



Australian
Competition &
Consumer
Commission

Determination

Revocation of Authorisation A90525

Application lodged by

**Qantas Airlines Limited on behalf of
Australia Asia Airlines Ltd**

*in relation to an agreement reached outside LATA on tariffs and related
conditions between Australia Asia Airlines and China Airlines Limited*

Date: 25 July 2007

Authorisation no. A91056

Public Register no. C2007/1427

Commissioners:

Samuel

Sylvan

King

Martin

Willet

1 Introduction

- 1.1 The Australian Competition and Consumer Commission (the ACCC) is the independent Australian Government agency responsible for administering the *Trade Practices Act 1974* (the Act). A key objective of the Act is to prevent anti-competitive conduct, thereby encouraging competition and efficiency in business, resulting in a greater choice for consumers in price, quality and service.
- 1.2 The Act, however, allows the ACCC to grant immunity from legal action for anti-competitive conduct in certain circumstances. One way in which parties may obtain immunity is to apply to the ACCC for what is known as an ‘authorisation’. Broadly, the ACCC may ‘authorise’ businesses to engage in anti-competitive conduct where it is satisfied that the public benefit from the conduct outweighs any public detriment.
- 1.3 On 20 May 1992, the Trade Practices Commission (TPC)¹ granted Qantas Airlines Limited (Qantas) Authorisation A90525. The authorisation was lodged by Qantas on behalf of its wholly owned subsidiary Australia Asia Airlines Ltd (AAA). It relates to an agreement reached outside International Air Transport Association (IATA) on tariffs and related conditions between AAA and China Airlines Limited (China Airlines), on behalf of Mandarin Airlines and Eva Airways Corporation for services between Australia and Taiwan.
- The TPC granted authorisation on the condition that there was 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.
- 1.4 The TPC had previously authorised a tariff setting arrangement between Qantas and other airlines outside the IATA tariff setting mechanism under Authorisation A90427.
- 1.5 On 26 April 1991, Qantas wrote seeking to include the arrangement detailed at 1.3 above within the scope of A90427. However, legal advice obtained by the TPC indicated that A90427 did not extend to Qantas subsidiaries and in response, Qantas lodged Authorisation A90525, which was later granted by the TPC.
- 1.6 Qantas submits that application for authorisation in the first instance was necessary as, under the Air Services Arrangement between Australia and Taiwan, the Taiwan Government explicitly required authorised airlines that operate or sell fares to and from Taiwan to agree on certain tariffs.

¹ The TPC is now the ACCC.

- 1.7 On 22 June 2007, Qantas applied to revoke authorisation A90525 on the basis that Qantas no longer operates flights to Taiwan, either under AAA or any other subsidiary. In addition to this submission, AAA no longer exists as an operating company and as such it is not possible for any agreement made under this authorisation to take effect.

2 Statutory provisions for revocation of an authorisation

- 2.1 Section 91B of the Act provides that a person to whom authorisation was granted may apply to the ACCC for revocation of the authorisation. On receipt of such an application, the ACCC is required to write to interested parties:
- advising them of the application for revocation,
 - indicating the basis on which the revocation has been applied for, and
 - inviting submissions from interested parties.
- 2.2 After considering any submissions received, the ACCC is required to issue a written determination either revoking or allowing the immunity conferred by the authorisation to continue.

3 ACCC review

- 3.1 On 29 May 2006 the ACCC wrote to Qantas seeking information as to whether immunity from the Act was still required for the arrangement covered by authorisation A90525.
- 3.2 On 22 June 2007 Qantas requested that the ACCC revoke authorisation A90525. Qantas advised that it no longer required the authorisation.
- 3.3 On 28 June 2007 the ACCC wrote to two potentially interested parties – China Airlines and the Department of Transport and Regional Services, advising of Qantas' request for revocation of authorisation A90525. The letter invited submissions in relation to this request by 13 July 2007.
- 3.4 This said, the ACCC notes Qantas' advice that AAA no longer exists and the authorisation is no longer required.
- 3.5 The ACCC has not received any objections to the revocation from any of the interested parties consulted. As a consequence, there is no need for the ACCC to assess the likely public benefits and detriments resulting from the revocation.

4 Determination

- 4.1 Based on the information provided by Qantas, and the absence of any objections from interested parties, **the ACCC hereby revokes authorisation A90525.**
- 4.2 This determination is made on 25 July 2007. If no application for review is made to the Australian Competition Tribunal, the ACCC's determination will come into force on 16 August 2007.