

February 1, 2005

Review of National Competition Policy Arrangements Inquiry Team
Productivity Commission
PO Box 80
BELCONNEN ACT 2616

The Australian Federation of Travel Agents ("AFTA") makes this short submission to support a draft proposal in the Commission's Discussion Draft *Review of National Competition Policy Reforms* [October 2004] for a national review into consumer protection policy and administration in Australia.

AFTA represents intermediaries in Australia's \$8 Billion travel services sector. Its membership includes retail and corporate travel agents, wholesalers, consolidators and tour operators, and accounts for an estimated ninety percent of the industry's turnover. The scale of membership varies considerably, but the bulk of membership may be described as small business. Some understanding of the Federation may be had from the attached copy of its last Annual Report.

In representing its membership, AFTA is continually reminded of the national and international complexities associated with the operation of the travel services sector. It is also aware of the difficulties of meeting contemporary competition and consumer protection challenges through a federated government structure.

The term "consumer protection policy" is not defined in the Discussion Draft. An attempt was made to define the term in the Commission's Research Report *Australian and New Zealand Competition and Consumer Protection Regimes* [December 2004]. However, regulation affecting competition and the application of internationally recognised consumer rights in individual markets is obviously not confined to the general requirements of trade practices laws. So much is left to micro-regulation of these markets through national and State/Territory inspired public and private sector initiatives.

Illustrative of this is the existing regulation of most travel intermediaries. This regulation may be traced back to the 1970s, and an eventual government response to continuing media attention to the financial and emotional plight of consumers, some stranded overseas, from management or fraud inspired collapses of travel intermediaries.

The present regulatory scheme was introduced by four State governments in 1986. With the exception of the Northern Territory, it is now in place throughout Australia. The scheme uniquely has two mutually dependent elements: State/Territory administered laws aimed at the probity, expertise and business standards of intermediaries, and a trust vehicle, the Travel Compensation Fund ("TCF"), which prudentially supervises intermediaries and compensates

(personal and business) consumer loss from intermediary failure. While its governing trust arrangement assures the TCF of a measure of autonomy, its operations are ultimately determined by laws of the States and Australian Capital Territory, and supervised by the Ministerial Council on Consumer Affairs.

The only major review of the Scheme has been NCP inspired. It was nationally and independently conducted, and steered by a Ministerial Council appointed committee. The review recommended retention of a modified licensing scheme, abolition of qualifications and experience requirements for travel agency licence holders, and opening up the TCF's compensation role to private insurers. The Ministerial Council declined to follow these recommendations on public interest grounds, its principal concern being that the Review had given insufficient weight to the intangible benefits of existing regulation.

AFTA was disappointed that in limiting itself to the existing regulated market – travel agents – this 2000 Review missed an opportunity to assess important competition and consumer protection issues across the whole travel services sector.

Today's travel services market is much different to that against which the existing scheme was framed. As the *Ansett Airlines* experience shows, consumer protection issues with "pre-payments" for travel services transcend the intermediary sector – and this trend is increasing. Consumers are increasingly dealing directly with suppliers for their point-to-point travel requirements. Leaving aside issues of information asymmetry, vast amounts of consumer pre-payments are potentially at risk. Security of consumer pre-payments comes down to who is holding the funds. This discriminatory approach of the existing scheme, and the increasing cost of regulatory compliance, is competitively disadvantaging intermediaries in the travel services market. More likely with a properly structured approach to reviewing consumer protection policy, these and many other issues may have been addressed.

Following the *Ansett* collapse, a Joint Working Group (comprising TCF, government, consumer and some industry representation) undertook a review of future directions for the Travel Compensation Fund. The Review was broken into two stages:

- the first assessed the Fund's capital adequacy, and capital requirements for intermediaries.
- the second stage (now in the process of being documented) is designed to assess AFTA's proposal for a new, expanded and centrally administered scheme – along with self and co-regulatory options.

The Commission's Discussion Draft will inform a review of National Competition Policy ("NCP") arrangements by the Council of Australian Governments, next September. AFTA acknowledges the significant contribution that NCP has made to Australia's recent economic performance. It also accepts the proposition that competitive markets may need little regulation to function effectively, but that some need "well designed" regulatory intervention to improve community outcomes. AFTA argues the current regulation of its industry denies adequate community outcomes, and the underlying objective of its proposal is "well designed" regulation for all involved in the supply chain for travel services.

AFTA believes there are lessons to be taken from the NCP journey, particularly for determining the extent to which regulatory schemes have identified and are meeting contemporary and complementary competition and consumer protection objectives. The Commission rightly observes “[that] ineffective mechanisms for coordinating the activities of Australian Government and State and Territory bodies involved in policy development and application....[leads] to duplication of effort.....inconsistencies in approaches across jurisdictions that increase compliance costs and impede the development of national markets..... [and] insufficient attention given to the scope for self-regulatory and co-regulatory approaches”.

A national review into consumer protection policy and administration could not resolve the myriad of issues that exist in the micro-regulation of markets, but it may deliver a structure, beyond NCP, for better assessing the continuing relevance of industry regulation.

AFTA will continue to develop its proposals for a new scheme. Its challenge will be having the merit of the proposals nationally considered, and if accepted, implemented and administered within the federal structure.

Yours faithfully

Mike Hatton
Chief Executive