for tickets sold and for the collection of funds due for those tickets, avoiding the need for each airline to manage the credit and collection arrangements with each travel agent the airline deals with.

*Views of interested parties*

AFTA

8.33 AFTA commented that one of the major benefits delivered by the IPAP is the ability for accredited agents to participate in a central clearing house through the BSP. Without the BSP agents would by necessity need to negotiate and settle with

individual airlines – a task which would be prohibitively expensive both for agents and airlines.

#### Qantas

8.34 Qantas regards the BSP as a highly automated efficient system of great benefit to agents and airlines. Its key benefit is the neutral air ticket and sales return which provides a single reporting and remittance procedure covering all carriers. It is preferable to agents having numerous tickets for each carrier on which they sell and having to complete multiple sales returns.

#### Ansett Australia Ltd

8.35 Ansett provided a list of perceived benefits including:

- simplifies and reduces work through the use of standard documents for all airlines;
- simplifies paperwork and overheads through a single sales report;
- simplifies remittance procedures by establishing one point for agents payments;
- reduces billing and collection costs;
- reports agents' irregularities and defaults on neutral and in a timely manner.

#### UTAG

8.36 UTAG regards the BSP as a "brilliant" system especially when compared to systems which used to operate some twenty years ago when travel sales were negotiated and acquitted between individual airlines and agents.

#### Company X

8.37 Company X considers BSP works very well and is in the interests of the industry.

#### *The Commission's view*

8.38 The Commission is satisfied that the BSP provides an extremely efficient means of transmitting information on air travel sales between travel agents and airlines and of disbursing funds paid by consumers between agents and airlines. The Commission is also satisfied that compared to any alternative arrangements which might be put in place on an individual airline to agent basis the BSP produces substantial cost savings not only to airlines and travel agents but also to consumers.

8.39 There would be a reduction in public benefits from the BSP if its rules and/or administration resulted in significant delays in the provision of refunds to consumers.

#### **Decisions of the General Assembly South West Pacific**

8.40 No benefits have been identified by IATA specifically in relation to the delegations given to the Assembly or the Executive Council for Australia.

## **8.2. Evaluation of public benefits**

8.41 The Commission accepts that the key elements of the IPAP in the form of the accreditation system, the agency appointment process and the BSP, as they apply in Australia, all provide significant public benefits.

8.42 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.

8.43 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.

8.44 The Commission would note however that the extent of public benefits 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.



## **9. Commission assessment – whether public benefits outweigh anti- competitive effects**

### **9.1. Competitive detriment and public benefit**

9.1 The Commission is satisfied that the IATA Passenger Agency Program (IPAP), as reflected in the provisions of the Passenger Agency Conference Resolutions Manual 22<sup>nd</sup> Edition (the Resolutions Manual) and the Travel Agents Handbook Resolution 816 Edition (effective December 2000) as they apply in Australia, provide clear and significant public benefits.

9.2 The Commission while identifying the IPAP as potentially anti-competitive is also of the view, some areas of concern apart, that the program is not having a detrimental impact on relevant markets at this point in time.

9.3 On this basis the Commission considers that, subject to action being taken by IATA in the areas where the Commission has concerns, the IPAP at the moment provides benefits to the public which outweigh any anti-competitive detriment associated with the program. That is, the Commission is satisfied that, subject to certain conditions being fulfilled (see later in the determination) a net public benefit flows from the conduct the subject of the authorisation application.

9.4 While proposing to authorise the IPAP as it currently stands, the Commission also recognises that the IPAP, to the extent it represents suppliers to a market jointly controlling the release of product to the market, could be anti-competitive in the future depending on the structure of the agreed distribution system at the time.

9.5 In this context the Commission is concerned that approval of the IPAP as a system, as sought by IATA, could result in authorisation extending to future changes to resolutions etc, which while not necessarily implemented with that objective in mind, could have the result of increasing anti-competitive detriment and/or reducing public benefit arising from the program.

9.6 Bearing in mind the anti-competitive potential of the IPAP identified above and given the current state and vulnerability of the various elements of the air travel industry in the world, the Commission is disposed to an approach to authorisation which minimises risks associated with changes to the IPAP either through the resolutions themselves or their administration.

9.7 The Commission accordingly proposes to authorise particular existing resolutions (as they appear in the Manual) where it considers the risk of changes to the resolutions being anti-competitive is minimal, on the basis that the authorisation extends to future changes to those resolutions.

9.8 All other resolutions in the Resolutions Manual (as specified in Appendix B) are proposed to be authorised only in the form in which they appear in that Manual.

9.9 The decisions of the General Assembly South West Pacific involve delegations under resolutions of the IPAP which have been identified by the Commission as involving a risk of anti-competitive outcomes. The Commission proposes that authorisation will extend to the decisions of that Assembly appearing in the Travel Agents Handbook, Resolution 816 Edition, (effective 1 December 2000), as they apply in Australia. Authorisation will not extend to similar subsequent decisions of the Assembly which are a product of powers delegated in relation to resolutions specified in Appendix B.

9.10 The Commission consulted with IATA on the classification of resolutions prior to the issue of this draft determination. IATA also made a submission in relation to the classification of resolutions appearing in the draft determination.

9.11 The IATA view if accepted would see every future amendment made to every resolution of the Passenger Agency Program over the life of the authorisation receive the benefit of authorisation. The Commission is not satisfied that arrangements agreed between airlines in relation to the distribution of air travel and in relation to the travel agency industry with whom airlines are increasingly competing should enjoy such latitude given the level of change and disruption which has occurred in the industries involved over the past decade and seems certain to continue.

## **9.2. Period of authorisation**

9.12 IATA has proposed that authorisation be granted to the IPAP as a whole for a period of seven years. AFTA suggests authorisation should be for a period of less than seven years.

9.13 The Commission proposes that resolutions appearing in Appendix B and decisions of the General Assembly South West Pacific made using powers delegated pursuant to resolutions appearing in Appendix B will be authorised for a period of four years. All other resolutions and decisions will be authorised for eight years. This outcome means that every eight years there will be a full review of the IPAP (should re-authorisation be sought).

## **9.3. Variations to authorisation**

9.14 In its application IATA emphasised (para 4.2) that it was seeking authorisation for

*“the system by which airlines meet in conference and pass resolutions consistent with the terms of reference given to Conferences under IATA’s provisions for the Conduct of the IATA Traffic Conferences, and to give effect to those resolutions”.*

9.15 IATA claimed that authorisation of a specific set of resolutions would be of little utility because changes to the program which have little effect on its overall

objectives and structure are passed on a regular basis. An authorisation of specific resolutions would require IATA to continually apply for re-authorisation as the program evolved.

9.16 AFTA has commented that the ACCC can only determine the question of public benefit if it has before it specific contracts, arrangements and understandings. A major source of friction and dispute between accredited travel agents and IATA is IATA's unfettered power to alter the contractual relationship which may result in the lessening of competition with no resulting public benefit.

9.17 AFTA suggests that authorisation of a specific set of resolutions for a specific period of time would enhance the public benefit by ensuring the relationship (between agents and airlines) is balanced and fair and not subject to arbitrary amendment.

9.18 Apart from the difficulty for the Commission of assessing now benefits associated with future variations to resolutions there is the possibility with a system authorisation that IATA could introduce new resolutions which are anti-competitive in nature.

9.19 The Commission's approach in relation to this application will result in a significant portion of the IPAP being authorised as a system with immunity extending to future variations to the conduct. For the remainder of the IPAP the decision will rest with IATA whether it wished to seek authorisation to variations in the relevant conduct. One option for IATA will be to stockpile such variations until the authorisation was subject to renewal.

9.20 The Commission acknowledges in respect of variations to authorised conduct that the process of variation by section 91A of the Act can be, depending on the conduct involved, a demanding and time consuming process for both the applicant and the Commission. It would hope that applicants would not embark lightly upon this course, especially in relation to variations to conduct which involve a low level of risk of action under the restricted trade practices provisions of the Act.

9.21 The Commission notes in this respect that in its submission responding to the draft determination IATA claimed that the majority of the 'major' changes made to Resolution 816 since 1984 are "*technical changes or only major in the sense that they are more liberal (pro competition) than they were in 1984*".

9.22 Both IATA and the Commission have explored whether authorisation could be granted in a form which included *variation conditions*. Such conditions would provide for authorisation to extend to future changes to the original authorised conduct as long as those changes were filed with the Commission and "acceptable" to the Commission.

9.23 The Commission's view has consistently been that such an approach is not consistent with the structure of the *Trade Practices Act 1974* or the specific provisions for amendment provided in sections 91A and 91C.

9.24 IATA has provided the Commission with a legal opinion which claims that the power under the Act for the Commission to grant authorisation as "it considers

appropriate” enables it to include *variation conditions* in determinations. The Commission does not accept this view.

## **9.4. Authorisation conditions**

### **Obtaining and retaining accreditation**

9.25 The Commission stated earlier that it is not clear whether or not there are unnecessary burdens and costs associated with conforming to IATA’s accreditation requirements. If there are such burdens or costs they could be impinging on the competitive position of agents at a time when airlines are increasingly competing in the retail air travel market and the financial position of many agents remains under threat. The Commission also considers that it would be in the interests of the public to establish that the accreditation scheme is not acting against the mutual interests of airlines and agents and constraining the potential flow of benefits to consumers, and if it is to ensure appropriate changes are made.

9.26 The Commission will accordingly make authorisation conditional upon a review being undertaken of the conditions for obtaining and retaining accreditation. The review is to take into account:

- (1) the extent to which IATA accreditation conditions as applied in Australia impede the operational efficiency of agents and/or result in increases in their operating costs;
- (2) the level of risk associated with the credit extended to agents by airlines and with traffic documents and authorities provided to agents by IATA in Australia and the extent to which the qualifications for accreditation and retention of travel agents, as applied in Australia alleviate that risk;
- (3) any opportunities for reducing costs and burdens placed on agents in Australia while containing risk associated with the extension of credit by airlines and the holding of traffic documents by agents; and
- (4) the impact on risk associated with airline credit and traffic documents of recent developments in the aviation and sale of travel industries including electronic ticketing, the incidence of credit sales made using airlines’ merchant agreements and changes to the BSP Australia remittance period.

9.27 The Commission requires:

- (1) 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;

- (2) the results of the review to be made public and available to the Commission within two years of the date of this determination taking effect; and
- (3) recommendations arising from the review and relating to the IATA Passenger agency Program 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 three years from the date of this determination taking effect.

9.28 In its response to the draft determination IATA advised that it has no objection to an independent review and has moved to establish such a review. IATA submitted that this initiative removed the need for any condition calling for a review in this determination.

9.29 The Commission has effectively provided authorisation in the knowledge that it is not clear whether or not accreditation arrangements, which constitute the major component of the IPAP, are having an unreasonable anti-competitive impact on agents giving rise to public detriment. The inclusion of the review condition by the Commission enables it to be confident that any such detriment associated with the accreditation scheme is identified and rectified and accordingly there is a net public benefit. In other words inclusion of the review condition is an important factor in enabling the Commission to grant authorisation.

#### **Refusal to supply plates**

9.30 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:

- 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 in relation to any agent in Australia which it refuses plates or from whom it withdraws plates.

9.31 IATA submitted in its response to the draft determination that the rules and regulations which govern the passenger agency program are determined by the member airlines, not by IATA. The Commission notes that at the 2002 IATA Passenger Agency Conference the airline delegates agreed to communicate to agent representatives of the GCC that they were prepared to accept a revised version of the Passenger Sales Agency Agreement (Working Paper 3 of Agenda item G2.1) which included the following clause in section 4 which relates to the "Rights and Obligations of the Carrier":

*4.1 The decision whether or not to place Traffic Documents and/or Carrier Identification plates with the agent lies with the Carrier. If the Carrier refuses to place its Traffic Documents or Carrier Identification Plates with the agent or subsequently withdraws them, the agent is entitled to be informed in writing of the reason.*

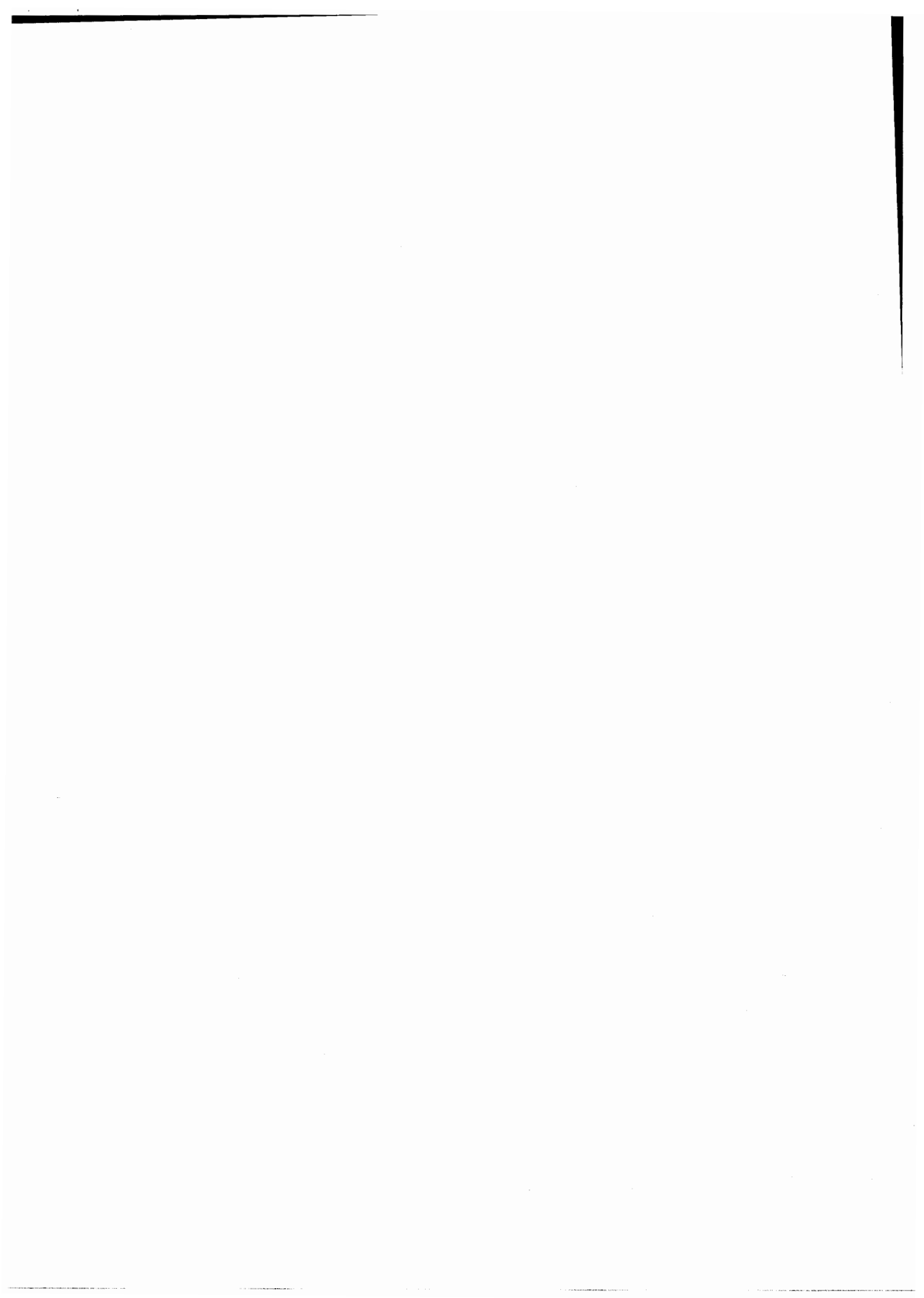
## 10. Determination

10.1 For reasons outlined above, the Commission revokes Authorisation A90408 issued on 31 October 1984 and gives authorisation for:

- (1) IATA and its members from time-to-time to engage in conduct giving effect to the contracts, arrangements and understandings evidenced by the:
  - (a) resolutions of the IATA Passenger Agency Conference passed in accordance with the Provisions for the Conduct of the IATA Traffic Conferences as amended from time to time; and
  - (b) decisions of the Generally Assembly constituted by Resolution 816 Section 2.1 (as amended or substituted from time to time).
- (2) Subject to paragraph (3) below, authorisation is also given for IATA and its members to meet in IATA Passenger Agency Conferences and pass resolutions amending or modifying or adding to the current resolutions.
- (3) This authorisation does not extend to amendments of or substitutions for the resolutions specified in Appendix B as they appeared in the IATA Passenger Agency Conference Resolutions Manual, 22<sup>nd</sup> Edition.
- (4) Subject to paragraph (5) below authorisation is given for IATA and its members to meet and make decisions in the General Assembly;
- (5) This authorisation does not extend to decisions of the General Assembly beyond those reflected in the IATA Travel Agent's Handbook, Resolution 816 Edition (effective 1 December 2000) where those decisions are made using powers delegated pursuant to resolutions appearing in Appendix B.
- (6) Authorisation is also given for IATA, its members and others who, according to IATA Passenger Agency Conference resolutions establishing the Executive Council Australia and other consultative groups relating to the IATA Passenger Agency Program, participate in consultations within the terms of reference set by the relevant Conference for those groups from time to time.

10.2 The granting of the above authorisation is subject to the following conditions:

- (1) A review is required to be undertaken of the conditions imposed by IATA through its Passenger Agency Program for travel agents in Australia to obtain and retain IATA accreditation, such review to take into account:



- (a) the extent to which IATA accreditation conditions as applied in Australia impede the operational efficiency of agents and/or result in increases in operating costs;
  - (b) the level of risk associated with the credit extended to agents by airlines and with traffic documents and authorities provided to agents by IATA in Australia and the extent to which the qualifications for accreditation and retention of travel agents, as applied in Australia, alleviate that risk;
  - (c) any opportunities for reducing costs and burdens placed on agents in Australia while containing risk associated with the extension of credit by airlines and the holding of traffic documents by those agents; and
  - (d) the impact on risk associated with airline credit and traffic documents of recent developments in the aviation and sale of travel industries including electronic ticketing, the incidence of credit sales made using airlines' merchant agreements and changes to the BSP Australia remittance period.
- (2) The Commission requires:
- (a) 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;
  - (b) the results of the review to be made public and available to the Commission within two years of the date this determination comes into force; and
  - (c) recommendations arising from the review and related to the IATA Passenger Program 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 three years from the date of this determination taking effect.
- (3) 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.

10.3 Resolutions appearing in Appendix B and decisions of the General Assembly South West Pacific made using powers delegated pursuant to resolutions appearing in Appendix B are authorised for a period of four years from the date of effect of this determination. All other resolutions of the IATA Passenger Agency Conference and



decisions of the General Assembly South West Pacific and variations to them are authorised for eight years.

10.4 This determination is made on 13 November 2002. 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 5 December 2002.

10.5 If an application for review is made to the Tribunal, the determination will come into force:

- (a) 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.

**APPENDIX A: INTERNATIONAL AIRLINES OPERATING  
SCHEDULED PASSENGER SERVICES TO/FROM  
AUSTRALIA FOR THE YEAR ENDED JUNE 2000**

| IATA Members   | Non-members  |
|--|--|
| <p>AOM French Airlines<br/>Aerolineas Argentinas<br/>Air Caledonie<br/>Air China<br/>Air Mauritius<br/>Air New Zealand<br/>Air Niugini<br/>Air Pacific<br/>Air Vanuatu<br/>Air Zimbabwe<br/>Alitalia<br/>All Nippon Airways<br/>American Airlines<br/>Ansett International<br/>British Airways<br/>Canadian Airlines International<br/>Cathay Pacific Airways<br/>Egytair<br/>Emirates<br/>Flight West Airlines<br/>Garuda Indonesia<br/>Gulf Air<br/>Japan Airlines<br/>KLM Royal Dutch Airlines<br/>Lan Chile<br/>Lauda Air<br/>Lufthansa German Airlines<br/>Malaysia Airlines<br/>Olympic Airways<br/>Philippine Airlines<br/>Polynesian Airlines<br/>Qantas Airways<br/>Royal Brunei Airlines<br/>Royal Tongan Airlines<br/>Singapore Airlines<br/>Solomon Airlines<br/>South African Airways<br/>SriLankan Airlines<br/>Swissair<br/>Thai Airways International<br/>United Airlines<br/>Virgin Atlantic Airways.</p> | <p>Air Nauru<br/>Asiana Airlines<br/>China Airlines<br/>China Eastern Airlines<br/>Continental Micronesia<br/>Eva Air<br/>Freedom Air International<br/>Korean Air<br/>Mandarin Airlines<br/>Merpati Nusantara Airlines<br/>Vietnam Airlines</p> |

*Source: IATA Passenger Agency Programme, Statement of Facts in Support of Application for Re-  
authorisation.*

**APPENDIX B: IATA PASSENGER AGENCY CONFERENCE  
RESOLUTIONS<sup>24</sup> VARIATIONS TO WHICH ARE NOT  
AUTHORISED**

| <b>Resolution No</b> | <b>Description</b>  |
|----------------------|---|
| 816(2)               | South West Pacific Agency Program   |
| 816(3)               | Qualifications for accreditation and retention  |
| 816(4)               | Procedures  |
| 816(8)               | Consequences of default   |
| 816(9)               | Conditions for payment of commission or other remuneration  |
| 816(10)              | Change of ownership, legal status, name or location   |
| 816(11)              | Application of minimum security standards for safe custody of traffic documents and carrier identification plates |
| 816(12)              | Reviews under the authority of the Travel Agency Commissioner   |
| 816(13)              | Measures affecting an agent's standing  |
| 816(14)              | Review by arbitration at agent's request  |
| 816e                 | Conduct of review by Travel Agency Commissioner   |
| 816f                 | Extension of agency program in South West Pacific   |
| 820d                 | Travel Agency Commissioner  |
| 824                  | Passenger sales agency agreement  |
| 824a                 | Application of the term "commission"  |
| 824r                 | Refunds to agents   |
| 830                  | Multiple ticket issuance by agents  |
| 830a                 | Consequences of violation of ticketing procedures   |
| 850t                 | Non-IATA airline participation in certain IATA programs   |
| 862                  | Joint agent and airline consultative meetings   |
| 886p                 | Reduced fare transportation for persons officially travelling to Travel Agency Commissioner hearings              |

<sup>24</sup> As appearing in the IATA Passenger Agency Conference Resolutions Manual 22<sup>nd</sup> Edition.

**APPENDIX C: RECORD OF PRE-DETERMINATION CONFERENCE  
IN RELATION TO APPLICATION FOR  
AUTHORISATION A90791 LODGED BY THE  
INTERNATIONAL AIR TRANSPORT ASSOCIATION  
(IATA)**

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**Time and place:** The conference was convened at 9.30am on Friday 14 June 2002 and immediately adjourned. The conference was reconvened at 9.00am on Monday 22 July 2002 at the Angel Place Meeting Room, 123 Pitt Street Sydney NSW.

**Attendance:** Commissioner Ross Jones (ACCC)  
Tim Grimwade (ACCC)  
Greg Outzen (ACCC)  
Bronwyn Davis (ACCC)

Mike Hatton (AFTA)  
Ian Carew-Reid (AFTA)  
Brian Wild (AFTA)  
Steven Lewis (Counsel for AFTA)

Rob Donald (IATA)  
David O'Connor (IATA)  
Peter Keogh (IATA)  
Russell Miller (Counsel for IATA)  
Cathryn Lane (Counsel for IATA)

Jacques Escoffer (Air Caledonie International)

Jeannie Foster (Air Canada)

Geeta Kapoor (Air India)

David Adams (Air New Zealand)  
Jo Foged (Air New Zealand)

Victor Sharan (Air Pacific)

Stephen Eyre (Air Vanuatu)

Angelo Angelillo (Alitalia)  
Claudio Bosca (Alitalia)

Raymond Hartweg (Aviation Credit Solutions)

Don Clark (British Airways)  
Carlos Santos (British Airways)

Andrea Stavrou (Cathay Pacific)  
Stephen Hinwod (Cathay Pacific)

Andrew Corby (China Southern Airlines)

Audrey Huang (China Southern Airlines)  
Frank Gyzemyter (China Southern Airlines)  
Helen Fong (China Southern Airlines)

Susan Jabs (Department of Industry, Tourism and Resources)

Chinta Amadorou (Emirates)  
Tim Harrowell (Emirates)

Helen Blake (Finnair)

David Hagley (Gulf Air)

Nobutaka Ishikure (Japan Airlines)  
Geoffrey Wadick (Japan Airlines)

Kerry Carmichael (Kendall Airlines)  
Rob O'Brien Kendall Airlines)

Kevin Lee (KLM South West Pacific)  
Maurizo Fabrizi (KLM South West Pacific)

Beate Rhoads (Lufthansa)

Pater Martin (Malaysia Airlines)  
Julia Loong (Malaysia Airlines)

Richard Doyle (Northern Territory Tourist Commission)

Roger Goodfellow (Philippine Airlines)

Chan Wicks (Polynesian Airlines Ltd)

Peter Kelly (Qantas)  
Darren Peisley (Qantas)  
Mike Nicholas (Qantas)  
Sarah Collins (Qantas)

Kerri Owens-Brown (Singapore Airlines)

Danielle Rutgers (Counsel for Star Alliance)  
Michelle Shek (Counsel for Star Alliance)

Dolly Francis (Thai Airways)  
Judy Williams (Thai Airways)

Maurice Tye (United Airlines)  
Stephen Pearse (United Airlines)

Sylvia Young (Virgin Atlantic)

## Proceedings of the Conference

1. Commissioner Jones welcomed interested parties to the conference and advised the procedures to be followed. He then asked the parties calling the conference to outline the main points they wanted to make.

### *Australian Federation of Travel Agents (AFTA)*

2. Mr Hatton spoke on behalf of AFTA. He said that AFTA agreed with the broad principles contained in the draft determination but felt that further conditions should be imposed as outlined in its further submission. These conditions include that:
  - The passenger agency program should be managed by a board of travel agents and airlines. Decisions made by the IATA Passenger Agency Conference (PaConf) should not be implemented unless the board agrees.
  - Authorisation should only be granted for a period of two years, after which the IATA agency program should be opened up to competition.
3. In addition, AFTA suggested that the unanimity vote requirement of the PAConf should be removed, as under the current system one airline can vote down a proposal that every other airline agrees on.

### *IATA*

4. Mr Donald made opening comments on behalf of IATA. He said that the IATA Passenger Agency Program (IPAP) is an important arrangement that has been around for the past 50 years and delivers real public benefits to consumers, agents and airlines. IATA was pleased that the draft determination recognised these benefits and proposed to authorise the IPAP. IATA's comments would relate primarily to the conditions proposed in the draft determination, including the two tier split of the conduct into four and eight year authorisation periods. Other comments would be on the issue of government sales (already addressed), the general concurrence proposal which was considered counterproductive, the joint review which was considered unnecessary and the issue of net remit errors in the BSP. IATA also had some factual comments to make and would be providing a detailed written submission of its concerns in about a week.
5. Mr Kelly indicated that Qantas also had several points to make, particularly in relation to airlines' performance on issuing refunds. Mr Kelly provided the Commission with a written submission (attached) containing Qantas' response to the draft determination.

### *The Joint Review*

6. Mr Donald made the following points in relation to the proposed second condition which called for a joint review of the IATA agency accreditation program:
  - While IATA noted the reasons why a review had been proposed, it does not consider a review to be necessary, as there is no record of any agent who has applied for accreditation being refused. The system is designed to try to

balance the requirements of all parties. There is also no evidence that the accreditation process impedes agents, and it is unlikely that airlines would try to use it in this way.

- IATA considers that the legal principle behind the Commission imposing conditions is that they should only be used to get an authorisation 'over the line'. IATA considers that using conditions to engage in 'social engineering' is not appropriate. The request that a joint body should review the current system does not recognise that the current Executive Council is a joint body and has both airline and agent representatives on it. Clearly the matters the condition suggests should be reviewed fall within the scope of the council. There has been no request for a review, and virtually every recommendation made by the Executive Council has been implemented by the General Assembly. The joint review proposal is unwarranted and inappropriate.
  - As an alternative to the proposed condition, IATA proposes that it will conduct a review consistent with the program and objectives of the Executive Council. Terms of reference have already been prepared and the review has been endorsed by the General Assembly South West Pacific with results to be reported by 30 June 2003. This initiative would alleviate the need for a condition to be imposed in the determination. AFTA will be invited to participate in the review
7. Commissioner Jones asked how the terms of reference for the IATA review differed from those proposed in the draft determination. Mr Donald responded that there were some minor changes. [A copy of the IATA terms of reference was provided to the Commission as attached.]
  8. Mr Hatton made the following points in relation to a joint review. The IATA proposed review would be under the control of the General Assembly. If the review is not in the determination it remains under the decision making power of IATA. The review should be independent of both IATA and AFTA, with the report delivered straight to the ACCC.
  9. Mr Hatton noted that equal representation of travel agents on the Executive Council has only happened in the last 12 months, and there was a great deal of resistance to the reform prior to its implementation. The move to a seven day remittance period was opposed by agents and not agreed by all airlines but still implemented.
  10. Mr Donald noted that with the exception of the weekly remittance matter where there was an active debate, all the other recommendations of the Executive Council had been adopted. IATA considered the joint review report emanating from its proposal could still be taken into account when the authorisation of the IPAP was next reviewed. The committee conducting the review would still be independent.

*Condition 3: General Concurrence*

11. Mr Donald stated that general concurrence gave clear public benefit and no competitive harm so why impose conditions relating to it, particularly when the facility creates efficiencies for both sides? While the condition was intended to address likely harm there was no factual basis for the condition and airlines were unlikely to deliberately impede agents.
12. Mr Donald noted the comments made in paragraph 6.126 of the draft determination with a reference to claims of refused plates. IATA had asked the Commission for details of such claims but they had not been furnished.
13. General concurrence facilitates agents and airlines doing business together. Some airlines have good reasons for not giving plates, particularly given costs associated with the process. If airlines are forced to give plates to all accredited agents, some airlines will withdraw from general concurrence. IATA is also concerned about a right of appeal, as this would involve someone sitting in judgement of an airline's right to grant plates and could force airlines to do business with agents on an uneconomic basis.
14. IATA does not consider that agents are disadvantaged if airlines refuse them plates and does not consider that the general concurrence arrangements warrant a condition being imposed.
15. Mr Kelly (Qantas) indicated that Qantas supported IATA's views on general concurrence and on the basis of internal inquiries had no record of ever declining to grant plates to an accredited agent in Australia. He noted that not all agents have Qantas plates, but that this was a product of agents not seeking them rather than Qantas refusing to supply them. Qantas also considers that it is unnecessary to impose this condition.
16. Ms Rhoads (Lufthansa) said that Luftahansa does not fly to Australia but does service the route on a code share basis. As it does not have the resources to serve the 4000 agents in Australia, it does not usually issue plates to Australian agents. Lufthansa operates through consolidators.
17. Ms Blake (Finnair) stated that Finnair does not operate to Australia. If an agent requests plates, Finnair considers the potential of the agent to support Finnair. Usually if the agent has the potential to issue ten or more tickets per month, it is granted a plate. If the agent's request is rejected, the agent is usually advised of the reasons. Some agents often send a standard letter to all airlines when they receive accreditation. If Finnair was forced to give every requesting agent a plate, it would have to consider the viability of its distribution systems particularly as it operates a one person office in Australia.
18. Mr Hagley (Gulf Air) stated that it was important to highlight that smaller carriers do not have the resources to service a large number of agents. Agents wishing to book on Gulf Air are not stopped by lack of a Gulf Air plate. Agents are accordingly not disadvantaged and fares are issued on a published rather than net basis.
19. Ms Williams (Thai Airways) noted that the focus of the discussion had been on single sector tickets. A substantial amount of traffic travels on interline fares.



Multiple carrier tickets can go on any airline's plate, thereby providing options for all accredited agents. Usually the ticket is issued on the outbound carrier's plate. Thai does not consider that an agent is disadvantaged by not being able to access a large number of plates. Some agents also use a consolidator by choice.

20. Mr Hatton said that AFTA did not entirely disagree with what had been said, but made the following points:
- If agents are seeking plates from every airline after gaining accreditation, is IATA informing agents that this is not necessary?
  - There are a number of IATA resolutions which state that tickets must be issued by an agent with a plate for the relevant airline.
  - Under Resolution 850 tickets can only be issued on the plate of the carrier on the ticket. Tickets can be issued on the plate of one carrier for use on another carrier but only if the former carrier has provided authorisation in writing.
  - There are no problems with Qantas in relation to providing plates.
  - For interline tickets conditions in IATA resolutions provide that valid interline agreements are a factor in the plate on which tickets are issued. Agents are not necessarily aware of such agreements and have had tickets rejected on this basis.
  - Overall AFTA considers that this area does need reviewing and relevant guidelines developed.
21. Mr Donald responded that the matters raised by AFTA involved technical issues that could be readily resolved and did not impact on the public benefits of the IPAP. He said that IATA considered that the proposed condition would not serve the public or agents and was a "broad brush" solution to a problem that does not exist. He said that this issue has not been raised at the Executive Council, and that if specific carriers were causing problems, there were other means to address the issue. He also considered there could be good economic reasons to refuse plates under certain circumstances.
22. Mr Hatton queried why IATA did do away with Resolution 850. If agents are able to plate on any airline there is no need for the resolution. Mr Donald responded that IATA was happy to look at the issues, but did not consider that anyone was being disadvantaged by the current system. He said that the object of general concurrence is to provide an efficient facility for agents and airlines who wish to do business together. There is no presumption on general concurrence - it is simply a facilitatory mechanism.
23. Mr Hatton said that he disagreed and queried whether there was a presumption that an agent has access to any airline. Mr Donald responded that without the general concurrence arrangements, business between airlines and agents would have to be on an individual contract basis.

#### *Condition 4: Errors and refunds*

24. Mr Keogh (IATA) said that a large number of tickets are issued at the net ticket level. About 60% by volume or 70% by value of international tickets are offered on a net remit basis. The predominance (around 95%) of net remit tickets go through the BSP without problem. For the 5% of net remit tickets which do not pass the validation process 95% of the errors arise from agent errors rather than carrier/system errors.
25. If the ticket is not validated, it goes through the system at the full fare shown on the ticket less standard commission. The BSP system provides reports to agents and airlines. Airlines also take action to ensure that tickets go through. Mr Keogh distributed a spread sheet analysis of an agent's cash flow position in support of IATA's claim that the impact of net remit errors on an agent is minor.
26. Mr Keogh also noted that agents can process fully refundable fares on the spot without delay. There is an automatic refund process. While the automatic refund facility is not used by all carriers, 92% of such transactions are handled through this facility. Additionally there is a resolution, Resolution 824R, which provides standards for airlines in handling refunds. Agents can also help enhance the performance of airlines by bringing it to IATA's attention if an airline is not complying with the standards. Any issues raised will be reported to the Executive Council.
27. Overall IATA does not believe that refunds constitute a significant problem, particularly as airlines are doing more training to reduce error rates, and larger agents are introducing extra processes with similar objectives. Nevertheless IATA recognised that agents had concerns in the areas of refunds and net remit errors and had developed a proposal in consultation with airlines participating in the Australian BSP to respond to those concerns. The Commission was provided with proposed changes (as attached) to the wording in the BSP Manual for agents. These changes would provide an opportunity for agents to refer refund and net remit error problems to the BSP Manager who could respond in an ombudsman capacity.
28. Mr Hatton (AFTA) considered that there are problems with the current refund system. For example:
  - The average traveller believes that he/she should receive a refund quickly. In order to maintain good relations with clients, one agent has decided to refund passengers immediately and bear the cost of the ticket themselves until the money is refunded by the airline.
  - The automatic refund system only operates for fully refundable tickets not involving multiple carriers. For other tickets the accepted time to process a refund is two months. AFTA has heard of examples of refunds taking over two and half years. The problems lie not with Qantas but with offshore carriers.
  - There is a need to expand the automatic refund process. There is a requirement for further education in this matter. Agents in many cases do

not know they need to go the BSP manager with problems. The standards of the outsourced BSP service are deplorable.

29. Mr Kelly (Qantas) said that at present his company conformed to the required time periods for cash sales. There are different criteria for different types of tickets. Fares involving partly used or multiple airline tickets take a longer time to refund. For example it takes three months to refund a lost ticket, mainly for security reasons. Qantas indicated that it supported action to monitor airlines' performance in this regard.
30. Mr Fabrizi (KLM) said that it is in airlines' best interest to ensure that the remittance process works properly. Several years ago Traveland indicated to KLM that its product was too complex to ticket. KLM implemented a training program, developed a cue card for agents containing the net remit specifics and also ran a seminar program. The error rate for KLM tickets went from 73% to 2%. In addition KLM has a policy of advising agents before an ACM is created.
31. KLM has three types of refund. A refund application goes to the airline for approval, (usually only for multi airline tickets), while auto refunds and refund notices go straight to the BSP. There is usually only a delay on refund applications when the ticket has been lost.
32. Mr Hatton (AFTA) said he accepted the Qantas presentation and considers the problem lies with offshore airlines. A major problem for the industry is that there is no common default mechanism as every airline sets its own. In addition some airlines waive rules at various points in time. There are imbalances where the default is to the full published fare. AFTA is aware of situations where more than \$30 000 has been removed from an agent's bank account without the agent's permission.
33. Mr Hatton noted that the proposal being brought forward by IATA responds to agents' concerns but relates only to cash sales and not to credit card transactions. There is a need for uniform standards to be introduced across all carriers with a common default. Some default to 9%, some to 0% and some to full published fares. The proposed system relies on the agents making any amendments within 24 hours, but AFTA does not consider that this a practical solution. AFTA considers that these situations cannot be rectified within one billing period.
34. AFTA considers that a review and further training are necessary. However, to date no carriers have approached AFTA seeking to implement industry wide training. While these technical issues are important to agents there is a need for an independent audited system.
35. Mr Keogh (IATA) referred to his spreadsheet example suggesting that the amount of money held back by an airline due to an error could be expected to be substantially outweighed by the amount of airline money held at any time by an agent.
36. Ms Williams (Thai Airways) noted that if a net remit ticket fails it defaults to protect the carrier. In the case of Thai the default was to the correct published fare with standard commission of 9%. Thai experiences a net error rate of the order of

2%. The Sydney-Bangkok default is \$1,400 for an excursion fare. Thai's policy is to fix errors in advance if the ticket has the correct booking class. Thai will contact the agent (especially if the ticket was plated on Thai but was a net fare ticket on another carrier). Thai considered that industry wide education would be a difficult task to undertake. Thai had developed cheat sheets outlining the key features of each of its fare type, and issued these to agents. An industry wide net remit default system was not easy to introduce as different agents get different deals. Thai also noted that it is a rule of net remit that a passenger cannot pay by credit card where the airline is the merchant.

37. Mr Donald (IATA) made the following general comments on the draft determination in respect of condition 3:

- There appears to be an implication in the draft determination that any errors made benefit the carrier when in fact it is a cost to them.
- IATA is proposing to introduce training programs and a system to monitor and report errors which in any event are at low levels. These will be implemented regardless of whether a condition to this effect is imposed.
- The BSP manager will be empowered to intervene on refund and error issues to facilitate resolution of problems.
- The proposal that IATA impose sanctions on recalcitrant members is unlikely to be implemented as it would have to be voted in by the airlines.
- The proposed 24 hour period for amendments is to ensure amendments are processed in the same billing cycle.
- IATA would find it helpful to receive details on long delayed refunds so that it can address these specifically.

38. Mr Kelly (Qantas) sought clarification from the Commission outside of the Conference of aspects of Condition 3.

*The two tier authorisation*

39. Mr Donald (IATA) commented that overall the Commission had completed a good review. There were a number of factual errors in the draft determination but this was to be expected when considering such a complex industry. General comments were:

- The difference between the required security level for airline ticket stock compared to agent ticket stock is due to the fact that airlines bear their own risk for ticket stock and have their own standards. It is also unusual for an airline to keep blank ticket stock.
- The draft determination also reinterprets the decisions made in 1984/85. IATA does not see such consideration as relevant to the current decision and hopes that it could be removed from the final determination.

40. IATA recognises the problem of the authorisation being able to accommodate variations to resolutions and understands the approach taken by the Commission whereby it has effectively “frozen” some resolutions for four years while allowing others to stand as amended for eight years. To change “frozen” resolutions would require a further authorisation application or for IATA to decide that the changes are consistent with the terms of the current authorisation.
41. In this context IATA would prefer that the term “anti-competitive risk” is replaced with a less pejorative term as the determination will be read around the world.
42. Instead of the resolution freezing approach IATA would prefer an approach whereby all resolutions including future amendments to them were authorised subject to any variations being lodged with the Commission which had a period of say 35-40 days to respond on concerns before they took effect. IATA would prefer this to having to get every change made to frozen resolutions specifically authorised
43. IATA noted that when it makes changes to resolutions only covered by a four year authorisation, it will need to consider whether or not it is worth seeking authorisation of these changes. There is a risk that Australia may be bypassed for changes to resolutions if it is too difficult to get immunity, to Australia’s possible detriment.
44. IATA considers that its proposal of notifying the Commission of changes would mean that the Commission would still have oversight over any changes made, but could consider them through a process that is more efficient than the authorisation process proposed in the draft determination.
45. Mr Hatton (AFTA) responded to the IATA proposal by saying that AFTA believes the Commission should stay with the approach in the draft determination for the following reasons:
- the proposed approach does not cover onsite documentation at PAConf;
  - proposals may be altered by the PAConf; and
  - the proposals cannot be guaranteed to pass at PAConf even if looked at 45 days in advance and approved by the Commission.
46. Mr O’Connor noted that IATA was discussing changes that had been adopted by the PAConf, before they were implemented in Australia. Many of the changes that would be made under this arrangement would benefit both carriers and agents, and the process should be less time consuming than seeking authorisation.
47. IATA’s summary points on this matter were:
- there are huge practical difficulties in implementing the four year/eight year split;
  - under the proposed arrangements, if there are any changes to IATA’s resolutions it will need to file a minor variation for each change. This is a very cumbersome process;

- very few of the resolutions in the four year category are considered to be anticompetitive at present. For example IATA does not consider that Resolutions 816(12), 820d and 824a have any effect on competition; and
- it would prefer the authorisation to apply to participants rather than to specific resolutions.

48. IATA provided the Commission with written comments (attached) on the assignment of conduct to the “frozen” category as well as views on how the authorisation should be worded (also attached).
49. The Commission noted that it appreciated the problem. It had explored the possibility of an approach to variations along the lines of the IATA proposal. The Commission’s legal advice, as communicated to counsel for IATA, was that such an approach was inconsistent with the intention of s.91A of the *Trade Practices Act* which was the vehicle for making minor variations to authorisations. IATA indicated that it has its own legal advice on this matter which it will provide to the Commission.
50. Mr Angelillo (Alitalia) noted that his company depends on travel agents. Access to the IPAP is necessary to enable it to compete with larger airlines.
51. Mr Ishikure (Japan Airlines) said that aviation was an international industry. Airlines have an entitlement to freedom in business under Government approved bilateral agreements which provide for all airlines to be treated fairly and equally. The Chicago Agreement and GATS also provide for fair and equal access to markets. The Commission’s decision was unilateral by nature. JAL’s major concern with the draft determination is that it appears to implicitly assume that all airlines are in a dominant position compared to travel agents. In Japan, the reverse is the case with one agency having 40% of the market compared to the 30% of JAL. For this reason JAL considers that while the proposed conditions may appear to work in theory, they may have other unexpected impacts.
52. Commissioner Jones noted that while that may be the case, each country has to consider its own domestic situation.
53. Mr Clark (British Airways) said that the industry is already very complex. The IPAP allows airlines to promote their business. If the IPAP is made more complex it will impact on their ability to serve the market, and may lead to more airlines choosing to cease services to Australia.
54. Commissioner Jones asked if there were any further comments from any interested parties. In the absence of further comments he thanked all parties for attending the conference and declared the conference closed at 12.35pm. He noted that a record of the conference would be circulated and a further period allowed for submissions.