

Trade Practices Commission

119

Determination

Application for Authorisation

**Fares agreement relating to the Australian/Taiwan
air route**

by

Qantas Airways Ltd

on behalf of its subsidiary

Australia-Asia Airlines Ltd

Application No:

A90525

Commissioners:

**Johns
Asher
Spier**

File No: CA91/23

Date: 20 May 1992

Summary

This paper concerns application for authorisation A90525 by Qantas Airways Ltd on behalf of its subsidiary, AAA, regarding a fares agreement relating to the Australia/Taiwan air route. The agreement was reached outside the International Air Transport Association (IATA) with China Airlines Limited, on behalf of Mandarin Airlines and Eva Airways Corporation.

The Commission granted interim authorisation on 9 October 1991 for six months, and later extended this to the date of issue of the final determination, or 30 June 1992, whichever comes first.

On 10 April 1992 the Commission issued a draft determination proposing to grant authorisation to AAA's tariff arrangement, on condition that there is no requirement on the carriers or travel agents:

- to charge the fares (or pay the commissions) in Australia that have been set by the agreement; and
- not to advertise in Australia tariffs they are actually charging, and that the carriers and travel agents concerned are kept aware of this condition.

There were no requests for a pre-decision conference to be held, and no additional submissions lodged.

Accordingly, the Commission confirms its draft determination and grants authorisation to the conduct.

Contents

		Page
1.	The application	1
2.	Background to the application	2
3.	Statutory test	3
4.	QANTAS agreements and government involvement	4
5.	Submissions by Qantas	6
6.	Other submissions	9
7.	Commission consideration	10
8.	Draft determination	13
9.	Commission determination	15

1. The application

1.1 On 12 September, 1991, Qantas Airways Limited (Qantas), on behalf of its wholly owned subsidiary Australia-Asia Airlines Limited (AAA) lodged an application for authorisation (A90525) with the Trade Practices Commission (the Commission) under sub section 88(1) of the Trade Practices Act 1974 (the Act). A copy of the application and supporting submissions is at Attachment A.

1.2 The arrangement, the subject of this application, relates to an agreement reached outside IATA (the International Air Transport Association) on tariffs and related conditions between AAA and China Airlines Limited, on behalf of Mandarin Airlines and Eva Airways Corporation, both of Taiwan, for services operating between Australia and Taiwan.

1.3 Such an arrangement has the purpose, or has or may have the effect, of substantially lessening competition within the meaning of section 45 of the Act.

1.4 As the AAA service was proposed to commence, and did commence, on 11 October 1991, the Commission granted interim authorisation to AAA on 9 October 1991 for a period of six months. It was later extended to the date of issue of the final determination, or 30 June 1992, whichever comes first.

2. Background to the application

2.1 The Commission has previously authorised tariff setting arrangements in respect of multilateral and bilateral air services conducted under the auspices of IATA, and has also considered and authorised Qantas to enter into tariff setting agreements with airlines outside the IATA tariff setting mechanism (A90427).

2.2 On 26 April 1991, Qantas wrote seeking to include the arrangements of AAA within the scope of A90427. However, legal advice obtained by the Commission indicated that A90427 did not extend to Qantas subsidiaries. Consequently, Qantas, on behalf of AAA, has lodged this application (A90525).

2.3 The Commission granted interim authorisation to this application (refer to paragraph 1.4) subject to the following conditions:

- that any such tariff would, by its nature, stipulate the passenger fare or cargo rate, as the case may be, at a specific level or levels;
- that any such tariff would, by its nature, stipulate the specific conditions related to the passenger fare or cargo rate, as the case may be;
- that prior to the implementation of same any such tariff would be formally filed where necessary with the Australian Department of Transport and Communications for approval;
- that any such tariff would not be implemented until published for the information of the trade and consumers;
- that any such tariff agreement would not include any obligation, as between the airlines, to comply with the agreement reached;
- that there is no requirement on carriers or agents to charge the tariffs (or pay the commissions) in Australia that have been set by the agreement; and
- that there is no requirement on carriers or agents not to advertise in Australia tariffs they are actually charging.

3. Statutory test

3.1 The TPC cannot, under section 90(7) of the Act, authorise the agreements unless it is satisfied that, in all the circumstances, it has resulted, or is likely to result, in a benefit to the public and that that benefit outweighs or would outweigh any detriment to the public constituted by any lessening of competition that has resulted, or is likely to result, from giving effect to the agreement.

4. Qantas agreements and government involvement

4.1 The agreements engaged in by Qantas and AAA represent a means by which carriers jointly recommend an agreed tariff, on a particular route, to the respective governments concerned for their approval. It should perhaps be emphasised that these agreed tariffs are quite distinct from those arising out of the IATA Traffic Conferences which Qantas, as the IATA member concerned, would recommend to the Australian Government. The IATA tariff agreements, along with other non-tariff rules, regulations, agreements and resolutions of IATA, relating to international airlines operating in Australia, have already been the subject of determinations issued by the TPC (A3485 - 31 October 1984, A90435 - 23 December 1985). The non-tariff arrangements which concerned various operational matters, for example safety and interlining, were granted authorisation by the TPC. The tariff agreements were also authorised provided there were no attempts to compel airlines or travel agents to adhere to the tariffs arrived at under the agreements.

4.2 Government involvement in international air transportation was explained at some length in the TPC's October 1984 IATA determination (paragraphs 14 to 29). In that determination Article 6 of the Chicago Convention of 1944 on International Civil Aviation was quoted. This provides that:

No scheduled international air service may be operated over or into the territory of a Contracting State, except with the special permission or other authorisation of that State, and in accordance with the terms of such permission or authorisation.

In accordance with this principle, bilateral air services (or air transport) agreements are concluded between governments of countries when scheduled air services are to be instituted between the countries concerned. Such agreements generally include a variety of articles relating to such matters as the grant of rights, transit and traffic rights, the principles governing operation of agreed services, tariffs and settlement of disputes.

4.3 A majority of Australia's bilateral air services agreements and arrangements state in their respective tariff articles that:

... agreement on tariffs shall wherever possible, be reached by the designated airlines concerned through the rate fixing machinery of the International Air Transport Association. When this is not possible, tariffs in respect of each of the specified routes shall be agreed between the designated airlines concerned. In any case, the tariffs shall be subject to the approval of the aeronautical authorities of both contracting parties.

In general, most of Australia's air services agreements intend the same result, that is, that tariffs be agreed through IATA or between the designated airlines concerned. Once agreement has been reached between the airlines, the proposed tariffs are filed with the Department of Transport and Communications (DTC) for approval under Air Navigation Regulation 106A and with the relevant authority of the foreign government for approval. According to the DTC:

- ANR 106A is administered in a manner to give effect to the Government's decision in 1981 that airlines serving Australia would be left as free as possible to set fares in accordance with their commercial judgment and to meet market demands;
- the DTC issues a direction under ANR 106A specifying the minimum fares that may legally be charged for different classes of travel over a particular route;

- airlines operating on a route may set their fares at or above the specified minimum for each class of travel; therefore airlines can and do set fares in accordance with their individual commercial judgments.

4.4 However, the TPC's legal advice is that the operation of ANR 106A does not exempt the agreements between the airlines on tariffs from the provisions of the Act outlawing price fixing agreements. Hence the application by Qantas for authorisation of the agreement on public benefit grounds.

4.5 In the case of carriers who are not members of IATA for tariff coordination purposes, the agreement covered by the current application represents a means for these carriers to satisfy the expectations of their respective governments regarding air services with other countries. In the case of IATA members, on the other hand, certain tariff agreements are not made pursuant to IATA procedures for the following reasons.

- Where it is necessary to adjust fares on a regional basis, eg Asia, and some of the carriers concerned are non-IATA, it is necessary in practice to establish agreements through multilateral rather than a series of bilateral discussions; such agreements could only be achieved through multilateral discussions outside IATA.
- There may be a failure to reach agreement within IATA, so it is subsequently decided to resolve matters outside the IATA conferences eg because of conflicting interests of the carriers involved, it may not be possible for a tariff between two countries to be agreed within IATA which would be satisfactory to the two principal carriers involved, ie the national carriers of the two countries concerned.
- The IATA carriers may simply prefer the flexibility of reaching tariff agreements outside the IATA conferences on certain routes. Also fare adjustments may be concluded and implemented more rapidly in some cases if undertaken outside the IATA conferences.
- In many cases it may be more efficient to reach tariff agreements outside the IATA conferences, and subsequently to process that agreement through the IATA machinery.

Hence, authorisation is being sought for an agreement reached outside IATA, irrespective of whether IATA or non-IATA carriers or both, are involved.

4.6 Qantas has stated that tariff agreements concluded outside IATA are usually negotiated on a bilateral basis, but there are cases where it is desirable or necessary to conclude such arrangements on a multilateral basis. For example, because of the close relationship of fares between Australia and various European countries, should it be necessary to make changes to these fares outside IATA, a more efficient way of handling such changes may be to discuss them on a multilateral basis. Because of the impact of a fare change to one country on fares to another country in close geographic proximity, it can often be difficult to achieve fare adjustments to a region involving multiple countries without multilateral discussions as opposed to a series of separate bilateral discussions. This situation also exists in the case of the development of and amendment to fares between Australia and Asia. Additionally, because of the impact of a fare change to one country on fares to another country in the Asian area the only efficient manner of facilitating adjustments is to undertake these through multilateral discussions. Yet they cannot be concluded through the IATA traffic conference because most of the carriers concerned are not members. This is also recognised by the governments concerned and consequently they have accepted that fares between Australia on the one hand and the ASEAN countries and Hong Kong on the other should be developed through multilateral discussions between the airlines.

5. Submissions by Qantas

5.1 In its submission, Qantas said that it relies on the arguments and submissions lodged in support of the Qantas application A90427, which was authorised by the Commission on 20 July 1987. A copy of Qantas' submissions in support of that application is on the Public Register

5.2 Qantas also said that the agreement, the subject of this application, is substantially in the form of those agreements authorised under application A90427.

5.3 In relying on what was said by the Commission in previous authorisations, and on what Qantas itself has said in its submissions on A90427, Qantas is relying on aspects of the Commission's determination in A90427 at paragraphs 11 to 41, and on aspects of its own submissions on A90427.

5.4 Qantas claimed the following in its submission on A90427, in regard to similar agreements to that which is the subject of this application.

- There is no obligation in the industry to comply with the agreed tariffs,
- Irrespective of whether tariff agreements are concluded inside or outside the IATA traffic conferences, the end result is the same.
- Australia's air service agreements and arrangements with other countries dictate the consultation/agreement procedures on tariffs adopted by international airlines.
- Parties to Australia's air agreements are not empowered to unilaterally change the agreed procedures for tariff determination — only the Australian and foreign governments concerned, by negotiation and agreement, can alter aspects of the air agreements.

5.5 Commenting on public benefit resulting from the agreements, Qantas has said in its submission on A90427.

- Benefits that arise from the non-IATA tariff agreements are the same as for the IATA tariff agreements.
- There is public benefit in the preparation and availability of tariff information providing a basis for determining fares and for fare structuring that is known throughout the industry.
- The arrangements enhance the efficient operation of the industry by enabling, for example, a lower or more attractive tariff to be agreed and approved far more quickly than through the IATA conference system.
- By enabling non-IATA airlines which cannot use IATA procedures to reach agreements on tariffs, the agreements make unnecessary the direct involvement of governments in the tariff fixing process and so avoid a complex, cumbersome, costly and time consuming process which could not be undertaken in any event without detailed airline background involvement.
- The arrangements contribute to the quality of services available by enabling (non-IATA) airlines to provide a range of interlining¹ possibilities and flexibility and choice to the consumer.

1 Interlining — the practice whereby a passenger may use the services of more than one airline while holding only one ticket.

5.6 In regard to anti-competitive detriment Qantas has said in its submission on A90427.

- Each carrier decides if it will comply or cease to comply with an agreed/approved tariff.
- The jurisdiction of governments covers the function of policing or ensuring approved tariffs are complied with and 'maintained', and this does not form part of the airline tariff determination process.
- Discounting of approved tariffs in the industry will not cease, or be affected, by any Commission decision on this application.
- The arrangements will not act as a barrier to new entrants to the industry since determination of entry falls within the province of governments.
- There is no restriction of competition in respect of non-price related matters or advertising.

5.7 Subsequent to the lodgement of this application (A90525), the Commission asked Qantas to supply additional information concerning the arrangements. A copy of that response is at Attachment B.

5.8 In general, Qantas said that a majority of fare sales to date have been discounted, as the market is highly competitive at the travel agency level, where '... mark-ups are kept to a minimum ...', and between competing airlines.

6. Other submissions

6.1 The Commission invited comment from organisations and individuals in the air travel industry and from consumer organisations. Responses were received from only four interested parties.

Garuda Indonesia
Olympic Airways SA
Jetset Tours (Jetset)
Department of Transport and Communications (DTC).

6.2 None of these organisations opposed authorisation.

6.3 Jetset said, in its submission:

... formal tariff agreements only provide a published reference fare level within the market place. There is intense competition between airlines in terms of setting market pricing as opposed to tariffs and ... the Australian international travel market is the most deregulated in the world ...

also

... the mechanism for agreeing published fares does not inhibit price competition within the Australian marketplace.

6.4 DTC said in its submission:

The agreement negotiated between the Australian Commerce and Industry Office in Taipei and the Taiwanese government, under which air services between the two countries have been established, allows for carrier tariff determination outside the IATA rate fixing mechanisms. The tariff structure agreed between AAA and China Airlines, for and on behalf of Mandarin and Eva, is within the boundaries of this agreement.

and

The department's policy on the setting of international tariffs is to leave the airlines as free as possible to make judgments on fares in response to market conditions. Under the provisions of Air Navigation Regulation 106A airlines are required to file for the approval of this Department any tariff they propose to make available for the carriage of passengers, cargo and mail.

6.5 Commission staff also contacted a number of travel agents in Sydney, Melbourne, Brisbane and Perth for their assessment of how the market is operating in the area covered by the agreement, the subject of this application.

6.6 The responses received indicated that the market for flights between Australia and Taipei was very competitive with packages including air travel, accommodation and occasionally sightseeing, at total cost which rivalled, and in some cases were lower than, AAA's published tariffs.

6.7 Prices quoted by agents for the AAA scheduled flights varied within a small range, however, all agents indicated that the quoted price was open to further negotiation, depending on competitive quotes.

7. Commission consideration

7.1 This application is concerned with a price agreement between non-IATA carriers, and which Qantas claims is similar to those approved under Authorisation A90427.

7.2 However, as noted at paragraph 2.2 above, legal opinion indicates that authorisation does not extend to agreements entered into by Qantas subsidiaries (in this case AAA) so that a separate application for authorisation was necessary.

7.3 Based on the Qantas projections provided in its submission the passenger market for the route represents approximately 0.85 per cent of the inbound and outbound passenger market, and would be in the top 25 per cent of markets measured by traffic volume. Of the 121 international passenger markets in 1990, Taiwan was the 36th largest.

7.4 The Commission considers that the Sydney/Taipei market is likely to develop into a substantial market, given that there has been a significant expansion of economic links between Australia and Taiwan over the last decade. There is also a sizeable expatriate Taiwanese community in Australia, which has the potential to provide an additional source of demand from visiting friends and relatives.

7.5 There is considerable competition to the AAA tariffs from a number of airlines offering flights to and from Taiwan (Taipei) at prices comparable to, and occasionally lower than, the AAA tariff. Some of these competitive route fares include incentives such as accommodation at stopovers and sightseeing.

7.6 The Commission also accepts that within the agents' commission rate offered by Qantas (see Attachment B), travel agencies are free to, and do, quote fare prices for the AAA service that vary from agency to agency.

7.7 In addition, the Commission has found that individual agencies will enter into further negotiation on their quote prices for the fare tariff. The Commission considers that this would occur where the agencies are competing to secure customers, and are willing to accept lower returns to achieve that end.

7.8 It is also noted by the Commission, that AAA and Mandarin Airlines are the only two carriers, as parties to the agreement, operating on the Sydney/Taipei direct route at this stage. However, Eva Airlines Corporation, the third carrier to the agreement, is expected to commence operations with two flights per week sometime later in 1992. This will place additional competitive pressure on AAA in regard to fare tariffs, particularly from members of the Australian Taiwanese and Taiwan communities which may tend to prefer the two China Airlines subsidiaries (Mandarin and Eva).

7.9 Qantas informed the Commission in its submission on A90427, and recently, that its non-IATA agreed tariffs are distributed as follows:

Passenger fares

- Telexes to Qantas offices worldwide for the advice of Qantas sales staff and for distribution to agents via Qantas offices.
- Computerised QANTAM passenger system, and most other major international computer reservation systems, eg SABA, ABACUS.

- Qantas Tariff Notices are distributed to Qantas offices, to other airlines and to agents.
- *Qantas Fares From Australia* book which is distributed to Qantas offices, other airlines and agents. (Issued every two months.)
- Worldwide Air Tariff Manual. (Issued monthly.)

Fare information to consumers is available from airlines offices and travel agents.

Cargo rates

- Telexes to Qantas offices worldwide for the advice of Qantas sales staff and for distribution to cargo agents and forwarders via Qantas offices.
- Computerised QANTAC cargo system.
- Qantas Cargo Tariff Notices are distributed to Qantas offices, to other airlines, to cargo agents and forwarders and to some shippers.
- The Worldwide Cargo Tariff-TACT (The Air Cargo Tariff). (Issued every two months.)

Cargo rate information to shippers is available from airline offices, cargo agents and forwarders.

7.10 Turning to public benefit that may flow from the agreement, the Commission recognised, in its October 1984 authorisation of the IATA tariff agreements (A3485), the informational value of publication of the IATA tariffs as a public benefit. The Commission firstly noted the complexity of fares when it said:

- IATA-based Common Pricing

51. This is derived from the Tariff Coordination Conferences and expressed ultimately in publications such as the *Air Tariff*, (see paragraph 47). This particular publication, although not an IATA document itself (and therefore not specifically the subject of this application for authorisation), is published by five carriers on behalf of some 70 participating carriers and is the IATA-related publication which is most commonly found on agents' desks in Australia. The *Air Tariff* has two parts one subtitled Worldwide Fares, and the other Worldwide Rules and Mileages. Between them they cover variables such as some 50 fare types, 12 class types, up to five seasons, currency moderation, distance limitations, stopover limits and payment requirements. As such, irrespective of the relationship between IATA common fares and actual market fares at any given time, the common fare listing allows quick estimates by agents of fares for any combination of routes in the world. As mentioned in paragraph 47, several carriers publish IATA-derived compilations of fares for particular purposes, and these are available to agents by arrangement.

The Commission went on to say:

The existence of competition in fares does not destroy the value of the IATA tariff as a source of information. Considering that the flights and services that are available are very significant in number and combination, and considering the thousands of Australian consumers seeking flight and fare information from some 3000 retail outlets, the Commission is of the view that there is public benefit in having a mechanism that caters for that information need. The need does not stop at consumers and travel agents. Airlines themselves rely on published fare data.

and

While competition is active in terms of individual airlines and travel agents competing in Australia by way of discounted air fares, the Commission accepts that there is public benefit in having IATA tariff coordination to provide information that is the underlying basis for determining fares and for fare structuring that is known throughout the industry. IATA tariffs provide a point of reference from which potential price competition, where it occurs, can operate. In the current market circumstances where discounting is the norm, it would be difficult to assert that the IATA tariff is causing a significant detriment to competition.

7.11 These comments were made in the context of IATA fares. However the fares set under the arrangement being considered here (a non-IATA arrangement) are also included in the Worldwide Air Tariff Manual in a similar manner to IATA fares. The Commission accepts the Qantas contention (as noted at paragraph 5.4 above) that there is no essential difference to the end result, irrespective of whether the arrangements are concluded within IATA or outside IATA.

7.12 Qantas has said that it is relying on the submissions placed before the Commission in previous applications to support the arguments for public benefit in AAA's arrangements. While competition between carriers on the one level and travel agencies on another level has increased since the 1984 determination noted in paragraph 7.10 above, the Commission considers that for the non-IATA decision-making processes (which are the background to the conduct, the subject of this application), there is no reason for the Commission to change its views on the market. Consequently, the Commission finds that similar public benefit to that noted in paragraph 7.10 above, flows from this non-IATA arrangement; ie:

- irrespective of the relationship of agreed common fares and actual market fares at any given time, the common fare listing allows quick estimates by agents of fares for any combination of routes in the world;
- in having a non-IATA tariff decision-making procedure that caters for the needs of information for consumers, travel agents and carriers;
- in establishing a source of information on fares and fare structuring throughout the industry, the non-IATA tariffs provide a point of reference from which potential price competition, where and when it occurs, can operate;
- provided current market circumstances promote discounting (as seems to be the case), the Commission considers that the non-IATA tariffs are unlikely to cause significant detriment to competition.

7.13 In regard to the Qantas comments on anti-competitive detriment at paragraph 5.6 above, the Commission accepts that while there is potential for detriment to arise from the AAA arrangements, the presence of extensive competition at both the airlines and agency levels limits the effect of such detriment.

7.14 In its submission to the TPC under A90427 Qantas pointed to what it saw as the ramifications of denial of authorisation, which Qantas claimed would result in direct government-to-government negotiations on airline tariffs. According to Qantas, this would be a slow, cumbersome, time consuming, costly and inefficient process, especially as governments would need to rely on the airlines for most of their information.

7.15 The TPC, in Authorisation A90427 said that '... there is benefit in arrangements which, by enabling the terms of Australia's air services agreements with other countries to be complied with, facilitate international air travel to and from Australia. Provided any fares resulting therefrom are list fares only and not made compulsory for the airlines or their agents there is sufficient net benefit to secure authorisation.'

7.16 At paragraph 41 of A90427, the Commission said that:

... fare competition remains strong in the current market; this limits the detriment which might otherwise be perceived to result from the Qantas non-IATA agreements with other airlines. The TPC accepts that there is benefit to the public in agreements which enable the terms of Australia's air services agreements to be fulfilled in circumstances where the public whilst knowing list fares, still enjoys benefits from competition in actual fares. The TPC considers that while these market conditions prevail these benefits to the public outweigh any anti-competitive detriment arising from the agreements.

7.17 The Commission considers that the conduct, the subject of this application, conforms with the type of conduct authorised under A90427 for non-IATA agreements, and holds to the views expressed in paragraphs 7.15 and 7.16 above.

8. Draft determination

8.1 On 10 April 1992, the Commission issued a draft determination proposing to grant authorisation to AAA's tariff arrangement, on condition that there is no requirement on the carriers or the travel agents:

- to charge the fares (or pay the commissions) in Australia that have been set by the agreement;
- not to advertise in Australia tariffs they are actually charging, and that the carriers and travel agents concerned are kept aware of this condition.

8.2 The decision to grant authorisation was subject to any request for a pre-decision conference pursuant to s.90A of the Act.

8.3 There have been no requests for a pre-decision conference to be held, and neither have any additional submissions been lodged since the Commission issued its draft determination.

9. Commission determination

9.1 Accordingly, the Commission confirms its draft determination and grants authorisation to the proposed conduct, the subject of Application No A90525 by Qantas/AAA.

9.2 The authorisation is granted on condition that there is no requirement on the carriers or travel agents:

- to charge the fares (or pay the commissions) in Australia that have been set by the agreement;
- not to advertise in Australia tariffs they are actually charging, and that the carriers and travel agents concerned are kept aware of this condition.

9.3 This determination is made on 20 May 1992. If no application for a review of the determination is made to the Trade Practices Tribunal, it will come into force on 10 June, 1992. If an application for review is made to the Tribunal, the determination will come into force:

- where the application is not withdrawn — on the day on which the Tribunal makes a determination on the review; or
- where the application is withdrawn — on the day on which the application is withdrawn.

9.4 The interim authorisation granted on 9 October 1991 (see paragraph 1.4) ceases to operate on the date this determination comes into force.

ATTACHMENT A

A 90525

Trade Practices Act 1974—sub-section 83 (1)

1001378

102

Agreements Affecting Competition: Application For Authorization Form B TO THE TRADE PRACTICES COMMISSION.

Application is hereby made under subsection 83 (1) of the Trade Practices Act 1974 for an authorization under that subsection—

~~to make a contract or arrangement, or arrive at an understanding, a provision of which would have the purpose, or would have or might have the effect, of substantially lessening competition within the meaning of section 45 of that Act.~~

to give effect to a provision of a contract, arrangement or understanding which provision has the purpose, or has or may have the effect, of substantially lessening competition within the meaning of section 45 of that Act.

(Strike out whichever is not applicable.)

(PLEASE READ DIRECTIONS AND NOTICES ON BACK OF FORM)

1. (a) Name of applicant	AUSTRALIA-ASIA AIRLINES LIMITED <i>(See Direction 2 on the back of this Form)</i>
(b) Short description of business carried on by applicant	INTERNATIONAL AIRLINE
(c) Address in Australia for service of documents on the applicant	L.M. LUTTERAL C/- QANTAS AIRWAYS LIMITED GPO BOX 489 SYDNEY NSW 2001
2. (a) Brief description of contract, arrangement or understanding and, where already made, its date	FARES AGREEMENT RELATING TO THE AUSTRALIA/TAIWAN ROUTE EFFECTIVE COMMENCEMENT OF OPERATION WHICH IS PROPOSED 11 OCTOBER 1991
(b) Names and addresses of other parties or proposed parties to contract, arrangement or understanding	CHINA AIRLINES LTD FOR AND ON BEHALF OF MANDARIN AIRLINES AND EVA AIRWAYS CORP. <i>(See Direction 4 on the back of this Form)</i>
(c) Names and addresses (where known) of parties and other persons on whose behalf application is made	CHINA AIRLINES LTD ON BEHALF OF MANDARIN AIRLINES AND EVA AIRWAYS CORP.
3. (a) Grounds for grant of authorization	SEE ATTACHED
(b) Facts and contentions relied upon in support of those grounds	SEE ATTACHED <i>(See Notice 1 on the back of this Form)</i>
4. This application for authorization may be expressed to be made also in relation to other contracts, arrangements or understandings or proposed contracts, arrangements or understandings, that are or will be in similar terms to the above-mentioned contract, arrangement or understanding.	
(a) Is this application to be so expressed?	YES
(b) If so, the following information is to be furnished—	
(i) the names of the parties to each other contract, arrangement or understanding	SAME PARTIES
(ii) the names of the parties to each other proposed contract, arrangement or understanding which names are known at the date of this application	NOT APPLICABLE - REFER AUTHORISATION A 90427 <i>(See Direction 5 and Notice 2 on the back of this Form)</i>
5. (a) Does this application deal with a matter relating to a joint venture (see section 4j of the Trade Practices Act 1974)?	NO
(b) If so, are any other applications being made simultaneously with this application in relation to that joint venture?	N/A
(c) If so, by whom or on whose behalf are those other applications being made?	N/A
7. Name and address of person authorized by the applicant to provide additional information in relation to this application	L. MICHAEL LUTTERAL, CORPORATE SOLICITOR, QANTAS AIRWAYS LTD GPO BOX 489, SYDNEY, NSW, 2001 PHONE: 1021 256, 4162 TRADE PRACTICES

Dated 12 September 1991

Signed by/on behalf of the applicant

CORPORATE SOLICITOR

COMMISSION
CANBERRA
12 SEP 1991

L. MICHAEL LUTTERAL

GROUNDS, FACTS & CONTENTIONS

- 4 (a) & (b) The applicant generally relies on the arguments and submissions put forward in support of the Qantas Airways Limited application registration number A90427 authorised by the Commission in its Determination dated 20th July 1987. The agreement subject of this application and attached hereto (Attachment A) is substantially in the form of those agreements authorised pursuant to A90427. Australia-Asia Airlines Ltd. (AAA), China Airlines Ltd., Mandarin Airlines and EVA Airways Corp. are all non IATA carriers.

The first service is being planned to be operated by AAA on 11 October 1991 and I attach a copy of the proposed AAA schedule (Attachment B). The only operator designated by the Taiwanese authorities is Mandarin and whilst at this point I am unable to provide a proposed Mandarin schedule, I am advised that it has applied for two (2) (arrival gate) slots per week at Sydney International Airport from 17 October 1991 to end March 1992.

Attachment C is AAA's traffic estimate for the Sydney/Taipei route.

REVISED FARE STRUCTURE BETWEEN AUSTRALIA AND TAIWAN

The following changes to the fare structure between Australia and Taiwan are subject to Taiwanese government approval and will only come into effect once a - DIRECT - service of Australia Asia Airlines (XNY) and/or a - DIRECT - service of a Taiwanese carrier commences the route.

The July 1991 fares from Australia publication, Issue 48 also contains the new structure (from Australia) in the STCP PRESS case. Until such time as a direct service commences, please continue to use the old fares/tables as per current Air Tariff and the July 1991 FFA.

1. From Australia to Taiwan

A. Normal Fares

Normal specified fares will be commensurate with fares from Australia to Hong Kong.

FROM:	SYD/BNE/MEL	BRW	PER
TO: TPE/KHH	AUD	AUD	AUD
P OW	2352	2249	2657
J OW	2226	2342	2174
Y OW	2031	1601	1891

- NOTE:
1. Normal fares from ADL/HBA to be constructed over MEL using Australian normal fare addons.
 2. Normal fares from CNS/TSV to be constructed over BNE using Australian normal fare addons.
 3. Normal fares from other Australian points such as CBR/MKY etc, also to be constructed using addons from the Addon tables.

B. Promotional Fares

FROM:	SYD/BNE	AIR TARIFF RULE
TO: TPE	AUD	
YHAB	1168	E784
YLAB	987	E784
YE90	1714	E751
YE45	1446	E781
YHIA	1387	F992
YLIT	1169	F992

NOTE: Promotional fares from other Australian cities to be constructed using Qantas Discover Australia fares/domestic fares.

2. From Taiwan to Australia

A. Normal Fares

FROM:	SYD/BNE/MEL	BRW	PER
TPE/KHH	TWD	TWD	TWD
P OW	49600	39749	51666
J OW	39130	31359	40760
Y OW	34026	27268	35443

- NOTE:
1. Normal fares to ADL/HBA to be constructed over MEL using Australian addons.
 2. Normal fares to CNS/TSV to be constructed over BNE using Australian normal fare addons.
 3. Normal fares to other Australian points such as CBR/MKY etc, are also to be constructed using addons from the Addon tables.

Promotional Fares

QF SYD/BNE to TPE	QF/BNE to TPE	QF DIRECT RULES
880W	880W	8818
8850	8850	8818
88V7	88V7	8878

NOTE: Promotional fares to other Australian States to be constructed using Qantas Discover Australia fares/domestic fares.

PROMOTIONAL FARE RULES

The Australia - Taiwan promotional fare rules package will be added to the rules package governing Australia - Asean/HK fares, as per Air Tariff Rules E784/E781/E992/E815/E816/E976.

The appropriate fare conditions will be amended to include Australia-Taiwan, etc.

I. Application

Australia - Brunei/HKG/Indonesia/Malaysia/Philippines/Singapore/Taiwan/Thailand

II. Routines

Travel via one plane thru services of etc.

Add:	Between	And	Carrier
	Australia	Taiwan	IM/Direct operating carrier

All other conditions of the Australia-Asean/HK fares rules apply.

BAGGAGE ALLOWANCES BETWEEN AUSTRALIA AND TAIWAN

The following baggage allowances will apply, subject to Taiwanese Government approval, when a direct service between Australia and Taiwan commences.

Please amend Air Tariff - general rules. Baggage rules, weight system, as follows.

B. Free baggage allowance - please add.

6) Applicable via QF/IM

NOTE: Normal free baggage allowance applicable via QF will apply via Australia Asia Airlines (IM).

F. Excess baggage weight charges - please add.

2) FROM/TO AUSTRALIA RATE PER KILO

SYD/BNE to TPE	AUD10
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Notes:

Add to Notes applicable on IM/Direct operating carriers

FROM TPE: Normal excess baggage rates of 1 percent of the First Class fare will apply.

Additionally, the following migrant fares from Taiwan to Australia will be available, subject to Taiwanese Government approval.

MIGRANT FARES FROM TAIWAN TO AUSTRALIA

- STANDARD CONDITION A -

1. Application

Y OW via IM Direct route operating carrier.

2. Periods of Application

All year. However the ticket is valid for 3 months from the date of issue.

4. Fares

60 percent of the normal Y OW.

10. Permitted Stopovers

None

Note: For the purpose of this rule. A stopover is defined as any stay at an intermediate point in excess of 5 hours.

11. Routings

Permitted transfers: One online not exceeding 6 hours.
Exception: One interline permitted between IM/QF at SYD.

16. Ticketing

- A. fare basis: Y
- B. Ticket designator: EM

18. Voluntary Rerouting

Not permitted after departure.

21. Eligibility

Passengers holding appropriate documentation as per Paragraph 22.

22. Documentation

- A. Documentation for migrant entry to Australia issued by Chief Migration Officer of the Australia Department of Immigration and Ethnic Affairs.
- B. Official dossiers on the migrants. Addressed to the Department of Immigration and Ethnic Affairs Canberra will be carried free of charge.

23. Passengers Expense

Must be totally at the passenger's expense.

Other Conditions

Free baggage allowance - 40 kgs. Normal excess charges will apply.

AUSTRALIA ASIA AIRLINES LIMITED
 Northern Summer Schedules 1991
 (Subject to government approval)
 ALL TIMES AND DAYS/DATES ARE LOCAL

NORTHBOUND

	Fri	Sun
	11Oct91 25Oct91	13Oct91 20Oct91
	IM835	IM835
Sydney d	0900	0900
Taipei a	1640	1640

SOUTHBOUND

	Fri	Sun
	11Oct91 25Oct91	13Oct91 20Oct91
	IM836	IM836
Taipei d	1800	2145
Brisbane a		Mon 0820
Brisbane d		0925
	Sat	
Sydney a	0520	1100

DWGJ
 05Sep91

AUSTRALIA ASIA AIRLINES LIMITED
 Northern Winter Schedules 1991/92
 (Subject to government approval)
 ALL TIMES AND DAYS/DATES ARE LOCAL

NORTHBOUND

	Fri	Fri	Sun	Sun
	01Nov91 28Feb92	06Mar92 27Mar92	27Oct91 23Feb92	01Mar92 22Mar92
	IM835	IM835	IM835	IM835
Sydney d	1130	1030	1130	1030
Taipei a	1800	1800	1800	1800

SOUTHBOUND

	Fri	Fri	Sun	Sun
	01Nov91 28Feb92	06Mar92 27Mar92	27Oct91 23Feb92	01Mar92 22Mar92
	IM836	IM836	IM836	IM836
Taipei d	1915	1915	2045	2045
Brisbane a			Mon 0845	Mon 0745
Brisbane d			0955	0855
	Sat	Sat		
Sydney a	0740	0640	1125	1025

DWGJ
 05Sep91

TRAFFIC ESTIMATES

Following are the traffic estimates for the Sydney/Taipei route. These figures assume that Qantas has 33% of the market and the total market figures have been worked from that base.

Passengers Per Annum

	<u>1991/92</u>	<u>%</u> <u>Increase To</u>	<u>1992/93</u>	<u>%</u> <u>Increase To</u>	<u>1993/94</u>
QF 33%	25,424	25	31,780	18	37,500
Total Market	76,272	25	95,340	18	112,500

The above figures would serve for indicative purposes. If the service was not provided, those wishing to go to Taiwan would have to travel on services moving over one of the intermediate ports of BKK, SIN, HKG or TYO.



**AUSTRALIA
ASIA AIRLINES** A.C.N. 002 613 463

P.O. BOX N767 GROSVENOR PLACE, SYDNEY NSW 2000 AUSTRALIA TEL: 61 2 2364767 FAX: 61 2 2364977

AAGM.039

24 January 1992

Senior Asst. Commissioner,
Mr. J.P. O'Neill,
Managers & Adj. Branch,
Trade Practices Commission,
P.O. Box 19,
BELCONNEN. ACT. 2616

Dear Mr. O'Neill,

I refer to your letter dated 13 January 1992 and make the following comments in response:

- There have been 30 flights operate up to and including 10 January 1992. The services began on 11 October 1991 at 2 per week on Friday and Sunday. The Friday service operates SYD/TPE/SYD; the Sunday service SYD/TPE/BNE/SYD. On 10 December 1991 we introduced a third service every Tuesday, which operates SYD/TPE/SYD.
- The plane which operates the services is VH-OGA, a 767-300ER. It is configured with 6 First Class seats; 16 Business Class seats; and 200 Economy Class seats, for sale.
- For the first 28 flights which operated, we averaged a 56% seat factor. About 20-23% of the load originated Australia, the large remainder 77-80%, coming from Taiwan sales.
- To date, all fare sales (with a possible one or two exceptions) have been discounted, as the market is highly competitive.
- Unless otherwise specified, the fares listed in this letter are assumed to be at SYD/TPE levels.
- Taking promotional fares:

IM currently has what we call a wholesale package on sale. This offers a combined airfare with accommodation package, giving 5 nights stay in Taipei.

This went on sale as follows:

2-21 November \$999.00 retail to passenger. The air portion was \$500.00 which was commissionable at 9%, netting to IM \$455.00 for the round trip. Interestingly, this compares rather favourably (from the consumer's point of view!) with the full round trip economy fare of \$4,062.00.

- 2 -

27 November - 19 January \$1,199.00 retail with \$660.00 air portion.
 20 January - 21 November \$1,190.

On the first two periods, i.e. up to 19 January, we allocated a minimum of 10 seats for these packages. There was only a subdued response to what was a well publicised, attractively priced, package.

- On general pricing, the economy fare applicable to inclusive tour packages is 9+18% discount until 15 March 1992. These are sold with ground packages.
- On First Class and Business Class fares, IM and AE have filed the following revised levels providing travel is direct to Taipei i.e. on the services of either AE or IM.

		<u>Less 9%</u>
Normal First Class	\$5,704.00	
Discounted Direct First Class	\$4,860.00	\$4,423.00
Normal Business Class	\$4,672.00	
Discounted Direct Business Class	\$3,990.00	\$3,631.00

These discounted levels are commissionable at normal 9%. Additionally, we pay another 7% (economy fares are 9+2 - see below) which results in \$4,113 for First Class and \$3,377 for Business Class.

- The Economy Class fares, being the excursion fares on round trip terms were as follows:-

(a) Started with the YE45 which sold from 11/10/91 to 21/11/91. These 45 day stay fares were -

\$1,290 - being 9% ordinary commission plus 2% override to the agent which applied to direct flights on IM only.

If travel was via HKG then the fare offered was \$1,385. The full published fare was \$1,446.00.

Then on 22/11/91 effective to 31/1/92, the fare offered was \$1,529, being 9% ordinary commission plus a further 2% or \$1,600 via HKG. The published fare was \$1,714.00 gross.

- For selected Chinatown agents in the major capital Australian cities, even more competitive discounted fares have evolved - agents have been given YE45 fare levels, net of all commissions, at \$1,050 round trip (applicable to 21/11/91) and the YE90 level was at \$1,360 net.

- To meet a competitive move from Cathay Pacific, Australia-Asia introduced a fare at \$1,286 R/T which allowed the consumer to travel direct to Taipei on IM, but travel back to Australia via HKG, with HKG/SYD on Qantas. The rate previously had been \$1,600, but to match the competitors we dropped to \$1,286. This was decided 19 December 1991 for a 20 January to 29 February introduction.
- The published fares are higher than those being offered on a discount basis to agents and consolidators. The consumer benefits because the competition between the commercial retail outlets (both IATA and non-IATA) is so high, that mark ups are kept to a minimum. The consumer directly benefits by all the competitive activity.

It is worth noting that competition comes not only from the direct operators on the route i.e. Mandarin and Australia-Asia, but also from the carriers operating indirect services, for example, Cathay Pacific SYD/HKG/TPE; or SQ SYD/SIN/TPE and so on.

- The pricing activity is intense and constantly changing. Essentially, the pattern to date has been:

(a) The gross level fares on introduction were - round trip

First Class	\$5,704
Business Class	\$4,672
Economy Class	\$4,062

(b) Promotional Fares

YE90	\$1,714	22/11/91 - 31/1/92
YE45	\$1,448	11/10/91 - 21/11/91

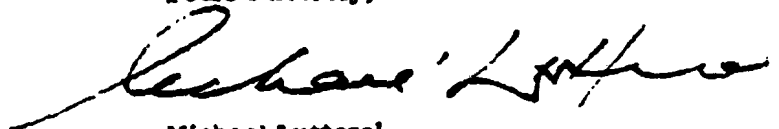
IM started with an introductory offer of

\$1,050	11/10/91 - 21/11/91
\$1,360	22/11/91 - 31/1/92
\$ 999	11/10/91 - 21/11/91 (package 5 nights)
\$1,199	22/11/91 - 31/1/92 (package 5 nights)

Then, all the above, as detailed, evolved.

- As far as we can ascertain, EVA does not propose to commence operations before July 1992.
- Please find attached Mandarin's schedule.

Yours sincerely,



Michael Lutteral,

Att.