



Australian
Competition &
Consumer
Commission

Determination

Application for Minor Variation of Authorisation A90855

Lodged by

The International Air Transport Association

in respect of

The IATA Cargo Agency System

Date: 19 September 2007

Authorisation no. A90855

Public Register no. C2007/1642

Commissioners: Samuel
King
Martin
Smith

1 Introduction

- 1.1 The Australian Competition and Consumer Commission (the ACCC) is the independent Australia 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’.
- 1.3 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.
- 1.4 A party to whom authorisation has been granted may also apply to the ACCC for a minor variation.

2 The Application

- 2.1 On 23 August 2007 the International Air Transport Association (IATA) lodged an application under section 91A of the Act for minor variation to authorisation A90855 which was granted by the ACCC on 9 November 2006.
- 2.2 The International Air Transport Association (IATA) is the international trade association of most airlines operating international air services in the transport of passengers, mail or cargo.

Authorisation A90855

- 2.3 Authorisation A90855 relates to the contracts, arrangements, understandings and conduct which constitute:
 - the IATA Scheduling System
 - the IATA Cargo Agency System
 - the IATA Passenger Services System
 - the IATA Cargo Services System
 - the IATA Prorate System
 - the IATA Clearing House
 - IATA Passenger Tariff Coordination; and
 - IATA Cargo Tariff Coordination.

- 2.4 On 9 November 2006 the ACCC granted authorisation A90855 for the following transition periods:
- for 21 days after the date this determination comes into effect for the IATA Clearing House, IATA Prorate System and IATA Scheduling System
 - until 31 August 2007 for the IATA Cargo Agency System, IATA Passenger Services System and IATA Cargo Services System
 - until 30 June 2008 for the IATA Passenger Tariff Coordination and IATA Cargo Tariff Coordination

Minor Variation

- 2.5 IATA has lodged a minor variation application seeking to extend the duration of authorisation for the IATA Cargo Agency System for three months beyond the current expiry date of 31 August 2007 to 30 November 2007.
- 2.6 The IATA Cargo Agency System provides a system for the transport of goods by air by cargo agents registered with IATA who are invoiced by and settle with the airlines through a clearing system, the Cargo Agents Settlement System (CASS).

Interim authorisation

- 2.7 IATA has also sought interim authorisation for the proposed arrangements.
- 2.8 The ACCC granted interim authorisation on 29 August 2007 to IATA in order to maintain the protection afforded to the IATA Cargo Agency System while it considered the merits of IATA's application.

3 Statutory provisions

- 3.1 Section 87ZD of the Act defines a minor variation as a single variation that does not involve a material change in the effect of the authorisation.
- 3.2 Section 91A of the Act provides that the ACCC must, if it is satisfied that the proposed variation is a minor variation, invite submissions from interested parties. After consideration of the application and any submissions received, the ACCC may make a determination varying the authorisation or dismissing the application.
- 3.3 Section 91A(4) of the Act provides that the ACCC may grant a minor variation to an authorisation granted under section 88(1), where it is satisfied that the variation would not result, or would be likely not 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 authorisation.

4 Submissions

Supporting submission from IATA

- 4.1 IATA submits that its 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.
- 4.2 IATA submits that the 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.
- 4.3 IATA indicated that it has undertaken a complete review of all of the resolutions constituting the Cargo Agency System. IATA further indicated that this process was undertaken in consultation with industry representatives and has taken into account the issues identified by the ACCC in its consideration of authorisation A90855. As a result of this review a number of amendments to the Cargo Agency System resolutions were adopted by the Cargo Agency Conference in March 2007.
- 4.4 IATA note that 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 anti-competitive, in particular:
- the resolution on conditions for payment of commission were removed for Australia
 - the restriction on airlines paying each other overrides was rescinded; and
 - the 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.
- 4.5 IATA further submit that it is proposing 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.
- 4.6 IATA note that if this final change is implemented, IATA considers it will be able to allow CASS participants to compete on credit terms, while maintaining the efficiency of the CASS, and operate the Cargo Agency System without authorisation in Australia.

Three month extension

- 4.7 IATA submit that the proposed extension of time is for a very limited duration. IATA further submit that in the context of a program that has been covered by authorisation for a period of three decades, an extension of time for a further three months is relatively insignificant.
- 4.8 IATA further submit that 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 authorisation.

- 4.9 IATA submit that there is a benefit in allowing IATA an additional three months to allow for the change to be introduced in an orderly fashion, with minimal disruption to stakeholders in the industry.

Submissions from interested parties

- 4.10 The ACCC invited comments from interested parties in relation to IATA's application for minor variation. The ACCC received submissions from the following interested parties:
- Qantas Airways Limited
 - South African Airways Pty Ltd
 - Australian Federation of International Forwarders
 - Customs Brokers & Forwarders Council of Australia Inc.
- 4.11 All submissions received support IATA's application for minor variation.
- 4.12 Specifically Qantas submitted that it endorses IATA's approach to revising the reporting and remittance procedures of the CASS to make it clear that airlines and agents can agree bilaterally on periods of credit.
- 4.13 Qantas further submitted that this change would preserve the efficiencies of the current reporting system, while expressly permitting CASS participants to compete on credit terms.

5 The ACCC's evaluation

- 5.1 IATA propose to extend the protection afforded to the IATA Cargo Agency System by three months until 30 November 2007.
- 5.2 The ACCC consider that a three month extension is a short period of time considering the length of time the IATA Cargo Agency System has been authorised in Australia.
- 5.3 The ACCC notes that the aim of authorisation A90855 was to provide IATA with a short but adequate transition period to allow IATA to review and amend its programs with a view to providing an orderly transition to an environment where it reduces its reliance on authorisations.
- 5.4 The ACCC notes IATA's submission that it has undertaken a complete review of all resolutions constituting the Cargo Agency System. This process was undertaken in consultation with IATA member airlines and representatives of the Australian freight forwarding industry and took into account the issues previously identified by the ACCC.
- 5.5 The ACCC notes that many of the changes to the IATA Cargo Agency System have already been adopted. The ACCC further notes that IATA is seeking a short extension of time for final amendments to be adopted.
- 5.6 The ACCC considers that extending the authorisation to 31 December 2007 will ensure that IATA's review of the Cargo Agency System and implementation of the changes to the system is completed in an orderly manner before authorisation expires.

- 5.7 The ACCC notes that the end date of authorisation A90855 will remain unchanged, the only change being an extension of the period of protection afforded to the IATA Cargo Agency System.
- 5.8 The ACCC considers that in the circumstances the proposed extension is unlikely to involve a material change in the effect of the authorisation.
- 5.9 The ACCC is satisfied that the proposed variation would be unlikely to result in a reduction in the net benefit to the public caused by authorisation A90855.

6 Determination

- 6.1 On 23 August 2007 the International Air Transport Association lodged an application under s91A of the Act for a minor variation to authorisation A90855. Authorisation A90855 was granted by the ACCC on 9 November 2007.
- 6.2 The ACCC is satisfied that the proposed variation is minor.
- 6.3 The ACCC is satisfied that the public benefit test in section 91A(4) of the Act is met – that is the variations which are the subject of this application are unlikely to result in a reduction in the net benefit to the public that arose from the original authorisation.
- 6.4 Pursuant to section 91A(3) of the Act, the ACCC makes this determination varying authorisation A90855 so that the protection afforded to the IATA Cargo Agency System under authorisation A90855 is extended until 31 December 2007.
- 6.5 This determination is made on 19 September 2007. If no application for a review of the determination is made to the Australian Competition Tribunal in accordance with section 101 of the Act, it will come into effect on 11 October 2007.

Interim authorisation

- 6.6 The ACCC granted interim authorisation on 29 August 2007 to IATA in order to maintain the protection afforded to the IATA Cargo Agency System while it considered the merits of IATA's application.
- 6.7 Interim authorisation will remain in place until such time as this determination takes effect.