

Cathay Pacific	7.6%
Air New Zealand	6.1%

3.19 An International Civil Aviation Organisation (ICAO) analysis of airlines' performance in 2000 estimated⁷ that financial results remained positive but with lower margins as a result of soaring fuel prices. Only airlines in the Latin American/Caribbean and Middle East experienced negative aggregated operating results.

3.20 The first half of 2001 saw deteriorating results for most airlines around the world. Asian and European carriers suffered from US economic uncertainty, higher fuel prices and weak local currencies. At the same time US airlines were suffering from a fall off in business travel estimated to have caused a drop in revenue of the order of 15% to 18%⁸. United Airlines for example, reported a loss of more than \$US600 million for the first six months of 2001.

3.21 The September 2001 events in the United States had a severe impact on most airlines around the world and saw immediate and substantial reductions in capacity as demand fell away. For airlines which were only marginally viable the sudden downturn took them over the edge and a number of substantial airlines failed including Swissair, Sabena and Canada 3000. Other airlines were only saved through the intervention of governments. Media speculation in late 2001 was that up to three of the major US carriers would enter bankruptcy before the end of 2001⁹ and that in Europe the number of airlines could ultimately be reduced from 40 to as low as ten¹⁰.

3.22 It is only in the longer term, subject to the re-emergence of public faith in air travel and as the economic position of leading developed countries becomes clearer, that conjecture with any confidence about the future structure of the industry will be possible.

Australian airline performance

3.23 Virgin Blue has benefited from the failure of Impulse and Ansett and with demand for domestic air travel in Australia likely to exceed supply for some time is well positioned to operate on a long term profitable basis as indicated by the recent sale of 50% of the equity in the company to the Patrick Corporation.

3.24 Qantas has a record of consistent and profitable financial performance over the past five years as Table 3.6 below shows. Even in the face of vigorous domestic competition and cost pressures Qantas was still able to perform relatively strongly.

⁷ "Airline financial results remain positive despite higher fuel prices", ICAO Journal, Vol. 56, No 4, May 2001.

⁸ "Demise of airlines began long before September 11", Australian Financial Review, 15 November 2001

⁹ "The fear of flying", Australian Financial Review, 17-18 November 2001.

¹⁰ "Bad air days", Hobart Mercury, 17 October 2001.

Table 3.6. Qantas financial performance, 1996/7 to 2000/01

Financial year ended	Revenue (\$m)	EBIT (\$m)	Net profit (\$m)	Operating margin	Net margin
1996/97	7,834.4	517.2	252.7	6.6%	3.2%
1997/98	8,131.5	581.7	304.8	7.2%	3.7%
1998/99	8,448.7	701.8	421.6	8.3%	5.0%
1999/2000	9,106.8	816.2	517.3	9.0%	5.7%
2000/01	10,188.2	695.8	415.4	6.8%	4.1%

Source: Qantas annual reports.

3.25 The demise of Ansett left Qantas better placed to respond to the events of September 2001 than many other airlines around the world. It was coming off a strong financial base and it was able to redeploy suddenly surplus international resources into the domestic market. The strength of Qantas' position was illustrated by its ability to raise capital for aircraft re-equipment at a time when most other airlines around the world were struggling to survive.

3.2. The travel agent industry in Australia

An industry profile

Industry size and financial performance

3.26 Travel agents act as distributors to both the leisure and business markets for a range of domestic and international travel products including air, land and sea travel, accommodation, tours and admissions, and travel insurance.

3.27 The travel agent industry in Australia is a mature industry which is a significant small business employer and has a substantial turnover of funds. Travel agents in Australia are required to be licensed under a national regulatory scheme operating in all States and Territories apart from the Northern Territory. Table 3.7 below shows that the number of licensed agents in the industry has remained relatively stable at just under 5,000 over the past five years.

Table 3.7: Licensed travel agents, Australia (excludes Northern Territory)

As at 30 December	1996	1997	1998	1999	2000
Head offices	3,355	3,420	3,453	3,439	3,415
Branches	1,470	1,387	1,458	1,463	1,473
Total	4,825	4,807	4,911	4,902	4,888

Source: Travel Compensation Fund, Annual Report 2000

3.28 The latest comprehensive study of the travel agent industry in Australia was undertaken by the Australian Bureau of Statistics in 1996/97¹¹. The study showed that at the time the industry employed around 25,000 people and earned total income of \$1,980 million of which 65% was earned from ticket sale commissions. Agents received an average commission on gross ticket sales of 9.4% with the higher commissions coming from domestic packages at 12.4%. International travel accounted for 66% of commission income and domestic travel for 34%.

3.29 In its analysis the study distinguished between retail travel agents, who sell to consumers, and wholesalers and ticket consolidators who sell to the industry. Retail travel agents earned 80% (\$903 million) of their income from ticket sales.

3.30 The overall profit margin of the industry was two per cent with retail travel agents showing an operating profit of margin of 8.1% while wholesalers and ticket consolidators achieved a negative profit margin of minus 16.8%.

3.31 Given the structure of the industry it is likely that smaller retail travel agents, who make up the bulk of the industry in numbers, operate on margins substantially lower than the 8.1% industry average. The ABS survey found that while at one end 36% of agents have turnovers of less than one million dollars per year, at the other end 37% of the industry's income was generated by just 0.6% of businesses. These larger businesses realise higher profit margins, with the ten retail travel agent businesses employing 100 or more persons having an average operating profit margin of 14.5% in 1996-97. More recent estimates¹² suggest that the top twenty multi-outlet travel agencies are responsible for over 70% of all sales.

3.32 Among the major travel agents are:

Flight Centre Ltd: a large public company with 350 outlets;

United Travel Agents Group Pty Ltd (UTAG): a buying group with turnover in excess of \$1.3 billion and representing over 400 agents;

Concorde International Travel Ltd: a wholesale travel agent with turnover exceeding \$1.2 billion;

Harvey World Travel: a public company operating a franchise network with over 410 agencies; and

American Express: a division of a large global corporation with 77 outlets in Australia.

3.33 The Chief Executive of the Travel Compensation Fund has expressed concern¹³ at the viability of the 62% of travel agents which turn over less than \$2 million. He considers that turnover of around \$5 million is required to obtain sufficient rewards for proprietors and employees, indicating that there "is still a

¹¹ Travel Agency Industry, Australia 1996-97 (Cat. No. 8653.0)

¹² P.23, Chapt. 2, The Australian Travel Agency, R Harris and J Howard (McGraw Hill, 2001)

¹³ "Worrying view of agent finances", Travelweek, 31 January 2001.

question mark over financial viability in the industry because margins have not improved”.

IATA accredited agents

3.34 Information provided by IATA in the Statement of Facts shows that the number of agents in Australia with IATA international agency accreditation (thereby being able to issue tickets directly to customers) is around 40% of the total number of agents. The number of accredited agents has risen steadily in recent years from 1,893 (38.6% of licensed agents) in 1998 to 2,028 (41.3%) in 2000.

3.35 In 2000 the IATA BSP processed over 15.5 million tickets accounting for over \$8 billion from the sale of airline tickets by IATA accredited agents in Australia.

The sale of airline seats by agents

3.36 There are broadly two types of agents selling airline travel to consumers:

- (i) accredited agents who sell tickets directly to consumers;
- (ii) non-accredited agents who purchase seats through accredited agents or under general sales agreements with specific airlines.

3.37 Within the accredited agency group are agents who primarily supply tickets to other agents. These agents are known as consolidators and wholesalers and specialise in supplying tickets to non-accredited agents. These agents rely on high turnover to obtain deals from airlines at levels that allow them a margin whereby they can wholesale to other agents.

3.38 The tightness of margins in the industry is such that both accredited and non-accredited agents shop across the industry to obtain optimum deals. Some agents for example specialise in cultural segments and are able to obtain fares at levels for specific markets which enable them to onsell to other agents.

3.39 A feature of the industry is the way agents look to arrangements which provide high volume purchases from airlines as a means of obtaining higher commissions or better fare prices. These arrangements include cooperatives, buying groups, agent franchise groups and large multiple agency businesses

3.40 Agents sell fares on behalf of airlines on either of two bases, a commissionable fare or a net fare with the agents' margin added on. With a *commissionable fare* the agent takes a commission agreed with the airline from the price at which a fare is sold in the market, i.e. the agent receives a commission which is subtracted from the sale price. Additional commission may be offered depending on sales volumes of up to say 10%, payable at three month intervals.

3.41 Where an agent is offered a *net fare* by an airline the agent will market the fare with a margin on top. Normally net fares will be offered to the agent market at the same level. Sometimes airlines will offer super net fares which give an agent the opportunity to retain the margin and mark the sale price down or to retain the sale price and achieve a higher margin. Qantas has recently stated that 50% of its

international fares are issued on a net basis for agents to mark up¹⁴. IATA has stated that 60% of international tickets sales in Australia are on a net fare basis.

3.42 In Australia domestic fares are normally subject to commission at the 5% level. Override commissions of up to 5% may be also payable depending on sales volumes and targets. International fares are marketed on both commission and net bases.

Events of September 2001

3.43 The incidents in New York resulted in an immediate loss of confidence in air travel and the ensuing fall off in demand globally was reflected in reductions in airline flights and downsizing in the airline and related industries. These developments also impacted on the revenue and viability of travel agents. The Australian Tourism Commission (ATC) has stated¹⁵ that analysts were estimating that one fifth of the 30,000 travel agents in the United States would be out of business by the end of 2001.

3.44 The above developments have also impinged on Australia with an ATC survey in late October 2001 indicating that bookings to Australia were down an average of 23% across all source markets.

3.45 While the bulk of the business of travel agents in Australia relates to Australian residents travelling overseas or domestically rather than inbound tourists, it is evident that they have been affected by a reluctance by Australians to travel overseas. Australia's largest consolidator, Concorde International Travel, for example, announced in early October a 15% reduction in its workforce.

3.46 For Australian travel agents the impact of events in the United States was compounded by the subsequent failure of Ansett Australia. Its demise was accompanied by the failure of its subsidiary travel agents and saw the loss of funds and bookings by many Australian consumers and the stranding of others in mid journey.

3.47 An AFTA industry survey¹⁶ completed in late 2001 by amongst others, 807 travel agencies, revealed that:

- respondents lost more than \$37 million from the Ansett collapse;
- 512 travel agencies experienced a business downturn of more than 30%; and
- travel agents had lost 447 staff and reduced salaries by an average 25%.

3.48 Pressure on the travel agent industry was recognised by a Federal Government assistance initiative for the tourism industry which included grants for consumers who purchased domestic travel packages through travel agents.

¹⁴ "QF staying loyal to agents", Travelweek, 20 February 2002

¹⁵ "Worse to come for tourism, warns ATC Chief", travelbiz.com.au, News, 2 November 2001

¹⁶ "Survey confirms industry in crisis", travebiz.com.au, News, 12 November 2001

3.49 Apart from the terrorist factor, for many Australian consumers the security of any investment in travel may also be an issue. The combination of the Ansett experience and the extreme financial difficulties of many international airlines (as discussed above), is likely to have made many consumers wary of spending on overseas travel when there is a high degree of uncertainty about protection and compensation arrangements. Travel insurance no longer protects against airline failure or terrorist acts. At the same time some banks have decided to hold back funds payable to airlines to limit the banks' exposure from credit card merchant rules. In response some airlines (eg Thai Airways) refused to accept payment by certain credit cards. In another development the reserves of the Travel Compensation Fund have been severely depleted by the Ansett failure.

3.50 The issue of credit card merchant agreements may also have an impact on the financial performance of travel agents. If the liability for credit card transactions where the travel agent was the merchant is passed on to agents, agents may have to bear the cost of claims of the order of \$50 –60 million from the Ansett failure.

3.51 Under these circumstances the low turnover/low margin agents who make up the bulk of the industry would seem vulnerable to an industry down turn. The Chief Executive of AFTA has indicated that agents that are not aligned with a large buying group would struggle to survive.

“Basically, any agent who is not part of a multi chain – with all the benefits that brings in terms of branding, recognition in the market place, additional products and additional income – will not in my view survive the next six months.”¹⁷

3.52 The extent to which the structure of the travel agent industry will remain under pressure remains to be seen. The ATC has suggested it will be at least 2004 before the travel industry returns to its pre September 2001 position. Boeing has predicted¹⁸ that it will be late 2005 before traffic levels reach pre September 11 levels.

Regulation of travel agents

Licensing

3.53 A scheme to regulate travel agents in Australia was established in 1986, subsequent to the issue of Determination A90408 by the Commission. The scheme was initially restricted to four States but later extended to cover all States and Territories except the Northern Territory. The scheme is embodied in the Travel Agents Acts of participating States and Territories, a Participation Agreement and the Travel Compensation Fund Trust Deed.

¹⁷ “Why independents’ days are numbered”, Traveltrade October 17, 2001

¹⁸ “Aussies show the way for Boeing growth”, The Australian, 26 April 2002

3.54 The Participation Agreement requires participating jurisdictions to implement uniform standard provisions for the licensing of travel agents and to require licensees to be members of the Travel Compensation Fund (TCF). The definition of travel agent under the scheme is such that, in addition to retail travel agents, it captures service providers, inbound tour operators, wholesalers and consolidators. Exemptions from licensing are available under nominated circumstances, including when the value of turnover for domestic travel is less than \$30,000 per annum.

3.55 The prerequisites for holding a licence are similar in each jurisdiction. An agent must be aged 18 years or over, be a fit and proper person, and meet specified levels of experience/qualifications (or have a manager with the requisite experience/qualifications).

Travel Compensation Fund (TCF)

3.56 The Travel Compensation Trust Fund Deed outlines the three purposes of the Trust as follows:

- to provide compensation to certain people who deal with travel agents;
- to provide for the operation of the Fund; and
- to ensure that only persons who have sufficient financial resources to enable them to carry on business as a travel agent are participants of the fund.

3.57 Participation in the TCF comes at the cost of an initial contribution of \$7,500 plus a one off administration fee of \$600. Up to \$3,000 of the initial contribution is rebateable depending on the financial standing of the agent. There is also an annual renewal fee of \$200. The TCF may also impose conditions, including guarantees or bonds, as a condition of participation in the Fund.

Financial viability assessments

3.58 The TCF monitors the financial viability of agents, both at the time of joining the Fund and annually at renewal, through reference to a range of specified financial criteria.

3.59 The financial criteria are designed to reflect the adequacy of owner's equity (capital and reserves) and generate a score based on financial ratio tests. Access to the TCF is dependent upon gaining 10 out of a possible 20 points for financial standing and business arrangements. Agents must also meet minimum equity levels specified according to turnover.

TCF benefits

3.60 The TCF was established to provide a system of compensation to consumers who lose money when a travel agent ceases due to its financial failure. The provision of benefits is generally limited to consumers who purchase travel packages (transport and accommodation). Benefits do not extend to air travel purchase only except where the failure of the travel agency occurs after payment has been made for a ticket but before the ticket is issued.

The Ansett failure

3.61 As at 31 December 2000 the Fund had reserves of \$8.54 million. Claims from consumers related to the failure of Ansett and its travel agency subsidiary Traveland were estimated then to be of the order of \$12 million. The Australian Government committed to inject \$5 million into the TCF, to be matched by State and Territory governments, as part of a \$45 million assistance package for the travel industry.

3.62 AFTA has been actively advocating a consumer funded protection plan to supplant or replace the current TCF arrangements. Consideration in Australia by the Executive Council of a similar IATA plan has been postponed at the request of AFTA. An update report on the IATA plan was submitted to the Passenger Agency Conference meeting in 2002. A special conference is being considered to discuss and endorse the plan.

4. Draft Determination

4.1 On 13 May 2002 the Commission issued a Draft Determination in response to Application A90791 from IATA for re-authorisation of the IATA Passenger Agency Program.

4.2 In the Draft Determination the Commission stated that it had examined the claims made by the applicant and comments of interested parties and was of the view that:

- a healthy travel agent industry is required in Australia to facilitate competition between international airlines;
- by providing a mechanism for most suppliers of air transport to Australia to jointly control the distribution of their services the IPAP is potentially anti-competitive, with any detriment extending to travel agents and consumers; and
- 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.

4.3 The Commission said that while it considered that the IPAP has the potential to be anti-competitive, some areas of concern aside, it did not consider that the IPAP was having a detrimental impact on relevant markets at that moment. Subject to IATA taking action in certain areas the Commission believed that the IPAP at the time provided benefits to the public which outweighed any anti-competitive detriment associated with the program.

4.4 The Commission proposed to grant authorisation to the IATA Passenger Agency Program subject to a number of conditions:

4.5 In the light of consistent claims that IATA's accreditation requirements gave rise to unnecessary burdens and costs and impede agents' ability to compete with the increasing direct sales of airlines, and recognising the difficulties being faced by the agent industry, the Commission proposed that authorisation should be conditional upon a review being undertaken of the conditions for obtaining and retaining IATA accreditation.

4.6 In response to representations from agents the Commission also proposed to make authorisation conditional upon IATA addressing the performance of airlines in interacting with the BSP in order to improve the system's ability to respond to errors and refunds to the benefit of agents and consumers.

4.7 In recognition of the potential significance for an accredited agent which has signed the Passenger Sales Agency Agreement of being denied plates by an airline in general concurrence the Commission proposed that authorisation should be conditional upon any such refusal of plates being subject to the agent being given a statement of reason and access to an appeal mechanism.

4.8 The Commission also proposed that authorisation should be conditional upon the revocation of paragraph 9.6 of Resolution 816 which suggested that agents could not tender for government business in Australia.

4.9 Recognising that the IATA Passenger Agency Program is dynamic and subject to regular change the Commission proposed to authorise those elements of the program which it regarded as having minimal anti-competitive risk for a period of eight years with authorisation extending to changes in those parts of the program in that period. The Commission proposed to authorise the other elements of the program for a period of four years with authorisation not extending to changes to those parts of the program.

5. Submissions

5.1 A copy of each submission is held on the Public Register, pursuant to s. 89 of the Act. A list appears below of organisations from whom the Commission received submissions or with whom the Commission held discussions.

Submissions in relation to the original application of the Applicant were received from:

The Applicant

Australian Federation of Travel Agents (AFTA)

Qantas Airways Limited

Tasmanian Department of Premier and Cabinet

Commonwealth Department of Transport and Regional Services

AV Credit

American Express

Discussions were held with:

Travel Compensation Fund

Qantas Airways Limited

Ansett Australia Limited

Consolidated Travel (Vic) Pty Ltd

Travel.com.au

Flight Centre Limited

Company x

UTAG

American Express

Submissions were received after the issue of the Draft Determination from:

The Applicant

The Australian Federation of Travel Agents (AFTA)

The Travel Compensation Fund (TCF)

The Department of Industry, Tourism and Resources

Qantas

Japan Airlines

4.1 The Applicant's submissions

Prior to the Draft Determination

5.2 IATA has sought the revocation of Authorisation A90408 from the date on which a substitute authorisation is granted and the substitution of an authorisation in terms described earlier. IATA has requested a seven year substitute authorisation.

5.3 In its submission IATA states that in order to grant the new authorisation the Commission would need to be satisfied that the conduct for which authorisation has been sought results or is likely to result in a benefit to the public; and that benefit outweighs the detriment to the public constituted by any lessening of competition that has resulted or is likely to result from the conduct.

5.4 In making its claims the IATA submission draws support from a statement from an industry expert, Dr Michael Trethaway, and the IATA Statement of Facts.

Public benefits

5.5 IATA submits that the Commission found in 1984 that the IPAP delivered public benefits and that the Program continues to do so. In its submission IATA identifies seven public benefits arising from the conduct for which authorisation is sought:

(i) *fostering business efficiency*

IATA claims that the IPAP fosters business efficiency for both travel agents and airlines. Efficiencies accrue to travel agents from the method of appointment, credit arrangements, the method of issuing tickets, the method of accounting for tickets sold, and the method of paying airlines.

Airlines benefit from a centralised assessment and accreditation mechanism, access to a greater spread of agents, neutral ticket stock and an efficient centralised method of accounting for tickets sold by travel agents.

IATA also suggests that Australia benefits from participation in a standardised distribution system which operates throughout the world.

(ii) *expansion of employment*

IATA claims that because accredited travel agents are able to sell airline tickets wherever they are located in Australia it provides the opportunity for greater employment in travel agents than would otherwise be the case.

(iii) *assistance to efficient small business*

IATA claims that the IPAP provides smaller travel agents with the same access to the ticket distribution system as larger agents, pointing out that 97% of agents employ less than 20 people. It is suggested that if the IATA agency system did not operate in Australia it is likely that many airlines would not deal with many smaller travel agencies.

(iv) *expansion of consumer choice*

IATA claims that the IPAP materially increases consumer choice by providing consumers with a wider choice of destinations, airlines and ticket flexibility. Consumers in country areas have access to a large range of airlines. The Program also facilitates new entrant airlines who might not otherwise have been able to justify establishing sales arrangements in Australia.

(v) *supply of better information to consumers and businesses to permit informed choices in their dealings*

Agents are claimed to be able to supply better information to consumers because they are able to sell tickets on a number of competing airlines. At the same time IATA training standards and courses ensure that travel agency employees are well trained and can advise consumers.

(vi) *promotion of equitable dealings in the market*

According to IATA the IPAP promotes equitable dealings in a number of ways. They include access by agents to a transparent and neutral accreditation scheme, an equal opportunity for all accredited agents to sell the business of all airlines, and the ability of all international airlines to access all accredited agents in Australia on the same basis.

IATA also claims benefits from access to the same credit arrangements and sales remittance system. The potential influence of local airlines is said to be neutralised by requirements for unanimous approval for changes to IPAP rules.

(vii) *growth in export markets*

IATA claims that the IPAP assists inbound tourism by providing travel agent facilities around the world to promote Australia and by facilitating the promotion and selling of Australia as a tourism destination overseas by Australian airlines.

Effect on competition

5.6 IATA submits that:

- the lessening of competition likely to arise from the Program in its current form is less than when the Commission authorised the Program in 1984; and

- the public benefits inherent in the Program clearly outweigh any detriments likely to arise from aspects of the Program which might lessen competition.

5.7 IATA notes that a number of resolutions with which the Commission had concerns in 1984 have been repealed or amended, or apply in a different way.

5.8 IATA notes that while the Commission in 1984 regarded the main anti-competitive detriment in the accreditation system as the detriment inherent in the system itself, the Commission nevertheless authorised the system.

5.9 IATA submits that the level of credit extended to accredited agents by airlines is such that sensible pre-qualification requirements are necessary. IATA suggests that the qualifications for accreditation are sensible, the process fair and cost reasonable, with an appeal mechanism available for handling grievances.

Features of the program

5.10 IATA submits that the rules which govern accreditation are fair and well balanced. The rules are sensible and not unduly restrictive in practice. There are fair rules for dealing with default, including rights of re-hearing. The rules of expulsion are fair and reasonable and include independent review rights. There is an opportunity for key stakeholders to have appropriate involvement in governance of the system.

After the Draft Determination

5.11 IATA submitted that three of the four conditions proposed in the Draft Determination were inconsistent with the evidence and were unnecessary to protect the interests of participants in the Agency Program. IATA also sought modification of the form of the authorisation to better accommodate changes in the program.

Condition on commission for government business

5.12 IATA advised that this condition was no longer required as the relevant resolution had not applied in practice in Australia for many years and was removed at the 2002 IATA Passenger Agency Conference.

Condition proposing a review of conditions for obtaining and retaining accreditation in Australia

5.13 IATA claimed that this condition was not supported by the by evidence and identified a range of factors and “uncontroverted facts” in support of the claim.

5.14 IATA also suggested that the ACCC’s power to impose conditions should only be exercised in order to get the matter over the line in terms of net public benefit. The Commission should not, through conditions, seek to re-engineer the agency program “developed over many years by the airlines with input from agents worldwide”.

5.15 IATA further claimed that the accreditation criteria are continually being refined jointly by the airlines and agent representatives through existing arrangements.

5.16 IATA indicated that notwithstanding its view that the condition was unnecessary it was prepared to commission an independent review of the accreditation rules and supplied the Commission with proposed terms of reference for that review.

Condition on general concurrence

5.17 IATA submitted that general concurrence has clear public benefit and no anti-competitive features and there is no basis for a condition requiring a statement of reasons and an appeal process for an agent refused plates by a airline in general concurrence.

5.18 Specific points made by IATA included that airlines have a commercial right to choose which agents receive their plates and there is no public record of an agent being refused a plate.

Condition on refunds and net remit errors

5.19 IATA submitted that this condition is unjustified, unnecessary and unworkable. IATA plays no role in net fare deals between airlines and agents except to process net remit tickets through the BSP and the effect of airline and BSP net remit errors on agents is negligible.

5.20 IATA claims that only 5% of net remit tickets are processed with errors and that agents account for 95% of such errors. Moreover agents at all times hold substantially more of the airlines' money interest free than the airlines owe to agents due to these errors.

5.21 In relation to refunds IATA noted that the length of time needed for a refund varies depending on the type of ticket and the reason for the refund. IATA submitted that there is no factual basis for the ACCC concluding that refund delays may impinge on the competitive position of agents.

5.22 IATA advised that notwithstanding their views on the condition, in recognition of the concerns of agents the airlines have approved a proposal (details supplied) covering net remit errors and refunds. IATA considered this proposal meant there was an additional reason for not having the condition.

Form of the authorisation

5.23 IATA has provided the Commission with a suggested alternative approach to the form of the authorisation which, amongst other things, incorporates:

- (i) authorisation of all the Passenger Agency Conference resolutions applicable in Australia for eight years, including all subsequent changes;
- (ii) for those resolutions which the Commission wishes to 'freeze', the authorisation of amendments would only apply if notice of the proposed resolution is given to the Commission and the Commission does not (within a specified period) require it to be the subject of a separate application.

5.24 IATA submits that the above approach to the authorisation would overcome practical difficulties associated with the form of the authorisation in the draft determination while still allowing the Commission to freeze resolutions if it so wishes. IATA feels that there is no justification for freezing most resolutions as changes since 1984 have tended to be more liberal and history does not support the view that there is any likely anti-competitive risk associated with the frozen resolutions.

4.2 Other submissions

Before the Draft Determination

Submissions lodged by interested parties

Australian Federation of Travel agents

5.25 The Australian Federation of Travel Agents (AFTA) considers that the IPAP provides an overall public benefit in providing a uniform method by which accredited travel agents can issue and account for air transport tickets. However AFTA does have reservations about particular elements of the Program and its support for IATA's application is conditional on those elements being modified or removed.

5.26 AFTA is very supportive of the BSP but considers that given there is no feasible alternative it is important that the regulations governing agents' participation be fair and reasonable.

5.27 AFTA views the IATA accreditation system as inherently anti-competitive and sets out concerns at those elements of the Program which act as a restraint on travel agents providing efficient and effective services and those which restrain competition between agents and airlines.

5.28 AFTA opposes granting IATA authorisation of a system which grants IATA immunity for future contracts, arrangements and understandings. Concerned at IATA's ability to alter the relationship with agents in a way which may result in a lessening of competition without attached public benefits, AFTA advocates authorising a specific set of resolutions.

5.29 Specific issues identified by AFTA as affecting the livelihood of agents are that:

- the IPAP is not a relationship negotiated between equals and accredited travel agents are obliged to accept complex and onerous obligations to member airlines;
- the resolutions comprising the IPAP (especially Resolution 816 – see page 19) have been developed without input from agents;

- commission being paid to agents is now being reduced in many markets, including Australia;
- airlines are increasingly pursuing direct sales using the internet, frequent flyer programs etc.; and
- current resolutions place an unnecessary financial burden on travel agents which puts them at a competitive disadvantage with airlines and non-accredited agents.

5.30 AFTA proposes to pursue modifications to the IPAP which would have the effect of:

- removing provisions which create unnecessary cost and formalities;
- removing duplication which exists in IATA accreditation and the TCF supervised licensing;
- reforming the IATA decision making process to ensure the interests of agents are given proper consideration; and
- implementing a revised contractual document which has been the subject of negotiation between agents and airlines.

5.31 AFTA has provided detailed comment on its areas of concern. It has also noted that representatives of national travel agent associations have been participating with IATA on a Global Consultative Committee in a review of the Passenger Agency Sales Agreement with the objective of presenting a draft new document to the 2002 Passenger Agency Conference.

Qantas

5.32 Qantas supported the IATA application for authorisation submitting that the Program resulted in efficiency and quality of service benefits which significantly outweighed any actual or potential anti-competitive effects arising from the Program.

5.33 It was the submission of Qantas that IATA is a key element in the international air transport system. The ability to participate in the Passenger Agency Conference and BSP enabled Australian airlines to access and compete in the international market. Australians would otherwise be disadvantaged in term of their access to export markets and to air travel.

5.34 Qantas submitted that the IPAP assists travel agents to enter the market, participate efficiently in the provision of travel services and provide employment throughout Australia. Consumers benefited from improved access to services and in increased choice and cost savings. These benefits extend to regional Australia.

5.35 There are also cost savings and business efficiency benefits that accrue to both airlines and agents from centrally organised accreditation, access to information and highly developed credit, accounting and ticket issuing systems.

5.36 Further, there is no discrimination between small and large operators. Without these systems, airlines would be forced to favour dealing with more established and larger agencies to the detriment of some consumers, particularly those outside the metropolitan area.

5.37 Qantas expressed the view that the IPAP is less likely to be anti-competitive now than when authorised in 1984, due to the reasons set out in the Application A90791, including a transparent accreditation process, accreditation not being required to carry on the business of a travel agent, and the removal of fixed commissions payable only to accredited agents.

Tasmanian Department of Premier and Cabinet

5.38 The Tasmanian Department of Premier and Cabinet submitted that the IPAP Program facilitates the movement of passengers and the clearance and payment of charges at competitive costs for all parties, often without the physical movement of money in payment. Without this system passengers and cargo shippers would face increased costs and decreased services.

5.39 The Department considered that the IPAP should not have a negative impact on competition and public benefits arising from the system should outweigh any anti-competitive detriment.

Commonwealth Department of Transport and Regional Services

5.40 The Commonwealth Department of Transport and Regional Services (DoTR) raised concerns with the IATA machinery generally, particularly to tariff control (an issue not of concern under the Program). Concerns were expressed that if resolutions of the passenger agency conferences were used to support moves that would affect competition on price between carriers within Australia they may be detrimental. DoTR recognised that this is more likely to lie within the ambit of A90435 – IATA arrangements other than accreditation of travel agents and related matters – and that should that authorisation come for consideration it would provide a more thorough response.

Aviation Credit Solutions

5.41 Aviation Credit Solutions (ACS) is a Hong Kong based corporation which amongst its activities markets insurance based products to Australian travel agents. ACS effectively underwrites guarantees sought from travel agents by the TCF and by IATA as part of the IPAP.

5.42 ACS has stated that IATA is developing a Passenger Protection Plan which would become mandatory for carriers and agents in a country with the agreement of two thirds of local airlines. Under the plan a compulsory fee of US\$0.45 would be collected on each ticket. The funds would be used to pay carriers funds owing from a default by an agent and pay consumers in respect of losses from agent or airline defaults.

- 5.43 ACS believes the Protection Plan raises competition issues and that:
- the IPAP should be ring fenced to exclude such arrangements;
 - Resolutions should be subject to individual scrutiny and approval by the ACCC;
 - the IPAP should be required to adopt a principle of business neutrality;
 - the IPAP should be authorised for a period less than seven years; and
 - all minutes of the Passenger Agency Conference should be lodged with the ACCC and be available for public inspection.

American Express

5.44 American Express (Amex) made a submission which attached observations made by Amex to the European Commission in relation to the IATA passenger agency program. Amex commented that a number of the observations are relevant to the Australian Program of IATA and asked the Commission to give them appropriate consideration. The Commission was also provided with a copy of IATA's response to the observations.

5.45 The Amex observations were made in relation to an application from IATA for the renewal of the exemption for Resolution 814 (the European counterpart to Resolution 816) from Article 81(1) of the EEC Treaty.

5.46 Amex claimed that contrary to when the exemption was granted in 1991 airlines were now competitors to travel agents, selling airline tickets directly to customers through sales offices, call centres and web sites. Amex suggested that the IATA Resolution allows the airlines to regulate their competitors.

5.47 Amex claimed that Resolution 814 causes serious anti-competitive effects by:

- restraining travel agents from providing efficient and effective services on behalf of their clients;
- hindering competition between travel agents and airlines in the distribution of passenger air transport services;
- reinforcing national trade barriers between Member States rather than bringing them down; and
- preventing the development of an e-commerce environment for the distribution of passenger air services.

Discussions with interested parties

5.48 The Commission notes that only a limited number of responses were received from the large number of potentially interested parties to the request for submissions on IATA application for authorisation A90791. The major representation from travel agents was by the travel agent industry association, the Australian Federation of Travel Agents (AFTA) which provided a submission on behalf of the industry following consultation with a range of members. No submissions were made by individual travel agents and even a subsequent promotion of the project by a daily travel agent news service with an extensive coverage of the industry resulted in only one inquiry from a small agency.

5.49 In light of the small number of submissions received the Commission initiated a limited program of discussions with parties involved with the industry, including a small representative cross section of agents. Discussion focussed on, but was not limited to, a range of questions drafted by Commission staff. Copies of the questions appear on the Commission's Public Register. A summary of those discussions appears below. A number of small agents contacted by the Commission were concerned that any comment should be made anonymously. Fuller reports of the meetings appear on the Public Register. The Commission would like to express its appreciation for the cooperation extended by the parties contacted, often in the face of substantial pressure from developments in the industry at the time.

Travel Compensation Fund

5.50 Commission staff met with Mr Carlo Brattoni, Chief Executive Officer of the Travel Compensation Fund. Mr Brattoni raised a number of issues pertaining to the program and its relation to the TCF.

5.51 The industry for the air transportation of passengers was described as unique. The industry relies on a commission based structure with agents distributing the product of airlines (the ultimate service providers). Airlines are able to use this commission structure to their advantage when competing with the travel agents. Most agents also have to compete with airline owned agencies which can be offered deals ahead of the rest of the industry and if making losses are effectively subsidised by the airlines.

5.52 Mr Brattoni explained that there is not an overlap between the coverage of the IATA accreditation scheme (under the IPAP) and the TCF scheme. The IATA scheme is intended to protect airlines against agent failure. The risk for airlines extends to funds received by agents for issued tickets where the funds have yet to be received from the agent. Carriers are obliged to carry passengers in possession of tickets, regardless of whether the airline has received the funds for the ticket.

5.53 The TCF scheme is intended to protect consumers against travel agent failure and only extends to travel package purchases, i.e. not to airline tickets alone. Where a consumer has paid for a travel package but not yet received airline tickets, protection extends to the whole of the package. If an agent fails after a valid airline ticket has

been issued but land content suppliers have not been paid by the agent, protection also extends to that component of the package.

5.54 With regard to accreditation, the TCF is subcontracted by IATA to conduct financial viability assessments required by IATA under the IPAP. Mr Brattoni considered there is a philosophical difference between IATA and the TCF with the TCF aimed at consumer protection, whilst IATA runs a trade indemnity program.

5.55 Mr Brattoni was concerned that the AFTA proposed consumer protection scheme applied insurance rather than licensing principles and it was not clear how licensing fitted into the scheme. If the scheme replaced licensing inefficient agents could enter the industry resulting in premium increases and less information being available to consumers as to agent reliability.

5.56 Generally, Mr Brattoni believes that IATA has become more consultative with the industry in recent years. The major area of disagreement had been the movement of the BSP to a 7 day remittance period, action which had not been supported by agents as it resulted in a loss of working capital.

Qantas Airways Limited

5.57 Qantas considered that agents hold considerable power in the industry, particularly where they form a buying group of consortium. This power derives from their ability to divert sales from one airline to another. Airlines engage in negotiations with almost all travel agents (whether through buying groups or otherwise). The percentage of international sales through agents is relatively unchanged over the past fifteen years.

5.58 There are no differences in fare levels for distributors for domestic fares. When net fares are offered to agents for travel the agents can mark up the fare to a level they believe sustainable. Qantas does not sell fares at the wholesale net fare rate to the general public. Agents can increase remuneration through service fees and efficiencies. Agents can also benefit from incentive commissions and overrides, both on net and published fares.

5.59 Of the approximately 2200 agents in Australia only a very small proportion have not negotiated arrangements with Qantas. Qantas offers plates to all accredited agents and has no record of refusing plates to an agent. Qantas makes electronic tickets available to agents even though Ansett did not. An E-ticket can cost substantially less to process and can increase agent margins as there are no costs associated with delivery fees, wallets, etc..

5.60 Qantas regards the new Zuji portal [a new regional multiple airline website] as an online travel agency which will be directed towards business to consumer sales but which will also develop as a business to business facility. Customers still prefer face to face booking and are not committing themselves to sales over the internet. It is likely internet bookings will become significant as consumers become more confident in the facility.

5.61 Qantas advised that airlines are able to gain information from the BSP as to their own percentage of sales by an agent. A carrier can identify locations and stores as the sources of sales data from the BSP but cannot obtain data on total sales by an agent or what is sold on competitors' routes. Qantas regards the BSP as a highly automated, efficient and beneficial system.

5.62 Corporate accounts often operate on a fee for service basis with the agent not deriving income from commissions or margins. Any commissions are passed on to the corporate client and not retained by the agent. Corporate agents compete on a fee for service basis. Quality of service is often an important factor for corporate clients. Agents tend to have a higher staff attrition rate than Qantas Business Travel which can also offer sophisticated technology and a personalised service. When responding to a travel tender Qantas Airways (as distinct from Qantas Business Travel) will make an offer to the corporate client as to discounts/rebates it can provide on services. The client can take the offer to an agent or to Qantas Business Travel for quotes to manage the account.

5.63 Overall Qantas has no concerns with the current IATA accreditation arrangements. There is consultation between carriers and agents. The move to weekly remittances resulted in increased speed in the refund process. The TCF is highly valued for keeping bad operators out of the industry.

Ansett Australia Limited

5.64 Commission staff met with Ansett Australia Limited (Ansett) on 10 September 2001 prior to the company entering administration on 14 September. Ansett stated that despite many changes to the retail travel market in the past 15 years the agency network has remained the core distribution vehicle. The most significant of the changes has been automation of processes, with the advent of Global Distribution Systems as a key access channel. As a result, agents have received a reduction in costs, productivity improvements and increased professionalism. The technology has also enabled agents to progress from manually hand written tickets to automated ticketing.

5.65 Ansett considered there are a number of benefits that may be derived from the use of a BSP. These benefits flow to both the agent and the airlines. With regard to the agents, the benefits may be stated as follows:

- Simplifies and reduces work through the use of standard documents for all airlines;
- Provides a central source of supplying tickets and documentation;
- Simplifies paperwork and overheads through a single sales report;
- Reduces processing costs through electronic data submission and report distribution;
- Increases security – single stock of documents, less storage space required;
- Simplifies remittance procedures by establishing one point for agents payments;
- Encourages and supports automated ticketing – improved efficiencies;
- Simplifies staff training as processes are consistent across the industry; and

- Assists with new initiatives/legislative requirements (for instance the GST).

5.66 Ansett also identified benefits to the airline flowing from the BSP as follows:

- Reduces billing and collection costs;
- Provides increased financial control;
- Improves cash flow;
- Ensures that data integrity standards are maintained;
- Enhances purchasing power for documents and forms;
- Minimises distribution, inventory control and administrative costs through central suppliers;
- Reports agents irregularities and defaults on neutral in a timely manner;
- Provides regular industry audits carried out by a neutral auditor;
- Consolidates document flow to airlines;
- Assists automated accounting by the provision of data files containing billing and ticketing data; and
- Enables production of reliable industry sales and management statistics.

5.67 Ansett also considered that the accreditation process provided benefits to airlines and agents. For airlines the benefits are a reduction in financial risk by ensuring only financially viable agents are accredited; a reduction in fraud as agents are required to meet financial and security tests, the provision of an unbiased and consistent approach to accreditation, and the discretion for airlines to decide if an agent is to be provided with the airline's plate.

5.68 The benefits to agents from accreditation were threefold. Due to the process agents are evaluated for accreditation by IATA rather than individual airlines, agents are required to supply only one bank guarantee, and accredited agents can issue tickets on behalf of non-accredited agents.

Consolidated Travel (Vic) Pty Ltd

5.69 Consolidated Travel (Vic) Pty Ltd (Consolidated) is IATA accredited and services approximately 2000 to 3000 agents annually, dealing with approximately 1000 agents weekly, on a national basis. The other main consolidator in Australia is Concorde. Consolidated operates in similar manner to buying groups using its turnover and distribution size to obtain discounts which enable it to sell tickets to other agents.

5.70 Some agents have sub-market dominance and sell to certain destinations or societal groups, often on national carriers. Their high turnover in these specialised markets enables them to obtain attractive incentives and commissions.

5.71 Non-accredited agents are the mainstay of consolidators. Consolidated estimated that 60% of agents operating in Australia are not IATA accredited. For accredited agents around half of the tickets they sell are not issued direct but obtained from operators such as consolidators.

5.72 Consolidated considers that there are two benefits to an agency from accreditation. It costs an accredited agent less to issue a carrier's ticket. Also, accreditation provides the ability of at-source ticketing. Against this an accredited agent incurs added administrative burdens and must have the ability to carry debts where there is a dispute as to BSP rejections.

5.73 E-commerce is not a concern to Consolidated. While E-commerce may make substantial inroads into domestic fares sales in the medium term, international tickets sales are unlikely to be affected. International tickets are more complicated and more expensive, and consumers are not confident of committing payment over the internet for such large amounts.

5.74 The BSP is an issue for the agent industry particularly where there is a transaction rejection. For instance, a ticket sold by an agent for a net fare of \$1,500 will have a gross value of around \$3,000. If the transaction is accepted by the BSP then \$1,500 will be remitted to the BSP. Should the transaction be rejected, the BSP will default the value of the transaction to the gross value of the ticket less 9%. The default value is then deducted from the remittances to the agent, who holds the financial liability until the mistake or dispute is resolved.

5.75 The size of consolidators meant they were in a better position than most agents to carry BSP rejections. Smaller agents simply could not afford to wear rejections. Consolidated suggested that this aspect of the BSP could result in many agents not wanting to be involved in the BSP or to seek accreditation.

Travel.com.au

5.76 Travel.com.au is of the view that there are advantages and disadvantages to being accredited. It can be an advantage to an agent to be able to issue tickets directly. However an agent could find the administration expenses associated with the BSP onerous and expensive and opt to avoid them by operating through a consolidator.

5.77 Most difficulties associated with the BSP arise from the automatic debiting of agents' accounts. The rectification of errors or the settlement of disputes can be a long drawn out process during which the agent carried the full cost of the ticket. This can be a reason for agents to prefer to deal through consolidators rather than seek accreditation and issue their own tickets.

5.78 The agency receives both standard published fares and net fares from airlines. Override commissions are payable every three months. There are no overrides on E-deals (internet fares) mainly because of the reduced work associated with them. While there is some competition between agents on margins, airlines also look at developments in nets and commissions and compete on them.

5.79 In general there are no differential discounts in the industry or quotas restricting fare availability. The only cheap fares that are not available to agents are Qantas E-fares and similar fares available from Webjet.

5.80 Inevitably it will become more attractive to consumers to pursue fares directly through airlines rather than through agents. For example in the US E-fares are made available through the airline owned Orbitz portal but not through other agent fare sites such as Travelocity or Expedia.

5.81 The integration through portals of frequent flier details and yield management systems for not just air fares but also accommodation and entertainment will see portals offer custom designed packages to clients at unbeatable prices. Agents will struggle to compete with this style of product.

5.82 There seems little doubt that airlines get better outcomes from direct sales (as against through agents) if only from the avoidance of GDS fees (\$8 per sector).

5.83 Qantas supports agents in the marketing of corporate business and recognises that agents can sometimes offer better rates on other airlines and hotels. Corporate accounts can also be expensive to service. On the other hand high fares can result in commissions perceived as unreasonable by airlines. This is in part why airlines in some countries have moved to cap commissions. Some airlines are not happy that an agent can earn (say) a \$630 commission on a \$7000 fare for doing no more than they would on a \$1,000 fare.

Flight Centre Limited

5.84 Flight Centre Limited (FCL) is concerned that IATA decision making is unilateral with the right to change a contract with agents without negotiation or accountability. In a free market each airline would have to negotiate with distributors. Closed door decision making between competitors without accountability or transparency is not acceptable. FCL's views are that:

- The unilateral decision to change the BSP remittance period has impacted on FCL's cash flow and cost it about \$3 million per year;

- FCL supports the UFTAA recommendation that the IPAP be more consumer oriented and give the travel agency body equal representation in decision making;
- airlines want to directly distribute to customers, limiting choice, distribution and service; and
- duplication of licensing and accreditation between IATA and the States/TCF should be eliminated.

5.85 FCL does not consider the current BSP system is a commercial arrangement:

- the BSP draws on the agent account, yet it is up to the agent to validate the withdrawal and chase up disputed transactions;
- fees are imposed for late submission of documents even when it is a BSP error;

- if the BSP or airline make a data entry error, the BSP takes no responsibility and the agent must prove the error to BSP;
- one week turnaround on customer service issues is unreasonable;
- customers are charged cancellation charges even if the seat is sold to someone else; and
- it normally takes the agent around 90 days to receive the refund, or longer if there is a dispute (FCL has adopted the practice of refunding the customer up front and carrying the risk until the refund payment is received from the airline).

5.86 FCL considers that many agents use consolidators due to the complexity and administratively intensive nature of the IATA ticketing system. Non-accredited agents can gain cost advantages by avoiding this administrative burden and are able to concentrate on sales consulting duties.

5.87 FCL receives a 5% commission on domestic sales with possible further override commissions which are paid on the actual travel by the consumer. Tracking override payments was a substantial task for FCL.

5.88 E-commerce is having an impact particularly on domestic sales where the low value of the tickets could see agents working for only \$5-10. As margins tighten agents are looking to charge service fees. FCL is not in favour of service fees as they provide an incentive for airlines to promote call centres and the internet to undercut agents.

5.89 E-commerce is not being taken up for international travel. It is difficult to accommodate factors such as yield management and interlining. Establishment costs are very expensive.

5.90 In the United States airlines have moved to cap commissions in dollar terms. However this may be to the detriment of the airlines as capped commissions remove the incentive for agents to sell high yield fares. In journeys where interlining is required agents can ticket the passenger on the airline paying the highest commission. All airlines on the ticket then pay commission at that rate.

5.91 FCL expressed concern that under the current IATA regime there is no protection for the agent in the event of the inability of an airline to continue operations. The emphasis is on protecting airlines from agency failure.

5.92 FCL claim that airlines can use information available through the CRS and BSP systems to their advantage. Airlines know for example what FCL has sold to their competitors and will approach sales consultants in individual shops citing market share figures and pushing consultants to sell more of the airlines' business.

5.93 In the view of FCL there is a restrictive distribution of fare types. They submit that airlines discriminate between which agents get which fares. For instance,

ethnic fares are only available to specific ethnic agents. Similar restrictions apply to student fares, internet fares and E-tickets.

Company X (a small agent which sought confidentiality)

5.94 *Company X* considered that the IPAP has not necessarily grown with the times to reflect changes to the airline industry structure and that the terms and conditions of IATA accreditation were dated and restricted commercial freedom. It was also considered that the nature of the industry was such that it needed a measure of control.

5.95 The rules for accreditation are onerous and can require excessive training without any real reason. Non-accredited agents do not have the burden associated with accreditation and ticket issuing and may have an administrative efficiency advantage.

5.96 Large agents can obtain better deals from airlines through override commissions and super net fares and are able to compete more strongly on price. Smaller agents often need to be part of a buying group. *Company X* is a member of buying group and buys both through the group and directly. Smaller agents typically shop across a number of sources to find the cheapest and most effective form of service delivery.

5.97 IATA Passenger Agency Conference meetings do not necessarily represent the interests of agents. As agents are not members of IATA, *per se*, they are therefore not fully involved in the meetings.

5.98 *Company X* thought the BSP worked well and is in the interests of the industry. However there was concern that information from the BSP can be misused.

5.99 Travel agents make money from the sale of services such as hotels accommodation, functions and tours. The bulk of the revenue for a travel agent comes from airfare sales. Recently the cost of distribution has increased while revenue from commissions has been decreasing.

UTAG

5.100 Independent agents can obtain buying power benefits by listing with *UTAG* which costs \$3,000 per annum. *UTAG* negotiates with airlines to obtain outcomes based on a loyalty program and turnover. If turnover increases *UTAG* may get bonus commissions which are passed on to members.

5.101 Some *UTAG* members are accredited and others are not. *UTAG* also acts as a consolidator and ticket centre for its members. Members are not restricted to sourcing their travel needs from *UTAG* and actively seek deals from other sources, including consolidators.

5.102 *UTAG* considers the BSP an excellent system, particularly compared to the alternative of having travel sales negotiated and acquitted between individual airlines and agents.

5.103 UTAG thinks that the TCF has had a good impact on the industry in that the vetting processes have resulted in less agent collapses and more agent stability. The financial requirements are not onerous, but could be improved with increased emphasis on ongoing, as against time of joining, analysis of working capital. According to UTAG the increased use of technology in the industry combined with recent events will inevitably see much lower numbers of agents in the industry.

American Express

5.104 American Express (Amex) provided a general background on the travel agent industry in Australia and how it operated followed most of which merely confirmed the ACCC's understanding from earlier discussions with other parties.

5.105 There was some discussion of commission rates, how they operated and the role of net fares and commissionable fares. In response to a query on the incidence of net fares offered by airlines compared to commissionable fares for international travel, Amex indicated that the incidence of net fares is increasing and currently makes up about 20% of the market.

5.106 Amex provided a copy of the Amex "observations" forwarded to the European Commission (EC) on the IATA agency program as well as a copy of the IATA response to the Amex submission. [Amex later formally made a written submission to the ACCC in response to the IATA application A90791 which included the observations put to the EC.]

After the Draft Determination

Australian Federation of Travel Agents (AFTA)

5.107 AFTA drew attention to the failure of the 2002 Passenger Agency Conference (PAConf) to adopt recommendations of the Global Consultative Committee in respect of reforms to the Agency Program, including revisions to the Passenger Sales Agency Agreement (PSAA)(Resolution 824).

5.108 Despite IATA's claims that an opportunity is given to accredited agents to have input into the governance of the Agency Program, the 2002 PAConf demonstrated that agents are excluded from the actual decision making process and governance of the Agency Program. This outcome also reflects on IATA claims that the Global Consultative Committee provides a means of consultation and review in relation to the Agency Program.

5.109 AFTA submitted that a number of additional or alternative conditions should be imposed in the final determination including that:

- the management of the Agency Program and the BSP in Australia be taken out of the exclusive hands of IATA and be jointly managed by representatives of agents and airlines in equal numbers with an independent chairman;
- IATA take action to remove the unanimity principle in respect of proceedings as PAConf;

- amendments made at PAConf Miami to Resolution 892 governing the privacy of positions taken at IATA meetings being extended to agents attending such meetings be revoked; and
- IATA be required to publish and maintain a record of voting at PAConf.

5.110 As to the conditions appearing in the draft determination AFTA has commented that:

- the proposed IATA review of the accreditation process provides no guarantee that any findings of the review would be implemented.
- the refusal of plates provision was similar to a provision endorsed by GCC members in the proposed revised PSAA and there is a consolidator agent in Australia which has been denied access to plates by an airline in general concurrence for two years;
- despite the submissions made by IATA and airlines there are still issues for agents with net remit errors and refunds;

The Travel Compensation Fund (TCF)

5.111 The TCF has claimed there may be a public detriment issue involved with Clause 7.2 of the IATA Passenger Sales Agency Agreement. It is suggested that it is unfair where as a result of this clause consumers are denied refunds under circumstances where:

- payment has been made and a ticket issued for travel on Ansett;
- Ansett collapses and cannot provide the service; and
- the BSP reverses payments to Ansett as a result of the collapse and monies paid for the ticket are now held by the agent.

The Department of Industry, Tourism and Resources (DITR)

5.112 DISR submits that any steps that could lead to making the IATA Passenger Agency Program more equitable for travel agents would be welcomed by the industry at this difficult time.

5.113 DITR supports in particular authorisation of the Agency Program being conditional upon addressing the performance of airline interaction with the BSP and a review of the conditions for agents to obtain and retain IATA accreditation.

Qantas

5.114 In relation to the proposed review of IATA accreditation requirements and processes Qantas considers that IATA's policies are appropriate and Qantas applies equal or more stringent requirements on its own distribution.

5.115 Qantas believes the proposed changes to the handling of BSP errors would increase the cost of dealing with agents and impact adversely on airline revenue.

Many errors result in breaches of fare rules. Most errors are agent errors and adequate processes already exist for agents to manage and correct errors.

5.116 The condition proposed by the Commission in relation to a carrier in general concurrence refusing plates is not considered necessary by Qantas. Qantas always offers new agents plates and smaller carriers may not find the broad distribution of plates justified commercially.

5.117 Qantas supports the proposal put forward by IATA to monitor performance against the agreed industry standards for processing refunds to travel agents.

Japan Airlines (JAL)

5.118 JAL suggests the forthcoming Commission ruling would have international implications and while the IATA global system is not perfect it has a mechanism to improve efficiencies through consultation and coordination with agents.

5.119 Airlines have entitlements under international conventions and agreements of fair and equal opportunities of doing business or sales and marketing in other countries with the Agency Program an essential part of it.

5.120 Commission proposals on some of the resolutions are different from the judgement of other authorities. Some sort of coordination might be necessary among international authorities.