



Australian
Competition &
Consumer
Commission

Determination

Application for Minor Variation of Authorisation A90855

Lodged by

the International Air Transport Association(IATA)

in respect of

the IATA Cargo Tariff Coordination System

Date: 11 June 2008

Authorisation no. A90855

Public Register no. C2008/724

Commissioners: Samuel
Sylvan
Court
King
Martin
Walker
Willett

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’.
- 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 to that authorisation.

2 The application

- 2.1 On 14 May 2008 the International Air Transport Association (IATA) lodged an application under section 91A of the Act for minor variation to authorisation A90855.
- 2.2 The International Air Transport Association (IATA) is the international trade association for 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 the determination came 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 systems.

Minor variation

- 2.5 IATA has lodged a minor variation application seeking to extend the duration of authorisation for the IATA Cargo Tariff Coordination system for three months beyond the current expiry date of 30 June 2008 to 30 September 2008.
- 2.6 The IATA Cargo Tariff Coordination system is the means by which freight rates are established between airlines for multilateral interlining which enables cargo to undertake a journey involving travel on multiple airlines on a single air waybill.

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 the IATA Cargo Tariff Coordination system has, for almost 60 years, delivered significant public benefits including:
- efficient and timely delivery of cargo;
 - reduced transaction costs for the shipper;
 - access for Australian consumers to products produced overseas at transportation efficient rates;
 - access for Australian producers to distant, inaccessible markets;
 - expanded route networks for smaller and regional airlines as well as new entrants; and

- opportunity for new entrants and smaller airlines to compete.
- 4.2 IATA notes that in granting authorisation A90855 the ACCC accepted that there were significant transition benefits in allowing IATA to make an orderly transition from the position where the IATA Cargo Tariff Coordination system is subject to authorisation to a position where, after expiry of A90855, authorisation of the system is no longer required. IATA further notes that in accepting those benefits the ACCC recognised that the transition period, while remaining short, must still be adequate to allow IATA and industry stakeholders to take all necessary steps to affect the transition.
- 4.3 IATA submits that no public detriment has resulted from authorisation of the IATA Cargo Tariff Coordination system under A90855. IATA notes that in determination A90855 the ACCC reached no definitive view as to the balance of public benefit and detriment.
- 4.4 IATA further submits that due to the limited duration of the extension sought the minor variation will have no material effect on public detriment.

The reason for extension

- 4.5 IATA submits that it had proposed moving to a new cargo tariff coordinating mechanism that continued the benefits of multilateral cargo interlining but reduced the potential for anticompetitive effects. IATA notes that the new mechanism could not be introduced without the unanimous support of the members of the IATA Cargo Tariff Coordinating Conferences. IATA further notes that although a significant majority of members voted in favour of the new mechanism, the vote was not unanimous.
- 4.6 IATA submits that from a practical view point the only real alternative for IATA is to terminate cargo tariff coordination on routes to/from Australia as soon as possible. Consequently, IATA cargo tariff coordination for interline purposes will cease on 30 September 2008 on routes to/from Australia. IATA notes that 30 September 2008 is the earliest date this can occur and consequently IATA is seeking an extension of authorisation A90855, as it applies to the contracts arrangements and understandings that constitute IATA cargo tariff coordination, from 30 June 2008 to 30 September 2008.
- 4.7 IATA submits that the withdrawal of Australian routes from the IATA Cargo Tariff Coordination system is a complex process for both IATA and for the airlines participating in the IATA multilateral cargo interline system that relies on the IATA rates developed through that system.
- 4.8 IATA notes that as part of the process it will need to:
- remove to/from Australia rates from The Air Cargo Tariff (TACT) manual;
 - reclassify rules contained in TACT to no longer apply to/from Australia;
 - amend composite resolutions currently applicable to Australia to exclude application to routes to/from Australia; and
 - provide guidance and information to airlines and the freight forwarder community to allow them to adjust to the new situation.
- 4.9 IATA further notes that IATA members and other airlines will need to:
- consider whether they want to establish their own published rates to/from Australia; and

- negotiate bilateral arrangements where they want to interline on routes to/from Australia that have previously relied on IATA multilateral cargo interlining rates.

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 a submission from the Australian Federation of International Forwarders (AFIF).
- 4.11 AFIF supports IATA's application for minor variation. Specifically AFIF notes that IATA members have not unanimously supported the continuation of a request for authorisation and as such would need to withdraw Australian routes from the IATA Cargo Tariff Coordination System. AFIF notes that it is a complex process and will take time and therefore supports IATA's request for an extension to complete the process.
- 4.12 AFIF notes that following the expiry of the current authorisation, it would look to the international airline members of IATA to individually devise efficient processes to ensure that the smooth movement of international air cargo is not unduly hampered.

5 The ACCC's evaluation

- 5.1 IATA seeks an extension of the protection afforded to the IATA Cargo Tariff Coordination system by three months until 30 September 2008.
- 5.2 IATA intends to terminate the system on routes to/from Australia from 30 September 2008.
- 5.3 The ACCC accepts that 30 September 2008 is the earliest date on which conclusion of the Cargo Tariff Coordination system can occur due to the number of complex steps required to achieve this. The ACCC considers that this three month extension will ensure that IATA and its members and other airlines have time to take the necessary steps before the Cargo Tariff Coordination system is terminated on routes to and from Australia and to ensure completion of these steps is undertaken in an orderly manner before authorisation expires.
- 5.4 The ACCC considers that a three month extension is a short period of time considering the length of time the IATA Cargo Tariff Coordination system has been authorised in Australia.
- 5.5 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.
- 5.6 The ACCC notes that the end date of authorisation A90855 remains 30 June 2008. The extension of the period of protection afforded only relates to the IATA Cargo Tariff Coordination system.
- 5.7 The ACCC considers that in the circumstances the proposed extension is unlikely to involve a material change in the effect of the authorisation.
- 5.8 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 14 May 2008 the International Air Transport Association lodged an application under s 91A 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 variation which is the subject of this application is 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 Tariff Coordination system under authorisation A90855 is extended until 30 September 2008.
- 6.5 This determination is made on 11 June 2008. 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 3 July 2008.

Interim authorisation

- 6.6 IATA has not applied for interim authorisation. The ACCC notes that in the absence of interim authorisation from 1 July 2008 the Cargo Tariff System is likely to be exposed to the operation of the TPA until 3 July 2008 when this determination comes into effect.
- 6.7 In this regard, the ACCC considers it is prudent to grant interim authorisation to IATA in order to extend immunity to the Cargo Tariff System until this determination comes into effect.
- 6.8 Interim authorisation will remain in place until such time as this determination takes effect.