

19 January 2007

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Isabelle Arnaud
Director, Adjudication
Australian Competition and Consumer Commission
470 Northbourne Avenue
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Dear Ms Arnaud

IATA – Passenger Agency Programme – Applications for Extension of Authorisation of Frozen Resolutions (Applications A91020-91022)

I refer to your letter of 22 December, enclosing further submissions by the Australian Federation of Travel Agents ('AFTA') and Travel and Aviation Risk Solutions ('TARS').

1. General Comment

- 1.1 Before providing specific responses to the new submissions of AFTA and TARS, IATA again points out that the submissions have 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 and TARS seeking to use this process to strengthen their relative positions in dealing with IATA and its members in the context of the Passenger Agency Programme.
- 1.2 In particular, TARS and AFTA have again referred to the Agency Programmes operating in the United States and the European Union as examples of how the Australian system could operate absent authorisation. In doing so, AFTA and TARS do not acknowledge the different legal and practical conditions that apply in these different jurisdictions.

2. Specific matters raised in AFTA and TARS submissions

- 2.1 The further submission by AFTA dwells on two matters. The first is the application of Resolution 800f in Australia. IATA assumes for the purposes of this response that AFTA did not have the opportunity of reviewing our letter to the ACCC of 21 December 2006 in preparing their submission. The second matter raised in AFTA's submission relates to IATA's need for an 18-month extension of time for authorisation with respect to the Frozen Resolutions. The submission of TARS also takes up this second matter and, like AFTA, contends that an 18-month extension is not appropriate.

2.2 Each of these issues is addressed in turn below.

(a) Resolution 800f

- 2.3 In our letter to the ACCC dated 21 December 2006 IATA advised that Resolution 800f did not apply in Australia as, by its own terms, Resolution 800f is "*subject to any local conditions that may apply*". Local conditions for Australia are contained in Resolution 816. The application of the conditions in Resolution 816 essentially renders Resolution 800f non-operational in Australia as Resolution 800f simply provides a baseline for use when setting or changing local criteria for financial evaluation of agents.
- 2.4 The inclusion of Resolution 800f in the current application for reauthorisation of the Frozen Resolutions occurred for the purposes of completeness only. As the ACCC is aware, Resolution 800f was first adopted by the Passenger Agency Conference in June 2003 and was authorised by the ACCC as a minor variation to Authorisation A90791 on 20 October 2004.
- 2.5 IATA took the view in 2004 that Resolution 800f was a "*resolution[] of the IATA Passenger Agency Conference passed in accordance with the Provisions for the Conduct of the IATA Traffic Conferences*" within paragraph 10.1(1), in terms of that Authorisation, and was not "*an amendment or substitution*" for a frozen resolution listed in Appendix B of Authorisation A90791. It nevertheless decided to voluntarily submit Resolution 800f (along with Resolutions 820e, 842, 866 and 878) for consideration by the ACCC, even though it was not strictly required to do so.¹
- 2.6 In authorising Resolution 800f, the ACCC noted that the adoption of Resolution 800f was a minor variation as "*Resolution 800f is only a recommended framework and can accommodate local conditions as they apply in Australia*".²
- 2.7 The role of Resolution 800f has not changed since its inclusion into the Passenger Agency Conference Resolutions Manual, despite the minor amendments made to it at the June 2006 Passenger Agency Conference. The local conditions that apply in Australia relevant to Resolution 800f are already provided for by Resolution 816. As such, IATA submits that the ACCC should either grant authorisation to Resolution 800f as requested by IATA or advise IATA that it has no objections to the resolution in which case it can be withdrawn from the current application.

(b) IATA's application for an 18-month extension

- 2.8 In paragraphs 4.1-4.7 of the Submission in Support of Application A91020, dated 24 November 2006, IATA set out the process it intends to undertake in order to reduce to scope of Passenger Agency activities for which competition law immunity is required. This process will involve self-assessment and review of Passenger Agency Conference resolutions in order to:

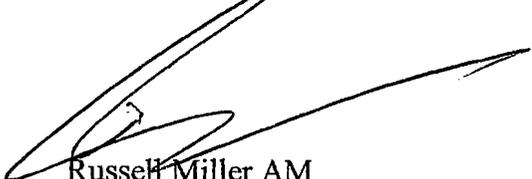
¹ See Para 3.1 – 3.2 of IATA Supporting Submission to the Application for minor variation of authorisation A90791, dated 20 August 2004.

² Para 4.9, ACCC determination of 20 October 2004.

- highlight areas of potential competition concern;
 - ~~consider whether resolutions raising competition concerns could be reformed to~~ address such concerns, whilst continuing to deliver the benefits of the system; and,
 - in the event resolutions raising competition concerns cannot be reformed whilst continuing to deliver the benefits of the system, consider applying for competition law immunity with respect to these elements.
- 2.9 Pursuant to this process, and as set out in the Submission in Support, IATA intends to submit appropriate reforms to relevant resolutions to the Passenger Agency Conference in mid-2007. This will allow what IATA regards as a prudent time period to develop any changes that may be necessary, consult with airlines and then with stakeholders and prepare the necessary papers for consideration by the Conference. In addition, the proposed timeframe would allow time to schedule a special PAConf meeting or undertake a mail vote, in the event that the PAConf were unable to consider relevant amendments at the June 2007 meeting.
- 2.10 As is the normal practice, once adopted, the amendments would need to go through a regulatory approval process in Australia and other jurisdictions, with entry into force early in 2008.
- 2.11 The 18-month timeframe proposed by IATA also allows for the possibility that IATA, or the Passenger Agency Conference itself, may raise technical or operational issues and not approve proposed changes to the resolutions, or that consultative bodies may have issues with them. As the ACCC is aware, one of the concerns of cargo agents at the recent pre-determination conference convened in respect of the new Authorisation A90855 was that changes to the cargo agency programme may be rushed through without proper consultation. It serves nobody's interests, and could well lead to confusion in the market, if time cannot be taken to deal properly with technical or operational concerns with proposed reforms.
- 2.12 In addition, it may well be appropriate for IATA to file a further application for Authorisation with the ACCC.
- 2.13 More generally, it is important to place the process of self-assessment, review and reform of the Passenger Agency Programme in its broader context. As the ACCC is well aware, IATA is currently undertaking a similar process with respect to each of its other activities, consistent with the 'sunset' periods set out in IATA's omnibus Authorisation A90855. In each area of IATA's activities, the process of self-assessment and review is painstaking, time and resource intensive and, as with all reform, potentially controversial. In order to manage this complex agenda – with its wide-ranging potential impacts on all industry participants as well as consumers – a reasonable period of time is appropriate. Eighteen months would seem to be at the shorter end of what is reasonable in the circumstances.

2.14 Attached for the ACCC's further information is an overview of IATA's timetable for the process of self-assessment and reform.

Yours faithfully
MINTER ELLISON



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Partner

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Your reference: C2006/2161

Attachment 1

**Anticipated timeline for review, reform and implementation of amendments to the IATA
Passenger Agency Programme**

January – June 2007
IATA to complete self-assessment identifying areas of competition concern and highlight possible reforms
Consultative meetings with airlines and agents in Australia, including through engagement with Agency Programme Joint Council, as appropriate
IATA to consider/draft any necessary amendments to Passenger Agency Conference ('PACConf') Resolutions, and to prepare PACConf agenda
IATA to provide agenda for PACConf to PAPGJC
IATA Passenger Agency Conference
July - December 2007
Any relevant matters not determined by PACConf to be referred to special PACConf meeting or referred to mail vote
Passenger Agency Programme Global Joint Council reviews relevant decisions of PACConf, if needed
If PAPGJC makes further recommendations on relevant decisions, such decisions to be presented to conference via mail vote
Secretary to declare result of mail vote
Amended resolutions submitted for government approval in relevant jurisdictions
January – June 2008
Implementation of amendments to Passenger Agency Programme, subject to necessary government approvals in relevant jurisdictions
Further action in order to bring any relevant reforms into effect
Fresh application for authorisation in Australia for any aspects of the Passenger Agency Programme not subject to reform, if needed
Expiry of proposed authorisation for Frozen Resolutions