

Submissions by Travel and Aviation Risk Solutions ("TARS") in respect of an application by IATA dated 9 October 2006 for authorisation of certain proposed amendments to the IATA Passenger Agency Programme in Australia adopted by the 29th meeting of the IATA Passenger Agency Conference, Geneva 28-29 June 2006 ("PAC")

1 IATA has submitted various proposed amendments to IATA resolutions previously authorised by the ACCC as an application for "minor variation" of Authorisation A90791 under Section 91A of the Trade Practices Act 1974. IATA has also sought interim authorisation of these changes, if they are not authorised before the intended implementation date of 1 January 2007

2 In relation to the proposed amendment as to the appointment of substitute Travel Agency Commissioners discussed below, it is the submission of TARS that authorisation be refused and no interim authorisation be granted.

4 The PAC has amended Resolution 820e to remove the power of the Travel Agency Commissioner ("TAC") to appoint a substitute Commissioner. The change would require any substitute to be appointed in the same manner as the Commissioner. This is a complex process whereby IATA, UFTAA and the WTAA must agree on a candidate.

5 IATA has submitted to the ACCC that the change "provides for an effective method of appointing substitute TAC's. It is minor and neutral in terms of competitive effect" As the information set out below will demonstrate, this submission is quite inaccurate and misleading.

6 TARS is a provider of credit guarantee products to IATA travel agents and in 2005 sought to enter the Australian market to provide credit guarantees backed by United Insurance Company Ltd of Barbados ("UICL").

7 IATA did not deal with TARS's application fairly or promptly.

8 An IATA agent, Harvey Word Travel of Willetton WA ("HWTW") purchased a UICL guarantee but IATA refused to recognise same as a proper security. In consequence, HWTW appealed to the TAC for review of IATA's conduct.

9 Because of his prior contact with the principals of TARS, the TAC elected not to hear the case and, for the first time in the history of IATA, appointed a substitute Commissioner. The substitute Commissioner heard the case and made a timely decision that the UICL was an acceptable security which should be accepted by IATA. A copy of this decision is attached.

10 IATA refused to accept this decision and IATA initiated collective boycott action against other IATA agents which had submitted UICL guarantees in discharge of their financial security obligations to IATA. We understand that the Travel Agency Commissioner brought IATA's conduct to the attention of the ACCC.

11 In early 2006 another IATA agent Group Event Travel of Sydney ("GET") had its provision of a UICL guarantee rejected by IATA. GET appealed to the TAC and the TAC appointed a substitute Commissioner to hear the matter. The substitute Commissioner ruled in favour of GET. A copy of this decision is also attached. IATA failed to accept this decision until some 4 weeks after it was handed down, even though the applicable IATA Resolution provides that a TAC decision is binding on IATA.

12 Notwithstanding the two substitute Commissioner decisions requiring acceptance of UICL guarantees by IATA, IATA has continued its failure to act fairly and promptly on acceptance of UICL guarantees in other jurisdictions, in particular the Philippines, Malaysia and Thailand

13 IATA is under notice that certain IATA agents are considering an appeal to the TAC if their use of UICL guarantees is refused again by IATA. We believe that the TAC will continue his position that he would prefer not to hear a case involving TARS even indirectly because of his prior contact with the principals of TARS

14 In the context of the circumstances and events described above, it is likely that IATA will frustrate any appeal by agents wishing to use UICL guarantees by simply not promptly taking action to appoint a substitute Commissioner. Even if IATA did act with despatch, the required selection process and subsequent consultation process with the international agent associations would cause appealing agents significant delay in having their case determined. Delay damages agents, TARS and UICL and runs to the benefit of IATA.

15 The effect of the proposed amendment is that IATA will effectively be in a position to decide the identity of a substitute Commissioner i.e. it will be in apposition to select the judge in a matter where its behaviour is under review and where, by its prior conduct in the HWTW and GET cases, it has shown its raw hostility to independent review, especially to the decisions of the substitute Commissioner appointed by the TAC

16 For the reasons set out above, the amendment is certainly not neutral in terms of competitive effect as claimed by IATA in its application to the ACCC. Indeed IATA has attempted to mislead the ACCC. This we believe will be evident if the ACCC calls for, and reviews, the full minutes and working papers of the PAC and its associated steering committees.

17 IATA has submitted that the amendment is "minor". That is certainly not supported by the circumstances set out above. Indeed it is a carefully contrived amendment designed to frustrate independent review of IATA's anti competitive behaviour with respect to UICL's guarantee products.

18 The recent disgraceful behaviour of IATA in not accepting the decisions of the substitute Commissioner referred to above reveals a basic weakness in the ACCC's regulation of the IATA Passenger Agency Programme in Australia. A breach of the authorised IATA Resolutions should lead to immediate and total loss of authorisation but we understand it currently only leads to an enquiry as to whether the particular IATA conduct is anti competitive. Legal action by an affected IATA agent or service provider against a richly funded IATA for anti competitive conduct is well nigh impossible.

19 TARS submits that no interim or final authorisation should be provided by the ACCC in respect of the submitted amendments to IATA Resolution 820e