

5 December 2006

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Isabelle Arnaud
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Australian Competition and Consumer Commission
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Dear Ms Arnaud


**International Air Transport Association - Passenger Agency Programme:
Response to AFTA submission made in context of IATA's application for minor variation
of Authorisation A90791**

I refer to your letter of 2 November 2006 enclosing submissions received, inter alia, from the Australian Federation of Travel Agents ('AFTA') with respect to the application for minor variation of Authorisation A90791 filed by IATA on 9 October 2006. Enclosed with this letter is a detailed response to the submissions made by AFTA in that context.

I also refer to our letter of 22 October 2006, which addressed all other matters raised in your letter of 2 November, including the submissions of Travel and Aviation Risk Solutions made in respect of that minor variation application.

I note that the minor variation application with respect to which AFTA's submissions were made has now been withdrawn by IATA because it was superseded by Application A91020. Nonetheless, to the extent that the AFTA submissions with respect to the 9 October minor variation application address issues that are relevant for the ACCC's consideration of Application A91020, (including the request made therein for interim authorisation for the changes incorporated in A91020 intended to take effect on 1 January 2007), the enclosed IATA response to AFTA's submissions should be treated as forming part of IATA's submissions for purposes of Application A91020.

Yours faithfully
MINTER ELLISON



Russell Miller AM
Partner

**AUST. COMPETITION &
CONSUMER COMMISSION
CANBERRA**
- 5 DEC 2006

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enclosure

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DETAILED IATA RESPONSE TO THE AUSTRALIAN FEDERATION OF TRAVEL AGENTS LIMITED

1. General comment

- 1.1 On 13 November 2006 the Australian Competition & Consumer Commission (ACCC) forwarded the submission by the Australian Federation of Travel Agents Limited (AFTA). This matter arose in the context of the ACCC's consideration of IATA's application for minor variation A90791 dated 9 October 2006. With lodgment of application A91020 that application became redundant and was withdrawn on 24 November 2006. At that time however, IATA undertook to respond to all matter raised in the context of the application for minor variation.
- 1.2 IATA therefore files this submission to provide the ACCC with IATA's detailed response to the submission by AFTA dated 27 October 2006. IATA recognizes the valuable role AFTA plays in representing its travel agent members in Australia and acknowledges that AFTA does so very effectively.
- 1.3 The IATA Passenger Agency Programme is an effective, efficient programme that benefits consumers, travel agents and airlines alike. It is a robust and inclusive programme that welcomes the input of all stakeholders, of which AFTA and its international organization, World Travel Agent Associations Alliance (WTAAA), are among the most important.
- 1.4 Before providing specific responses to each paragraph of AFTA's submission IATA notes two points:
 - (a) It is a sign of the health of the Programme that organizations like AFTA can engage in robust debate with IATA and the airlines, seeking to improve the relative position of their members in the programme.
 - (b) The primary thrust of AFTA's submission is based on a mistake of fact. Resolution 800f does not apply in Australia and, in relation to Resolution 816 (the relevant resolution), approved insurance guarantees and bonds have been permitted for some time and there is nothing in the minor variation that changes that position.
- 1.5 In IATA's view, AFTA's submission has little to do with the merit of the minor changes made to the resolutions, in terms of their effect on competition or on public benefits and everything to do with AFTA seeking to advance its members interests.
- 1.6 IATA sets out its detailed responses to each paragraph of the AFTA submission below, but overall submits that there is nothing in the AFTA submission that should dissuade the ACCC from granting the authorization IATA has applied for.

2. Specific responses

No.	AFTA Submission	IATA Response
1.	<p>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.</p> <p>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 significant costs burden coupled with the competitive impact such burdens have on travel agencies.</p>	<p>The Resolutions set out in Schedule 4 of the application were filed purely for information and are not the subject of the application for minor variation. IATA nevertheless disagrees with AFTA's assertion that the relevant Resolutions will either reduce public benefits or impose significant cost burdens on airlines. The changes were unanimously adopted by airlines in a meeting of the IATA Passenger Agency conference.</p>
2.	<p>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.</p>	<p>Like the variations that are the subject of this application, the changes to the Resolutions in schedule 4 either:</p> <ul style="list-style-type: none"> • improve the IATA Passenger Agency Programme for airlines and agents; or • are of a technical or drafting nature. <p>The variations would not result, and would not be likely to result, in either a reduction in the extent to which the benefit to the public of the authorisation outweighs any detriment to the public caused by the authorisation, or a reduction in the benefit to the public that arose from the original authorisation.</p>
3.	<p>It was not the intent of the authorisation to allow IATA <i>carte blanche</i> to institute new conditions on travel agents free of scrutiny by the Commission. These submissions will be developed below.</p>	<p>IATA objects the use of the words "<i>carte blanche</i>", which is no doubt intended to be inflammatory and convey negative connotations to the ACCC.</p>

	Resolution 800f section 3.3	
4.	<p>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.</p>	<p>AFTA's submission is based on a false assumption. Resolution 800f does not apply in Australia. The financial criteria for Australia is well-established in Resolution 816.</p> <p>However, the amendment is to provide a more effective means for an Agent who has defaulted to return to full participation in the Agency Programme at the earliest opportunity by providing some financial security. This Resolution is for use by markets that have not yet adopted their own financial criteria. It is nevertheless commended as an equitable process to ensure that an Agent seeking reinstatement can continue to meet its financial responsibilities and thus provide protection to the end-consumer who purchases tickets from that Agent.</p> <p>The change improves the effectiveness of the reinstatement process and assists Airlines to be assured of the financial stability of Agents where reinstatement is sought. The change is neutral in terms of competitive effect.</p>
5.	<p>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.</p> <p>This is consistent with IATA's own provision in Resolution 800f, section 2. See also Resolution 850p.</p>	<p>Accredited travel agents are entitled to satisfy the prudential requirements for continued access to the airline credit that participation in the IATA Passenger Agency Programme provides by submitting an insurance bond or insurance guarantee that meets criteria developed by IATA for the protection of airlines and travel agents. This has not changed.</p> <p>The change in Resolution 800f (which does not apply in Australia) contains a drafting error, which IATA will submit to the Passenger Agency Conference for correction. The change should read: "... Agents will be required to furnish a bank guarantee or an approved insurance guarantee or bond equivalent to sales at risk..." (emphasis added).</p>
6.	<p>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 such security being</p>	<p>IATA does not disagree with this assertion. It is a matter for the bank or insurer to determine whether or not security will be required from the travel agent.</p>

	given. Further, the cost to the travel agent is significantly lower.	Whether or not the cost of a bank guarantee or an insurance bond is cheaper will presumably depend on the circumstances of each travel agent and its relationship with its bank or insurer.
7.	AFTA submits that IATA's approach to providing security should be consistent.	IATA agrees. That is why Member airlines have adopted Resolution 850p and criteria have been established under that Resolution. While IATA's approach may be consistent it cannot be uniform across jurisdictions because different countries have different corporate, banking and insurance laws and requirements.
	Resolution 816(3) section 3.6.1.1	
8.	<p>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.</p> <p>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 to the travel agent and each branch will need to obtain authority to issue an electronic ticket.</p>	<p>The change is a consequence of an amendment to Resolution 818 adopted by PAConf/28. It is neutral in terms of competitive effect.</p> <p>The effect of the change is to remove the reference to satellite ticket printers being used to print electronic tickets because with electronic tickets no ticket is actually printed. The amendment is minor because it removes a provision that cannot apply. An STP is not a sales point for the issue of tickets. It is a remote delivery mechanism for the host sales location of an Agent to print out tickets for delivery its customers.</p> <p>There is no intention to change the current position in relation to satellite printer or charge additional fees in relation to them and this changes does not do so.</p>
	Resolution 800b	
9.	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.	<p>The change is in accordance with the planned introduction of 100% Electronic Ticketing from 1 January 2008 and is consistent with the objectives of IATA Members to simplify business processes and reduce the amount of paper used.</p> <p>Removal of paper traffic documents from the IATA BSP system does not limit an Agent's ability to sell carrier services. It is a Carrier that appoints an Agent to sell its services and if the Carrier wishes that to continue they will ensure the Agent has the tools to fulfil the service. The expiry of the STP provisions in</p>

		<p>fact is not introducing but rather contributing to a reduction in Agents' costs. In a fully electronic ticketing environment there is no longer a need for delivery of tickets, maintenance of ticket stocks or employment of ticket devices. Instead this provides an Agent the opportunity to streamline its operation, introduce greater efficiency and remove costs.</p> <p>It is neutral in terms of its competitive effect on accredited travel agents.</p>
10.	<p>However, airlines will still have the ability to do so after that 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.</p>	<p>AFTA's concern is quite misplaced.</p> <p>The airline industry has taken up electronic ticketing because it is efficient, same time and costs which benefits both airlines and travel agents.</p>
	Schedule 4 amendments	
11.	<p>AFTA takes specific objection to the following resolutions, which are set out in schedule 4 of the application:</p> <ul style="list-style-type: none"> • Res 832, Clause 1.7.14 • Res 850M, Clauses 4.10 & 4.11 • Res 850p 	No comment required.
	Schedule 4 amendments – Resolution 832	
12.	<p>R832 relates to reporting and remitting procedures. IATA has amended clause 1.7.14.</p>	<p>Amendments to Resolution 832 have already been authorised under Determination A90791 because they are neither amendments to or substitutions for the Resolutions specified in Part I of Appendix B as they appeared in the 22nd edition of the IATA Passenger Agency Conference Resolutions Manual.</p>
13.	<p>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 the ADM was correct or needed adjustment then the airline would issue a new ADM.</p> <p>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</p>	<p>An Agent has a minimum of 14 days in which to review an Agency Debit Memos (ADM) prior to its submission to BSP for processing. If the Agent dispute the ADM within 14 days of its receipt, it is held in abeyance until the airline determines that the purpose of the ADM was correct or needs adjustment.</p> <p>If as a result of an Agent dispute the airline determines that the ADM needs adjustment, the adjusted ADM will be processed.</p> <p>AFTA misreads both the current version of 1.7.14 and the amendments to the section that will take effect on 1 January 2007. AFTA</p>

<p>for payment.</p> <p>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.</p>	<p>apparently believes that Resolution 832 allowed an Agent contesting an ADM to renew its objection to successive new ADMs raised by an airline indefinitely until the underlying dispute was resolved. However, the terms of Resolution 832 do not support this interpretation. Under the current terms of Resolution 832 Agents have the opportunity to dispute an ADM, either (i) before the ADM was submitted to the BSP for processing (i.e., within 14 days of receipt of the ADM pursuant to 1.7.14.2 and 1.7.14.3); or (ii) after the ADM was submitted to the BSP for processing (i.e., within 15 to 30 days of receipt pursuant to Paragraph 4.7 of Resolution 850m). In the latter case, if the ADM is present in the billing, the ADM is processed by the BSP and the dispute is dealt with outside the BSP with the airline having 60 days from receipt to resolve the dispute in accordance with Resolution 850m, subparagraph 4.7.1).</p> <p>The current version of 1.7.14 sets out a series of ordered steps for implementing the first of these dispute practices. Under 1.7.14.2 and 1.7.14.3, an ADM is withheld from the Billing when the Agent disputes the ADM within 14 days of its receipt and then it is only held in abeyance until the airline determines that the purpose of the ADM was correct or needs adjustment. Under 1.7.14.4, when the airline makes such a determination, it "will issue a new ADM" (emphasis added). There is no additional period in 1.7.14.4 comparable to that set out in 1.7.14.2 for the Agent to review the new ADM before it is submitted to the Billing. If there remains a dispute, it is strictly between the Agent and the airline and must be dealt with outside the BSP.</p> <p>The amendment made to 1.7.14, which will be effective on 1 January 2007, is a minor modification to the mechanical process for handling ADMs in order to reflect how the system has operated in practice since 1 January 2006. It is also more practical and efficient where the original ADM is determined to be correct to allow it to continue through the Billing process. As far as IATA is aware, there has been no complaint from Agents regarding the way that the system has functioned in practice during this period. If an Agent continued to dispute the ADM, the dispute</p>
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		<p>became a commercial issue between the Agent and airline outside the BSP. The same applied when the airline modified the ADM and issued a new ADM for a different amount in light of the explicit wording of 1.7.14.4 that the airline will submit the new ADM. The change to 1.7.14, which comes into effect on 1 January 2007, therefore, does not in any way reduce the Agent's options to dispute ADMs compared to the previous version. Thus under the new procedure effective 1 January 2007, the Agent is informed before the ADM is processed and therefore the Agent has the ability to further dispute the ADM with the airline outside of the BSP process.</p> <p>The amendment is neutral in terms of competitive effect.</p>
14.	<p>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 remedies.</p>	<p>AFTA is correct that ADMs are directly debited, but that does not mean that the Agent is out of pocket as a consequence. As the data lodged following the 2002 pre-determination conference proved, Agents will always hold more of the airlines' money any collective ADMs will account for. Agents have a significant residual float of the airlines' money.</p> <p>No further comment required save that the statement concerning civil remedies is misplaced and argumentative.</p>
15.	<p>Effective on 1 Jan 2007 IATA intends to remove the safeguards which enables a travel agent to dispute an ADM. AFTA submits that:</p> <ul style="list-style-type: none"> • 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 • when an 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. 	<p>The assertion that IATA intends to remove any safeguard is untrue. The revisions to Resolution 832 do not remove any safeguards for travel agents to dispute an ADM. (See response to para 13 above.)</p> <p>As the data lodged following the 2002 pre-determination conference proved, Agents will always hold more of the airlines' money any collective ADMs will account for. Agents have a significant residual float of the airlines' money.</p> <p>No further comment required save that the statement concerning civil remedies is misplaced and argumentative.</p>
	Schedule 4 amendments – Resolution 850p	
16.	<p>The amendments to clause 2.1 provides that IATA shall establish criteria for the</p>	<p>This statement accurately recites the provisions of the relevant part of Reso 850p, which</p>

	<p>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.</p>	<p>provides for uniform assessment criteria for approval of providers of bonds and guarantees to assist Agents in meeting their obligations.</p> <p>The Resolution has already been authorised under Determination A90791 because they are neither amendments to nor substitutions for the resolutions specified in Part 1 of Appendix B as they appeared in the 22nd edition of the IATA Passenger Agency Conference Resolutions Manual.</p>
17.	<p>AFTA is most concerned that no criteria currently exists however travel agents will be subject to the terms of the resolution without having had 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.</p>	<p>IATA has developed a criteria for evaluating providers of these products, wherever in the world the product may be offered to Agents.</p> <p>As the change to Reso 850p does not come into effect until 1 January 2007 IATA has not yet issued the criteria but will shortly provide it to international agency associations under its normal consultative arrangements, set out in the governance section of the original Statement of Facts. An advance copy will be provided to the ACCC and to AFTA shortly.</p>
18.	<p>These have 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.</p>	<p>IATA respects AFTA's position in seeking to lower IATA's financial criteria standards relating to the financial stability of its members but AFTA should not seek to use the ACCC to achieve that end. IATA submits that this is an irrelevant matter for the purposes of this aspect of the application.</p>
19.	<p>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.</p>	<p>See 17 above. No additional comment is required.</p>
20.	<p>Resolution 860a 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 PACConf decisions. In particular the PAPGJC is responsible for providing oversight on those aspects of the agency program relevant to the agent/airline relationship.</p> <p>The PAPGJC was established following the Commissioner's determination and after protected negotiations between IATA and representatives of the travel agents.</p>	<p>AFTA's summary of the resolution is accurate. No comment is required.</p>

	PAPGJC shall also review any on-site items considered by the PAConf prior to the conference being held.	
	Further AFTA comment	
21.	<p>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 has been provided.</p> <p>...it is unacceptable that travel agents must try and track the amendments by reference to IATA finally adopted resolution documentation.</p> <p>AFTA notes that it is not beyond IATA's ability to provide such a tracked and marked up copy of Resolution 816...</p>	<p>This statement is purely argumentative. The proposed changes to the Resolution were provided to the PAPGJC in accordance with Reso 860a prior to being considered by the Conference. No comment was made by AFTA's international representatives on that council.</p> <p>IATA will provide AFTA with a marked up copy of Resolution 816.</p>
	AFTA conclusion	
22.	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.	<p>IATA refutes the AFTA claims. The changes are neutral in terms of both their competitive effect and their effect on the public benefits the Programme provides.</p> <p>IATA refers to comments made above at 4, 8, 12 & 13.</p>
23.	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.	<p>The Resolutions as amended will not impose any material additional burden on Agents. See comments are 9 above.</p> <p>No further comment required save that the statement is argumentative and inaccurate for the reasons set out above.</p>
24.	These concerns extend to Resolutions 832, 850m, 850 and 850p set out in schedule 4 of the application.	No comment required
25.	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	No additional comment required.

	Conference Resolutions Manual.	
26.	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.	The resolutions as amended will not impose any material additional burden on accredited agents. IATA's full response to this assertion is discussed at 12, 13, 15 and 16 above.
27.	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.	The burdens to which AFTA refers do not exist. AFTA has provided no evidence on which the ACCC could conclude that its assertions are correct.
28.	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.	The review was undertaken and a copy of the report provided to the ACCC. The recommendation from the review were adopted after the Conference held in Singapore and was submitted to the ACCC with the minor variation on 18 November 2005.
29.	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.	IATA disagrees. There is nothing in the amendments to Schedule 4 (provided to the ACCC for information purposes only) which is inconsistent with the results above or have any of the effects asserted by AFTA. AFTA has provided no evidence on which the ACCC could conclude that its assertions are correct.
30.	In addition, the implementation of the changes to the ADM dispute procedure has ignored the travel agency consultative process.	The assertion by AFTA is not correct. The proposals to change ADM Resolution text were properly set out in agenda items of the 2006 Passenger Agency Conference. The agenda was made available to the Agent community for comment according to established procedures and the agenda was reviewed with the agents at local joint consultation including at the Euroforum, and at a global level through the Passenger Agency Programme Global Joint Council (PAPGJC), where AFTA is represented and was in attendance. Agent comments on the proposals were set out in separate agenda items to the Conference and in the report of the PAPGJC to the Conference. These comments and alternative agent proposals were taken into account by the Conference when making its determinations. The fact that AFTA may have

		<p>preferred a different outcome does not mean consultative process has been ignored.</p> <p>The PAPGJC made no recommendations on the proposal in accordance with paragraph 2.3 of Resolution 860a.</p>
31.	Yet again travel agents must deal with unilateral action by IATA which directly affects commercial wellbeing.	No further comment required on this doctrinaire and inaccurate statement.

- 2.1 IATA would be pleased to amplify its response on any of the above points if required.
- 2.2 IATA has provided a copy of this response to AFTA and reserves the right to respond to any additional facts or assertions AFTA may submit.

DATED: 1 December 2006



Leslie Lugo
Senior Legal Counsel
International Air Transport Association