



**Australian
Competition &
Consumer
Commission**

Determination

Application for Revocation and Substitution of Authorisation A90408

**International Air Transport Association (IATA)
Passenger Agency Program**

Date: 13 November 2002

**Authorisation No:
A90791**

**File No:
C2001/601**

Commissioners:

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Summary

On 14 May 2001 an application for authorisation (No. A90791) was lodged with the Australian Competition and Consumer Commission (the Commission) by the International Air Transport Association (IATA) pursuant to section 91C of the *Trade Practices Act 1974* (the Act).

The application sought the revocation of an existing authorisation (No. A90408), issued on 31 October 1984 on an indefinite basis for the IATA Passenger Agency Program (IPAP), a program which provides a system of the sale and distribution of air transport through travel agencies, and the issue of a new authorisation covering the program and any future changes made to it.

IATA is the international trade association of most airlines operating international air services in the transport of passengers, mail or cargo. Its members are estimated to account for over 95% of international passenger air travel to and from Australia.

The IPAP is embodied mainly in resolutions passed by IATA airline members at IATA Passenger Agency Conferences. The program has three core elements, an accreditation scheme which enables licensed agents to sell tickets on behalf of airlines, a process of appointing agents to represent airlines and a system for managing the reporting and payment of ticket sales.

The Commission must in considering whether it can make a determination revoking Authorisation A90408 and granting a new authorisation apply a statutory test pursuant to subsections 90(6) and 90(7) of the Act. Under this test the Commission shall not make a determination granting an authorisation unless it is satisfied that, in all the circumstances, the conduct has resulted, would result, or would be likely to result in a benefit to the public and the benefit would outweigh the detriment to the public constituted by any lessening of competition that would result.

The Applicant submits that the IPAP satisfies the test for authorisation. IATA claims that there are seven public benefits arising from the IPAP, being the fostering of business efficiency, the expansion of employment, assistance to small business, the expansion of consumer choice, the supply of better information to consumers and businesses, the promotion of equitable dealings in the market and growth in export markets. IATA claims these benefits outweigh any detriments likely to arise from aspects of the IPAP which might lessen competition.

The Commission received submissions from six parties, including the Australian Federation of Travel Agents, and had discussions with seven parties on the application. While no parties suggested the authorisation should not be granted there was strong criticism of various aspects of the IPAP, especially the IATA agent accreditation scheme and the processing of refunds and anomalies within the IATA Billing and Settlement Plan (BSP).

The Commission has examined the claims made by the applicant and comments of interested parties and is 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.

The Commission issued a draft determination on 13 May 2002 proposing to authorise the IPAP subject to a number of conditions relating to the requirements for obtaining and retaining accreditation, airlines' performance in interacting with the BSP and the ability of airlines to withhold carrier identification plates.

While the Commission considers that the IPAP has the potential to be anti-competitive, some areas of concern aside, it does not consider that the IPAP is having a detrimental impact on relevant markets at the moment. Subject to IATA taking action in certain areas the Commission believes that the IPAP currently provides benefits to the public which outweigh any anti-competitive detriment associated with the program.

A common submission from parties in the travel agent industry is that IATA's accreditation requirements give rise to unnecessary burdens and costs and impede agents' ability to compete with the increasing direct sales of airlines. Recognising the competitive impact of such burdens and costs on agencies and the difficulties being faced by the agent industry currently the Commission proposes to make authorisation of the IPAP conditional upon a review being undertaken of the conditions for obtaining and retaining IATA accreditation. The Commission sees this review and the implementation of its recommendations as an important factor in ensuring there is net public benefit from the IPAP.

On the basis of additional information supplied by IATA and taking into account measures proposed to be introduced by IATA in relation to airlines' BSP performance the Commission is satisfied that the BSP is not having an anti-competitive impact. Accordingly it is no longer proposed to include conditions relating to the BSP.

However in the light of advice that an Australian consolidator has been refused plates by an airline in general concurrence for two years the Commission will require such airlines refusing or withdrawing plates from an agency to provide a statement of reasons. The unreasonable refusal of plates could have an anti-competitive impact.

IATA sought authorisation of the IPAP as a system, i.e. including future changes to the program, for a period of seven years. Bearing in mind the potential for changes to the program to have an anti-competitive impact the Commission is not prepared to provide authorisation in a form which is open ended as to conduct.

Mindful that the IPAP is dynamic and subject to regular change the Commission is authorising elements of the program which it regards as having minimal anti-competitive risk for eight years with authorisation extending to changes in those parts of the program in that period. The other elements of the program are authorised for four years with authorisation not extending to changes to those parts of the program.

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List of Abbreviations

Act	<i>Trade Practices Act 1974 (Cth)</i>
Amex	American Express
ATC	Australian Tourism Commission
BSP	IATA Billing and Settlement Plan
CRS	Computer Reservation System
DAPA	Domestic Agency Program Australia
FCL	Flight Centre Limited
GDS	Global Distribution System
IATA	International Air Transport Association
IPAP	IATA Passenger Agency Program
Manual	IATA Passenger Agency Conference Resolutions Manual, 22 nd Edition
BSP Manual	IATA BSP Manual for Agents (effective 1 December 2000)
PAConf	IATA Passenger Agency Conference
PSAA	IATA Passenger Sales Agency Agreement
TCF	Travel Compensation Fund

1. The Application

1.1. Introduction

1.1 On 14 May 2001 an application for authorisation (No. A90791) was lodged with the Australian Competition and Consumer Commission (the Commission) by the International Air Transport Association (IATA).

1.2 The application was made under s. 88(1) of the *Trade Practices Act 1974* (Cth) (the Act) and sought, pursuant to s. 91C of the Act, the revocation of Authorisation A90408 from the date on which a substitute authorisation is granted and the substitution of an authorisation in the following terms:

1. *Authorisation for IATA and its members from time-to-time to:*
 - 1) *engage in conduct giving effect to the contracts, arrangements and understandings evidenced by the:*
 - a) *Provisions for the Conduct of the IATA Traffic Conferences, to the extent that they relate to the IATA Passenger Conference, as amended from time to time;*
 - b) *resolutions of the IATA Passenger Conference passed in accordance with the Provisions for the Conduct of the IATA Traffic Conferences as amended from time-to-time; and*
 - c) *decisions of the General Assembly constituted by Resolution 816 Section 2.1 (as amended or substituted from time to time);*
 - 2) *meet in IATA Passenger Agency Conferences and pass resolution amending or modifying or adding to the current resolutions; and*
 - 3) *meet in the General Assembly and make decisions within the jurisdiction of that Assembly.*
2. *Authorisation for IATA, its members and others who, according to IATA Passenger Conference resolutions establishing the Executive Council Australia and other consultative groups relating to the IATA Passenger Agency Programme, participate in consultations within the terms of reference set by the relevant conference for those groups from time-to-time.*

1.3 The application in essence seeks re-authorisation for the IATA Passenger Agency Program (IPAP) which, in brief, provides a system for the sale and distribution of air transport through agencies which specialise in the sale of travel and related products, and for the acquittal to airlines of funds paid for the purchase of air transport.

1.2. History of the Application

1.4 Application A90791, along with a supporting submission (the IATA Submission), was lodged with the Commission on 14 May 2001. Other substantive information received subsequently by the Commission from the Applicant included:

- a letter of 2 November 2001 responding to queries raised by the Commission in a letter of 27 July 2001; and
- a letter of 17 December 2001 responding to a submission from the Australian Federation of Travel Agents (AFTA) lodged with the Commission on 31 August 2001.

1.5 The Commission released a Draft Determination on 13 May 2002 proposing to authorise the IATA Passenger Agency Program subject to number of conditions. A pre-decision conference in relation to the Draft Determination was requested by IATA in a letter dated 24 May 2002 and by AFTA in a letter dated 27 May 2002.

1.6 The pre-decision conference was convened on 14 June 2002 and, at the prior request of the Applicant, was immediately adjourned, to reconvene on 22 July 2002. The pre-decision conference was reconvened in Sydney on 22 July 2002. A record of the conference is at Attachment C. IATA forwarded a written statement attached to a letter of 31 July 2002 in support of its submission to the pre-decision conference.

1.7 At paragraph 4.3 of the IATA Submission it was stated that that the ACCC was entitled under section 88(13) of the Trade Practices Act to grant authorisation expressed to apply to contracts that are in similar terms to any contract specifically lodged for authorisation and that it has done so in other cases. The Commission acknowledges the presence and intent of section 88(13) but does not see that the provisions are necessarily relevant or could be considered to have been applied under these circumstances given that no specific reference was made to Section 88(13) in Application A90791.

1.8 The IATA submission of 31 July 2002 (the Responding Submission) suggested that the Commission is entitled to grant an authorisation permitting the making of a contract or arrangement that may be anti-competitive (s.88(1)(a)) or the giving effect to a contract or arrangement that may be anti-competitive (s.88(1)(b)) or the engagement in conduct which is or may amount to exclusive dealing (s.88(8)). IATA stated that to be fully effective an authorisation must cover all elements.

1.9 Applications A90408 and A90791 both only sought authorisation under s.88(1) and neither identified conduct with exclusionary provisions or where exclusive dealing might be occurring. For the Commission to provide authorisation in relation to such conduct applications would also need to have been made pursuant to s.88(1)(b) and s.88(8) and interested parties given an opportunity to respond to the applications.

1.3. The Applicant

1.10 IATA is a non-governmental international trade association of most carriers operating scheduled international air services in the transport of passengers, mail or cargo. IATA is incorporated pursuant to Canadian law.

IATA Membership

1.11 Members of IATA are classed as either Active Members or Associate Members. Active Membership is only open to carriers operating an international air service for the public transport of passengers, mail or cargo by aircraft. Airlines operating services other than international air services may become Associate Members of IATA. Associate Members are not allowed to vote at certain IATA meetings.

1.12 Unless sponsored by at least two active members an applicant shall have operated an air service for at least two years and performed for each year at least 5,000,000 revenue tonne kilometres. Membership fees consist of a non-refundable membership application fee, a one time entrance fee, a fixed annual levy and a variable annual levy based on revenue tonne kilometres performed by the carrier two years earlier.

1.13 Until recently membership of IATA was restricted to carriers operating under the flag of a state eligible for membership in the International Civil Aviation Organisation (ICAO). That restriction has now been removed. As at 1 June 2001 there were 273 IATA members, of which 246 were Active Members and 27 Associate Members. IATA claims that its member airlines fly over 95% of all international scheduled air traffic.

1.14 IATA submitted that there were 53 carriers operating scheduled passenger services to and from Australia as at 30 June 2000. Details of these airlines appear at Appendix A. Nearly all of the major airlines operating to and from Australia are members of IATA. The airlines which were not members of IATA accounted for only 4.3% of passenger traffic to and from Australia in 1999/2000.

IATA's objectives

1.15 IATA's mission, as stated in its Articles of Association, is to "*represent and serve the airline industry*". The relevant Article states that in carrying out this mission IATA shall:

1. Promote safe, reliable and secure air services for the benefit of the peoples of the world;
2. Provide means of collaboration among airlines engaged directly or indirectly in international air transport;
3. Cooperate with the International Civil Aviation Organisation and other relevant organisations.

1.16 In pursuing this mission IATA has identified¹ the following goals:

(i) *To promote safe, reliable and secure air services.*

This goal focuses on the safety and economy of airlines' operations and contributes to the development and implementation of security standards.

(i) *To achieve recognition of the importance of a healthy air transport industry to world-wide social and economic development and to assist the industry to achieve adequate levels of profitability.*

IATA promotes the contribution of the international airline industry both as an industry in its own right (carrying 1.5 billion scheduled passengers year) as well as to employment (1 out of every 12 workers in the world is in the travel and tourism industry) and trade and production. IATA notes the travel and tourism sector accounts for about 12% of the world's Gross Domestic Product.

These activities are directed especially towards governments, which are regarded as setting the political and economic agenda for international air transport, in recognition of the roles played by government in relation to charging and taxation policies.

(iii) *To provide high quality, value for money, industry-required products and services that meet the needs of the customer.*

IATA covers much of its operating costs from selling products and services to member airlines and others in the industry. Such products include clearing house services between airlines, currency clearance services, training, prorating funds between carriers for interline passengers, insurance, yield management, tariff services, agency programs, management information services, market and economic analysis, conferences and consultancy services.

(iv) *To develop cost-effective, environmentally-friendly standards and procedures to facilitate the operation of international air transport.*

IATA develops and refines standards for multilateral interline traffic agreements, passenger and cargo services conferences, passenger and airport services, scheduling, facilitation and fraud prevention.

(v) *To identify and articulate common industry positions and support the resolution of key industry issues.*

1.17 IATA is pro-active in supporting joint industry action directed towards the efficient operation of the air transport system including the development of supporting infrastructure such as airport terminals and air traffic control systems, providing legal support such as for the Montreal Convention, and maintaining dialogue with international consumer groups.

¹ "IATA: What it is and what it does", IATA, October 1999.

1.4. Background to the Application

History of authorisation of the passenger agency program: 1975 - 1980

1.18 The IATA Passenger Agency Program has been the subject of attention under the Act on a number of occasions involving both complaints and applications for authorisation. A condensed history of these matters is provided below.

10 January 1975: Qantas lodged application for authorisation A3485 which related to the entire system of IATA rules, regulations, etc. The application was lodged on behalf the member airlines of IATA and non-IATA international airlines that operated services to and from Australia.

13 February 1975: A3485 was granted interim authorisation.

August 1975: the Commission received a complaint alleging discrimination between travel agents in the amount of the bond required by IATA.

25 February 1976: IATA lodged application A16252 for authorisation of a newly developed bonding scheme.

17 March 1977: IATA lodged application A17020 for authorisation of a proposed scheme for assessing the productivity levels of IATA accredited travel agents.

5 August 1977: the Commission granted interim authorisation to A17020.

Mid 1978: the Australian Federation of Travel Agents (AFTA) initiated court action against IATA over travel agent bonding alleging contravention of the Act.

16 August 1978: the Commission, with the agreement of IATA and AFTA, revoked interim authorisation A3485 and a new interim authorisation was granted on condition that IATA did not increase any bond beyond the level applicable prior to 30 May 1978.

8 December 1978: Application A16252 was withdrawn.

11 December 1978: A new application A30048 for authorisation of a proposed bonding scheme was lodged by IATA.

13 November 1979: Following discussions with AFTA, IATA wrote to the Commission seeking to vary A30048 which now contained bonding proposals supported by AFTA.

30 June 1980: Commission issued final determination authorising Applications A3485 (part), A17020 and A320048, subject to certain conditions and qualifications. The final authorisation for A3485 only extended to conduct relating to the IATA scheme of joint accreditation and bonding. Other conduct covered by Application A3485 continued to be covered by interim authorisation.

The Determination

1.21 In its determination of 31 October 1984 the Commission stated that:

40. *Authorisation is granted to the IATA system of accreditation of travel agents provided for in Application no. A90408, as expressed in the IATA Passenger Conference Resolutions Manual, 4th edition as amended up to 1 February 1984, Resolutions 001aa-892 [Document 58 on Public Register No A75/452 and Folios 1-3 on Public Register No A84/s].*
41. *This authorisation supersedes the earlier authorisation that was granted on 8 July 1981, thus the Commission revokes that earlier authorisation (Application no. A90353).*

Current applicability of Authorisation A90408

1.22 IATA has stated in para 3.2 of its Submission in Support of Application for Re-authorisation (the IATA Submission) that by its use of the word “system” in paragraph 40 of the determination that the Commission authorised the IATA system – not just specific resolutions as they stood in 1984.

1.23 The interpretation made in the IATA Submission that authorisation was of the system and therefore future resolutions is inconsistent with the wording of the original IATA Application A90408. Application A90408 sought authorisation of the Passenger Agency Conference Resolution Manual, 4th Edition as amended up to 1 February 1984, not of the system of accreditation. To imply that the Commission by using the word system in its authorisation extended authorisation to future resolutions is to imply that the Commission granted authorisation for conduct for which authorisation was not sought in the application.

1.24 It is the Commission’s view that any resolutions made in an IATA Passenger Agency Conference (PACConf) subsequent to the resolutions specified in Application A90408 cannot be assumed to be authorised under the Act pursuant to determination A90408.

1.25 The Commission similarly does not consider that Authorisation A90435 authorises any resolutions made in a PACConf subsequent to resolutions in the Passenger Agency Conference Resolution Manual, 4th Edition, as amended up to 1 February 1984.

1.26 It is stated at paragraph 4.6 of the IATA Submission that authorisation A90435 is a broad authorisation which entitles IATA and its members, subject to certain conditions, to adopt and give effect to resolutions (including passenger agency resolutions) passed at Traffic Conferences convened in accordance with the Provisions for the Conduct of IATA Traffic Conferences.

1.27 The Commission notes in this respect that paragraph 1 of determination A90435 states that rules concerned with the accreditation of travel agents and related matters are covered by a separate authorisation application (A90408).

1.28 The Commission notes IATA's comment at paragraph 4.3 of the IATA Submission that authorisation of a specific set of resolutions would be of little utility because changes to the Program are passed on a regular basis and authorisation of specific resolutions would require IATA to continually apply for re-authorisation as the Program evolved.

1.29 The Commission acknowledges that there are issues of a practical nature arising from the authorisation of specific resolutions as against systems which produce resolutions as outcomes. At the same time the Commission is concerned that any authorisation of a system potentially authorises future conduct of which it cannot be aware now and which could be anti-competitive in nature and substantially lessen competition. Under these circumstances there is a question as to whether the Commission in respect of unknown future conduct is able to form a view as to the extent of any public benefit or of detriment associated with a possible lessening of competition.

1.30 The Commission addresses these issues in the context of Application A90791 later in this determination.

1.31 IATA has requested in its Submission of 31 July 2002 (the Responding Submission) responding to the Draft Determination of 13 May 2002 that the Commission not include the interpretation of prior Trade Practices Commission decisions in the final determination.

1.32 In making comments on those decisions the Commission is merely responding to claims made in the IATA Submission as noted above in paragraph 1.22. Not to respond to those claims could leave the impression that the Commission agrees with the interpretations made by IATA. IATA suggests that it is not for the Commission to try to re-interpret prior decisions – that only a court can do that. The Commission would find it an unusual outcome if it were not able to provide guidance on the interpretation of its own decisions.

1.5. The Conduct

1.33 There are three main areas of conduct covered by the IATA authorisation Application A90791 and covered under the broad heading of the IATA Passenger Agency Program (IPAP):

- the Provisions for the Conduct of IATA Traffic Conferences (to the extent they relate to IATA Passenger Agency Conferences);
- resolutions passed at IATA Passenger Agency Conferences; and
- decisions of the General Assembly South West Pacific.

Provisions for the Conduct of IATA Traffic Conferences

IATA's conference structure

1.34 The primary mechanism by which airlines pursue IATA's objectives is through the IATA conference structure. Conduct of the conferences is subject to the

Provisions for the Conduct of IATA Traffic Conferences² (the Conduct Provisions) which are specified in the IATA Handbook (Part 1). IATA conferences are described as autonomous groups where airline representatives discuss and develop commercial and traffic standards from the perspective of their own carrier interests. IATA submits that the Conferences facilitate international interline air transportation through resolutions, industry standards and recommended practices. They also develop resolutions on international fares and rates which underpin the interlining system.

1.35 There are three passenger and three cargo conferences classified by IATA into groups as follows:

Passenger procedures conferences

Passenger services conference

Passenger agency conference

Cargo procedure conferences

Cargo services conference

Cargo agency conference

Tariff coordinating conferences

Passenger tariff coordinating conferences (different conferences for different regions)

Cargo tariff coordinating conferences (different conferences for different regions)

1.36 There is also a Schedule Coordination Conference.

Participation

1.37 Under the Conduct Provisions only Active Members (international airlines) may vote at conferences. Associate Members (domestic airlines) may attend but not vote. The aims, objectives and purposes of the traffic conferences are to be those of IATA as a whole. Each conference must meet at least once every two years.

1.38 Attendance at conferences by observers is by invitation only. Specific provisions are made for invitations to be made to nominated governmental organisations such as the International Civil Aviation Organisation (ICAO) and any Government formally expressing a requirement to attend.

1.39 The Conduct Provisions allow for any person to be invited to Passenger Services or Cargo Services Conferences. There are no provisions for the attendance of observers at Passenger Agency Conferences other than governmental representatives.

² This summary of the Provisions for the Conduct of the IATA Traffic Conferences is derived from the IATA Handbook, Part 1, July 1999.

Input from Third Parties

1.40 Under the Conduct Provisions any person may:

- (i) receive copies of the agenda of any Traffic Conference;
- (ii) submit a specific written proposal, on any subject or matter pending before the Conference;
- (iii) seek to make an oral presentation in support of a written submission, subject to the approval of the Chairman and Secretary of the Conference.

Traffic Conference voting

1.41 The only action at a conference which is binding upon members is a *resolution*. Resolutions may only be passed at procedures conferences by the unanimous affirmation of all members present. While resolutions at tariff coordination conferences also generally require unanimous agreement, there are provisions taking into account regions of operation of members.

1.42 In Passenger and Cargo Services Conferences *industry standards* may be adopted by an 80% majority of members. An industry standard sets forth procedures where uniformity is considered necessary for say interline service, but for practical reasons not all carriers follow the procedures. Passenger Agency Conferences are not able to adopt industry standards.

1.43 Passenger and Cargo Services Conferences may similarly adopt *recommended practices*, by a two-thirds majority. A recommended practice sets forth procedures which will, for example, facilitate interlining, but uniformity is not considered essential. Passenger Agency Conferences are not able to adopt recommended practices.

Resolutions of the IATA Passenger Agency Conference

Organisation of the Passenger Agency Conference

1.44 The Passenger Agency Conference is the primary vehicle by which IPAP issues are progressed. This conference takes action on matters relating to relationships between airlines and IATA recognised passenger sales agents (travel agents) and other intermediaries, but excluding remuneration levels. The broad IATA governance structure associated with the Passenger Agency Conference is illustrated in Figure 1 below.

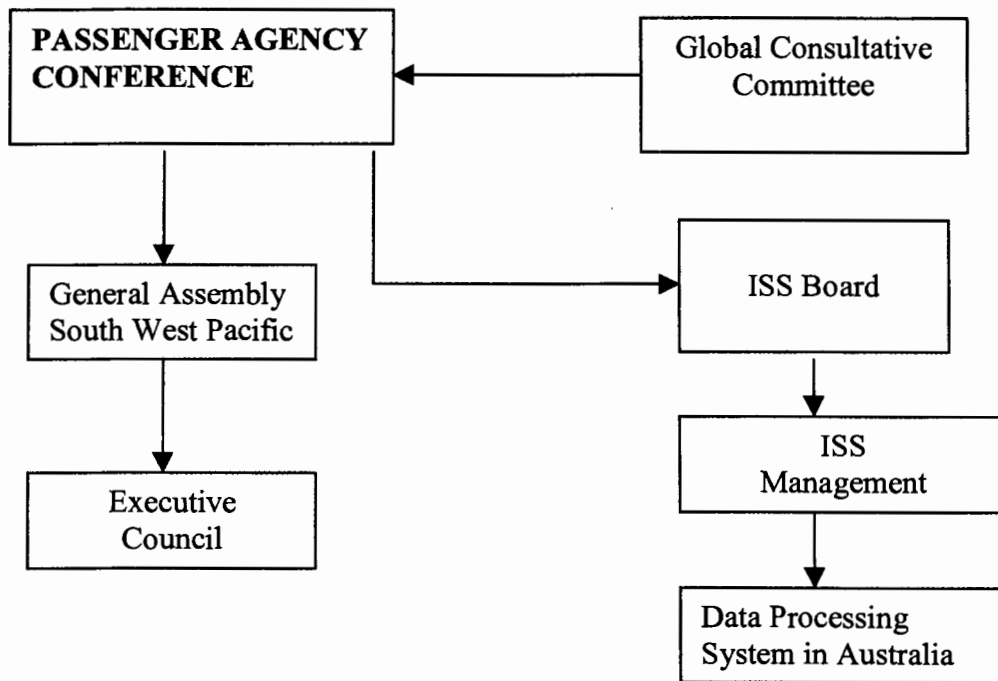
1.45 The *Global Consultative Committee* is a permanent body with equal representation from travel agents and airlines which reports directly to the Passenger Agency Conference. The Committee is able to make recommendations to the Conference on all matters affecting the operation of the IATA agency program.

1.46 The *General Assembly South West Pacific* has been established by the Conference to administer the agency program in the South West Pacific region which includes Australia. The General Assembly is entitled to make recommendations to

the Conference for improvements to the program. Powers delegated to the General Assembly embrace:

- qualifications for accreditation and retention of IATA accreditation;
- procedures for processing applications for accreditation;
- conditions for payment of commission and provision of beneficial services to accredited agents; and
- rules for notice of change of ownership or legal status for accredited agents

Figure 1.



1.47 The General Assembly South West Pacific has established a number of executive councils for countries in the region, including an *Executive Council Australia*. Executive Council Australia has a consultative role in relation to the agency program as it operates in Australia. The Council has equal representation from airlines and agents and may make recommendations to the General Assembly on matters within its jurisdiction.

1.48 Management of the IATA Billing and Settlement Plan (BSP) has been delegated by the Conference to an area called Industry Settlement Systems Management (ISS Management). ISS has its own board and executive structure and is responsible to the IATA Board of Governors.

Key Elements of the Passenger Agency Program and Relevant Resolutions

1.49 IATA emphasises that the IPAP is part of a world wide system designed to enable the sale and distribution of airlines seats on its 270 member airlines anywhere in the world to and from any destination in the world.

1.50 The Program provides a mechanism internationally for the sale of air travel through accredited agents with sales being reported and acquitted through a clearing bank.

Agent Accreditation

1.51 Resolution 816 and the Travel Agents Handbook prescribe rules for assessing whether travel agents who apply for accreditation with IATA have the necessary qualifications and financial standing for appointment as an IATA agent. Only licensed³ agents that are accredited or approved under the Domestic Agency Program Australia (DAPA) are allowed to issue tickets using neutral IATA ticket stock on behalf of airlines. DAPA is an extension of the IATA agency program for a small number of agents who sell only domestic travel. The interest of the agency program in the financial position of agents arises from airlines being creditors to the agents for payments made by consumers to agents for airline tickets.

1.52 Other factors identified by IATA as justifying accreditation are that the agents hold valuable ticket stock and airline identification plates and that airlines need to be satisfied that agents have the necessary skills to represent the airlines in the travel market.

1.53 Resolution 816 specifies the qualifications and criteria that must be satisfied by an agent to be accredited as follows:

- (i) automated ticketing: must have access to an IATA approved automated ticketing facility;
- (ii) premises: must be open on a regular basis, trade as a travel agency, not be located in office space shared with another agent or airline, and meet nominated security requirements;
- (iii) storage: must meet security standards specified for storage of ticket stock, etc.;
- (iv) prudential requirements: must provide audited financial statements, meet financial standards and, if required, post a guarantee/bond (around 25% of newly accredited agents in 2000 required bonds/guarantees averaging \$33,333);
- (v) business standards: principals or senior officers must not have a record of breaching fiduciary obligations or be undischarged bankrupts;
- (vi) management: no director or manager can have held a similar position in an agent which has been removed from the IATA agency list, is in default or has moved out of default through a bond/guarantee;

³ Travel agents in Australia must be licensed in the State or Territory in which they operate.

- (vii) personnel: must meet IATA qualifications and competency criteria;
- (viii) general sales agency: cannot be a general sales agency⁴ for a carrier for Australia or any part of it; and
- (ix) name: cannot have the same name or a name similar to an IATA member, an airline participating in the BSP, or IATA itself.

1.54 The application fee for IATA accreditation is currently \$1,315 for a head office and \$1,161 for a branch office. The assessment of applications takes six to eight weeks. Airlines have an opportunity under Resolution 816 to object to the accreditation of an agent. Accreditation refusal or removal is subject to an independent appeal mechanism.

Agent Appointment to Represent Airlines

1.55 Having passed the accreditation phase, before an agency can represent airlines it must sign the Passenger Sales Agency Agreement (PSAA). The PSAA, contained in Resolution 824, is a standard agreement world wide which specifies the arrangements between carriers and agents, and agents' obligations. The IATA Agency Administrator signs the agreement on behalf of IATA Members and airlines are notified that an agent has been added to the IATA Agent List. IATA submits that the PSAA approach saves the negotiation of individual agreements between airlines and agents.

1.56 An accredited agent may sell tickets for all IATA member airlines which have entered into an IATA agreement called the *general concurrence*. An accredited agent cannot act for an IATA Member airline which has not entered the general concurrence unless it has been provided with a certificate of appointment by that airline and that airline's ticketing authority. IATA advises that over 80 airlines have signed a general concurrence in relation to Australia, including all major international airlines serving Australia.

1.57 Agents do not have to represent all airlines in the general concurrence and generally only seek carrier identification plates for limited number of carriers. Statistics provided by IATA show that as at January 2001, 18% of accredited agents in Australia held plates for less than 10 carriers, 78% held plates for between 10 and 39 carriers and 4% held plates for 40 or more carriers.

⁴ A general sales agent is one appointed by an airline to represent it for the purposes of overseeing sales in a defined territory and which is remunerated accordingly.

Reporting and Payment of Ticket Sales

1.58 IATA has developed a regionally based system for reporting agents' tickets sales to airlines and remitting to the airlines funds due to them from those sales. This system is called the IATA Billing and Settlement Plan (BSP). There are 61 such BSPs operating around the world. There is a BSP operating in Australia. The workings of the BSP are contained in Resolution 816 and changes can only be made by resolutions of the Passenger Agency Conference.

1.59 Accredited agents report all accountable transactions (sales) for a specified reporting period on a Sales Transmittal Form. The Sales Transmittal Form is forwarded together with supporting documents to a designated Data Processing Centre (DPC) which edits the data and generates a single consolidated account for the agent for monies owed to airlines whose business the agent sold. The agent then makes a single remittance to the appointed Clearing Bank. The DPC subsequently forwards transaction accounting documents to each airline and the Clearing Bank makes a settlement to each airline.

1.60 There are detailed procedures under Resolution 816 covering the operation of the BSP and the obligations of agents. Resolution 816 also contains default and sanction provisions for agents participating in the BSP, as well as appeal mechanisms. The operational procedures for reporting and remittance are described in IATA's BSP Manual for Agents and Local Procedures/Information, Australia supplement. Remittance is performed on a weekly cycle in Australia.

1.61 It is stated in the IATA Submission that without the BSP system each travel agent would need to report separately to each airline for whom it sells tickets and comply with the individual reporting requirements of each separate airline. The BSP similarly requires each agent to make one payment to IATA covering all sales made in each reporting period, rather than separate payments to each airline.

1.62 Agencies in Australia which only sell in the domestic travel market may join the Domestic Agency Program Australia and access the BSP.

Resolutions relevant to Australia

1.63 IATA provided a Statement of Facts in support of its application for re-authorisation. Schedule 3 to the Statement of Fact lists resolutions appearing in the IATA Passenger Agency Conference Resolutions Manual, 22nd edition, 11 December 2000, and identifies resolutions applicable to Australia.

Decisions of the General Assembly South West Pacific

The Powers of the General Assembly

1.64 In the case of the South West Pacific region, which includes Australia, authority over some aspects of the passenger agency program has been delegated to a General Assembly of members. All IATA members operating or selling through accredited agents in the region, as well as any non-members participating in a BSP in the region, are entitled to participate in the General Assembly.

1.65 The General Assembly obtains its powers from Resolution 816 which delegates the powers of the Passenger Agency Conference in relation to:

- qualifications for accreditation and retention of IATA accreditation;
- procedures for processing applications for accreditation;
- conditions for payment of commission and provision of beneficial services to accredited agents; and
- rules for notice of change of ownership or legal status of accredited agents.

The General Assembly's Decision Making Process

1.66 The Assembly is required to meet on a regular basis and to elect a Chairman. Each member of the assembly is entitled to vote and decisions are adopted by a two thirds majority vote of members present at the meeting.

1.67 The assembly also elects an Executive Council for each country or group of countries to exercise powers as delegated by the Assembly. For Australia the Executive Council consists of 12 elected members of which six shall be airlines and six agents designated by the national travel agents association. Voting results are to be included with all recommendations to the Passenger Agency Conference or General Assembly.

1.68 To achieve international consistency between General Assemblies, the decisions of Assemblies are required to be consistent with Resolution 816 and the Passenger Agency Sales Agreement (as specified pursuant to Resolution 824). The decisions of the General Assembly are included, as part of applicable IATA Resolutions, in the Travel Agents Handbook, Resolution 816 Edition.

1.6. Assessing Application A90791 versus Application A90408

1.69 To the extent that Application A90791 seeks an authorisation to replace Determination A90408 and covers similar conduct it might have been expected that the Commission would have undertaken a detailed comparison of the conduct covered by the two applications as part of its assessment. For a number of reasons the Commission does not consider there would be merit in such exercise and intends to undertake a largely "green fields" assessment of Application A90791.

1.70 In the first instance section 91C(7) of the Act requires the Commission to examine a proposed substitute authorisation in terms of the net public benefit associated with the conduct for which authorisation is sought as if it were a new authorisation sought under section 88.

1.71 It is also relevant that in the seventeen years since Application A90408 was lodged there have been extensive changes to the resolutions that constitute the Passenger Agency Program. Schedules to the Legal Submission made by IATA in support of Application A90791 examine these changes and identify not just many new resolutions and the replacement of Resolution 806 affecting Australia with Resolution

816, but a total of 174 changes to resolutions which are described by IATA as “major”.

1.72 At the same time there have been extensive changes to the environment in which air travel is marketed as a result of factors such as route liberalisation, airline alliances, industry deregulation, the introduction of new technology such as the internet and on line sales centres, and the globalisation of business and the tourism trade. These developments have been accompanied by increased competition in many routes and the acceptance of fare discounting which was in its infancy in 1984.

1.73 Aspects of the relationship between agents and airlines have also changed with the repeal of resolutions in IATA Tariff Coordination Conferences which provided for commissions on sales for agents and a trend towards the provision of fares to agents on a net fare basis rather than a commissionable basis. IATA has advised that around 60% of the volume of international tickets sold in Australia is now sold on a net fare basis where the agent adds a margin to the amount payable to the airline. For commissionable fares agents are required to negotiate with airlines on a one on one basis.

1.74 These changes in markets are such that even without changes to IATA’s Passenger Agency Program the basis of assessment for authorisation could have been expected to have changed.

2. Conduct of the inquiry

The Commission conducts inquiries in accordance with the requirements of the Act and with the procedures for authorisations as described in *Guide to Authorisations and Notifications, November 1995*. A chronology of the main stages of the Commission's inquiry is provided below.

Date	Description
20 March 2001	Letter to interested parties foreshadowing IATA application
14 May 2001	Application lodged
18 May 2001	Letter sent to interested parties inviting submissions by 27 July 2001
24 May 2001	Australian Federation of Travel Agents (AFTA) seeks extension for submission until 27 November 2001
28 May 2001	Letter to AFTA extending deadline for submission to 31 August 2001
17 July 2001	AFTA seeks deferral of consideration of IATA application until after 30 June 2002
27 July 2001	Letter to AFTA rejecting request to defer consideration of the application
27 July 2001	Letter sent to Applicant requesting more information
27 July 2001	Initial closing date for submissions
31 August 2001	Submission received from AFTA
10-27 September 2001	ACCC holds discussions with industry parties
2 November 2001	Applicant's response to letter of 27 July 2001
17 December 2001	Applicant's response to AFTA submission
8 January 2002	Presentation by Applicant on response to AFTA submission
19-22 March 2002	Applicant's responses to outstanding issues raised by the ACCC
13 May 2002	Release of Draft Determination
14 June 2002	Pre-determination conference convened and immediately adjourned

22 July 2002 Pre-determination conference re-convened

31 July 2002 Applicant's submission in response to Draft Determination

29 August 2002 AFTA response to Applicant's submission of 31 July 2002

12 September 2002 Letter sent to Applicant requesting further information

20 September 2002 Deadline for submissions in response to Draft Determination

11 October 2002 Applicant's response to AFTA submission of 29 August 2002 and ACCC letter of 12 September 2002

13 November 2002 Final Determination issued

3. Background to the Application

3.1 The supply and distribution of air travel services globally, including in Australia, has been impacted by the terrorist attacks in the United States on 11 September 2001. In Australia disruption to the aviation and travel industries was exacerbated by Australia's second major carrier, Ansett Australia, entering voluntary administration on 14 September 2001.

3.2 While it will be some time before it is possible to assess the long term consequences or extent of these developments it is clear that they have substantially impacted upon the structure of the air travel and agency industry and relevant markets in Australia. Under these circumstances the developments arising from September's events form part of the background to the assessment of Application A90791 and are taken into account by the Commission.

3.1. The airline industry

3.3 To the extent that travel agents' primary source of revenue is the sale of airline travel, any examination of the travel agent industry must necessarily begin by looking at the performance of the airline industry. A fall off in demand for air travel for example will quickly be reflected in the business of travel agents.

International travel

3.4 This section examines passenger activity between Australia and other countries in recent years. Table 3.1 below shows that demand for international passenger services to and from Australia has increased steadily over the past five years. Passenger movements increased from 14.0 million in 1997 to 17.4 million in 2001, an average annual growth rate of 5.6%. Preliminary statistics show passenger traffic fell by 4.2% between 2001 and 2002.

Table 3.1. Passengers carried on scheduled air services to and from Australia, 1997 to 2001

Year ended 30 June	Number of flights	Number of passengers (‘000)	Number of seats available (‘000)	Seat Utilisation (%)
1997	74,330	14,049	20,790	67.6
1998	77,600	14,577 (+3.8%)	21,575	67.6
1999	80,372	14,880 (+2.1%)	21,574	69.0
2000	86,751	15,873 (+6.7%)	22,896	69.3
2001	93,467	17,405 (+9.7%)	24,492	71.1

Source: Department of Transport and Regional Services

3.5 The passenger traffic of airlines includes both foreign residents visiting Australia and Australians going overseas. It is mainly the population of Australians going overseas, which represents potential customers for Australian travel agents, that

is relevant to Application A90791. Foreign visitors would tend to purchase their travel outside Australia. Foreign visitors constitute around 60% of scheduled passenger traffic and residents going overseas 40%.

3.6 Table 3.2 below shows that while there has been steady growth in the number of Australians travelling overseas over the five years to 30 June 2000, there has also been an apparent decline in the rate of growth. A continuation of this trend, which coincides with a slide in the value of the Australian dollar, would see a plateauing of travel overseas by Australians and of the potential business of travel agents.

Table 3.2. Australian resident passengers carried on scheduled air services to and from Australia, 1996 to 2000

Year ended 30 June	Number of Passengers ('000)	Growth in resident passenger traffic
1996	5,360	..
1997	5,799	+8.2%
1998	6,241	+7.6%
1999	6,540	+4.8%
2000	6,811	+4.1%

Source: Department of Transport and Regional Services

3.7 Department of Transport and Regional Services statistics show that 43 airlines offered scheduled passenger services to and from Australia in the year ended 30 June 2001. As Table 3.3 below shows the top four airlines carried over 60% of passengers with Qantas accounting for 34.4% of the total market. At the bottom end of the market 77% of the airlines accounted for only 17.5% of the passengers carried.

Table 3.3. Airline market share of passengers carried on scheduled air services to and from Australia, 2001

Airline	Year ended 30 June 2001 (%)
Qantas	34.4
Air New Zealand	11.0
Singapore Airlines	10.6
Malaysia Airlines	5.8
Japan Airlines	4.3
Cathay Pacific	3.6
Thai International	3.6
United Airlines	3.3
Ansett International	3.2
British Airways	2.7
Garuda	2.5
Other	15.0
Total	100.0

Source: Department of Transport and Regional Services.

3.8 Most airlines also offer direct sales of international travel to the public through a range of sources including retail outlets, call centres and internet web sites. IATA has cited estimates⁵ that 15% to 20% of international tickets sales worldwide are made directly by airlines and not through travel agents. IATA notes that in 2000 Qantas sales through agents amounted to 79% of its international ticket sales.

3.9 The September 2001 terrorist attacks in the US had an immediate and severe impact on international airline traffic to and from Australia. The extent of the impact was reflected in capacity adjustments made by Qantas, the major international carrier serving Australia. Qantas indicated in a mid November 2001 press release⁶ that the September events had resulted in a significant downturn for travel to and from Europe, South East Asia and Japan, as well as the United States. Overall traffic levels had declined market by market by between 10% and 20%. Bookings were down 25% from Japan and 23% from the United Kingdom.

3.10 Qantas announced intentions to reduce services to a number of overseas destinations including Rome, Johannesburg, Bangkok, Manila and Buenos Aires taking its overall reduction in capacity since September to 11%. At the same time Qantas announced a number of cost reduction initiatives including the early retirement of older aircraft and reductions in staff.

3.11 A number of foreign airlines operating to Australia also announced adjustments to services including United Airlines, Air New Zealand, Thai Airways and Malaysia Airlines. Other airlines withdrew from Australian routes as a result of company failure including Ansett International, Canada 3000 and Swissair.

Domestic travel

3.12 The domestic market in Australia was for some years a two carrier market contested by Qantas and Ansett. While Ansett had historically been the dominant player in the market, it steadily lost market share through the 1990's until Qantas achieved a higher share in 1996/97.

Table 3.4. Australian domestic airline passenger movements, 1997 to 2001

Year ended 30 June:	Passenger movements (‘000)	Annual change
1997	46,926	+2.5%
1998	46,972	+1.0%
1999	47,619	+1.4%
2000	49,844	+4.7%
2001	53,629	+7.6%

Source: Department of Transport and Regional Services

3.13 More recently the domestic airline market saw the arrival of increased competition though the entry of Impulse Airlines on 5 June 2000 and Virgin Blue on 31 August 2000. The increased competition is reflected in the figures in Table 3.4

⁵ Interview with Ian Carew-Reid (AFTA Chairman), Travelweek Australia, 18 July 2001

⁶ "Qantas to reduce staff by 1500 to 2000", Qantas media release, 15 November 2001

above where domestic passenger movements showed a 7.6 % increase in 2000/01 over the previous year with lower fares contributing to the increased demand.

3.14 The market has since seen the failure of Impulse on 22 May 2001 and Ansett which entered voluntary administration on 14 September 2001. Ansett subsequently re-entered the market under administration but at reduced capacity levels on selected routes and in a manner which left Qantas as the only full service Australian network airline with a market share estimated at around 90%. Attempts to revive the airline under new ownership were not successful and it ceased operations in late February 2002. It is clear that Qantas has assumed a position of significant advantage for some time to come in the domestic market.

3.15 A feature of the increased competition in the domestic market has been a move by airlines to direct sales to the public through the internet and call centres rather than distributing sales through travel agents. Both Impulse and Ansett (when under administration) chose this distribution approach. Qantas and Virgin Blue offer travel both through direct sales and via travel agents. It is estimated that at this stage around 50% of domestic travel sales are made directly through airlines.

Airline industry performance

Global performance

3.16 *Airline Business* magazine conducts an annual assessment of the financial performance of the world airline industry, with an assessment of the year 1999 appearing in the September 2000 edition.

Table 3.5. Top 150 airline groups, 1995 to 1999

	1995*	1996*	1997	1998	1999
Revenues (US\$bn)	272.9	281.4	293.2	299.1	320.1
Operating result (US\$bn)	15.5	14.0	20.5	19.3	16.7
Operating margins	5.7%	5.0%	7.2%	6.8%	5.7%
Net result (US\$bn)	1.7	5.4	9.3	9.0	9.9
Net margin	2.1%	1.5%	3.2%	3.1%	3.2%

Source: "Profits slide again", Airline Business, September 2000; Note: Years before 1997 apply to top 100 only.

3.17 *Airline Business* suggested that while the year 1999 was profitable margins were stuck at only a few percentage points above break-even despite an apparent boom elsewhere in the world economy. It was noted that increases in fuel prices posed a threat to profitability.

3.18 Net operating margins for the major airlines serving Australia varied significantly as follows:

Qantas	5.0%
Singapore Airlines	13.1%
Japan Airlines	1.7%
Malaysia Airlines	-3.2%
Thai Airways	4.9%