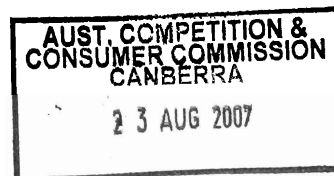


23 August 2007

MINTER ELLISON BUILDING 25 NATIONAL CIRCUIT FORREST
GPO BOX 369 CANBERRA ACT 2601 AUSTRALIA
DX 5601 CANBERRA www.minterellison.com
TELEPHONE +61 2 6225 3000 FACSIMILE +61 2 6225 1000

BY COURIER

Mr Scott Gregson
General Manager, Adjudication Branch
Australian Competition and Consumer Commission
23 Marcus Clarke Street
CANBERRA ACT 2601



Dear Mr Gregson

International Air Transport Association – Cargo Agency System Application for minor variation of Authorisation A90855

On behalf of our client, the International Air Transport Association (IATA), we enclose an application for minor variation of Authorisation A90855 under Section 91A of the *Trade Practices Act 1974*.

The minor variation sought is to extend the duration of authorisation for the IATA Cargo Agency System for three months beyond the current expiry date recorded in paragraph 5.7 of Authorisation A90855, namely until 30 November 2007.

IATA has made significant progress in addressing competition issues relating to the Cargo Agency System. It has reformed or rescinded elements relating to the conditions for payment of commission, restricting airlines paying each other overrides and restricting airlines and agents dealing bilaterally, even where agents default and are suspended from the Cargo Accounts Settlement System (CASS). Each of these reforms addresses relevant competition concerns. These reforms represents the culmination of an intensive process of consultation, review and reform of the IATA Cargo Agency System since Authorisation A90855 entered into effect in December 2006.

The application for extension of the authorisation is in order to allow one final amendment to the Cargo Agency System to be submitted to a mail vote. The mail vote process will take approximately three weeks. Following that, provided the vote is passed successfully, a further period of 60 days is required in order to gain government approvals in certain overseas jurisdictions. Thereafter the amendment will be brought into force.

We are instructed to request interim authorisation for the Cargo Agency System, pending a final determination by the ACCC in this matter. An application for minor variation is therefore enclosed.

If you have any queries about this application or the request for an interim authorisation, please contact Iain Sandford on 6225 3014 or Russell Miller on 6225 3297.

Yours faithfully

MINTER ELLISON



Russell Miller AM
Partner

Contact: Iain Sandford Direct phone: +61 2 6225 3014 Direct fax: +61 2 6225 1014
Email: iain.sandford@minterellison.com
Partner responsible: Russell Miller Direct phone: +61 2 6225 3297
Our reference: IDS:RVM 26-3841115

enclosure

Form FA

Commonwealth of Australia

Trade Practices Act 1974 - Subsection 91A(1)

**APPLICATION FOR MINOR VARIATION OF A NON-MERGER
AUTHORISATION**

To the Australian Competition and Consumer Commission:

Application is hereby made under subsection 91A(1) of the *Trade Practices Act 1974* for a minor variation of an authorisation.

1. Applicant

(a) *Name of applicant:*

A90855

International Air Transport Association ('IATA')
800 Place Victoria
Montreal, Quebec
CANADA

(b) *Description of business carried on by applicant:*

Co-ordination of procedures for the safe and efficient movement of people and goods by air, internationally.

The present membership of IATA is annexed in **Schedule 1** to this application.

(c) *Address in Australia for service of documents on the applicant:*

Minter Ellison
Level 3, 25 National Circuit
FORREST ACT 2603

2. Minor variation of authorisation

(a) *Description of the contract, arrangement or understanding, or the relevant conduct, for which authorisation was granted, including, but not limited to, the registration number assigned to that authorisation (the original authorisation):*

The contracts, arrangements or understandings ('arrangements') which constitute the IATA Cargo Agency System, as far as it operates in Australia or applies to parties incorporated in or carrying on business in Australia¹, made and amended on various dates presently evidenced by the documents listed in **Schedule 2**.

¹ Required as a consequence of section 6 of the *Trade Practices Act 1974*.

These arrangements are authorised until 31 August 2007 under Authorisation A90855, dated 9 November 2006. Authorisation A90855 authorises certain other IATA activities until 30 June 2008.

- (b) *Provide a description of the goods or services that relate to the authorisation for which variation is sought:*

Services to facilitate the efficient marketing and sale of air cargo services through the accreditation, transaction reporting and remittance system managed by IATA.

- (c) *Provide details of the variation for which authorisation is sought, including but not limited to identification of differences between the contract, arrangement or understanding, or the relevant conduct, that was originally authorised and the contract, arrangement or understanding, or the relevant conduct, for which a minor variation of authorisation is sought:*

Application is made to vary the duration of authorisation for the IATA Cargo Agency System by extending authorisation until 30 November 2007.

- (d) *Facts and evidence relied upon in support of the claim that the variation is a minor variation:*

See attached submission in support (**Schedule 3**).

3. Parties to the contract, arrangement or understanding (whether proposed or actual), or conduct, for which variation of authorisation is sought

- (a) *Names, addresses and description of business carried on by those other parties to the contract, arrangement or understanding, or the relevant conduct:*

The parties to the relevant contracts and arrangements are:

- IATA
- airline that are members of IATA, present and future
- non-member airlines participating in CASS Australia
- registered IATA cargo agents present and future
- cargo agents that are CASS Associates in Australia
- general sales agents participating in CASS Australia
- ground handling agents participating in CASS Australia.

(The current membership of IATA is included in **Schedule 1**. Addresses will be provided on request, as will the names and addresses of the other participants listed above.)

- (b) *Names, addresses and descriptions of business carried on by parties and other persons on whose behalf this application is made:*

- IATA makes this application on its own behalf and on behalf of its member airlines. IATA is an international association of airlines formed pursuant to a special Act of the Canadian Parliament.

- Its members are airlines conducting scheduled cargo, or cargo and passenger services, internationally. (The current membership of IATA is included in **Schedule 1**. Addresses will be provided on request.)

(c) *Where those parties on whose behalf the application is made are not known description of the class of business carried on by those possible parties to the contract or proposed contract, arrangement or understanding:*

N/A

4. Public benefit claims

(a) *Provide submissions regarding the effect of the minor variation upon the public benefits resulting or likely to result from the original authorisation:*

The IATA Cargo Agency System delivers significant public benefits in terms of business efficiency, contribution to growth in export markets, assistance to efficient small businesses, expansion of employment, a better informed market, and promotion of equitable dealings in the market, all detailed in the IATA submission dated 12 November 2002. Those benefits continue.

In granting Authorisation A90855 the ACCC referred to transitional benefits arising from IATA's decision to move from an environment where every aspect of its operation is subject to authorisation, to a position where the scope of conduct requiring authorisation is much narrower. The short extension sought with this minor variation application will allow IATA to complete that process as far as the Cargo Agency System is concerned with minimal disruption to the interests of all industry stakeholders.

(b) *Facts and evidence relied upon in support of these claims:*

See attached submission in support (**Schedule 3**).

5. Market definition

Provide a description of the market(s) in which the goods or services described at 2(b) are supplied or acquired and other affected markets including: significant suppliers and acquirers; substitutes available for the relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions):

- the market for air freight services;
- the market for freight forwarding services.

In discussion paper 90855/2 of 26 October 2004, the ACCC also indicated that international commodity markets may be relevant to the assessment of the IATA Cargo Agency System, although IATA did not subscribe to that view in the context of Application A90855² and does not now.

² IATA Cargo Agency System - Submission on relevant markets for competition analysis in response to ACCC discussion paper A90855/2, dated 6 April 2005.

6. Public detriments

- (a) *Provide submissions regarding the effect of the minor variation upon the detriments to the public resulting or likely to result from the original authorisation, in particular the likely effect of the conduct on the prices of the goods or services described at 2(b) above and the prices of goods or services in other affected markets:*

The minor variation will have no effect on any such detriments. The minor variation is unlikely to have any effect on prices of relevant goods or services. Although in Authorisation A90855 the ACCC identified a number of competition issues, it reached no definitive view as to the balance of public benefit and detriment. Due to the limited duration for the application there will be no material effect on the incidence of any other detriments as a result of the application.

Facts and evidence relied upon in support of these claims:

See attached submission in support (**Schedule 3**).

7. Further information

- (a) *Name and address of person authorised by the applicant to provide additional information in relation to this application:*

Russell Miller AM
Minter Ellison
Level 3, 25 National Circuit
Forrest ACT 2603

Telephone: (02) 6225 3297
Facsimile: (02) 6225 1297

Dated: 23 August 2007

Signed by/on behalf of the applicant



(Signature)

Russell V. Miller AM

(Full name)

Minter Ellison

(Organisation)

Partner

(Position in organisation)

IATA Application for Minor Variation – A 90855

Schedule 1 – Present Membership of IATA

Aegean Airlines S.A. - Aviation Limited Company	Adria Airways
Aeroflot	Aer Lingus
AEROMÉXICO	Aerolineas Argentinas
Aeropostal Alas de Venezuela	Aeromexpress
Afriqiyah Airways	Aerosvit Airlines
Air Astana	Air Algérie
Air Baltic	Air Austral
Air Botswana	Air Berlin
Air China Limited	Air Canada
Air Europa	Air Contractors (UK) Limited
Air India	Air France
Air Koryo	Air Jamaica Limited
Air Madagascar	Air Macau
Air Malta p.l.c.	Air Malawi
Air Moldova	Air Mauritius
Air New Zealand	Air Namibia
Air Nostrum	Air Niugini
Air Pacific	Air One S.p.A.
Air Sénégal International	Air Sahara
Air Tahiti	Air Seychelles
Air Tanzania	Air Tahiti Nui
Air Zimbabwe	Air Vanuatu
Alaska Airlines	Aircalin
ALITALIA S.p.A.	Albanian Airlines
Aloha Airlines	All Nippon Airways
America West Airlines	Alpieagles
Angola Airlines	American Airlines
Arkia Israeli Airlines Ltd	Ariana Afghan Airlines Co. Ltd.
Asiana	Armavia
Atlasjet Airways	Atlas Air
Austrian	Austral
Azerbaijan Airlines	AVIANCA
Bangkok Airways Co., Ltd.	B & H Airlines
Bellview Airlines	Belavia - Belarusian Airlines
Binter Canarias	Biman
Blue Wings	Blue Panorama
bmi	Blue1
C.A.L. Cargo Airlines	British Airways
Cargojet Airways Ltd.	Cameroon Airlines
Carpatair	Cargolux S.A.
Cathay Pacific	Caspian Airlines
China Airlines	CCM Airlines
China Eastern	China Cargo Airlines Ltd.
Cimber Air	China Southern Airlines
CityJet	Cirrus Airlines
Continental Airlines	Comair
COPA AIRLINES	Continental Micronesia
Croatia Airlines	Corsair
Cyprus Airways	Cubana

IATA Application for Minor Variation – A 90855

dba Luftfahrtgesellschaft mbH	Czech Airlines
Denim Air	Delta Air Lines
DHL International E.C.	DHL Air Ltd.
Egyptair	Dragonair
Emirates	EL AL
Ethiopian Airlines	Estonian Air
European Air Express EAE	Etihad Airways
Eurowings	European Air Transport
Far Eastern Air Transport	EVA Air
Finnair	Federal Express
FlyLAL - Lithuanian Airlines	flybe.British European
GB Airways	Garuda
Hahn Air	Gulf Air
Hapag Lloyd	Hainan Airlines
Hemus Air	Hellas Jet
Icelandair	IBERIA
Interair	Indian Airlines
Iran Aseman Airlines	Iran Air
Israir	Iraqi Airways
Japan Airlines	JALways Co. Ltd
Jet Airways	Jat Airways
Kenya Airways	Jordan Aviation
Kitty Hawk	Kish Air
Korean Air	KLM
LAB	Kuwait Airways
LAM	LACSA
Lan Argentina	Lan Airline
Lan Perú	Lan Chile Cargo
Lauda Air	LanEcuador
Líneas Aéreas Azteca S.A. de C.V.	Libyan Arab Airlines
LTU	LOT Polish Airlines
Lufthansa Cargo	Lufthansa
Luxair	Lufthansa CityLine
Malaysia Airlines	Mahan Air
Malmö Aviation	MALEV
MEA	MAT -Macedonian Airlines
Mexicana	Meridiana
Montenegro Airlines	MIAT
Nippon Cargo Airlines (NCA)	Nationwide Airlines
Olympic Airlines S.A.	Northwest Airlines
Onur Air	Oman Air
Palestinian Airlines	PAL
PGA-Portugália Airlines	Pegasus Airlines
PLUNA	PIA
Qantas	Precision Air
Rossiya - Russian Airlines	Qatar Airways
Royal Brunei	Royal Air Maroc
Rwandair Express	Royal Jordanian
SAA	SA Airlink
SAS	Safair
SATA Air Açores	SAS Braathens
Shandong Airlines Co., Ltd.	Saudi Arabian Airlines

IATA Application for Minor Variation – A 90855

Shenzhen Airlines Co. Ltd.	Shanghai Airlines
SIA Cargo	SIA
Sichuan Airlines Co. Ltd.	Siberia Airlines
Skyways	Silkair
Solomon Airlines	SN Brussels Airlines
SriLankan	Spanair
Surinam Airways	Sudan Airways
Syrianair	SWISS
TAM - Transportes Aéreos del Mercosur Sociedad Anónima	TACA
TAP - Air Portugal	TAM Linhas Aéreas
Tassili Airlines	TAROM S.A.
THY	Thai Airways
Transaero	TNT Airways S.A.
Tunis Air	TransAsia Airways
United Airlines	Ukraine International Airlines
US Airways, Inc.	UPS Airlines
Vietnam Airlines	Varig Log
Virgin Nigeria	Virgin Atlantic
Volga-Dnepr Airlines	Vladivostok Air
Xiamen Airlines	Wideroe
Zambian Airways	Yemenia

Schedule 2 – Contracts, arrangements and understandings evidencing the IATA Cargo Agency System³

DOCUMENT
Cargo Agency Conference Resolutions Manual
Cargo Agent's Handbook Resolution 809 edition
CASS South West Pacific settlement procedures
CASS Technical Specifications Handbook (Attachment A to Resolutions 851/853)
IATA Settlement Systems Service Provisions Manual
Provisions for the Conduct of IATA Traffic Conferences

³ Copies of these documents will be made available to the ACCC upon request.

Schedule 3 – Submission in support of application for minor variation

1. Overview

- 1.1 Application is made under Section 91A of the *Trade Practices Act 1974 (Cth) (TPA)* to vary the duration of one element of Authorisation A90855, namely to extend the duration of authorisation for the IATA Cargo Agency System for three months, until 30 November 2007.
- 1.2 This short extension is sought in order to allow IATA time to seek, by mail vote of IATA member airlines, approval to amend the final group of resolutions required to be amended following IATA's comprehensive review of the Cargo Agency System, including the Cargo Accounts Settlement System (CASS) and consultations with industry participants on those changes. The extension is also required to cover the 60 day government approval period prior to changes being declared effective.
- 1.3 IATA believes that it will be able prudently to operate the Cargo Agency System without authorisation, given amendments already made, if these amendments are adopted by member airlines and have entered into effect.

2. Grounds for application for minor variation

- 2.1 The ACCC may grant a minor variation of Authorisation A90855, provided the variation would not result, or would not be likely to result, in a reduction in the extent to which the benefit to the public of the authorisation outweighs any detriment to the public caused by the authorisation⁴, or the would be likely not to result in a reduction in the benefit to the public that arose from the current authorisation.⁵
- 2.2 In granting Authorisation A90855, the ACCC considered that there are 'significant transition benefits' associated with IATA's proposal to phase out authorisation through an 'orderly transition' to an environment under which all aspects of the IATA system were authorised to one in which only some conduct could require authorisation.⁶
- 2.3 With respect to the balance of public benefit and detriment vis-à-vis the Cargo Agency System, the ACCC considered that when the transition benefits to which the ACCC referred were taken into account, there is a net public benefit arising from the IATA Cargo Agency System. This conclusion is reinforced by the facts IATA had previously submitted on which it was open to the ACCC to decide that the Cargo Agency System delivers substantial public benefits.⁷

⁴ TPA, subsection 91A(4)

⁵ TPA subsection 91A(5)

⁶ Final Determination, para. 4.10.

⁷ IATA Application for Re-authorisation dated 12 November 2002

- 2.4 IATA's application to vary the authorisation to provide for a short transitional period of authorisation for the Cargo Agency System does not alter the balance of public benefits and detriments.
- 2.5 First, the proposed extension of time is for a very limited duration. In the context of a programme that has been covered by authorisation for a period of three decades, an extension of time for a further three months is relatively insignificant.
- 2.6 Secondly, if the final group of amendments, proposed to be issued by IATA for a mail vote of member airlines, is approved by the Cargo Agency Conference, the result would be that IATA could prudently operate the Cargo Agency System without an authorisation. When it granted Authorisation A90855, the ACCC accepted there was a possibility that IATA would seek authorisation of some conduct. A further three month period of authorisation would allow IATA to operate the Cargo Agency System without authorisation. There is a benefit in allowing IATA an additional three months to see if this can be achieved and if it can, for the change to be introduced in an orderly fashion, with minimal disruption to stakeholders in the industry.

3. The nature of amendments made to the Cargo Agency System

- 3.1 In the period since Authorisation A90855 was granted a significant amount of work has been done by IATA to modify the Cargo Agency System with an aim having the system continue without authorisation. IATA has undertaken a complete review of all of the resolutions constituting the Cargo Agency System. This process was undertaken in consultation with IATA member airlines and representatives of the Australian freight forwarding industry. The process took account of the issues identified by the ACCC in its consideration of Application A90855, as reflected in the Final Determination and discussion papers. As a result of an initial review process, a number of amendments to Cargo Agency Conference resolutions were adopted by the Cargo Agency Conference in March 2007.
- 3.2 The changes to the system in March 2007 implemented a number of pro-competitive initiatives, directed at further reducing the prospect that aspects of the system may be regarded as potentially anticompetitive. Notably, the resolution on conditions for payment of commission were removed for Australia; the restriction on airlines paying each other overrides was rescinded; and resolutions that implied, contrary to the fact, that there were restrictions on airlines and agents dealing bilaterally outside of the CASS system, including in cases of agent default, were lifted.

4. The remaining issue

- 4.1 One remaining area of potential competition concern, on which IATA is still working, relates to the reporting and remittance calendar for transactions to be reported to and process through the CASS. Out of an abundance of caution, IATA proposes to seek airline member approval to amend the rules relating to the reporting and remittance calendar to make it clear that airlines and agents can agree bilaterally on periods of credit.

- 4.2 If this final change is implemented, as noted above, IATA considers it will be able to allow CASS participants to compete on credit terms, while maintaining the efficiency of the CASS, and otherwise operate the Cargo Agency System without authorisation in Australia.
- 4.3 If the amendment is not approved by the Conference, IATA would likely seek a further fresh authorisation for the Cargo Agency System. In the event that such an application is required, IATA would be in a position to inform the ACCC as soon as the results of the mail vote are declared.