

Application for Minor Variation of Authorisation

Lodged by

INTERNATIONAL AIR TRANSPORT ASSOCIATION

In respect of

The authorisation of the IATA Passenger Agency Program

Date: 5 March 2003

Authorisation no. A90791

Public Register no. C2003/66

Commissioners:

Fels
Bhojani
Jones
Martin
McNeill
Willet

1. The Application

- 1.1. On 24 December 2002 the International Air Transport Association (IATA) lodged an application for minor variation to authorisation A90791 under section 91A of the *Trade Practices Act 1974* (the Act).
- 1.2. IATA is the international trade association of most airlines operating international air services in the transport of passengers, mail or cargo. Its members are estimated to account for over 95% of international passenger travel to and from Australia.

Authorisation A90791

- 1.3. Authorisation A90791 was issued by the Commission on 13 November 2002 under a determination which also revoked an existing authorisation (A90408). Both A90791 and A90408 concerned the IATA Passenger Agency Program (IPAP).
- 1.4. The IPAP provides a system for the sale and distribution of air transport through travel agencies. The IPAP is embodied mainly in resolutions passed by IATA airline members at IATA Passenger Agency Conferences. The program has three core elements: an accreditation scheme which enables licensed agents to sell tickets on behalf of airlines; a process of appointing agents to represent airlines, and a system for managing the reporting and payment of ticket sales.
- 1.5. The Commission authorised elements of the IPAP which it regarded 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 were authorised for four years with authorisation not extending to changes in those parts of the program. The Commission's authorisation applied to the year 2000 version of the IPAP. The Commission's authorisation of the IPAP was conditional on IATA taking action in a number of areas including reviewing the conditions of accreditation for travel agents.
- 1.6. Since 2000, two subsequent annual IATA Passenger Agency Conferences have passed resolutions amending elements of the year 2000 version of the IPAP.

Proposed minor variation

- 1.7. IATA seeks the following three variations to the determination of A90791:
 - a) That the following be substituted for paragraph (3) of the determination of authorisation A90791:

"This authorisation does not extend to amendments of or substitutions for the resolutions specified in Part 1 of Appendix B as they appeared in the

IATA Passenger Agency Conference Resolutions Manual 22nd edition other than those set out in Part 2 of Appendix B.”

- b) That the following be substituted for paragraph (5) of the determination of authorisation A90791:

“This authorisation does not extend to decisions of the General Assembly made using powers delegated pursuant to resolutions appearing in Part 1 of Appendix B other than: (i) those decisions which are reflected in the IATA Travel Agent’s Handbook Resolution 816 Edition (effective 1 December 2000) or (ii) decisions made pursuant to the resolutions in Part 2 of Appendix B or (iii) decisions set out in Part 3 of Appendix B.

- c) That determination A90791 be amended by designating the table in Appendix B as Part 1 of that appendix and by adding Parts 2 and 3 to Appendix B.

- 1.8. The specific resolutions the subject of the proposed amendments and for which authorisation is sought are set out in Annexure A to this determination.

Interim authorisation

- 1.9. The applicant also requested interim authorisation of the proposed minor variation. On 16 January 2003 the Commission granted this request on the basis that the amendments the subject of the interim authorisation would be subject to the review of conditions of travel agents in Australia to obtain and retain IATA accreditation. This review was one of the conditions on which the authorisation of the IPAP was granted by the Commission.

2. Statutory provisions

- 2.1. Section 87D of the Act defines a minor variation as a single variation that does not involve a material change in the effect of the authorisation. A person may apply for two or more minor variations at the same time, and the Commission may deal with all the variations together, if it is satisfied that the combined effect of those variations, if all were granted, would not involve a material change in the effect of the authorisation.
- 2.2. Section 91A of the Act provides that the Commission must, if it is satisfied that the proposed variation is a minor variation, invite submissions from interested parties. After consideration of the application and any submissions received, the Commission may make a determination varying the authorisation or dismissing the application.
- 2.3. Section 91A(4) provides that the Commission may grant a minor variation to an authorisation granted under section 88(1) in respect of conduct that may substantially lessen competition, where it is satisfied that the variation would not result, or would be likely not to result, in a reduction in the extent to which the benefit to the public of the authorisation outweighs any detriment to the public caused by the authorisation.

3. Submissions

IATA

- 3.1. IATA stated in their submission in support of their application that the proposed amendments to Authorisation A90791 concern changes which either:
- improve the IPAP for airlines and agents, or
 - are of a technical or drafting nature.
- 3.2. IATA submitted that the variations would not result, and would not be likely to result, in either a reduction in the extent to which the benefit to the public of the authorisation outweighs any detriment to the public caused by the authorisation, or a reduction in the benefit to the public that arose from the original authorisation.

Interested parties

- 3.3. The Commission sought submissions from a wide range of potentially interested parties. No submissions were received.

4. Commission Evaluation

- 4.1. In its determination dated 13 November 2002 the Commission accepted, subject to certain conditions being met, that the key elements of the IPAP in the form of the accreditation system, the agency appointment process and the IATA Billing and Settlement Plan (BSP), as they apply in Australia, provide clear and significant public benefits.
- 4.2. The Commission noted that some benefits flow directly to consumers through promoting an agency system which results in increased consumer information and choice and which encourages competition between airlines. Consumers are also likely to benefit, in competitive markets where savings are passed on, from lower fares as a result of efficiencies accruing from avoiding airline to agent credit assessment, negotiation and appointment processes. Similar benefits would accrue from the efficiencies of the BSP in providing a single system for the distribution of funds from agents to airlines.
- 4.3. In its determination, the Commission noted that the extent of the public benefits generated by the IPAP is directly related to the form of the resolutions constituting the IPAP. Any changes to resolutions which, for example, negatively impacted on the ability of agents to enter or remain in the accredited agency system could ultimately impact on competition between airlines and/or agents and identified benefits.

- 4.4. The Commission has examined the amendments to the resolutions the subject of this minor variation application and is satisfied that, in the context of the total set of resolutions pertaining to the IPAP, that none of the amendments is likely to have a negative public benefit impact or detrimentally affect competition between airlines for passenger travel, or between airlines and travel agents for the sale of such travel.
- 4.5. Indeed, the Commission notes that at least two of the amendments are likely to have a positive effect on the operation of the IPAP in Australia. For example:
- Resolution 816, which concerns Passenger Sales Agency Rules in the South West Pacific, will be amended to expand the authority delegated to the General Assembly South West Pacific which will enable certain decisions to be made locally.
 - Resolution 824r, which concerns Refunds to Agents, will be amended to ensure refunds to agents by airlines are processed within two months, otherwise an airline must provide reasons to the agent for the delay. This amendment provides certainty to agents and increases transparency in the dealings between airlines and agents.
- 4.6. In conclusion, the Commission is of the view that the proposed minor variation would not reduce the public benefits flowing from the original authorisation. The Commission also considers that the public detriment stated in the original determination would not be increased by the proposed minor variation. Consequently, the Commission is satisfied that the minor variation would not be likely to result in a reduction to the extent to which the benefit to the public recognised in authorisation A90791 outweighs any detriment to the public identified in authorisation A90791.

5. Determination

The application

- 5.1. On 24 December 2002 IATA lodged an application for minor variation to authorisation A90791 under section 91A of the Act. Authorisation 90791 was issued by the Commission on 13 November 2002 as part of a determination which also revoked an existing authorisation (A90408). Both A90791 and A90408 concerned the IATA Passenger Agency Program which provides a system for the sale and distribution of air transport through travel agencies.
- 5.2. IATA seeks the following three variations to the determination of A90791:
- a) That the following be substituted for paragraph (3) of the determination of authorisation A90791:

“This authorisation does not extend to amendments of or substitutions for the resolutions specified in Part 1 of Appendix B as they appeared in the

IATA Passenger Agency Conference Resolutions Manual 22nd edition other than those set out in Part 2 of Appendix B.”

- b) That the following be substituted for paragraph (5) of the determination of authorisation A90791:

“This authorisation does not extend to decisions of the General Assembly made using powers delegated pursuant to resolutions appearing in Part 1 of Appendix B other than: (i) those decisions which are reflected in the IATA Travel Agent’s Handbook Resolution 816 Edition (effective 1 December 2000) or (ii) decisions made pursuant to the resolutions in Part 2 of Appendix B or (iii) decisions set out in Part 3 of Appendix B.

- c) That determination A90791 be amended by designating the table in Appendix B as Part 1 of that appendix and by adding Parts 2 and 3 to Appendix B.

5.3. Interim authorisation was granted to the application on 16 January 2003 pending Commission consideration of the application.

The statutory test

5.4. Pursuant to section 91A(4) of the Act, for the reasons outlined in section 4 of this determination the Commission concludes that the minor variation would not be likely to result in a reduction to the extent to which the benefit to the public recognised in authorisation A90791 outweighs any detriment to the public identified in authorisation A90791.

Conduct authorised

5.5. Pursuant to section 91A(3) of the Act, the Commission varies authorisation A90791 in accordance with the minor variation sought by IATA.

5.6. The determination in respect of authorisation A90791 shall now read as follows:

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

(1) IATA and its members from time-to-time to engage in conduct giving effect to the contracts, arrangements and understandings evidenced by the:

(a) resolutions of the IATA Passenger Agency Conference passed in accordance with the Provisions for the Conduct of the IATA Traffic Conferences as amended from time to time; and

- (b) *decisions of the Generally Assembly constituted by Resolution 816 Section 2.1 (as amended or substituted from time to time).*
- (2) *Subject to paragraph (3) below, authorisation is also given for IATA and its members to meet in IATA Passenger Agency Conferences and pass resolutions amending or modifying or adding to the current resolutions.*
- (3) *This authorisation does not extend to amendments of or substitutions for the resolutions specified in Part 1 of Appendix B as they appeared in the IATA Passenger Agency Conference Resolutions Manual, 22nd Edition other than those set out in Part 2 of Appendix B.*
- (4) *Subject to paragraph (5) below authorisation is given for IATA and its members to meet and make decisions in the General Assembly;*
- (5) *This authorisation does not extend to decisions of the General Assembly made using powers delegated pursuant to resolutions appearing in Part 1 of Appendix B other than: (i) those decisions which are reflected in the IATA Travel Agent's Handbook Resolution 816 Edition (effective 1 December 2000) or (ii) decisions made pursuant to the resolutions in Part 2 of Appendix B or (iii) decisions set out in Part 3 of Appendix B.*
- (6) *Authorisation is also given for IATA, its members and others who, according to IATA Passenger Agency Conference resolutions establishing the Executive Council Australia and other consultative groups relating to the IATA Passenger Agency Program, participate in consultations within the terms of reference set by the relevant Conference for those groups from time to time.*

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

- (1) *A review is required to be undertaken of the conditions imposed by IATA through its Passenger Agency Program for travel agents in Australia to obtain and retain IATA accreditation, such review to take into account:*
 - (a) *the extent to which IATA accreditation conditions as applied in Australia impede the operational efficiency of agents and/or result in increases in operating costs;*
 - (b) *the level of risk associated with the credit extended to agents by airlines and with traffic documents and authorities provided to agents by IATA in Australia and*

the extent to which the qualifications for accreditation and retention of travel agents, as applied in Australia, alleviate that risk;

- (c) any opportunities for reducing costs and burdens placed on agents in Australia while containing risk associated with the extension of credit by airlines and the holding of traffic documents by those agents; and*
- (d) the impact on risk associated with airline credit and traffic documents of recent developments in the aviation and sale of travel industries including electronic ticketing, the incidence of credit sales made using airlines' merchant agreements and changes to the BSP Australia remittance period.*

(2) The Commission requires:

- (a) the review to be undertaken jointly by airlines and agents (with equal representation from each group and including a representative of the Australian Federation of Travel Agents) under an independent Chairperson;*
- (b) the results of the review to be made public and available to the Commission within two years of the date this determination comes into force; and*
- (c) recommendations arising from the review and related to the IATA Passenger Program which are directed at improving the efficiency or reducing the operating costs of, or burdens on, accredited agents to be implemented at the earliest opportunity but no later than three years from the date of this determination taking effect.*

(3) Within two years of the date this determination comes into force, entry into general concurrence by an airline is to be conditional upon the airline providing a statement of reasons to both the agency and the Executive Council Australia in relation to any agency in Australia which it refuses Traffic Documents or Carrier Identification Plates or from whom it withdraws such Documents or Plates.

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

- 5.7. This determination is made on 5 March 2003. If no application for review of this determination is made to the Australian Competition Tribunal in accordance with section 101 of the Act, this determination will come into force on 27 March 2003.
- 5.8. The interim authorisation granted by the Commission on 16 January 2003 will remain in force until this determination comes into force.
- 5.9. If an application for review is made to the Tribunal, the determination will come into force:
 - a) Where the application is not withdrawn - on the day on which the Tribunal makes a determination on the review and grants authorisation; or
 - b) Where the application for review is withdrawn - on the day on which the application is withdrawn.

ANNEXURE A

Authorised 2001 Amendments To Or Substitutions For The Resolutions Specified In Appendix B Part 1

(Also referred to as Appendix B Part 2)

No.	Title	Outline of changes
816	Passenger Sales Agency Rules – South West Pacific	Amended to reflect the introduction of Resolution 832 (see below), and to allow an agent's accreditation to be withdrawn if it is used to profit from activities which harm IATA's good standing.
816e	Conduct of Review by Travel Agency Commissioner – South West Pacific	Amended to reflect the introduction of Resolution 832.
824r	Refunds to Agents	Amended to replace the previous requirement on Airlines to use their best endeavours to ensure refunds to agents are processed within two months, with an obligation to ensure that this occurs. Airlines are also now required to provide reasons to the agent where a refund is not processed within two months.
830a	Consequences of Violation of Ticketing Procedures	Amended to add failure to follow the Ticketing Airline Selection Rules (contained in attachment H to Resolution 850) to the example list of practices which breach agent ticketing procedures.
832	Reporting and Remitting Procedures	New Resolution 832 consolidates the rules relating to consequences of agent default under the various resolutions worldwide into a single resolution. As a result the rules applicable in Australia which were previously set out in section 8 of Resolution 816 have been incorporated into Resolution 832. In the drafting process some aspects of the existing arrangements under Resolution 816 were inadvertently altered in Resolution 832. Those discrepancies were amended at the next Passenger Agency Conference (PAC) meeting in June 2002. In the interim the arrangements as they existed under Resolution 816 continued to be applied.

Authorised 2002 Amendments To Or Substitutions For the Resolutions Specified In Appendix B Part 1

(Also referred to as Appendix B Part 2)

No.	Title	Outline of changes
816	Passenger Sales Agency Rules – South West Pacific	<p>Amended to:</p> <ul style="list-style-type: none"> • expand the authority delegated to the General Assembly South West Pacific to include cost-recovery charges, variation of sanctions and enhancement of the minimum security standards • make AFTA’s chief executive an ex officio member of the Executive Council of Australia • remove the provision allowing an airline to lodge a protest against an agent’s application for accreditation, and replace it with a provision allowing an airline to register information which it believes justifies a review of a successful applicant • remove the provisions allowing an airline to lodge a protest against an agent’s notification of change of ownership, legal status or location • reduce the permitted decision time on applications for accreditation and notifications of change of ownership or legal status • remove the long-unused provision prohibiting commission on government sales • formalise the authority given to accredited agents to use the IATA logo.
832	Reporting and Remitting Procedures	<p>Resolution 832 was a new resolution adopted at the 2001 meeting of the PAC which consolidated the rules relating to consequences of agent default under the various resolutions worldwide into a single resolution. It was amended to improve the clarity of the text, to reflect changes to Resolution 850 and to correct some aspects of the rules applicable in Australia under former section 8 of Resolution 816 which were inadvertently altered during the transition to Resolution 832. During the period that those errors were in Resolution 832 the arrangements as they existed under Resolution 816 continued to be applied.</p>
862	Joint Agent and Airline Consultative Meetings	<p>Amended to remove the 12 month transitional timeframe as equal representation has been achieved in all joint consultative bodies.</p>

Authorised Amendments To Decisions Of The General Assembly South West Pacific Reflected In The IATA Travel Agent's Handbook Resolution 816 Edition (Effective 1 December 2000) Made Using Powers Delegated Pursuant To Resolutions Appearing In Appendix B Part 1

(Also referred to as Appendix B Part 3)

No.	Title	Outline of changes
816	Passenger Sales Agency Rules – South West Pacific	Amended to introduce a requirement for all staff of an accredited agent to have completed an appropriate ticketing course within the previous 2 years.