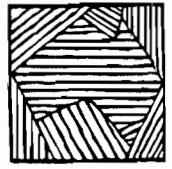


Level 3, 309 Pitt Street
Sydney NSW 2000
Australia
Tel: (02) 9264 3299
Fax: (02) 9264 1085
Email: afta@afta.com.au
www.afta.com.au



A·F·T·A
THE AUSTRALIAN
FEDERATION
OF TRAVEL AGENTS
L I M I T E D

ABN 72 001 444 275

27 October 2006

Ms Isabelle Arnaud
Director
Adjudication Branch
The Australian Competition & Consumer Commission
PO Box 1199
DICKSON ACT 2602

By Email: adjudication@accc.gov.au

| |
|-------------|
| FILE No: |
| DOC: |
| MARS/PRISM: |

Dear Madam

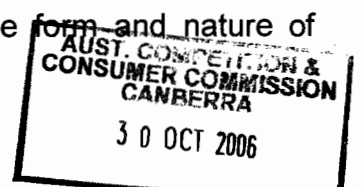
**International Air Transport Association – Passenger Agency Program
Application for Minor Variation to Authorisation A90791**

We refer to your letter of 13 October 2006 in relation to an application for variation to Authorisation A90791 from the International Air Transport Association (“IATA”).

The Australian Federation of Travel Agents (“AFTA”) wishes to put before the Commission the following submissions.

At the outset AFTA submits that in respect of certain resolutions the subject of the application the variations are not minor or, in the alternative, even if such variations were minor they would result, or would be likely to result in a reduction in the extent to which the benefit to the public outweighs the detriment caused by the authorisation. In particular, AFTA is concerned that some amendments to resolutions set out in schedule 4 of the application will have the effect of providing airlines as a group with further significant control over the travel agency industry; visit upon travel agents a significant costs burden coupled with the competitive impact such burdens have on travel agencies.

Whilst the Commission authorised IATA and its members to meet in IATA Passenger Agency conferences and pass resolutions amending or modifying or adding to the then current resolutions except in respect of resolutions specified in appendix B of the Determination (being resolutions as they appeared in the IATA Passenger Agency Conference Resolution Manual 22 Edition), AFTA submits that the ~~form and nature of~~



some of the amendments set out in schedule 4 constitute new and additional burdens upon travel agents and therefore should be subject to a fresh application to the Commission for authorisation.

It was not the intent of the authorisation to allow IATA *carte blanche* to institute new conditions on travel agents free of scrutiny by the Commission. These submissions will be developed below.

Schedule to Part A Variations

Resolution 800f – Section 3.3

AFTA objects to the proposed amendment to section 3 which adds a new section 3.3 to provide that in the event of default for non payment of monies due, agents will be required to furnish a bank guarantee following default. AFTA disputes IATA's assertions that the change is neutral in terms of competitive effect.

In AFTA's submission a travel agent should be able to provide an insurance guarantee in the form approved by IATA. Such a guarantee may be either an insurance bond or an insurance guarantee. This is consistent with IATA's own provision in Resolution 800f, section 2. See also Resolution 850p.

The provision of a bank guarantee will in almost every case involve the travel agent granting a charge over its assets. In AFTA's experience insurance or guarantee bonds can be provided ^{WITHOUT} ~~with~~ such security being given. Further, the cost to the travel agent is significantly lower.

I.M.B
3/10/06

AFTA submits that IATA's approach to providing security should be consistent.

Resolution 816(3) – Section 3.6.1.1

The effect of this amendment is that it removes the authority to issue an electronic ticket to any satellite ticket printer ("STP") which is used to print tickets in a location with tickets issued by the accredited agent. By removing this authority IATA effectively gains additional accredited locations with additional fees to be charged. For example, a travel agency may have a central head office and a number of wholly owned branches.

STP's are installed in the branches running off the central authorised location. Under the amendment each branch will now have to be accredited by IATA if it wishes to run an STP. This will have an immediate increase in the cost to the travel agent and each branch will need to obtain authority to issue an electronic ticket.

Resolution 800b

This resolution has been amended to bring in a sunset clause of 31 December 2007.

The effect of this amendment is that agents will not be able to issue paper tickets after 31 December 2007. However, airlines will still have the ability to do so after that date and therefore any restriction on travel agents' ability to issue paper tickets would be anti-competitive in those circumstances as the airlines will clearly have an advantage.

Schedule 4 Amendments

AFTA takes specific objection to the following resolutions, which are set out in schedule 4 of the application:

- Res 832, Clause 1.7.14
- Res 850m, Clauses 4.10 and 4.11
- Res 850p

Resolution 832, Clause 1.7.14 – Disputed Agency Debit Memo

Resolution 832 relates to reporting and remitting procedures. IATA has amended clause 1.7.14 – Disputed Agency Debit Memo.

As previously constituted clause 1.7.14.4(i) provided that in the event an agent disputed an ADM and the airline subsequently determines that the purpose of that ADM was correct or needed adjustment then the airline would issue a new ADM.

Now as amended when an agent disputes an ADM and the airline subsequently determines that the ADM was correct then the airline will advise the agent and BSP and the ADM as originally submitted will be processed.

In addition, clause 1.7.14.5 provides that an ADM that has been included in the BSP billing will be processed for payment.

The effect of the amendment is to remove a travel agent's right to have a replacement ADM reviewed and grants to the airline a unilateral right to have the replacement ADM processed and billed to the travel agent. The removal of the second dispute/review period (14 days) has been the subject of a second complaint to the Commission.

It is important to understand the background to this dispute. In October 2002 ECTAA and GEBTA filed a complaint with the European Commission for infringement of European competition law against IATA and its members in respect of the Passenger Agency Program. The European Commission subsequently wrote to IATA in June 2003 and invited the parties to negotiate in order to address those concerns. Those negotiations led to a number of changes to the Passenger Agency Program which were adopted at the 2005 PAConf and the withdrawal of the complaint.

ECTAA and GEBTA withdrew their complaint on the basis that the changes were implemented and that there would be continued cooperation between travel agents and IATA. As part of the 2005 reforms IATA put in place procedures and rules to improve travel agents' right to be heard in the procedure to dispute ADMs.

However, at the June 2006 PAConf IATA changed the procedure to dispute ADMs.

As the Commission will be aware ADMs are an accounting tool enabling an airline to notify an agent that the agent owes an amount of money. ADMs are processed through the BSP under a system of direct debit from the agent. In recent years airlines have increased the use of ADMs as a result of intense scrutiny of ticket coupons after the date of travel.

Following the complaint by ECTAA and GEBTA, IATA wrote to the European Commission on 18 May 2005 stating:

- That the changes that it would introduce to the resolutions would make the rules on ADM disputes fairer,
- That a disputed ADM would not be processed (that is billed and debited) if the agent disputed the ADM within 14 days of receipt,

- If after receipt of a dispute by the agent the airline considered that the ADM was in fact correct it would issue a second ADM to replace the first one.

A copy of this letter was included in the 2005 PAConf Onsite Documents under Agenda item R11 at page 80.

In May 2006 IATA gave agents notice of a proposal to be put to the June 2006 PAConf to modify the ADM dispute procedure which would have a significant impact on the rights of travel agents. Representations were made to IATA by the travel agency bodies at a meeting of the European Agency Program Joint Supervisory Council (Euroforum) on 24 May 2006 and the matter was also raised in the PAPGJC. It was pointed out to IATA that the proposed amendment was totally contradictory to IATA's response to the European Commission and subsequent reforms which led to the withdrawal of the ECTAA and GEBTA complaint.

Notwithstanding, the June 2006 PAConf adopted the amendment which has the effect of removing the airline's obligation to issue a second ADM replacing the first one where an airline determines that a disputed ADM is in fact correct.

In Australia, as is many European countries, the ADM is directly debited from the agent's account. Under this new process travel agents would have no further rights within the

Passenger Agency Program and would be left only with civil remedies¹.

Following further objections raised by travel agency groups IATA agreed to put the issue before the Global Joint Council and the PAConf Steering Group. During the PAPGJC held on 9 October 2006 IATA stated that the revised ADM dispute procedure which was put in place from 1 January 2006 and reported to the European Commission in May 2005 raised technical problems and implied that it was never implemented. IATA sought a further one month to consult with individual BSPs on possible solutions to effectively implement a travel agents' safeguards in the ADM dispute procedure. However the PAConf Steering Group which met on 10 October 2006 recommended not to take any action at this time

¹ It should be noted that resolution 820e does not provide for a dispute arising from an ADM may be referred to the Travel Agency Commissioner unless it is a situation where an agent considers that its commercial survival is threatened by a Member's individual decision preventing the agent from acting as an agent for, or from issuing Travel Documents on behalf of such member (paragraph 1.1.8). However IATA has amended resolution 850m to provide that a disputed ADM may only be referred to the Travel Agency Commissioner if both the airline and the agent agrees. This amendment is currently the subject of an application to the Commission for minor amendments to the Determination.

except to gather further information about the market process and to review whether the desired business practice could be supported.

Effective on 1 January 2007 IATA intends to remove the safeguards which enables a travel agent to dispute an ADM. AFTA submits that:

- (i) IATA and its members should not be entitled to unilaterally determine that an ADM is correct without the travel agent having a right to dispute a reissued ADM: and
- (ii) when the agent disputes an ADM it be given a reasonable period of time (currently 14 days) to raise such a dispute and the airline should not be entitled to debit the amount of the ADM from the travel agent's account during the ADM procedure.

Resolution 850p – Financial Securities

The amendments to clause 2.1 provides that IATA shall establish criteria for the consistent evaluation and approval of financial securities and such criteria will be subject to review and amendment by IATA annually or more frequently as may be necessary.

AFTA is most concerned that no criteria currently exists however travel agents will be subject to the terms of the resolution without having has the opportunity of reviewing and having input into any such criteria. In effect, IATA is free to implement any such criteria without reference to travel agents.

There has been a long running dispute with IATA over IATA's acceptance of insurance bonds and guarantees as financial security. Such insurance products are vital to travel agents due to their lower cost and the absence of any requirement to grant a charge over the assets of the travel agency.

It is only fair and reasonable that IATA produce the criteria which accompanies the resolution for discussion via the PAPGJC. To date this has not occurred.

The Commission will be aware of Resolution 860a which established the Passenger Agency Program Global Joint Council.

Resolution 860a was implemented to manage the agent/airline relationship and to provide a consultation forum for PAConf decisions. In particular the PAPGJC is responsible for

providing oversight on those aspects of the agency program relevant to the agent/airline relationship.

The PAPGJC was established following the Commission's determination and after protracted negotiations between IATA and representatives of the travel agents.

Relevantly:

- The PAPGJC is responsible for making recommendations to PAConf on the development, management and marketing of the Passenger Agency Program. The PAPGJC may make recommendations to PAConf for improvements to all aspects of the agency program (clause 3.1)
- The PAPGJC shall review the PAConf agenda immediately after its publication and in any event no later than 30 days from publication (clause 3.2);
- The PAPGJC is authorised to review all agenda items and recommend changes to proposed resolution amendments having a direct impact on the agent/airliner relationship (clause 3.2.1);
- In the event there are issues to be addressed, the PAPGJC is to convene to review the decisions of PAConf immediately following such conference and in any event no later than 30 days following the conference (clause 3.2.1c);
- Following the review, any changes to the proposal, including any recommendations for deferral of implementation, shall be presented to the PAConf for consideration by mail vote or as a recommendation for an agenda submission to the next PAConf (clause 3.2.1d);

PAPGJC shall also review any on-site items considered by the PAConf prior to the conference being held.

Further comment

IATA has not assisted interested parties including AFTA in making submissions to the Commission in the form of the application. In particular AFTA objects to the fact that no marked up copy of Resolution 816 – South West Pacific Sales Agency Rules - has been provided.

This is one of the central documents setting out the obligations of travel agents and it is unacceptable that travel agents must try and track the amendments by reference to IATA finally adopted resolution documentation.

AFTA notes that it is not beyond IATA's ability to provide such a tracked and marked up copy of Resolution 816: the Commission has been provided with a fully marked up copy of Resolution 001 and 200g (Filing of Government Requirements) which is an internal IATA requirement and of no relevance to travel agents.

Conclusion

AFTA submits that the amendments to Resolution 800f, 816(3), 800b and 832(3) are not minor in nature and should be the subject of a fresh application for authorisation by IATA. Alternatively, AFTA submits that the variations would likely result in a public detriment not outweighed by any public benefit. The effect of these amendments is to impose significant additional financial burdens on travel agents and/or alternatively limit travel agents' ability to compete with airlines in the relevant market.

The concerns extend to Resolutions 832, 850m, 850 and 850p set out in schedule 4 of the application.

The form of the authorisation provides that resolutions applications in Australia and adopted by IATA at the 2006 PAConf and which now forms part of the Passenger Agency Program are deemed to be authorised if they are neither amendments nor substitutions for the resolution specified in Part 1 of Appendix B as they appear in the 22nd Edition of the IATA Passenger Agency Conference Resolutions Manual.

However, the resolutions which AFTA has objected to (Res 832, 850m and 850p) impose upon travel agents conditions which it is submitted, are significant burdens and therefore should be the subject of a fresh application for authorisation.

It is submitted that these burdens carry with them costs which will have a negative impact on travel agents being able to compete with airlines in the relevant markets with an ensuring public detriment. It was a condition of the authorisation that a review be undertaken of the conditions for obtaining and retaining accreditation. The review took into account a number of matters which are more fully set out in clause 10(2) of the authorisation.

AFTA submits that the amendments to the resolutions set out in Schedule 4 which are objected to by AFTA have ignored the results of the review in that the resolutions are likely to increase travel agents' operating costs, have been implemented without any reference to the level of risk associated with the credit extension to agents and rather than reducing costs have added to the costs burden on travel agents.

In addition, the implementation of the changes to the ADM dispute procedure has ignored the travel agency consultative process.

Yet again travel agents must deal with unilateral action taken by IATA which directly effects commercial wellbeing.

Yours faithfully,

A handwritten signature in cursive script that reads "Mike Hatton". The signature is written in black ink and is positioned above a long, thin horizontal line that extends to the right.

Mike Hatton
Chief Executive Officer