



**APPLICATION A90855: FOR THE REVOCATION AND SUBSTITUTION
OF AUTHORISATION A90435**

Lodged by the International Air Transport Association

**DISCUSSION PAPER A90855/6
IATA PASSENGER SERVICES SYSTEM**

ISSUED: 1 December 2005

ISSUES IDENTIFIED IN THE PAPER

Issue 1 - The counterfactual

When assessing IATA's application for revocation and substitution the ACCC must compare public benefits and anti-competitive detriment generated by the Passenger Services System in the future if authorisation is granted with the position if authorisation is not granted.

IATA has continued to operate the IPSS in Europe following withdrawal of immunity from competition law for the system in the EU. IATA has also given up immunity in the US for a large number of standards developed by the IPSS. Under these circumstances why would IATA not continue, absent authorisation, to operate in Australia some or all of the elements of the IPSS?

Issue 2 - Standard form contracts

The conditions of supply of international air services to passengers agreed to by airlines at IATA Passenger Services Conference meetings are mainly contained in Recommended Practice 1724 (RP1724) – General conditions of carriage (passenger and baggage).

- 2.1 *To what extent are IATA's model conditions of carriage reflected in the airlines' own conditions of carriage?*
- 2.2 *To what extent and/or in what circumstances would standard conditions of carriage in the international airline industry be capable of generating public benefits?*
- 2.3 *To what extent do IATA's model conditions of carriage generate anti-competitive detriment?*

Issue 3 - Transferability of tickets

The IATA model conditions of carriage do not allow transfer of a ticket from one passenger to another; rather airlines provide carriage only to the passenger named on the ticket at the time of purchase.

To what extent does the non-transferability rule generate detriment? To what extent is such detriment, if any, alleviated by the 'force majeure' provision in the revised RP1724?

Issue 4 - Coupons to be used in sequence

Resolution 723 provides that a ticket will lose its validity if a passenger does not use all the coupons in the ticket in the sequence in which they are issued.

- 4.1 *What is the impact on competition of the requirement that all coupons be used in sequence?*
- 4.2 *What would be the implications, as far as Australia is concerned, of eliminating the requirement that coupons be used in sequence?*

Issue 5 - Applicable fares

The revised RP1724 provides that the applicable fare is the fare in effect on the date of payment of the ticket.

- 5.1 *To what extent does the condition that the applicable fare is the fare in effect on the date of payment of the ticket generate detriment?*
- 5.2 *Does the absence of a requirement that airlines notify consumers in advance of a fare rise in order for consumers to be given the opportunity to secure the pre-increase fare constitute a detriment?*

Issue 6 - Taxes, fees and charges

The practice of airlines, in line with RP1724, appears to be to pass on to consumers any increase in, or introduction of, new taxes, fees and charges imposed by governments and other authorities, or by the operator of an airport, irrespective of when the passenger ticket is paid for and issued.

To what extent does the treatment of taxes, fees and charges in IATA model conditions of carriage give rise to detriment?

Issue 7 - Refunds

The IATA model conditions of carriage do not include a requirement on airlines to promptly provide a refund to consumers.

Does the absence of a time frame for airlines to provide refunds to consumers give rise to detriment?

Issue 8 - Overbooking and denied boarding

IATA Recommended Practice 1799 provides a standard for airlines to provide denied boarding compensation in countries where there is no legislation to that effect.

- 8.1 *To what extent are airlines' denied boarding policies as applied in Australia, if any, based on IATA Recommended Practice 1799?*

8.2 *Does RP1799 adequately balance the interests of airlines and the rights of consumers in the event of denied boarding?*

Issue 9 - Scheduling, re-scheduling, cancellation

Airlines generally reserve the right to change the scheduled flight time after payment and issue of the ticket. This provides airlines with flexibility to respond quickly to changes in demand or to events outside their control.

9.1 *Are schedule changes, cancellations and/or long delays an issue for passengers in relation to international travel to and from Australia?*

9.2 *Does RP1724 provide an adequate balance of rights between airlines and consumers with regard to schedule changes, cancellations and delays?*

Issue 10 - Limitation of liability

Airlines' liability for the international carriage of passengers and baggage is governed by an international treaty framework.

In light of the international Conventions governing airlines' liability for the international carriage of passengers and baggage, to what extent do the conditions limiting airlines' liability give rise to detriment?

Issue 11 - Disclosure of conditions

Passengers need clear information regarding the conditions specific to their tickets.

To what extent does the absence of a disclosure requirement of specific conditions in IATA's model conditions of carriage reduce any public benefit?

Issue 12 - Incapacitated passengers

Resolution 700 sets out the agreed standard arrangements for the acceptance and carriage of incapacitated passengers.

12.1 *Are there any concerns regarding the policies and practices of airlines operating to and from Australia in relation to the acceptance and carriage of incapacitated passengers?*

12.2 *To what extent are the standards and procedures set out in Resolution 700 of benefit to incapacitated passengers? Would any such benefit be realised absent authorisation?*

Issue 13 - Efficient operations

IATA submits that the IPSS provides common procedures, systems and documentation required for efficient operations.

Would the public benefits associated with efficient operations be realised absent authorisation?

Issue 14 - Communication connectivity and technology

IATA submits that the standards developed by the IPSS in relation to airline designators, automated and electronic tickets, baggage tags and boarding passes enable a high level of communication connectivity within the airline industry.

Would the public benefits associated with communication connectivity and technology be realised absent authorisation?

Issue 15 - Safety

IATA submits that the IPSS provides common procedures, systems and documentation to enhance the safety of passengers, crew, the public and property.

Would the public benefits associated with aviation safety be realised absent authorisation?

Issue 16 - Supporting the interline system

IATA submits that an important aspect of the IPSS is that it is essential to the interline system, whether within alliances or under multilateral interlineable travel, and also provides the contractual framework for interlining.

16.1 To what extent are there public benefits associated with facilitating interlining? Would such benefits continue to be realised absent authorisation

16.2 Considering the incidence of interlining using IATA fares, what is the extent of public benefits generated by the IATA Multilateral Interline Traffic Agreements?

16.3 Would the public benefits associated with the agreed terms and conditions for interline baggage be realised absent authorisation?

Issue 17 - Assisting new airlines

It has been submitted that the IPSS also benefits new airlines, which would simply adopt the mechanisms already put in place by the IPSS.

Would the benefit to new airlines continue to be realised absent authorisation?

Issue 18 - IPSS decision making process

IATA submitted that IPSS resolution and recommended practices are developed with the assistance of numerous committees and working groups established by the Conference, and that the IATA Partnership Programme enables suppliers to the aviation industry to participate in those groups in which they have a direct interest.

Does the organisation and decision making process of the IPSS give rise to anti-competitive concerns?

Issue 19 - Ticketing time limits

Resolution 768 provides for the establishment of ticketing time limits for online and interline international travel.

To what extent does the agreement among competing airlines on ticketing time limits in Australia give rise to anti-competitive detriment?

Issue 20 - Interline service charge

Resolutions 780b and 780c provide that the airlines which carry the passenger pay a fee equal to 9% of their prorated share of the fare paid by the passenger to compensate the ticketing airline for the costs involved in handling the reservation and ticketing requirements for an interline passenger.

20.1 *Is the IATA agreed interline service fee of 9% used as an industry standard to compensate the ticketing airline? Does it reflect the efficiency gains in ticketing made since the arrangements were first authorised in 1985?*

20.2 *To what extent does the IATA interline fee give rise to anti-competitive detriment?*

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1. INTRODUCTION

History of the application

1.1 On 24 December 1985, Authorisation A90435 was granted to the International Air Transport Association (IATA) in respect of certain rules, regulations, agreements and resolutions made by it as part of its role in the co-ordination of procedures and arrangements for the international movement of people and goods by air. Authorisation was granted by the Trade Practices Commission, now known as the Australian Competition and Consumer Commission (the ACCC).

1.2 On 13 November 2002, IATA lodged Application A90855, seeking the revocation of authorisation A90435 in its entirety and its substitution with a new authorisation in respect of the contracts, arrangements, understandings and conduct which constitute:

- the IATA Cargo Agency System;
- the IATA Scheduling System;
- the IATA Prorate System;
- the IATA Services System (passenger and cargo);
- the IATA Clearing House System; and
- the IATA Tariff System (passenger and cargo).

1.3 IATA has made submissions to the ACCC in relation to each of these areas of conduct.

Authorisation

1.4 The ACCC is the Australian Government agency responsible for administering the *Trade Practices Act 1974* (the Act). A key objective of the Act is to prevent anti-competitive conduct, thereby encouraging competition and efficiency in business, resulting in greater choice for consumers in price, quality and service.

1.5 The Act, however, allows the ACCC to grant immunity from legal action for anti-competitive conduct in certain circumstances. One way in which parties may obtain immunity is to apply to the ACCC for what is known as ‘authorisation’.

1.6 In order to grant authorisation the ACCC must be satisfied that the public benefits arising from the particular conduct outweigh any public detriment.

1.7 In addition, the ACCC may grant an application by the holder of an authorisation to revoke its authorisation and substitute a new authorisation where, in broad terms, the public benefit from the conduct proposed to be authorised (that is, under the substitute authorisation) outweighs the public detriment caused by that conduct.

Consideration of the application

1.8 Due to the complexity and range of conduct covered by Application A90855, the ACCC is issuing a series of discussion papers, each dealing with a specific component

of the conduct for which authorisation is sought and examining substantive issues raised by that conduct.

1.9 The discussion papers are being circulated to interested parties. The ACCC will then consider submissions made by interested parties in response to the discussion papers when preparing one or more draft determinations which will reflect the ACCC's views on the range of conduct covered by the application and indicate the ACCC's proposed decision on the application.

1.10 Once a draft determination is released, the applicant or any interested party may request that the ACCC hold a pre-determination conference. A pre-determination conference provides the applicant and interested parties with the opportunity to put oral submissions to the ACCC in response to the draft determination. The ACCC will also invite interested parties to lodge written submissions on the draft.

1.11 The ACCC will then reconsider the application, taking into account the comments made at the conference (if one is requested) and any further submissions received, and issue a final determination.

Purpose of the discussion paper

1.12 This discussion paper is the sixth in the series of discussion papers being issued by the ACCC in relation to Application A90855. It examines the public benefit and detriment associated with the IATA Passenger Services System (IPSS). Earlier papers have examined the IATA Scheduling System, the IATA Cargo Agency System, IATA Passenger Tariff Coordination, IATA Cargo Tariff Coordination, and the IATA Prorate System and Clearing House.

1.13 The purpose of the discussion paper is to stimulate consideration of issues associated with the IATA Passenger Services System by parties engaged or affected by it. The ACCC is seeking comments on the issues raised in the discussion paper to assist it in understanding the IPSS and its impact, and forming a view on the merit of the application as it relates to passenger services.

2. THE APPLICANT

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

Membership

2.2 As at May 2004, IATA member airlines accounted for over 270 of the world's airlines and about 95 percent of all international scheduled air traffic. Active Membership is only open to carriers operating international air services 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.

IATA's objectives

2.3 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:

- promote safe, reliable and secure air services for the benefit of the people of the world
- provide means of collaboration among airlines engaged directly or indirectly in international air transport
- cooperate with the International Civil Aviation Organisation (ICAO) and other relevant organisations

IATA's conference structure

2.4 The primary mechanism by which airlines pursue IATA's purposes, objects and aims is through the IATA Traffic Conference structure, established pursuant to IATA's Act of Incorporation through the Provisions for the Conduct of IATA Traffic Conferences.

3. THE CONDUCT

3.1 The component of the conduct for which authorisation is sought that is relevant to this discussion paper is the IATA Passenger Services System (IPSS). The IPSS relates to agreed technical standards and procedures covering the areas of passenger reservations, ticketing, passenger and baggage handling and ground handling.

3.2 There are two main areas of conduct falling under the IPSS:

- the provisions for the Conduct of IATA Traffic Conferences (to the extent that they relate to the IATA Passenger Services Conference); and
- Resolutions and Recommended Practices adopted at the Passenger Services Conference.

Provision for the conduct of IATA Traffic Conferences

IATA's conference structure

3.3 The conduct of IATA conferences is subject to the Provisions for the Conduct of IATA Traffic Conferences (Conduct Provision).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. According to IATA, the conferences facilitate international interline air transportation through the adoption of resolutions, industry standards and recommended practices. They also provide for the development of resolutions on international fares and rates which underpin the interlining system.

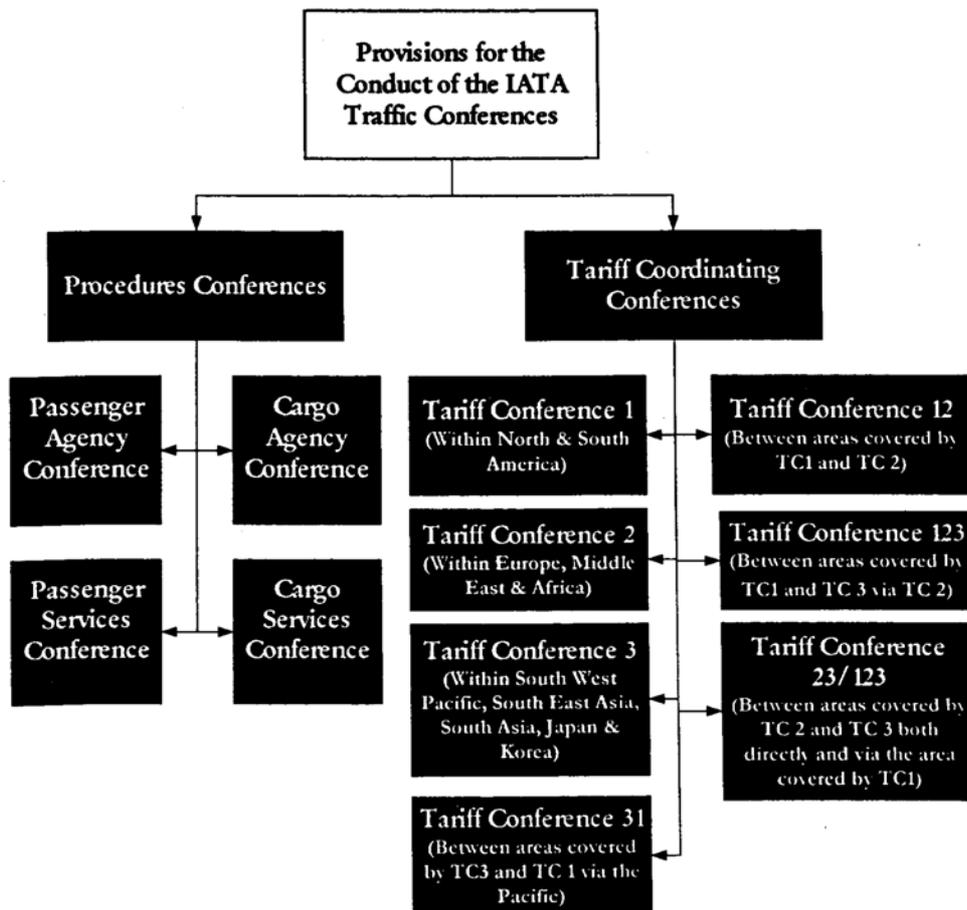
¹ This summary of the Provisions for the Conduct of IATA Traffic Conferences is derived from the IATA handbook, Part 1, July 1999.

3.4 IATA submits that under the Provisions for the Conduct of the IATA Traffic Conferences, IATA members have:

- established standards and recommended practices essential for the efficient operation of the airline industry and necessary for interlining, and for the operation of the Passenger Agency and Cargo Agency Systems, including the Billing and Settlement Plans and the Cargo Accounts Settlement Systems; and
- developed resolutions on international passenger fares and cargo rates necessary for the interlining system.

3.5 Diagram 1 shows the various IATA conferences constituted under the Provisions for the Conduct of IATA Traffic Conferences. IATA submitted that each conference operates separately, although the work of each conference contributes to the total system.

Diagram 1 – IATA Traffic Conferences



Participation

3.6 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.

IATA Passenger Services Conference

Participation

3.7 The Passenger Services Conference is the supreme governing body for the IPSS. All IATA member airlines that operate scheduled services for the transportation of passengers are voting members of the IATA Passenger Services Conference. In practice, approximately 50 airlines usually attend each meeting of the Conference. The IATA Passenger Services Conference meets annually.

3.8 The Passenger Services Conference can meet jointly with the US Air Transport Association (ATA) Passenger Council. It is then known as the Joint ATA/IATA Passenger Services Conference (JPSC).

3.9 IATA submits that the Passenger Services Conference meetings are open meetings. Governments are entitled to send observers to the Conference meetings, and the Conference can also invite non-government third parties to attend meetings as observers.

3.10 A third party can lodge a written proposal on any matter to be discussed at an IATA Passenger Services Conference meeting, and with the consent of the Conference secretariat can then attend the meeting to make an oral presentation on that proposal.

3.11 IATA has established a Partnership Programme² as a forum for consultation with suppliers and service providers in the following areas:

- | | | |
|-------------------------------|---|---------------------------|
| . Aircraft recovery | . Flight simulation | . Ramp services |
| . Airport development | . Fuel services | . Regional infrastructure |
| . Cargo services | . In-flight services | . Revenue accounting |
| . Electronic commerce | . Information management | . Scheduling standards |
| . Facilitation | . Interline & revenue management services | . Security |
| . Engineering and maintenance | . Passenger & airport services | . Special cargoes |
| . Financial services | | . Taxation |
| . Flight operations & safety | | . Unit Load Devices |

3.12 The suppliers and service providers that are members of IATA's Partnership Programme can also attend IATA Passenger Services Conference meetings.

Adoption of standards

3.13 The standards developed by the IATA Passenger Services Conference are adopted as either Resolutions or Recommended Practices.³

3.14 IATA submitted that all IATA members are expected to apply Passenger Services Conference Resolutions to any passenger ticket or journey which is interlineable, (although IATA recognises that the work of the Passenger Services

² The ACCC understands that IATA's Partnership Programme is now known as the IATA Strategic Partnerships.

³ The Provisions also provide for the adoption of industry standards but the practice to date has been to use resolutions and recommended practices.

Conference has wider application than interlining). To amend an existing resolution or adopt new resolutions requires the unanimous affirmative vote⁴ of all members present at an IATA Passenger Services Conference meeting.⁵

3.15 IATA submitted that Recommended Practices are models or guidelines and may be regarded as best practice non-enforceable arrangements. They set forth procedures which will facilitate interlining of traffic among airlines but uniformity of procedures is not considered essential. New or amended Recommended Practices require only a majority of two third of all members present at an IATA Passenger Services Conference meeting to be adopted.⁶ Resolutions and Recommended Practices can also be adopted by mail vote.

Governance and organisational structure

3.16 The standards adopted by the Passenger Services Conference are developed with the assistance of numerous specialised committees and working groups established by the Conference. These sub-groups are comprised of airline experts, with many also including other industry experts. An overview of the IPSS governance and organisational structure appears in Diagram 2.

3.17 The Airport Services Committee is responsible for managing the IATA Ground Handling Council (IGHC). The IGHC is the principal industry ground handling forum for the development of industry standards on ground handling for inclusion in the Airport Handling Manual. It comprises over 370 airlines (IATA members and non-members), independent ground-handling companies and airports providing ground handling services.⁷

3.18 In addition to reviewing and providing recommendations to the Conference on proposed resolutions and recommended practices as do other sub-groups, the Airport Services Committee is also responsible for the publication of the IATA Airport Handling Manual. Specialist working groups established by the Committee develop proposals on changes to the manual. Adoption of those changes is then determined by vote of the Committee, which comprises 18 IATA member airlines elected by the Conference.

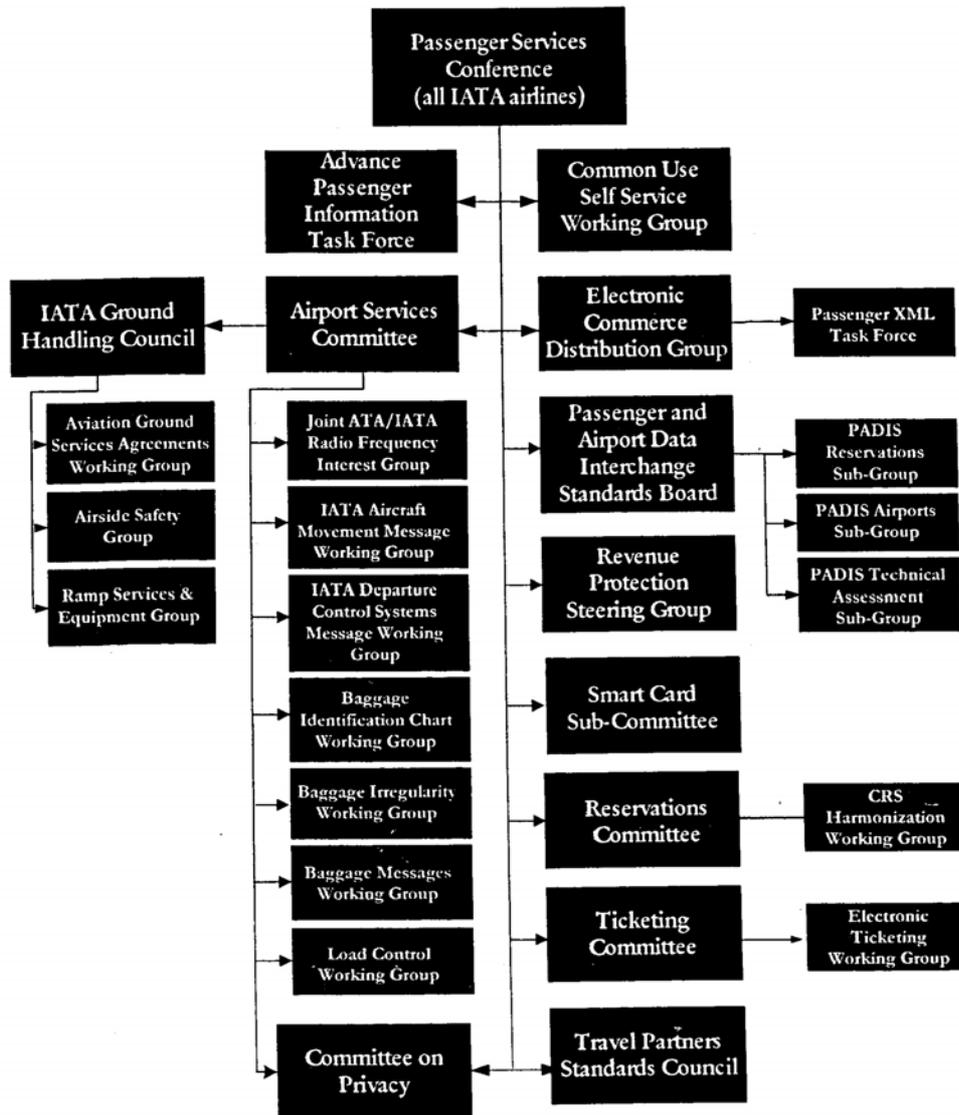
⁴ With regard to vote of resolutions, abstention or failure to vote on the part of any accredited representative who is present at the meeting is deemed to be an affirmative vote. See IATA handbook, Part 1, July 1999, p.96.

⁵ For the purpose of IATA's activities, the world is divided into three Traffic Conference areas. There is an exception to this if the proposed resolution will not have a worldwide effect. If a proposed resolution will not affect all three areas, then only a unanimous vote of the members of the area or areas that are affected is required.

⁶ Abstentions do not count in the vote.

⁷ IATA Airport Handling Manual, 23rd edition and IATA submission.

Diagram 2: Passenger Services System's governance & organisational structure



3.19 Certain sub-groups have been established by IATA jointly with the US Air Transport Association:

- The Common User Self Service (CUSS) Management Group has been established under Resolution 706 to manage the certification and amend the specifications and standards for self-service kiosks to be shared by multiple airlines, set out in RP1706c.
- The Passenger and Airport Data Interchange Standards (PADIS) Board has been established under Resolution 783 to develop and maintain Electronic Data Interchange message standards for airlines passenger travel and for airport related passenger service activity.

Key elements of the IPSS and relevant Resolutions and Recommended Practices

3.20 IATA submits that the work of the Passenger Services Conference has wider application than interlining, although much of its work originated in the need to develop an efficient interline system. The Conference is responsible for the development and maintenance of technical and procedural standards and communication protocols in the areas of passenger reservations, ticketing, passenger and baggage handling and ground handling for use by the airline industry. IATA submits that these standards and protocols facilitate interlining, whether within alliances or between members at large, as well as airlines' own business processes.

3.21 Details of the Resolutions, Recommended Practices and other Arrangements being considered in this paper are contained in the IATA *Passenger Services Conference Resolutions Manual, 23rd edition, June 2003* and in various reference manuals issued by the IATA Passenger Services Conference.⁸

3.22 Functionally, the Resolutions and Recommended Practices may be grouped in the following categories:

- Passenger reservations – standards and procedures to allow a reservation to be made, tracked and acted on, for example:
 - *Resolution 760* sets out the ATA/IATA Reservations Interline Message Procedures – Passengers (AIRIMP) as the mandatory multilateral data exchange standard for interline communications for passenger reservation usage.
 - *Resolution 766* establishes interline passenger reservation procedures
- Ticketing – standards and procedures related to the format, issuance and honouring of standard IATA ticket stock, for example
- *Resolutions 720, 720a, 721, 722, 722a, 722c, 722d, 722e, 722f, 722g, 742, 742a, 742e and 742f* establish standard tickets.
 - the *Resolution 724 series* sets out the standard notices provided on tickets.
 - *Recommended Practice 1724* provides a template set of airline conditions of carriage covering passengers' and airlines' rights and obligations.
 - *Resolution 723* provides that a ticket will lose its validity if the passenger does not use all the coupons in the ticket in the sequence in which they are issued.

⁸ These manuals are: *Reservation Services Manual*, 20th edition, June 2003; *Ticketing Handbook*, 35th edition, June 2003; *Multilateral Interline Traffic Agreements Manual*, 67th edition, April 2003; *AIRIMP Manual*, 27th edition, June 2003; *Airport Handling Manual*, 23rd edition, January 2003; *Baggage Services Manual*, 6th edition, April 2003; *IATA Airline Coding Directory*, 61st edition, April 2003; *Airline Baggage Identification Chart*, June 2001; *Airline Guide to Involuntary Rerouting*, 1st edition, September 2002; *Electronic Ticketing Implementation Manual*, 1st edition, October 2003; *Travel Standards Council Manual*, 1st edition, January 2002.

- *Resolution 735* sets the period of validity for a normal fare interline ticket at one year from the date of commencement of the flight.
- *Resolutions 780b, 780c and 780d* establish the interline service charge to be paid by the airline carrying the passenger to compensate the ticketing airline for the costs involved in handling the reservation and ticketing requirements for an interline passenger.
- Passenger and baggage handling – standards and procedures for the handling of passengers and baggage at airports, for example:
 - *Resolution 722c, 722d and 722e* establish standard boarding passes.
 - *Resolution 740* establishes standard baggage tags.
 - *Resolutions 745, 745a and 745b* set out rules in relation to the carriage and non-carriage of certain dangerous items.
 - *Resolution 780* establishes the IATA Interline Traffic Agreement, which among other things, sets out procedures for the interline carriage of baggage and for mishandled baggage.
 - *Recommended Practice 1739* sets out reconciliation procedures to ensure that baggage is not on a flight without the passenger to whom it belongs.
 - *Resolution 700* and *Recommended Practice 1700* set out standard arrangements for the acceptance and carriage of passengers with reduced mobility.
 - *Recommended Practice 1799* provides a standard for denied boarding in countries where there is no denied boarding legislation.
 - *Recommended Practice 1700a* provides recommended standards for the carriage of expectant mothers and newborn babies.
 - *Recommended Practice 1798* provides a standard for informing passengers about travelling when carrying an infectious disease and for notifying health authorities.
- Ground handling – standards and procedures relating to aircraft and ground handling matters, including safe operating procedures, training and recommended standard forms of agreement between airlines and ground handling companies, for example:
 - *Resolution 762* establishes the rules for the assignment and use of airline designators, which are set out in the IATA Airline Coding Directory.
 - The *IATA Airport Handling Manual*, established under *Recommended Practice 1690*, sets out loading requirements to enhance safe operation of aircraft (AHM 500 series) and the IATA standard ground handling agreement (AHM 810).

4. BACKGROUND TO THE APPLICATION

The airline industry

International travel

4.1 There were 46 international airlines which operated scheduled passenger services to and from Australia in 2004. Table 1 shows the movements in passengers between Australia and other countries over the past five years.

Table 1: Passengers carried on scheduled air services to and from Australia

Year ended 31 December	Number of flights	Number of passengers ('000)	Number of seats available ('000)
2000	91,188	16,488	23,932
2001	92,045	16,799	24,144
2002	87,421	16,682	22,759
2003	92,214	16,451	23,761
2004	109,329	19,371	28,109

Source: DTRS

4.2 Following steady growth through the 1990s, Table 1 shows that demand fell in 2002 and 2003 as a result of the impact of terrorist events, the war in Iraq and SARS crisis. A recovery in demand which commenced in late 2003 has continued into 2004 which recorded the highest level of passenger traffic ever carried in a calendar year, with record traffic for each month from September 2003.

4.3 Table 2 below shows the shares in passenger traffic of the major airlines operating scheduled services to and from Australia in 2004.

Table 2: Passenger traffic to and from Australia by airlines

Airlines	%
Qantas Airways ^a	33.0
Air New Zealand ^b	11.0
Singapore Airlines	10.5
Malaysia Airlines	5.1
Emirates	4.7
Cathay Pacific Airways	3.9
Thai Airways International	3.8
Japan Airlines	3.8
British Airways	3.0
Air Pacific	2.2
United Airlines	2.2
Garuda Indonesia	1.8
Pacific Blue	1.6
Others	15.3
Total	100.0

^a includes Australian Airlines ^b includes Freedom Air

Source: DTRS

Airline alliances

4.4 The proliferation of airline alliances has been a feature of the development of the international aviation industry over the last decade, subsequent to the granting of authorisation to IATA in December 1985.

4.5 A detailed background to airlines alliances and their development, including code share and special prorated arrangements, is set out in the ACCC discussion paper A90855/3 on IATA passenger tariff coordination.

Sale of air travel

4.6 A major development in recent years in the sale of passenger air transport has been the increased availability and promotion of website sales, initially for domestic passenger sales, but increasingly for international travel as well.

4.7 However, travel agents still remain the main channel for the distribution of international travel products. The travel agent industry in Australia is a mature industry which is a significant small business employer and has a substantial turnover of funds. At the end of 2003, there were a total of 4,578 travel agencies, comprising 3,176 head offices and 1,402 branch offices.⁹

4.8 Computer reservation systems (CRS), also referred to as global distribution networks (GDS), provide an interface between airlines and travel agents. CRS distribute to subscribers, principally travel agents, information on airline schedules, fares and seat availability and enable subscribers to make reservations and issue tickets.

Airports and ground handling

4.9 There were ten Australian airports with international operations in 2004.¹⁰ Sydney Airport is by far the main international airport, with 46.2 per cent of international passenger traffic in 2004, followed by Melbourne Airport with 20.3 per cent, Brisbane Airport with 16.9 per cent and Perth Airport with 9.6 per cent.

4.10 Ground handling activities cover a complex series of processes that are required to separate an aircraft from its load (passengers, baggage, cargo and mail) on arrival and combine it with its load prior to departure. The range of services provided by ground handling companies to international airlines may cover the following areas:¹¹

- passenger services, such as check-in and gate function
- ramp services such as baggage handling, loading and unloading the aircraft, aircraft cleaning
- load control, communications and flight operations
- cargo and mail services

⁹ Travel Compensation Fund, 2003 Annual Report.

¹⁰ International operations at Canberra Airport commenced in July 2004 and ceased in September 2004.

¹¹ IATA standard ground handling agreement, Annex A, IATA Airport Handling Manual, 23rd edition, January 2003.

- support services such as unit load devices (ULD) control or ramp fuelling operations,
- security services such as passenger and baggage screening and reconciliation
- aircraft maintenance.

4.11 The following companies provide ground handling services to international airlines at Australia's major airports:¹²

- Qantas – Sydney, Melbourne, Brisbane, Adelaide (no cargo handling), Perth and Darwin (no cargo handling)
- Patrick Air Services (cargo handling only) – Sydney, Melbourne, Brisbane, Adelaide and Darwin
- Menzies – Sydney, Melbourne and Brisbane
- Australian Air Express (cargo handling only) – Sydney, Melbourne, Brisbane, Adelaide, Perth and Darwin
- Aero-care – Sydney, Melbourne, Brisbane, Adelaide, Perth and Darwin
- Australian Airsupport services – Brisbane (no cargo handling)
- Skystar Airport Services – Perth (no cargo handling)

5. SUBMISSIONS

IATA's supporting submission

5.1 IATA provided a submission in support of the passenger services component of the application. Although IATA did not specifically identify public benefits flowing from the IPSS, it indicated that the technical standards and procedures comprising the IPSS are designed to foster efficiency, communications connectivity and safety and to support the interline system:

- efficient operations – the IPSS provides common procedures, systems and documentation required for efficient operations, including interlining.
- information to passengers – the IPSS provides information to passengers as consumers.
- connectivity and technological improvement – the IPSS provides shared opportunities for airlines to take advantage of technological improvements.
- reference manuals – the IPSS provides user-friendly training and operations reference manuals and guides, which are used extensively by airlines and other participants in the industry.
- safety – the IPSS complements and supplements the work of the ICAO and governments in relation to passenger, crew and aircraft safety.

¹² IATA IGHC Interactive Directory and companies' websites.

Submissions from interested parties

5.2 Submissions responding to the application were received from the following interested parties:

- Adelaide Airport
- American Express International
- The Australian Federation of Travel Agents (AFTA)
- Consumer Affairs Victoria (CAV)
- Consumer Law Centre Victoria (CLCV) and the Australian Consumers' Association (ACA) (joint submission)
- The Country Women's Association of Australia (CWAA)
- Queensland Government
- Tasmanian Government

The ACCC also held meetings with Qantas and CLCV in relation to the IPSS.

5.3 A summary of comments submitted by interested parties is provided below. The detail of the comments will be addressed as appropriate by the ACCC when assessing the individual elements of the IPSS.

5.4 *Adelaide Airport* considered that the conditions of carriage at point of sale should be made clearer. Adelaide Airport submitted that consumers should have particular rights in relation to overbooking, rescheduling or flight cancellation.

5.5 *American Express International (Amex)* recognised the benefits and efficiencies associated with collective agreement on uniform operational standards. Amex noted that while the IPSS is concerned primarily with airline operational matters, there are aspects of the IPSS which do impact both travel agents and passengers. Amex considered it important that representatives of travel agents and passengers/consumers be assured of an opportunity to participate in IATA decisions which affect them.

5.6 *AFTA* submitted that the IPSS has an essential and important role in ensuring technical and procedural standards in the airline industry. AFTA considered that these standards ensure more efficient airline operations but have minimal impact on competition between airlines. AFTA was of the view that the benefits from the IPSS far outweigh any lessening of competition.

5.7 *Consumer Affairs Victoria (CAV)* submitted that IATA's revised conditions of carriage represent a significant improvement on the conditions currently in place. CAV pointed to the new provisions of Victoria's Fair Trading Act (FTA) which prohibit the use of unfair terms in consumer contracts. CAV submitted that based on an early assessment of the revised conditions of carriage, there may be some clauses that could be considered unfair under Victoria's FTA provisions. CAV suggested that consideration of revocation and substitution of authorisation be deferred until after IATA or individual airlines undertake a full analysis of the impact of the new FTA provisions on the revised conditions.

5.8 CLCV and ACA expressed concern that the IPSS does not deliver a net public benefit. CLCV and ACA submitted that it is not clear the efficiency benefits claimed by IATA will be passed onto Australian consumers and questioned the weight which could be given to these benefits. CLCV and ACA expressed serious concerns that IATA's RP1724, which operates as a recommended contract for its members, institutionalises behaviours that fall short of minimum consumer protection standards contained in current State and federal legislation.

5.9 CLCV and ACA noted that the revised RP1724 goes a substantial way to bringing IATA model contract of carriage in line with European unfair contract legislation. However, CLCV and ACA considered that certain provisions of the revised version contravene fundamental consumer protection provisions in the TPA and State fair trading legislation, and are likely to constitute unfair terms under the Victorian FTA.

5.10 CWAA expressed concerns about certain aspects of passenger services and contract of carriage.

5.11 Qantas provided an overview of its interline agreements with other airlines. Qantas submitted that the IATA passenger services program provides an airline forum to set minimum industry standards for interline customer service delivery. The program delivers efficiencies to the industry and benefits to consumers.

5.12 The *Queensland Government* (Qld Govt), represented by the Department of Tourism, Racing and Fair Trading, considered that there is clearly a public benefit in the processes and procedures put in place by IATA, in that without them, travellers could experience significant difficulties and inconveniences. However, the Qld Govt identified certain sections of the IATA model conditions of carriage which could fall under the category of 'unfair terms'.

5.13 The *Tasmanian Government* (Tas Govt) generally supported the IPSS as being critical for the efficient functioning of international air services. However, the Tas Govt identified certain issues relating to conditions of carriage.

6. MARKET DEFINITION

6.1 The first step in assessing the conduct for which authorisation is sought is to consider the relevant market(s) in which that conduct occurs. The ACCC uses market analysis to identify and measure the public benefit and anti-competitive detriment resulting from arrangements for which authorisation has been sought.

6.2 The ACCC notes that IATA has not provided any views on the markets it considers relevant to the ACCC's evaluation of the passenger services component of the application.

6.3 The ACCC has expressed views on markets relevant to the air transport sector in recent determinations.¹³ In those determinations, the ACCC has concluded that there are three broad markets of relevance to air transport:

- passenger transport;
- freight; and
- ticket sales.

6.4 From these markets the carriage of freight by air is not a market relevant to the IPSS. Additional areas of relevance to the IPSS relate to the provision of airport, ground handling and other services to the airline industry.

Passenger transport

6.5 The ACCC has consistently distinguished between the domestic and international passenger markets, primarily on the basis of different regulatory environments.

6.6 When examining international air transport passenger markets the ACCC has until recently considered that a regional approach to market definition was the most appropriate approach for many international markets while acknowledging it was not universally applicable.

6.7 In its Determination A30226-7 in relation to Qantas and British Airways Joint Services Agreement, the ACCC recognised for the first time separate product markets for business travellers and leisure travellers on long haul routes. While the regional approach was deemed still relevant to leisure travellers a point to point approach was seen as more relevant for business travellers.

6.8 For the purpose of responding to the passenger tariff coordination component of IATA's application, the ACCC proposed in Discussion Paper A90855/3 to adopt an approach to market definition consistent with the views it has expressed in previous assessments it has made involving air transport, with distinction being recognised between:

- international air transport and domestic air transport
- the carriage of cargo and passengers
- leisure travellers and business travellers on long haul routes (business traveller markets are considered to be point to point)

6.9 In its response to the ACCC discussion paper A90855/3, IATA states that it does not agree with the ACCC identification of separate markets for business and leisure travellers on long-haul routes. From a geographic viewpoint, IATA submits that the relevant market is the market for international air transport from Australia to destinations throughout the world and for international air transport from other parts of

¹³ See, for example, Determination A90791 of 13 November 2002 in relation to the IATA Passenger Agency Program, Determination A30220-2 and A90862-3 of 9 September 2003 in relation to Qantas and Air New Zealand, and Determination A30226-7 of 8 February 2005 in relation to Qantas and British Airways.

the world to Australia.¹⁴

6.10 The ACCC will consider IATA's views on market definition when progressing the assessment of the passenger tariff coordination component of IATA's application.

6.11 The ACCC does not consider it necessary to precisely define the relevant air transport markets when assessing the passenger services component of IATA's application, as the outcome of the analysis would not be affected. With the IPSS there is no differential impact on product or geographical markets unlike some other areas of IATA's conduct.

Sale of air travel

6.12 Consistent with previous determinations, the ACCC recognises a market for the sale of air travel to the public where consumers can purchase travel from retail travel agents, airlines and package tour operators.

Other relevant markets

6.13 The ACCC considers that other broad product dimensions in markets are of potential relevance to its assessment of the IPSS, including:

- the provision of airport services;
- the provision of ground handling services; and
- the provision of global distribution services (CRS or GDS).

6.14 The ACCC does not consider it necessary to its assessment of the IPSS to comprehensively define these markets.

7. THE COUNTERFACTUAL

7.1 As indicated earlier in this discussion paper, the ACCC is required to assess the likely public benefits and anti-competitive detriment arising from the arrangements for which authorisation is sought.

7.2 When identifying and evaluating public benefits and anti-competitive detriment generated by the IATA application, the ACCC is required to apply a 'future with-and-without' test established by the Australian Competition Tribunal (the Tribunal). The test requires a comparison of the public benefits and anti-competitive detriment that the arrangements would generate in the future if authorisation is granted with the position if authorisation is not granted. The scenario in which authorisation is assumed not to have been granted is termed the counterfactual.

7.3 When determining the most likely counterfactual, the ACCC must assess the extent to which IATA would be likely to continue to engage in the various elements of

¹⁴ IATA response to ACCC Discussion Paper A90855/3 dated 28 October 2005, section 4.

the conduct covered by the application should authorisation not be granted. The IATA application did not contain any views on a likely counterfactual.

7.4 The ACCC notes that immunity for most of IATA’s operations in the European Union (excluding passenger tariffs and scheduling) was removed from 1 May 2004 (although the arrangements are defensible if challenged). These developments were acknowledged on page 18 of IATA’s 2004 Annual Report:

“On May 2004, new EU competition regulations came into force. As a result, four IATA conferences (Passenger Agency, Cargo Agency, Passenger Services and Cargo Services) lost their protection from competition law within the EU.

To ensure compliance in the non-immunised environment, IATA, its members and external counsel conducted an extensive legal analysis. On the basis of this analysis, the programmes were adapted to bring them into compliance with European law. The goal of maintaining effective systems was met, avoiding adverse impact on IATA members and over 28,000 passenger and cargo agents in Europe alone. An ongoing compliance programme will ensure that the business and conduct of future conferences comply fully with EU competition laws.”

7.5 The ACCC also notes the comments in IATA Customer News of December 2004:

“...the PSC [Passenger Services Conference] has already taken significant action through its “whittle back” activity where the Conference has voluntarily given up immunity for a large number of its standards with the US DOT.”

7.6 The ACCC notes that IATA has emphasised in its submission on the IPSS that it is a global system:

“This element of the application relates to the IATA Passenger Services System as it applies to transactions entered in Australia. However the IATA Passenger Services System is a global system applicable throughout the world.” [para 1.4]

“The Passenger Services System [IATA] administers on behalf of the world’s international airlines is a worldwide system.” [para 5.1]

7.7 Given that IATA has been able to continue to operate the IPSS in Europe and accommodate the loss of immunity from EU competition law, and has given up immunity for a large number of the IPSS standards in the US, the ACCC questions why individual elements, if not the whole, of the IPSS could not continue to be operated by IATA in Australia absent authorisation.

Issue 1.	IATA has continued to operate the IPSS in Europe following the withdrawal of immunity from competition law for the system in the EU. IATA has also given up immunity in the US for a large number of standards developed by the IPSS. Under these circumstances why would IATA not continue, absent authorisation, to operate in Australia some or all of the elements of the IPSS?
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8. DISCUSSION

8.1 As indicated above, whilst IATA did not specifically identify public benefits flowing from the IPSS, it indicated that the technical standards and procedures comprising the IPSS are designed to foster:

- efficient operations;
- passenger information and assistance;
- connectivity and technological improvements; and
- safety
- and to support the interline system.

8.2 Passenger information and passenger rights have been major issues overseas and the focus of overseas regulators' attention. These are also the main issues raised in submissions to the ACCC in relation to the IPSS. The ACCC will initially focus its analysis of the IPSS on these aspects. The ACCC will then examine the other elements of the IPSS in turn.

Benefits and detriments associated with passenger information and assistance

8.3 The IPSS provides standards and recommended common procedures, systems and documentation to provide services for, and information to, passengers.

8.4 In that regard, the IPSS can be seen as an arrangement whereby suppliers of a service, namely the international air transport of passengers, collaborate on the conditions upon which such a service is provided to the public. Although this may well generate benefits, as suggested by IATA, there is also the potential for the arrangements to impact on competition and/or be to the detriment of passengers, in particular when suppliers account for around 95 per cent of the supply of those services, as is the case with IATA member airlines.

8.5 This element of the IPSS should therefore be examined within the frameworks of both public benefits and detriments. For ease of presentation, benefits and detriments are examined in parallel in the following sections.

Standard form of contract

8.6 The conditions of supply of international air services to passengers agreed to by airlines at IATA Passenger Services Conference meetings are mainly contained in Recommended Practice 1724 (RP1724) – General conditions of carriage (passenger and baggage). Following concerns raised by the UK OFT under the UK unfair contract law, IATA's model conditions of carriage were amended by postal vote of members in August 2000 (thereafter referred to as 'the revised RP1724'). The ACCC understands that the revised RP1724 has not been declared effective as it has not yet received all government approvals.

8.7 CLCV noted that in major markets service providers do not compete on terms and conditions. As a result, service providers tend to use similar contract terms which are often onerous on consumers. CLCV expressed concern at the anti-competitive

effect of IATA RP1724, if it is effectively used as a standard form contract, considering the wide coverage of IATA membership among airlines.

8.8 *CLCV* was of the view that the IPSS may provide efficiencies in relation to interlining, but that it would be unlikely any efficiency from using standard contracts could be regarded as constituting public benefit. In that regard, *CLCV* and *ACA* expressed concern that the model conditions of carriage institutionalise behaviour and practices which fall short of minimum consumer protection standards contained in current state and federal legislation, in particular the unfair contract provisions of the Victorian *Fair Trading Act 1999*.

8.9 *Qld Govt* raised the issue of unfair contract terms in relation to the IPSS and noted that standard form contracts are of particular concern because of their non-negotiated character.

8.10 *AFTA* submitted that IATA conditions of carriage are just a model that each airline will adopt or modify according to their own commercial needs.

8.11 *Qantas* submitted that RP1724 is a good base for airlines to start from when developing their own conditions of carriage. *Qantas* indicated that it used to adopt the IATA conditions of carriage verbatim, but in the late 1990s it re-wrote its conditions of carriage in plain English. *Qantas* commented that the revised RP1724 is in plain English and incorporates new concepts. *Qantas*' conditions of carriage are based on IATA's revised RP1724. *Qantas* commented that many airlines may still use the old version of RP1724; but it considered they would adopt the revised version when it is declared effective.

8.12 Airlines' conditions of carriage are an issue of concern to consumers. Over the past few years, around a third of the complaints received by the ACCC in relation to international passenger air transport services raised contract of carriage issues, as shown in Table 3 below. Although the concerns raised by consumers may relate to specific airlines, they also highlight broader issues relevant to the assessment of the IATA model contract of carriage.

Table 3: ACCC complaints regarding international air transport services

Issues raised	Number of complaints		
	2002	2003	2004
Contract of carriage	82 (39%)	51 (35%)	41 (31%)
Others	129	96	93
total	211	147	134

8.13 It should be noted that the number of complaints received by the ACCC does not necessarily reflect the level of concerns and problems encountered by consumers. In the ACCC experience, many consumers do not complain about problems they encounter. The ACCC also considers that consumers would be expected to contact the airlines or their travel agent, rather than the ACCC, when faced with contract of carriage issues.

8.14 The ACCC notes that IATA's conditions of carriage are mainly in the form of recommended practices rather than resolutions with which airlines would be required to

comply. In that regard, IATA describes recommended practices as ‘*models or guidelines for airlines [which] may be regarded as best practice non-enforceable arrangements*’.

8.15 The ACCC is of the view that even though IATA’s conditions of carriage are technically only recommended and not required to be implemented by all airline members, this does not mean that they have little or no impact on the market. On the contrary, it may well be that when a recommended practice is agreed to at IATA Passenger Agency Conference meetings, there is an expectation among airlines that most airlines would implement the recommended practice, and this is what in fact happens. Qantas has indicated to the ACCC that a decision of the IPSS would generally be in the form of a recommended practice when it would not be possible for some airlines to implement a particular decision due to government regulations or because they lack the required technology. This comment would suggest there is an expectation that IATA member airlines would implement recommended practices unless they face particular impediments.

8.16 The ACCC has examined the conditions of carriage of a sample of airlines operating to and from Australia.¹⁵ Table 4 below suggests that a majority of international airlines base their own conditions of carriage on IATA’s model conditions. The ACCC notes that from the sample considered, the revised RP1724 appears to have become the main version used, although some airlines have not made all the changes set out in that version. The ACCC also notes of Qantas’ comments that when the revised version becomes effective, it would be adopted by airlines.

Table 4: Airlines’ conditions of carriage

Airlines	Conditions of carriage
Austrian Airlines	Same text as revised RP1724, with some exclusions and minor additions.
British Airways	Same format and content as revised RP1724 but own wording; some small additions.
Emirates	Generally same format and content as revised RP1724 but own wording; some additions
Malaysia Airlines	Based on both current and revised RP1724; some additions and differences
Qantas	Based on revised RP1724 but with own wording and format
Singapore Airlines	Based on current RP1724 with some additions
South African Airways	Same text as revised RP1724 with some additions.
Thai Airways	Same text as revised RP1724 with some additions
United Airlines	Partly based on ATA’s model contract of carriage
Virgin Atlantic	Generally same text as revised RP1724 with some additions and differences.

8.17 On the one hand, standardisation of conditions of carriage for international travel across all or most airlines may be seen as desirable, ensuring that passengers are guaranteed certain minimum rights across all airlines, as well as facilitating travel

¹⁵ Copies of the airlines’ contract of carriage was obtained from the website of the airlines concerned.

globally with multiple airlines. Such agreement, however, would only be of benefit to the public if the minimum rights provided to consumers are adequate and reasonable.

8.18 On the other hand, some of the standard conditions may be seen as restricting or limiting passenger rights. Considering that around 95 per cent of the world airlines are members of IATA, agreement on such standard conditions would appear to be inherently anti-competitive. The ACCC recognises however that the extent of the detriment would depend on the nature of the particular conditions agreed upon.

8.19 The ACCC will examine below IATA's model conditions of carriage in more detail. The ACCC has not attempted to assess the conditions in terms of the unfair contract provisions of the Victorian Fair Trading Act, but more broadly whether the clauses raise consumer concerns, in light of the particular circumstances of the airline industry.

Issue 2.1	To what extent are IATA's model conditions of carriage reflected in the airlines' own conditions of carriage?
Issue 2.2	To what extent and/or in what circumstances would standard conditions of carriage in the international airline industry be capable of generating public benefits?
Issue 2.3	To what extent do IATA's model conditions of carriage generate anti-competitive detriment?

Transferability of tickets

8.20 The IATA model conditions of carriage do not allow transfer of a ticket from one passenger to another; rather airlines provide carriage only to the passenger named on the ticket at the time of purchase. This has been a long-standing condition of the provision of air transport to passengers.

8.21 *Qld Govt* considered that a total ban on transferability was not reasonable, and suggested that suitable procedures could be put in place to accommodate this.

8.22 *CLCV* raised concern about the non-transferability of tickets, also noting that tickets may be wholly or partly non-refundable. However, *CLCV* noted that a credit may be given in case of 'force majeure'.

8.23 *CAV* expressed concern that the conditions allow for certain fares to have conditions which limit or exclude the passenger's right to change or cancel reservation.

8.24 *CWAA* expressed concerns at the non-transferability and refund for tickets

8.25 *AFTA* considered that the conditions imposed by airlines regarding the transferability and refund of tickets are a matter of policy of each airline. In *AFTA's* experience these conditions are made known to passengers before the ticket is purchased. *AFTA* submitted that the general condition of carriage that tickets are not transferable is not unreasonable. The additional security concerns and practice now in place reinforce the requirement that tickets not be made transferable.

8.26 IATA has stated that the restriction on transferability of tickets is a core term of an airline contract that is fundamental to airline pricing and inventory control.¹⁶ In the economy class cabin, airlines offer a range of fares from fully flexible fares to deeply discounted, heavily conditioned fares with little flexibility. The non-transferability rule is a way of ensuring that the varying level of flexibility of the different fare levels can be implemented. By pushing passengers with less travel certainty to purchase higher priced fully flexible fares, the rule undoubtedly benefits airlines.

8.27 Non-transferability of tickets may only become an issue for consumers who have purchased a non-refundable ticket. For these consumers, the condition means that they could lose the whole value of their ticket if they cannot travel. A number of complaints received by the ACCC relate to that very issue, and in particular where passengers are prevented from travelling due to circumstances beyond their control, such as illness, injuries or major unexpected events in their immediate family.

8.28 The ACCC notes that the changes to this condition in the revised RP1724 maintain the non-transferability rule, but provide for consumers prevented from travelling due to 'force majeure' to obtain a credit note for any part of the ticket price that is not refundable for future use on that airline. Force majeure can be defined as unusual and unforeseeable circumstances beyond the consumer control, the consequences of which could not be avoided even if the consumer had exercised all due care. The OFT considered the new rights to be generally more valuable than a right of transfer, as in practice most consumers would be unlikely to find another person to take their place in what could be a very short time before departure, when they could be ill or preoccupied with the very problem that prevented them from travelling in the first place.¹⁷

8.29 Of the airlines' contracts of carriage it has examined, the ACCC notes that all apply the non-transferability rule. However, British Airways, Emirates, Qantas, South African Airways, Thai Airways and Virgin Atlantic have inserted the reference to 'force majeure' in line with the IATA revised model clause.¹⁸

8.30 The ACCC considers that the general rule of non-transferability of tickets may still be questioned beyond cases of 'force majeure'. The ACCC understands that reasons for airlines not permitting transfers of ticket include security and immigration control, issues which have become more prevalent in recent years. However, it could be argued that as long as the transfer is notified by the passenger early enough to allow the airline to re-issue the ticket, therefore ensuring the airline can check the identity of each passenger, there appears to be no need for such a condition to be imposed. In a practical sense, this is not different from cancelling a ticket, and reselling the seat and issuing a new ticket to another passenger.

8.31 The ACCC notes that Virgin Blue offers certain fare categories for domestic and international travels which allow for changes to the passenger name.¹⁹ The ACCC also

¹⁶ IATA, Comments of the European Commission's consultation paper *Airlines' Contracts with Passengers*, Geneva, October 2002.

¹⁷ The Office of Fair Trading, *Unfair contract terms case report bulletin 12*, November 2000.

¹⁸ British Airways and Qantas refer to events beyond the passenger's control.

¹⁹ Flexi Savers and Blue Plus fare categories.

notes that SAS conditions of carriage, revised with the Scandinavian Consumer Ombudsman, allow transfer of tickets bought for personal use provided that the airline is contacted at least 24 hours prior to departure time.²⁰ These two examples show that transferability of ticket is feasible and cast doubt on the airlines' security argument.

8.32 It could be argued that general ticket transferability would allow a secondary market to emerge. Not only could individual passengers buy and transfer tickets, but also intermediaries could purchase tickets in large quantities at discounted prices as soon as they are offered, and resell them closer to the flight's departure time at a higher price, but presumably less than the airline's price. Airlines would lose the ability to control the pricing of their tickets which it is argued could threaten the availability of deeply discounted fares.

8.33 The opposite argument could be made that a secondary market would provide increased price competition, in particular for passengers who need the convenience of last-minute travel decisions. In any event, if the concern is the development of a secondary market, it would seem possible to design particular measures to address this concern, such as restricting transferability to tickets bought for personal use for identified travellers and controlling the number of tickets sold to individuals.

8.34 The ACCC acknowledges that consumers make choices between price and flexibility, among other things. However, this is premised on consumers knowing exactly the nature and implications of the restrictions they may be accepting for a lower price. Complaints to the ACCC suggest that this is not necessarily the case.

8.35 Leisure passengers are usually prepared to accept limited flexibility in exchange for discounted fares, because they have a greater certainty that they will travel on a particular date. The way the airlines' yield management systems operate ensures that discounted fares are marketed and purchased by such passengers well in advance of travel. However, this also means that there is a greater chance unexpected events could happen and affect the passenger's decision to travel. Some of these events may not necessarily be covered by the 'force majeure' provision. For example, in recent years events such as the September 11th terrorist attack, SARS, the Bali bombing or the Boxing Day tsunami have impacted on consumers' travel plans. Changes to personal circumstances, such as employment situation, would also affect a passenger's ability to travel as planned. In these circumstances, it may be questionable whether airlines can be justified to supply non-refundable, non-transferable tickets to the public.

8.36 It is possible, however, that a right of transfer would not necessarily assist consumers in the above circumstances. Rather, an entitlement to a credit voucher for later use with the same airline may be more useful.

8.37 It should be noted that airlines are operating in an environment of higher load factors through effective yield management. In this environment, and depending upon the notice given by the passenger being prevented from travelling, the airline would have the opportunity to re-sell that ticket. In the case of a non-refundable ticket, the airline could effectively be paid twice for the same seat.

²⁰ *SAS and the Scandinavian Consumer Ombudsman agree on better conditions for travellers*, SAS press release, 26 August 2002; and SAS conditions of carriage, page 7.

8.38 A final consideration worth noting is that passengers are able to purchase travel insurance to cover cancellation costs if they are prevented to travel for any reason after purchasing their ticket. The revised RP1724 clearly states in relation to non-refundable tickets that:

You [the passenger] may wish to ensure that you have appropriate insurance to cover instances where you have to cancel your ticket.

Issue 3. To what extent does the non-transferability rule generate detriment? To what extent is such detriment, if any, alleviated by the ‘force majeure’ provision in the revised RP1724?

Coupons to be used in sequence

8.39 Resolution 723 provides that a ticket will lose its validity if a passenger does not use all the coupons in the ticket in the sequence in which they are issued. This requirement is also reflected in RP1724.

8.40 IATA submitted that airlines often offer lower fares in return for passengers accepting a particular itinerary. For example, an indirect fare from A to C via B may be cheaper than a fare from B to C. Resolution 723 effectively prevents a passenger travelling from B to C from purchasing the cheaper indirect fare from A to C and not using the flight from A to B.

8.41 IATA submits that if airlines were unable to control the use of coupons to ensure that tickets from indirect travel are not used for direct travel, this would reduce or even eliminate their ability to compete in indirect market. Because airlines would likely withdraw from these markets as a result, it would also reduce competition in the A to C markets. IATA considers that using coupons out of sequence would amount to the passenger obtaining a different product to that they had purchased.

8.42 AFTA submitted that if airlines were not able to control the use of coupons then there would be a reduction or elimination of their ability to compete in indirect markets which would have an adverse impact on consumer choice and public benefit.

8.43 CAV expressed concern at the requirement that the first flight coupon in a sequence must be used for the entire ticket to be validated.

8.44 CWAA submitted that ticket coupons should be able to be used in reverse sequence.

8.45 As indicated above, the requirement that coupons be used in sequence is reflected in RP1724. The ACCC notes that the revised RP1724 clearly states that onward reservations will not be cancelled if the consumer warns the airline that a part of the ticket is not to be used, however the cost of the ticket will be recalculated. It also provides that there will be no recalculation of fare if a coupon is not used for reasons of force majeure.²¹

²¹ The OFT challenged the unqualified right of airlines to cancel onward reservations if a part of a ticket is not used. The OFT considered the terms were too wide by penalising consumers whose

8.46 The ACCC notes that all the airlines' contract of carriage it has examined include the requirement that all coupons be used in sequence. Austrian Airlines, British Airways, Emirates, Qantas, Thai Airways and Virgin Atlantic include a reference to force majeure in line with the revised RP1724.²²

8.47 While the revised RP1724 provides greater flexibility, it is clear to the ACCC that the core condition remains which is aimed at preventing passengers from exploiting differences in prices (i) between fares available to inbound and outbound passengers, and (ii) between fares for indirect routing and the individual sector fares for that routing. This rule enables airlines to create market segmentation and price discriminate by having fences which allow the various products to be differentiated from each other.

8.48 The ACCC has received a number of complaints from consumers regarding the fact that return fares from Australia to certain overseas destinations are more expensive than the same fare from the overseas destination to Australia.

8.49 The discrimination between inbound and outbound passengers appears to restrict competition to the detriment of passengers. The ACCC acknowledges that supply and demand conditions at the places of origin and destination will influence ticket prices from those locations. However, considering that the vast majority of passengers have to come back to their point of origin, the airline cannot distinguish between inbound and outbound passengers. In the absence of the sequencing rule, one would expect to see arbitrage leading to the same fares applying for both inbound and outbound passengers, with the supply and demand conditions at the origin and destination influencing the one-way fares from each end. In addition, competition for selling tickets would be expected to expand from the departing country to the global level.

8.50 However, ticket prices in each country could also vary due to standard of living and consumers' ability to pay in that country. The elimination of the sequencing rules could have negative social consequences in some countries by making air travel out of reach to many people, although Australian consumers could be enjoying cheaper fares to destinations in those countries. Conversely, it is possible that Australian consumers could face fare rises to destinations such as the UK.

8.51 As indicated above, the requirement to use all coupons in sequence also prevents passengers from discarding coupons to potentially exploit cheaper prices for indirect travel. The ACCC notes the argument that eliminating this rule would reduce or even eliminate the airlines' ability to compete in indirect markets. However, a counter argument can also be made that the rule ensures that competition on one route does not affect ticket prices on another route which is also a sector on an indirect flight on the first route. The rule gives airlines an effective way of maintaining different fare levels and differentiated markets which, but for the rule, would not necessarily exist. In the absence of the sequencing rule arbitrage would be expected to lead to all fares being point-to-point sector fares.

reasons for missing a segment is not to seek to reduce the price of their ticket. Office of Fair Trading, *Unfair contract terms case report bulletin 12*, November 2000.

²² See footnote 18.

8.52 In addition, considering that most international routes to Australia are long-haul routes with Australia being the end of the route, it is questionable whether an argument can be made that eliminating the sequencing rule would impact on the airlines' ability to compete in indirect markets. The ACCC also notes that IATA has not provided any concrete example on how Australia could be affected.

8.53 The ACCC notes the increasing use of point-to-point fares, which were the hallmark of low cost airlines, beyond those airlines. In 2003, Air New Zealand introduced such a fare structure on the trans-Tasman, which was followed by other carriers operating in that market. In Europe, airlines such as Aer Lingus, bmi, British Airways and SAS have introduced one-way tickets.²³

8.54 Thus far the sector sale approach has not been introduced into long haul markets involving Australia. The ACCC notes, however, that Air New Zealand has recently announced a simplified fare structure on the US route, which removes seasonality and allows travellers to book round trips in different classes on outbound and return flights.²⁴ The ACCC considers it is only a matter of time before sector fares will be introduced on long haul routes involving Australia.

8.55 The ACCC notes that point-to-point sector fares would provide a way to sell an itinerary involving multiple airlines over the internet. Considering the cost advantage of web sales and the focus of airlines on reducing their costs, a move towards web sales of international long-haul travel can certainly not be excluded. Such a development would render the coupon sequencing rule irrelevant.

Issue 4.1	What is the impact on competition of the requirement that all coupons be used in sequence?
Issue 4.2	What would be the implications, as far as Australia is concerned, of eliminating the requirement that coupons be used in sequence?

Applicable fares, taxes, fees and charges

8.56 A number of complaints to the ACCC have raised issues regarding applicable fares, surcharges and other fees and charges.

8.57 The condition relating to applicable fares was modified in the revised version of the IATA model conditions of carriage. The current version of RP1724 provides that the applicable fare is the fare in effect on the date of commencement of the carriage covered by the first flight coupon. However, the revised RP1724 provides that the applicable fare is the fare in effect on the date of payment of the ticket. Taxes, fees and charges imposed by government, other authorities or airport operators remain those payable at the time of departure.

8.58 Austrian Airlines, British Airways, Emirates, Qantas, Thai Airways and Virgin Atlantic follow the revised RP1724 with regard to applicable fares. United Airlines provide that transportation is subject to the fares in effect on the date when the ticket is

²³ SAS launches one-way fares, www.airlinebusiness.com, 26 August 2005.

²⁴ Air NZ US fare structure simpler, travelbiz.com.au, 12 October 2005.

issued. Malaysian Airlines, while providing that the applicable fares are the published fares in effect on the date of payment in full of the ticket, reserve the right to increase fares after full payment in order to take account of increases in cost; in such cases, however, the passenger may cancel the ticket and obtain a full refund. Singapore Airlines follow the current RP1724 where the applicable fare is the fare in effect on the date of commencement of the carriage covered by the first flight coupon of the ticket.

8.59 *Adelaide Airport* submitted that airlines should not be able to ‘change their mind’ in relation to prices after a sale is agreed.

8.60 *Tas Govt* submitted that the condition that the fare charged shall be that in effect at the date of payment, which could be later than the date of booking, seems at odd with consumers’ reasonable expectation that the fare quoted at the time of booking would be that charged, providing the conditions of payment are met.

8.61 *CLCV* commented that any provision that allows the airlines to vary the fare after the contract has been entered into would constitute an unfair term.

8.62 *CWAA* submitted that no airline should be able to increase fares after an agreed route has been booked at an agreed fare.

8.63 *AFTA* indicated that it is unaware of any recent example in Australia where an airline has increased the cost to the passenger of a fare after it had been ticketed and believed that no such practice exists. *AFTA* submitted that it is the practice of travel agents to inform passengers that the fare booked will only be protected if it is ticketed. *AFTA* indicated that in nearly all cases airlines advise agents in advance of a pending fare increase; however there is no standard practice as to the period of advance notice. In these circumstances, the agent contacts its clients and requests payment before the increase takes effect in order to secure the pre-increase price.

8.64 *AFTA* further submitted that there is clearly a public benefit in being able to preserve the pre-increase airfare. However, this may require the passenger to pay for a ticket a considerable time prior to travel and certainly at an earlier date than had originally been anticipated. This may impose a financial burden on an intending passenger.

8.65 The *ACCC* notes the improvement to the applicable fare condition in the revised RP1724, which fixes the fare at the time of payment in full of the ticket.

8.66 One of the issues raised with the *ACCC* relates to airlines increasing the cost of the ticket between the time the ticket is booked or a deposit is paid and the time the customer makes the final payment.

8.67 When making a booking, customers would reasonably expect that the price quoted would be the price they have to pay, even more so if they have made a deposit. Depending on the date of travel, customers may not be required to make full payment for a certain time. Airlines have from time to time special offers which require almost immediate payment, but these would be advertised as such. Otherwise, customers would be given an invoice indicating the remaining balance and due date for payment. In these circumstances, customers would be entitled to expect that the price of their ticket would not change until the date their payment is due. Most consumers would not

be aware that a deposit paid on a ticket would not guarantee them the price quoted at the time of booking.

8.68 The ACCC notes the comments from AFTA that it is a standard industry practice for airlines to contact travel agents about an impending fare rise, and for the agent in turn to inform customers to allow them the opportunity to pay their ticket in full to secure the pre-increase fare. However, complaints to the ACCC suggest that this does not always occur. There also appears to be no standard practice as to the period of notice given. The ACCC notes that there is no requirement in the IATA model conditions of carriage for airlines to inform consumers of impending fare rises.

8.69 Even if consumers are informed of a fare rise and afforded the opportunity to preserve the pre-increase fare by paying in full for the ticket, consumers may still be disadvantaged by being required to pay earlier than anticipated, which may place a financial burden on some consumers. There is also no right for consumers to cancel their booking at no cost.

8.70 The ACCC notes that SAS conditions of carriage, reviewed with the Scandinavian Consumer Ombudsman, address this issue by providing for the fare to be calculated in accordance with the tariff in effect on the date the reservation is made.²⁵

Issue 5.1	To what extent does the condition that the applicable fare is the fare in effect on the date of payment of the ticket generate detriment?
Issue 5.2	Does the absence of a requirement that airlines notify consumers in advance of a fare rise in order for consumers to be given the opportunity to secure the pre-increase fare constitute a detriment?

8.71 The practice of airlines, in line with RP1724, appears to be to pass on to consumers any increase in, or introduction of, new taxes, fees and charges imposed by governments and other authorities, or by the operator of an airport, irrespective of when the passenger ticket is paid for and issued.

8.72 On the one hand, third parties' taxes, fees and charges can be seen as outside the airlines' control, and presumably are levied by the third party at the time the service is rendered, that is the time of departure. In that regard, IATA has stated that airlines act as collectors of taxes payable by the consumer on behalf of governments and their agencies, and that taxes on passengers can be significant and can be imposed or changed with little notice.²⁶ It could be argued that if airlines were not able to recoup increases in third party charges after customers have paid in full for their ticket, this would discourage airlines from selling tickets long in advance, or encourage them to charge more for those tickets. Under this argument, an issue remains regarding the transparency of the third party charges and the advice to consumers that these charges may change. The ACCC notes in that regard that the revised RP1724 requires consumers to be advised at the time they purchase their tickets of the taxes, fees and

²⁵ SAS and the Scandinavian Consumer Ombudsman agree on better conditions for travellers, SAS press release, 26 August 2002; and SAS conditions of carriage, page 10.

²⁶ IATA, Comments on the European Commission's Consultation Paper *Airlines' Contracts with Passengers*, Geneva, October 2002, p.16.

charges not included in the fare component of the price paid, and normally shown separately on the ticket.

8.73 On the other hand, increases in taxes, fees and charges after consumers have paid for their ticket can be viewed as increases in the price of the services for which consumers have committed themselves at a particular price. Airport charges in particular may be viewed as closer to the ordinary costs of running an airline that must be taken into account when airlines are setting their prices.

8.74 The revised RP1724 provides that consumers are entitled to claim a refund if any taxes, fees or charges they have paid are reduced or abolished. The ACCC notes, however, that consumers need to request their refund with the airlines, rather than obtaining it automatically. Consumers are generally not in a position to know whether particular taxes, fees or charges have been reduced or abolished, and therefore would be unlikely to claim the refund they are entitled to. To address this issue, SAS' revised conditions of carriage provide that the airline will endeavour to contact consumers when the refund equals or exceeds 20 SDRs (around 10A\$).

8.75 The absence of automatic refunds is also of concern in the context of the time taken for refunds to be processed, as discussed below.

8.76 Concerns have been raised in recent times regarding the refund of third parties' taxes, fees and charges when tickets are not used and/or a booking is cancelled, and the ticket is not refundable.

8.77 If the airlines consider themselves as only collectors of taxes, fees and charges levied by third parties at the time a passenger departs, then if the passenger does not depart, these charges no longer need to be collected, and therefore must be refunded to the consumer. The ACCC notes in that regard that the European Airline Passenger Commitment provides for any taxes, fees and charges collected with the fare and shown on the ticket to be refundable when the ticket is not used. By contrast, the IATA model conditions of carriage are silent on this issue.

8.78 Another issue raised in recent complaints to the ACCC relates to the imposition of a fuel surcharge by airlines after the ticket is booked or paid for by the customer.

8.79 Clearly, fuel surcharges, being imposed onto passengers by the airlines themselves to cover an operating cost, form part of the price of the ticket set by the airlines. It follows that any imposition of a new surcharge or increase in an existing surcharge should be treated in the same manner as a rise in fare, and not as third party charges. IATA has clearly stated that taxes, fees and charges levied by government and other authorities, and airport operators, do not include changes in the price of fuel that constitute part of an airline's general costs.²⁷ However, the IATA model conditions of carriage are silent on this issue.

8.80 More generally, it is of concern that the IATA model conditions of carriage do not require airline surcharges to be treated the same way as fares, and therefore permit

²⁷ IATA, Comments on the European Commission's Consultation Paper *Airlines' Contracts with Passengers*, Geneva, October 2002, p.16.

airlines to increase that part of the ticket price after payment. The ACCC notes for example, that Virgin Atlantic may impose on customers exceptional circumstances surcharges, such as insurance premium supplements or additional security costs triggered by terrorism, even after the ticket has been issued.²⁸

Issue 6.	To what extent does the treatment of taxes, fees and charges in IATA model conditions of carriage give rise to detriment?
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Refunds

8.81 A number of complaints to the ACCC have raised concerns at the time taken by airlines to provide consumers with the refunds to which they are entitled. In particular, consumers have complained that their refunds take several months to be processed after their claim is lodged.

8.82 The IATA model conditions of carriage do not include any requirement on airlines to promptly provide a refund to consumers. By contrast, the European Airline Passenger Commitment provides that an airline will issue refunds within 7 business days for credit card purchases and within 20 business days for cash or cheque purchases, where a passenger claims and is entitled to a refund on a ticket purchased direct from the airline.

8.83 A majority of international travel products are still distributed through travel agents. The ACCC noted in the final determination in relation to the IATA Passenger Agency Program that IATA had agreed a package of measures which included improved refund times by airlines in processing refunds to agents.²⁹

Issue 7.	Does the absence of a time frame for airlines to provide refunds to consumers give rise to detriment?
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Overbooking and denied boarding

8.84 It is common practice for airlines to sell more tickets than there are seats available on a flight, a practice referred to as overbooking, on the basis that there are invariably cancellations or 'no-shows' from passengers. On occasions where cancellations and 'no-shows' do not offset the number of overbooked passengers, some passengers will be denied boarding. When this occurs, it causes passengers inconvenience and lost time, and may require them to incur additional expenses such as for meals and accommodation. Denied boarding can also take the form of a downgrading of the class paid for by the customer.

8.85 IATA Recommended Practice 1799 recommends a standard for airlines to provide denied boarding compensation in countries where there is no legislation to that effect. The standard provides for handicapped passengers and unaccompanied children to be given first priority in the event that not all passengers booked can be accommodated on a flight. An airline may then call for volunteers not to board the

²⁸ However, if the surcharges payable exceed 50 pounds, the passenger may choose to cancel the ticket and receive a refund.

²⁹ Determination A90791, page 82.

flight. Passengers who are denied boarding voluntarily or involuntarily have the choice of re-routing or a refund. In addition, they are entitled to receive compensation with the amount depending on the delay time and flight distance, to be established by each airline. Finally, such passengers are entitled to meals, refreshment and hotel accommodation as required. If the passenger's class of service is downgraded, the passenger is entitled to reimbursement of the difference in price.

8.86 *CLCV* submitted that by allowing denied boarding to occur, IATA model conditions permit airlines to limit their performance of the contract, which may constitute an unfair term. *CLCV* was also concerned about the inconsistency of rights with Europe. *CLCV* commented that even if denied boarding is relatively less frequent in Australia than in Europe, there is still an issue of having a lesser standard being applied on those occasions when denied boarding occurs.

8.87 *Adelaide Airport* submitted with regard to overbooking that airlines should not only make good but be subject to a fine or some other penalty for misleading the consumer at point of sale.

8.88 Overbooking and denied boarding has been a major issue overseas, in particular in Europe where around a quarter of a million passengers each year are denied boarding. One of the stated aims of the introduction of the new EU Regulation on denied boarding³⁰ is to substantially reduce the incidence of passengers being denied boarding against their will by requiring airlines to first call for volunteers to surrender their seats in exchange for benefits, and if insufficient volunteers come forward, to pay passengers compensation at a dissuasive level.³¹ The EU Regulation applies in relation to all flights departing from an EU airport, as well as flights leaving a third country airport for one situated in the EU, when operated by an EU carrier.

8.89 Austrian Airlines', British Airways' and Virgin Atlantic's contracts of carriage refer to the applicable [European] legislation in relation to denied boarding compensation. Emirates', Malaysia Airlines', Qantas', South African Airways' and Thai Airways' contracts of carriage make reference to applicable legislation and the airline's denied boarding compensation policy for countries where there is no applicable legislation. Singapore Airlines' conditions of carriage provide that in the event of overbooking the airline will decide in its reasonable discretion which passengers will not be carried. It will then carry passengers on another flight, re-route them or make a refund to them.

8.90 The issue of international airlines denying boarding due to overbooking has been raised in few complaints to the ACCC. The ACCC accepts, however, that this may not reflect the actual incidence of the practice, as the ACCC would not necessarily be the organisation consumers facing such issues would contact, but rather the airlines. In addition, even if the incidence of denied boarding is limited at present, this may not remain the case in the future with the tendency to high load factors and finer matching of supply and demand on individual flights.

³⁰ Regulation 261/2004 of the European Parliament and the Council of 11 February 2004.

³¹ European Commission, *New rights for air passengers in the whole EU*, press release, 26 January 2004.

8.91 In any event, the ACCC considers it important that consumers have adequate rights so that they are properly cared for by airlines on those occasions, even if infrequent, when they are denied boarding. The ACCC notes in that regard that RP1799 provides for passengers denied boarding to be offered refreshment, meal and hotel accommodation as required and a telephone call. RP1799 also provides for passengers to be compensated for the inconvenience and lost time.

Issue 8.1	To what extent are airlines' denied boarding policies as applied in Australia, if any, based on IATA Recommended Practice 1799?
Issue 8.2	Does RP1799 adequately balance the interests of airlines and the rights of consumers in the event of denied boarding?

Scheduling, rescheduling and cancellation

8.92 Concerns regarding changes to schedules, cancellation of flights, changes to class booked by the airlines, and the extent of consumers' rights in these circumstances, have been raised in a number of complaints to the ACCC.

8.93 *AFTA* was of the view that the issues of rescheduling and cancellation of flights, and whether to pay compensation in such circumstances, are commercial matters for each airline. *AFTA* considered that as long as consumers are informed in advance as to the condition, then airlines are at liberty to impose conditions as they see fit.

8.94 *Tas Govt* submitted that the revised RP1724 does not appear to address consumer concerns regarding overbooking, rescheduling or cancellation of flights or delays, and the cost borne by consumers as a result, such as additional airport transfers and accommodation.

8.95 *Adelaide Airport* was of the view that if the condition is clear at point of sale and there are sound reasons for the rescheduling or cancellation of flights, then the consumer should have every right to a refund or transfer to another carrier with the original carrier meeting any additional cost or expense.

8.96 *CAV* submitted that the IATA model condition of carriage which alleviates a carrier from liability for errors or omissions in timetables and representations made by its employees or agents in that regard might be considered as disadvantageous to consumers.

8.97 *CLCV* noted that airlines will make either alternative arrangements or provide a refund where there is a significant change to the scheduled flight time, however whether a change is significant is at the discretion of the airlines.

8.98 *CWAA* submitted that there should be reasonable expectations of accommodation provided in the event of reschedule or cancellation of flights, otherwise compensation should be paid.

8.99 *Qld Govt* was concerned that in case of cancellation or other changes to schedule, no provision is made for meals and accommodation where the next available flight is not for some time. *Qld Govt* also considered that it was unacceptable for

carriers not to accept responsibility for errors in timetable or for representations made by employees or agents in that regard.

8.100 Airlines generally reserve the right to change the scheduled flight time after payment and issue of the ticket. This provides airlines with flexibility to respond quickly to changes in demand or to events outside their control. For instance, flights may be delayed due to weather conditions, problems of air traffic control or congestion at airports. Flights may also be cancelled due to insufficient booking.

8.101 When purchasing a ticket, consumers expect to receive a particular service at a particular time. The change to schedule may be such that customers would no longer receive the service they have paid for. Some changes to schedule could also force passengers to incur additional costs, such as for meal and accommodation, as well as lose valuable work time or be forced to take additional leave. In some instances, the passenger may no longer be able to attend the particular event the purpose of the travel.

8.102 The ACCC notes that revised RP1724 places an obligation on airlines to take all necessary measures to avoid delays in carrying passengers, as opposed to simply using 'their best effort' to fly passengers according to published schedule. Revised RP1724 also requires airlines to endeavour to inform passengers of changes to their scheduled flight, provided passengers have given the airline their contact details. As with the current version, it provides that, when significant changes to scheduled flights are made, passengers have the right to an alternative flight or a refund if the passenger considers the alternative flight(s) offered by the airline is not acceptable to them.³²

8.103 Resolution 724 sets out standard notices to be attached to IATA tickets, which are used by all IATA members around the world. The condition of contract notice states among other things that:

“Carrier undertakes to use its best effort to carry the passenger and baggage with reasonable dispatch. Times shown in timetable and elsewhere are not guaranteed and form no part of this contract. Carrier may without notice substitute alternate carriers or aircraft, and may alter or omit stopping places shown on the ticket in case of necessity. Schedules are subject to change without notice. Carriers assume no responsibility for making connections.”

8.104 The above notice goes well beyond what is contained in RP1724 in favour of the airlines. However, the ACCC notes that the 24th Passenger Services Conference adopted an amendment to Resolution 724 which deleted the above text.³³ The ACCC understands that the amended resolution has not been declared effective, and therefore the above notice continues to be used by international airlines and appears on tickets.

8.105 The ACCC acknowledges the improvement made to passenger rights in the revised RP1724, but notes that the airlines retain the discretion to determine what

³² RP1724 also provides that if an airline cancel a flight, fail to operate a flight reasonably in accordance to the schedule, fail to stop at the passenger's destination or stopover destination, or cause the passenger to miss a connecting flight, the airline must carry the passenger on another flight, re-route the passenger or provide a refund

³³ IATA Passenger Services Conference Resolutions Manual, 23rd edition, effective 1 June 2003 - 31 May 2004.

constitutes a ‘significant’ change in flight scheduled time.

8.106 The ACCC notes the new EU Regulation requires, in the case of cancellation, that airlines pay financial compensation to passengers (unless cancellation is caused by extraordinary circumstances), assist passengers in revising their travel plans by giving them the choice between rescheduling of the ticket or a refund, and pay for meals, accommodation and any required transport. In the case of long delays, airlines are required to pay for meals and possibly accommodation and transport, as well as assistance with travel plans for delays of more than five hours, including reimbursement of the ticket.³⁴

8.107 Singapore Airlines’ conditions of carriage are in line with the current RP1724. Malaysian Airlines’ conditions of carriage generally follow the current RP1724, but provide that for cancellation due to circumstances within its control the airline will pay compensation as would be due as denied boarding compensation. Austrian Airlines’, British Airways’, South African Airways’ and Virgin Atlantic’s conditions of carriage generally follow the revised RP1724, but provide for assistance and/or compensation to passengers in the event of cancellations or long delays in line with the EU regulation or as otherwise required by the applicable law. Emirates’ and Thai Airways’ conditions of carriage follow the revised RP1724.

8.108 Qantas’ conditions of carriage follow the revised RP1724, but exclude the option of a refund for non-refundable tickets, when late or cancelled flights are due to circumstances beyond Qantas’ control (for example, bad weather, runway closure or air traffic control issues) and provide for a credit, rather than a refund, for the same tickets when Qantas makes significant schedule changes which are not acceptable to the passengers. Qantas’ terms and conditions also specify that passengers departing from an airport in the EU are entitled to compensation and/or assistance in the event of cancellation or long delays as per the EU regulation.

8.109 A majority of international flights to and from Australia are long-haul or very long-haul, where the flight frequency is more likely to be double-daily or daily. In these circumstances, the cancellation of a flight would have greater implication for consumers in terms of inconvenience, lost times and other expenses incurred as a result of the cancellation.

8.110 It is of concern that the revised RP1724 does not provide for any compensation for additional expenses incurred by consumers as a result of changes to schedule, such as meals and accommodation, nor for the inconvenience and lost time. This contrasts with the provisions of IATA RP1799 on denied boarding compensation.

8.111 It may be argued, however, that there is a difference between cancellation, delays and changes to schedule due to circumstances within the airline’s control (as with denied boarding) and due to events outside the airline control, for example weather

³⁴ European Commission, *New rights for air passengers in the whole EU*, press release, 26 January 2004, and Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91 – *Official Journal L 046*, 17 February 2004.

conditions or air traffic control decisions. That is, assistance and compensation to passengers should be limited to circumstances within the airlines' control.

8.112 It should also be noted that passengers are able to purchase travel insurance which generally provides an allowance for travel delays.

8.113 The ACCC would be concerned if airlines were to deny liability for any error and omission on their part in relation to their schedule or on the part of their agents or employees. The ACCC notes that the term excluding liability for representation by the airlines, their agents or employees with regard to timetables has been deleted from the revised RP1724.

Issue 9.1	Are schedule changes, cancellations and/or long delays an issue for passengers in relation to international travel to and from Australia?
Issue 9.2	Does RP1724 provide an adequate balance of rights between airlines and consumers with regard to schedule changes, cancellations and delays?

Limitation of liability

8.114 CLCV expressed concerns that in circumstances of cancellation, rerouting or delays, the liability of the airline to arrange the carriage of the passenger or provide a refund are to be the sole and exclusive remedies available to the passenger. CLCV was also concerned that a time limitation of two years is imposed on actions for damages where a passenger's baggage has been damaged.

8.115 Qld Govt noted that the IATA model conditions of carriage give airlines the right to nominate a sum to which liability is limited in relation to death, wounding or bodily injury, and in relation to baggage, and exclude any liability for indirect or consequential damage. Qld Govt questioned whether it is reasonable that the carrier's liability should be limited in this manner. Qld Govt considered that reference to a passenger's age in relation to limitation of liability is inappropriate; the appropriate question being whether the passenger is physically or mentally able to travel.

8.116 Qld Govt further noted that the IATA model conditions of carriage provide that acceptance of baggage at the time of delivery without complaint is prima facie evidence that the baggage has been delivered in good condition. Qld Govt submitted that depending on its nature, the damage may not be readily ascertainable at the time of delivery. Since seven days are allowed to lodge a complaint, a short period could be allowed to enable a passenger to check their baggage.

8.117 Airlines' liability for the international carriage of passengers and baggage is governed by an international treaty framework. In May 1999, the Contracting States of the International Civil Aviation Organisation (ICAO) negotiated an agreement, the Montreal Convention³⁵, to modernise the Warsaw Convention of 1929 and subsequent amending protocols (the Warsaw system). The Montreal Convention entered into force

³⁵ The Convention for the Unification of certain Rules for International Carriage by Air, 28 May 1999.

in November 2003 and currently has 63 parties - Australia is currently not a party to it.³⁶ The Montreal Convention applies to all international carriage originating and having a final destination in States which are parties to the Convention. Otherwise, the Warsaw system applies.

8.118 The Warsaw Convention provides that airlines are liable for damage sustained in the event of the death or wounding of a passenger or any other bodily injury suffered by the passenger. Airlines are also liable for damage sustained in the event of destruction, loss or damage to registered baggage, as well as damage occasioned by delay in the carriage of passengers or baggage. However, the Warsaw Convention sets low limits on airlines' liability for passengers and baggage.

8.119 The Montreal Convention improves the international regime for air carriers' liability by providing a form of unlimited and more equitable passenger compensation governing injury or death. The Montreal Convention also increases the airlines' liability limit for lost, damaged or destroyed baggage.

8.120 IATA model conditions of carriage follow the rules of the Warsaw system. The ACCC notes that a number of airlines, including Qantas, Singapore Airlines, Emirates, and Malaysian Airlines, have waived the Warsaw limits on liability for death or injury to passengers, in line with the Montreal Convention rules. European carriers also follow the Montreal Convention rules as required under EU regulation.

8.121 The ACCC notes that the time limitations on claims and actions in RP1724 also reflect the rules of the Conventions.

8.122 The ACCC notes that the term denying carriers liability with respect to delays beyond the remedies set in the conditions of carriage has been deleted in the revised RP1724. In addition, the revised IATA condition on cancellation, rerouting and delays, while maintaining that the airline has no further liability to passengers beyond providing an alternative flight or a refund, expressly preserves passenger rights under the applicable Convention.

8.123 The ACCC considers that age is not an appropriate factor of itself for determining a person's fitness to fly and therefore for determining the carrier's liability. The ACCC notes in that regard that a reference to a passenger's age has been deleted from the revised RP1724, which more appropriately refers to a passenger's physical condition.

Issue 10.	In light of the international Conventions governing airlines' liability for the international carriage of passengers and baggage, to what extent do the conditions limiting airlines' liability give rise to detriment?
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³⁶ Accession to the Montreal Convention by Australia will require amendments to the Civil Aviation (Carriers Liability) Act 1959. The ACCC understands that the matter is currently under consideration.

Disclosure of conditions

8.124 *Tas Govt* raised the issue of disclosure of information to consumers and submitted that there may be some benefit from requiring the full disclosure of 'lengthy and detailed' conditions to consumers by other ways than the current summary on the ticket.

8.125 *Qld Govt* commented that it is important passengers are made aware of the terms and conditions in an easily accessible medium and form, and are able to access them before committing themselves to a transaction.

8.126 *CLCV* was of the view that a requirement for better disclosure of terms and conditions would not necessarily assist consumers where standard form contracts contain unfair terms. Consumers in these circumstances need to be protected against the existence of unfair terms in the market place.

8.127 Complaints to the ACCC indicate that consumers are not always aware of the terms and conditions attached to the tickets they have booked or purchased.

8.128 Consumers may only realise the importance of the terms and conditions when something goes wrong or their travel plans have to be altered, at which time they would become aware of the costs to them of changing or cancelling their flights. In these circumstances, it is important that airlines provide key information to passengers at the time of booking.

8.129 Passengers need clear information regarding the conditions specific to their tickets. The ACCC notes that the revised RP1724 provides that passengers are to be informed about who the operating carrier is under a code share arrangement, whether reconfirmation of their ticket is required and how it should be made, the specified time limit to pay for the ticket, as well as changes to schedule to the extent possible.

8.130 RP1724 recognises that certain fares have conditions which limit or exclude the right to change or cancel reservations; however, it does not require airlines to provide specific information about such limitations, and in particular the cost to consumers of changing or cancelling their ticket. The ACCC notes that under the Airline Passenger Service Commitment a number of European airlines have signed, the airlines undertake to provide their passengers with information on specific terms of their commercial and operational conditions. The ACCC also notes that under US Department of Transportation regulations, three specific terms require 'conspicuous written notice' 'on or with the ticket'. These are terms restricting refunds of ticket price, imposing monetary penalties on passengers or permitting the carrier to raise the price.³⁷

8.131 Resolution 724 sets out the notices that must be included with airline tickets. The notice of contract terms indicate that the conditions of contract may include certain terms mainly relating to the limits on the carrier's liability. The notice also indicates that information about conditions of carriage is available where the airlines sell tickets. However, Resolution 724 only requires carriers to make their conditions available at

³⁷ Code of Federal Regulations, Title 14, Volume 4, Chapter II, Part 253.

their offices. Conditions may be available on the airlines' websites, although this is not required.

8.132 The ACCC considers it very important that airlines' conditions of carriage be easily accessible to consumers. The ACCC recognises the risk of providing consumers with too much information that is not easy to understand. A balance needs to be found between providing essential elements automatically and further details on request.

Issue 11. To what extent does the absence of a disclosure requirement of specific conditions in IATA's model conditions of carriage reduce any public benefit?

Incapacitated passengers

8.133 Resolution 700 sets out the agreed standard arrangements for the acceptance and carriage of incapacitated passengers. Incapacitated passengers are defined as those with physical or mental disability, or with a medical condition, who require individual attention or assistance on enplaning/deplaning, during flight and during ground handling which is normally not extended to other passengers.

8.134 The purpose of the resolution is to standardise the conditions for travel of incapacitated persons so as to facilitate their acceptance, handling and carriage on interline journeys. However, the resolution provides that the agreed rules must not only be implemented in interline transactions involving IATA members, but also in the members' wholly online transactions, except where otherwise specified in their own tariffs or regulations.

8.135 The resolution provides that IATA member airlines must participate in interline transactions concerning the carriage of incapacitated passengers. The airline may not limit the number or type of incapacitated passengers except where required for operational reasons or by government safety regulations. The resolution provides, however, that airlines may refuse to carry incapacitated passengers in certain circumstances. The resolution also sets out the circumstances when medical clearance is required.

8.136 The resolution then establishes standard codes, documentation, reservation procedures and handling procedures on the ground and in flight in relation to incapacitated passengers. In addition, Recommended Practices 1700c, 1700d and 1700e set out rules for seat allocation for incapacitated passengers and their escorts, group travel and the publication of rates and conditions relating to incapacitated passengers travel.

8.137 The ACCC notes that access and acceptance of passengers with reduced mobility has been the subject of much attention by regulators in Europe over the past few years. The ACCC, however, has received few complaints about this issue.

8.138 It appears to the ACCC that the agreement between airlines that they will generally accept incapacitated passengers on interline journeys, which also reserves the right of each airline to decide individually not to accept such passengers in certain circumstances, would generate little anti-competitive detriment.

8.139 The ACCC considers that the standards and procedures set out in Resolution 700, in particular with regard to the information requirements and reservation procedures, would appear to facilitate the carriage of incapacitated passengers by airlines. The procedures relating to the handling of incapacitated passengers on the ground and in flight, as well as the recommended practices dealing with incapacitated passengers, set out positive requirements for airlines to follow which would benefit the passengers concerned. However, the extent of such benefits would depend on whether the resolution and recommended practices provide sufficient and/or adequate obligations on airlines and rights to incapacitated passengers. In addition given the nature of the standards and procedures, it is questionable whether any such benefits would not continue to be realised absent authorisation.

Issue 12.1	Are there any concerns regarding the policies and practices of airlines operating to and from Australia in relation to the acceptance and carriage of incapacitated passengers?
Issue 12.2	To what extent are the standards and procedures set out in Resolution 700 of benefit to incapacitated passengers? Would any such benefit be realised absent authorisation?

Other public benefits

Efficient operations

8.140 IATA submits that the IPSS provides common procedures, systems and documentation required for efficient operations in a multitude different ways including:

- standard tickets, which are essential to the efficient operation of the IPSS and allow tickets to be issued by any travel agent or airline anywhere in the world and be accepted for travel on the airline on which the travel has been booked.
- standard boarding passes, which contain readable information that allows passenger manifests to be reconciled and essential data on boarded passengers to be captured, communicated and used.
- standard baggage tags, which allow a passenger's baggage to be loaded on the same flight as the passenger, linked with the passenger, unloaded and delivered in the correct city and carousel location, and traced if misplaced.
- airline designators – the two-letter designator is the way in which computer system identify an airline from the point-of-sale, to booking through a CRS, to the ticket and boarding pass, to the airport departure, arrival and baggage displays, to the scheduling systems and to accounting and billing systems.
- reservation standards and procedures which are essential to airlines exchanging passenger data for interlining purposes (whether within alliances, code shares or under multilateral interlining), for identifying and managing passengers with special disabilities or for tracking special passenger requirements.
- advance passenger information, providing for the collection of passport and other information required by immigration authorities to be collected at the time of

reservation and check-in and communicated to those authorities.

8.141 *Qantas* submitted that the IPSS provides an airline forum to set minimum industry standards for interline customer service delivery. The IPSS has developed a large number of standardised codes and formats, which allow airlines to communicate with each other and know in advance whether they are able to cater for passengers' individual requirements. This standardisation delivers efficiencies to the industry and benefits consumers.

8.142 *Amex* submitted that it recognises the benefits and efficiencies associated with collective agreement on uniform operational standards.

8.143 *Tas Govt* generally supports the proposed IATA arrangements as they are critical for the efficient functioning of international air services.

8.144 *AFTA* submitted that the technical and procedural standards set by the IPSS ensure more efficient airline operations.

8.145 *ACA* and *CLCV* submitted that it is not clear the efficiency benefit referred to by IATA will be passed onto Australian consumers, and questioned the weight that can be given to this purported benefit.

8.146 The ACCC accepts that the standardisation of processes and procedures achieved by the IPSS would have improved the efficiency of airlines' operations and are likely to have resulted in cost savings to the airlines, which constitute a public benefit. The ACCC considers that where international aviation markets are competitive, such benefits are likely to be passed on to consumers and may be given greater weight.

8.147 However, in terms of the 'with-or-without test', an important consideration is whether or not benefits associated with improved efficiency would be realised absent authorisation. Should benefits be realised absent authorisation, then such benefits cannot be considered as benefits from the authorisation and little weight should be attached to them.

8.148 Considering the nature of the above standards and procedures agreed at IPSS conference meetings, the ACCC considers it is open to question whether the efficiency benefits claimed can be reasonably attributed to the authorisation. The ACCC notes in that regard that similar arrangements are still in place in Europe despite the loss of anti-trust immunity.

Issue 13. Would the public benefits associated with efficient operations be realised absent authorisation?

Communication connectivity and technology

8.149 IATA submits that the standards developed by the IPSS in relation to airline designators, automated and electronic tickets, baggage tags and boarding passes also enable a high level of communication connectivity within the airline industry.

8.150 IATA submits that the IPSS provides standards and protocols which allow for:

- travel agents to communicate with airlines;

- airlines to communicate with one another and with service suppliers such as ground handlers;
- billing and settlement to occur between agents, airlines and suppliers;
- airline and airport to communicate for gate assignment, and boarding and disembarkment purposes; and
- airlines to interline and settle financially between themselves.

8.151 IATA submits that the IPSS also provides standards which permit CRS to interface with airline reservations systems throughout the world and gain real time access to airlines inventory for booking purposes. IATA submits that these standards also permit CRS to provide last seat availability and seat assignment instead of the travel agent or passenger having to contact the airline direct to do so.

8.152 IATA submits that the IPSS provides technical guidelines for the implementation in airline systems of a mechanism, known as married segment control, which enables airlines to link at the time of reservation segments of a passenger's journey so that passengers taking connecting journeys can gain priority booking and seat availability on connecting flights, even across a number of airlines.

8.153 IATA submits that the IPSS has been developing a standard by which self-service check-in machines, which have been so far dedicated to a single airline, can process check-in and boarding passes for multiple airlines.

8.154 *Qantas* submitted that the IPSS has mechanisms in place to continue to make improvements to the system.

8.155 The ACCC accepts that the IPSS has established, and continues to develop, technical standards and protocols which enable airlines to communicate with each other and third parties, which in turn contribute to the provision of more efficient and better quality air transport services to consumers.

8.156 The ACCC notes as an example that self- service check-in machines will start to be introduced at Sydney International Airport in 2006. IATA considers that a 40 percent market penetration of these kiosks across the world's airports would add up to US\$1 billion in annual industry savings. Sydney Airport has also commented that it sees benefits for the airports, as the kiosks allow them to increase check-in capacity without the requirement for additional space.³⁸

8.157 The ACCC recognises that there are public benefits flowing from these arrangements, noting however that certain benefits have already been recognised under efficient operations.

8.158 Again, considering the nature of the above standards and procedures, it is open to question whether the benefits claimed by IATA can be reasonably attributed to the authorisation.

³⁸ *DIY check-in for Sydney international departures*, Travelbiz.com.au, 12 October 2005.

Issue 14.	Would the public benefits associated with communication connectivity and technology be realised absent authorisation?
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Safety

8.159 IATA submits that the IPSS provides common procedures, systems and documentation to enhance the safety of passengers, crew, the public and property, such as:

- government security and pre-screening requirements – the IPSS has developed a series of data interchange messages in standard formats that can be recognised in airline systems and transferred electronically, in accordance with legal requirements, to the relevant authorities.
- aircraft handling procedures, including ramp procedures, which set out loading requirements to enhance the safe operation of aircraft.
- fuelling procedures while passengers are on board, which ensure the safety of passengers, crew and the aircraft.
- passenger and baggage reconciliation procedures, which provide an industry wide safety and security process for ensuring that baggage loaded on an aircraft is linked with the passenger and can be unloaded efficiently if the passenger fails to board. These procedures aim to assist airlines complying with Standard 4.3.1 of ICAO Annex 17.³⁹
- rules for the carriage and non-carriage of certain dangerous items to enhance the safety of passengers, crew and the aircraft.

8.160 The ACCC acknowledges that the IPSS gives rise to public benefits associated with aviation safety. However, given the benefits arise from conduct that is not anti-competitive in nature, the ACCC considers that it is also likely that these benefits would be realised absent authorisation. In addition, any benefit associated with safety matters would also be reduced to the extent that the conduct referred to by IATA is a product of government regulation, rather than the IATA system.

Issue 15.	Would the public benefits associated with aviation safety be realised absent authorisation?
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Supporting the interline system

Technical standards and procedures which facilitate interlining

8.161 IATA submits that an important aspect of the IPSS is that it is essential to the interline system, whether within alliances or under multilateral interlineable travel.

³⁹ In accordance with the Chicago Convention, the ICAO Council adopts Standards and Recommended Practices (SARPs) for the safeguarding of international civil aviation. The SARPs relating to civil aviation security are contained in Annex 17 to the Chicago Convention. The Standards contained in Annex 17 are mandatory for each ICAO Contracting States.

8.162 IATA provides the example of a standard interline journey from Sydney to Dublin via Singapore and London, which may be taken either on a multilateral interlineable basis or within an alliance.

8.163 IATA submits that the IPSS is essential to successfully complete this journey on a fully interlineable basis with airlines which are not all in an alliance. IATA also submits that if a passenger were to choose to make the above journey on airlines within an alliance or code share, interlining would still be required because no single airline operates the full service required to complete the journey.

8.164 IATA submits that without the standard and procedures developed through the IPSS, reservations would have to be made individually with each airline involved in the journey. A ticket would have to be issued by each such airline and each ticket would likely be in a different currency. Through-checking of the passenger and their baggage would not be possible.

8.165 *Qld Govt* submitted that there is clearly a public benefit in the processes and procedures put in place by IATA. Without them, travellers could experience significant difficulties and inconvenience.

8.166 The ACCC accepts that the agreed technical standards and procedures developed through the IPSS facilitate interlining. The ACCC considers that the extent of any public benefit would depend on the incidence and form of interlining.

8.167 In addition, given the nature of the standards and procedures developed by the IPSS, it is open to question whether such benefits can be reasonably attributed to the authorisation.

Issue 16.1	To what extent are there public benefits associated with facilitating interlining? Would such benefits continue to be realised absent authorisation?
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IATA Multilateral Interline Traffic Agreements

8.168 IATA submits that in addition to developing the technical and procedural standards and communications protocols which facilitate interlining, the IPSS also provides the contractual framework for interlining.

8.169 The IATA Multilateral Interline Traffic Agreements (MITA) contained in Resolutions 780 and 780e are standard IATA agreements which provide the basis for a multilateral airline interlining network using IATA systems. There are two basic forms of MITA reflecting the fact that interline arrangements can be made on a reciprocal or one-way basis.

8.170 When an airline joins the MITA, those airlines which are already party to the MITA choose whether or not they will enter into interlining arrangements with the new airline. An airline can withdraw from the MITA as a whole or in relation to any other airline with 30 day notice, and with immediate effect in relation to an airline which has become insolvent.

8.171 IATA submits that by signing the MITA, airlines agree to accept each others' tickets, transport each others' passengers and their baggage, and deliver through checked baggage to each others. Under the terms of the MITA, interline tickets and baggage tags must be in the standard format and issued using the standard procedures established by the IPSS. Signatories also agree to apply a standard set of procedures in relation to missing baggage and to share baggage claim settlements where liability cannot be determined.

8.172 Airlines which are not member of IATA can participate in a MITA. When participating in a MITA, non-IATA airlines must use the standards for ticket and baggage tag formats and procedures developed by the IPSS, as well as agree to apply the other elements of the IPSS.

8.173 IATA submits that airlines can and do enter into their own bilateral interlining arrangements outside the MITA but it is only through becoming signatory to the MITA that airlines participate in, and their passengers have access to, multilateral interlining.

8.174 *Qantas* submitted that when signing to the MITA airlines commit to accept each other's documents and to transport passengers and baggage accordingly. The MITA spells out the minimum standards required and provide uniformity and consistency of arrangements between airlines who interline. *Qantas* indicated that interline agreements are different from prorated agreements. Two airlines can be member of the MITA and also have a special prorated arrangements between them. *Qantas* also indicated that most bilateral agreements are based on the MITA.

8.175 The ACCC considers that any benefit generated by the MITA, as one of the elements permitting IATA multilateral interlining to occur, would be intrinsically linked to the fares agreed at IATA Tariff Coordination Conference meetings.

8.176 As noted in the ACCC discussion paper A90855/3 on IATA Passenger Tariff Coordination, industry participants have suggested that IATA interline fares are rarely purchased by leisure passengers, who make up the majority of travellers, and only with low frequency by business travellers.

8.177 In its response to the ACCC discussion paper A90855/3, IATA noted that the percentage of passengers travelling on IATA fares today is lower than it was in 1985, but considered that these passengers still represent a large absolute number.⁴⁰ IATA submitted that further analysis of BSP data suggests that sales in Australia of tickets at IATA normal fares range from 2.3 to 22.3 per cent. IATA's estimate is that every year more than 10 per cent of passengers from/to Australia use IATA fares.⁴¹ The ACCC will examine in detail IATA's response in relation to the incidence of sales of IATA fares when progressing its assessment of the passenger tariff coordination component of IATA's application.

8.178 The ACCC also notes the comments made by *Aircash*⁴² that using IATA

⁴⁰ IATA presentation to ACCC, 8 November 2005.

⁴¹ IATA response to ACCC discussion paper A90855/3 dated 28 October 2005, section 8.

⁴² Submission dated 1 April 2005 to the EC discussion paper on its review of the IATA block exemption (EU1617/93).

interlining fares is not a right of the passenger to use any airline signed up to the MITA, but rather it is a voluntary mechanism selectively applied by airlines when the revenue is considered sufficiently high. As noted by Aircash, airlines can use special ‘fencing’ mechanisms to prevent unwanted interlining, for example by restricting the release of inventory. IATA has submitted that whether a passenger can book a seat on a particular sector will depend on whether there is a seat available in the particular booking class for the relevant fare. IATA submitted that as IATA fares are at the higher end of the scale, they will be among the booking classes likely to remain open the longest.⁴³

8.179 Information from Qantas suggests that the MITA is used more broadly as a basis for interlining between airlines which also have special prorated arrangements. By signing to the MITA airlines commit to the technical standards and procedures developed by the IPSS. The ACCC accepts that these standards and procedures generate public benefits by facilitating interlining. However, the extent of such public benefits has already been considered in the previous section.

8.180 The ACCC notes that the MITA also includes an agreement on the terms and conditions relating to the handling of interline baggage. The ACCC considers this element to be important for interlining and to be of benefit to the public. However, given the nature of the agreement, the ACCC questions whether the agreement would not continue absent authorisation.

Issue 16.2	Considering the incidence of interlining using IATA fares, what is the extent of public benefits generated by the IATA Multilateral Interline Traffic Agreements?
Issue 16.3	Would the public benefits associated with the agreed terms and conditions for interline baggage be realised absent authorisation?

Assisting new airlines

8.181 *Qantas* submitted that the IPSS also benefits new airlines, which would simply adopt the mechanisms already put in place by the IPSS.

8.182 The ACCC accepts that the standards, procedures and documentation developed by the IPSS would be readily available for a new airline and may assist them in setting up efficient operations. However, it is again questionable whether such benefit would not continue absent authorisation, and therefore can be attributed to the authorisation.

Issue 17.	Would the benefit to new airlines continue to be realised absent authorisation?
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Other detriments

8.183 As indicated above, the IPSS is an arrangement whereby suppliers of a service, namely international air transport of passengers, collaborate on the conditions upon which such services are provided to the public. When those suppliers account for

⁴³ IATA letter to the ACCC dated 21 November 2005.

around 95 per cent of the supply of those services, as is the case with IATA member airlines, there is the potential for the arrangements to be anti-competitive.

IPSS decision making process

8.184 The IPSS is established by Resolutions and Recommended Practices adopted by IATA member airlines at meetings of the IATA Passenger Services Conference. IATA has indicated that the resolution and recommended practices are developed with the assistance of numerous committees and working groups established by the Conference. These sub-groups are comprised of airline experts, and many also include other industry experts.

8.185 IATA also submitted that the IATA Partnership Programme enables suppliers to the aviation industry to participate in the various committees and working groups in which they have a direct interest.

8.186 *Amex* submitted that there are aspects of the IPSS which impact both travel agents and passengers, for example provisions relating to reservations and ticketing (travel agents) and baggage and safety (passengers). For this reason, *Amex* considers that it is important for representatives of travel agents and passengers/consumers to be given the opportunity to participate in IATA decisions on processes which affect them. *Amex* considers that the ACCC should ensure that any authorisation of the IPSS requires IATA to seek and take into account the views and interests of other groups.

8.187 The ACCC considers that, through the IPSS, airlines can make decisions that may affect the way third parties, such as CRS, airports, ground handling operators, travel agents, conduct their business, as well as impact directly on consumers by collaborating on the conditions upon which their services are provided to the public. Although existing standards and procedures may generate little anti-competitive detriment, there is the potential for new standards and procedures, or changes to existing ones, to adversely affect competition in those markets where third parties operate.

8.188 The ACCC considers, however, that the potential anti-competitive detriment from the IPSS would be mitigated where standards and procedures are developed with the involvement of the parties to whom they would apply.

8.189 The ACCC notes that third parties participate in many of the sub-groups and/or committees set up by the Passenger Services Conference, although ultimately decisions are made only by IATA member airlines at the Conference. Third parties are mainly drawn from the participants of IATA's Partnership Programme.

8.190 The ACCC accepts that the IPSS has procedures in place for suppliers and service providers to the aviation industry to participate in the development of standards they have an interest in. This reduces the likelihood of decisions of the IPSS to give rise to anti-competitive detriment in those markets.

8.191 The ACCC notes, however, that there is no forum in the IPSS organisational structure for representatives of travel agents and consumer organisations to have an input into the decisions made by the IPSS. There may be a need for processes to be put

in place to ensure that the impact of changes to the IPSS on consumers and travel agents is adequately considered and taken into account.

Issue 18.	Does the organisation and decision making process of the IPSS give rise to anti-competitive concerns?
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Resolutions and rules of the IPSS

8.192 The potential for anti-competitive detriments arising from the IPSS as it relates to the conditions of carriage of passengers has been examined in a previous section. Other potential competition concerns identified by the ACCC are examined below.

Ticketing time limit

8.193 Resolution 768 provides for the establishment of ticketing time limits for online and interline international travel. The resolution states that all reservations for international travel (online and interline) booked X hours or more prior to scheduled departure time shall be ticketed and paid in full not less than X hours prior to such departure time or Y hours after confirmation of space, whichever is later.

8.194 The resolution does not itself specify ticketing time limits, but sets out a process for the Area Reservations Subgroups to set such time limits.⁴⁴ In that regard, the resolution provides that Area Reservations Subgroups should consider what ticketing time limits have already been established in other areas with a view to standardising ticketing time limits on the widest uniform basis. At the end of the process the agreed ticketing time limits becomes binding on the member airlines, although members are not precluded from establishing stricter limits.

8.195 The ACCC notes that this resolution applies to both interline and online travel. The ACCC questions the need for airlines to agree on ticketing time limits for their own online fares. There is a risk that such limits may reflect the least efficient airline's processes. The ACCC considers that such agreements among competing airlines in relation to their own online fares are inherently anti-competitive, although the extent of the detriment to consumers would depend on the actual ticketing time limit agreed to.

Issue 19.	To what extent does the agreement among competing airlines on ticketing time limits in Australia give rise to anti-competitive detriment?
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Interline service charge

8.196 Resolution 780b provides that where an interline agreement exists between two or more IATA member airlines, the ticketing airlines is entitled to charge the other airlines which carry the passenger a fee equal to nine per cent of their prorated share of the fare paid by the passenger to the ticketing airline, as compensation for the costs incurred by the ticketing airlines in handling the reservation and ticketing requirements for an interline passenger. Resolution 780c provides that the interline service fee does not exceeds nine percent where the interline agreement is between an IATA member and a non-member. Both resolutions do not prevent airlines from entering into separate bilateral agreements on the payment of interline fees.

⁴⁴ Australia is one such Area Reservations Subgroup.

8.197 IATA submitted that the interline service charge has been a longstanding arrangement in the industry and that the resolutions were in place in 1985.

8.198 In the context of agreed IATA fares for interline purposes, without considering the benefit and detriment associated with IATA Passenger Tariff Coordination, the setting of a multilaterally agreed compensation for expenses incurred by the ticketing carrier may be justified. However, the ACCC is questioning whether the level of the interline service fee reflects the efficiency gains in ticketing over the past 20 years, for example through computerisation and more recently e-ticketing

8.199 The ACCC notes that Resolutions 780b and 780c do apply to any interline agreement, although the resolutions do not prevent IATA member airlines from entering bilateral agreements on interline service fees.

8.200 The ACCC is concerned that the interline service fee of nine percent is also applied as an industry standard to airlines bilateral agreements, and may ultimately flow to market fares paid by consumers. Bilateral negotiation of the interline service fees is more likely to lead to a greater range of fees being charged, better reflecting the efficiency in ticketing of the particular airlines concerned and the market conditions faced by the airlines.

Issue 20.1	Is the IATA agreed interline service fee of 9% used as an industry standard to compensate the ticketing airline? Does it reflect the efficiency gains in ticketing made since the arrangements were first authorised in 1985?
Issue 20.2	To what extent does the IATA interline fee give rise to anti-competitive detriment?