

Cairns Airport Pty Ltd

Submission on authorisation application by car rental operators (ref: AA1000460)

17 December 2019

1 Introduction and summary

The Application

- 1.1 The Australian Competition and Consumer Commission (ACCC) has received an application from a group of car rental operators at Cairns Airport (**Applicants**), seeking authorisation to collectively bargain with Cairns Airport (**Application**).
- 1.2 On 3 December the ACCC invited Cairns Airport Pty Ltd (**Cairns Airport**) to comment on the Applicants' application.
- 1.3 Cairns Airport considers that the collective bargaining authorisation (which would enable the Applicants to form a legal cartel) will not deliver any public benefit, and would risk causing significant harm to competition in upstream and downstream markets, as well as the economic efficiency of Cairns Airport.

No net public benefit

- 1.4 To authorise the proposed conduct the ACCC must be satisfied that there is a net public benefit that would arise as a result of that conduct. The onus is on the Applicants' to provide a sufficient evidentiary basis that the benefits arising from the conduct outweigh the detriments.
- 1.5 For the following reasons there is clearly no basis for the ACCC to find that there is a net public benefit arising from the proposed.

The benefits claimed by the applicants are purely speculative

- 1.6 Cairns Airport is conducting a competitive RFP process in order to allocate the scarce capacity at the Airport. The authorisation cannot compel Cairns Airport to negotiate with the proposed cartel, and Cairns Airport does not intend to do so if the authorisation is allowed. As such, the proposed authorisation will have no impact on the bargaining power of the Applicants or the efficiency of negotiations.
- 1.7 The applicants have not provided any evidence to substantiate their claim that Cairns Airport would negotiate with the proposed cartel. Accordingly, the ACCC must place no weight on the unsubstantiated assertions that the authorisation would deliver the stated benefits, as they have no regard to the commercial realities of the situation.

- 1.8 This is consistent with the view of the ACCC in its decision to object to similar proposed conduct at Perth Airport (**Perth Airport Decision**).¹ In that case the ACCC found that Perth Airport would not engage with the collective bargaining group, unless there were some benefit to Perth Airport in doing so, and as a result, the benefits submitted by the applicants were unlikely to arise. In this case, Cairns Airport is unequivocal – there will be no benefit to it in engaging with the proposed cartel, and it does not intend to do so. It follows that the argued benefits will not materialise.

Even if the bargaining power was increased, cost savings would not flow through to consumers

- 1.9 Even in the highly unlikely circumstances where Cairns Airport did elect to negotiate with the proposed cartel, and this in turn resulted in reduced costs to rental operators, there is no probative evidence before the ACCC that any cost savings would be passed on to consumers.
- 1.10 Rather, the rental operators will continue to charge what the inelastic airport car rental market can bear in circumstances where car rental supply is restricted by limited airport space and the limited number of participants in the car rental market. Consistent with the ACCC's Perth Airport Decision, it is very likely that the Applicants will, to the extent possible, seek to reduce their input costs without passing these cost reductions onto Australian consumers and thereby increasing their profits.
- 1.11 The evidence provided by the Applicants' of a purported correlation between rental operators' 'location fees' and airport charges labours under a fundamental logical fallacy: that correlation equates to causation.
- 1.12 Rather, Cairns Airport's analysis shows that the link between 'location fees' and airport charges is weak. Instead rental prices are correlated to the demand for rental cars, with the rental operators pricing at what the market will bear.

Collective bargaining would be likely to result in price distortions and economic detriment

- 1.13 In contrast to the unsubstantiated benefits asserted by the Applicants, there are clear detriments that will arise if the ACCC allows the proposed cartel.
- 1.14 Cairns Airport's process to enter into new rental operator agreements will allocate terminal space through a transparent and fair market-based pricing mechanism. This market-based pricing mechanism maximises efficiency by ensuring that scarce airport space is put to its highest value use. This requires independent bidding by the car rental companies.
- 1.15 If the proposed arrangement were to have any effect it would eliminate independent bidding, or for different contracts based on differentiated levels of service, blunting price signals for airport space. This will distort prices and mean that scarce airport space will not be put to its highest value use, resulting in economic detriment, and harming allocative efficiency at the airport.

¹ ACCC Objection Notice in respect of a collective bargaining notification lodged by Hertz Australia Pty Ltd on behalf of a group of car rental companies operating at Perth Airport (16 July 2010).

- 1.16 Further, if the Applicants are authorised to form the proposed cartel, there is a significant risk that the services offered by rental operators will become standardised, removing any competition based on differentiated service offerings between the rental operators.

Collective bargaining will increase likelihood of collaboration in an already concentrated market

- 1.17 The proposed conduct will also increase the risk of collusion between the Applicants in downstream markets.
- 1.18 The market for on-airport car rentals is already highly concentrated. Five large participants control the market,² and off-airport providers of car rental services are less prevalent than they are at other Australian airports. There are also high barriers to entry (in that there is limited available airport space for other operators).
- 1.19 It is evident that a degree of sharing commercially sensitive information has already occurred between the rental operators, in order to facilitate their Application. Cairns Airport has serious concerns that at least some of the rental operators may have already formed an arrangement to maintain the pricing of services provided by Cairns Airport, until a decision by the ACCC has been made.
- 1.20 Authorising the proposed cartel conduct would allow further commercially sensitive information to be shared, either intentionally or unintentionally. This, and the collaborative environment that it will create, will significantly increase the likelihood of collusion, tacitly or otherwise, within the already concentrated downstream market for on-airport car rentals. This could occur in decisions not to pass on cost savings to consumers, not to compete on service offering, or more blatant arrangements to control prices.

Conclusion on net public benefit test

- 1.21 These factors comprehensively establish that there is no basis for the ACCC to approve the authorisation Application as the benefits of the proposed conduct, if any, do not outweigh the detriments.

Interim authorisation inappropriate

- 1.22 If an interim authorisation was to be allowed, it could result in irreversible harm to be done through the sharing of commercially sensitive information, which could not be undone if the ACCC were to subsequently decide not to authorise the conduct.
- 1.23 Once information is shared, it cannot be unshared. It would be completely inappropriate for the ACCC to grant interim authorisation in circumstances where it has previously found that the same conduct would result in public detriments, and where this harm could be irreversible.
- 1.24 If the ACCC makes a decision to allow interim authorisation Cairns Airport requests that it be provided written notice at least 10 business days before the interim authorisation comes into effect, so that it can be afforded natural justice.

² When Avis and Budget are treated as the same entity, due to both being part of the Avis Budget Group.

Structure of this submission

1.25 The remainder of this submission is structured as follows:

- 1.25.1 Section 2 explains how prices are set for rental operators at Cairns Airport in a fair and reasonable manner which ensures an efficient allocation of scarce airport space, and why the comparisons made in the submissions of the Applicants are misleading.
- 1.25.2 Section 3 provides a brief overview of relevant previous decisions by the ACCC on similar matters.
- 1.25.3 Section 4 sets out the test for the ACCC in deciding whether to authorise the proposed cartel conduct.
- 1.25.4 Section 5 explains that there are no ascertainable benefits that will arise as a result of the authorisation, and points out the flaws in the Applicant's submission, including how it is inconsistent with the ACCC's previous decisions.
- 1.25.5 Section 6 establishes that if the authorisation were to have any affect, it would result in significant detriments that outweigh any benefits.
- 1.25.6 Section 7 explains the reasons why it would be completely inappropriate for the ACCC to grant an interim authorisation, given the clear potential for irreversible harm to be caused.
- 1.25.7 Section 8 explains why the 10 year authorisation period is excessive, raises issues of natural justice relating to the provision of the confidential Application, and explains Cairns Airport's serious concerns that the Applicants may be engaged in cartel conduct prior to the authorisation of any such conduct.

2 Background - how are prices set at Cairns Airport?

- 2.1 This section briefly lays out the types of charges paid by rental operators at Cairns Airport, how they will be determined, and why the current charges are fair and reasonable.

Rental operators at Cairns Airport

- 2.2 There are six car rental operators at Cairns Airport, though Avis and Budget are part of the same corporate entity (Avis Budget Group), meaning that there are effectively only five rental operators at Cairns Airport.³

2.3

[REDACTED]

[REDACTED]

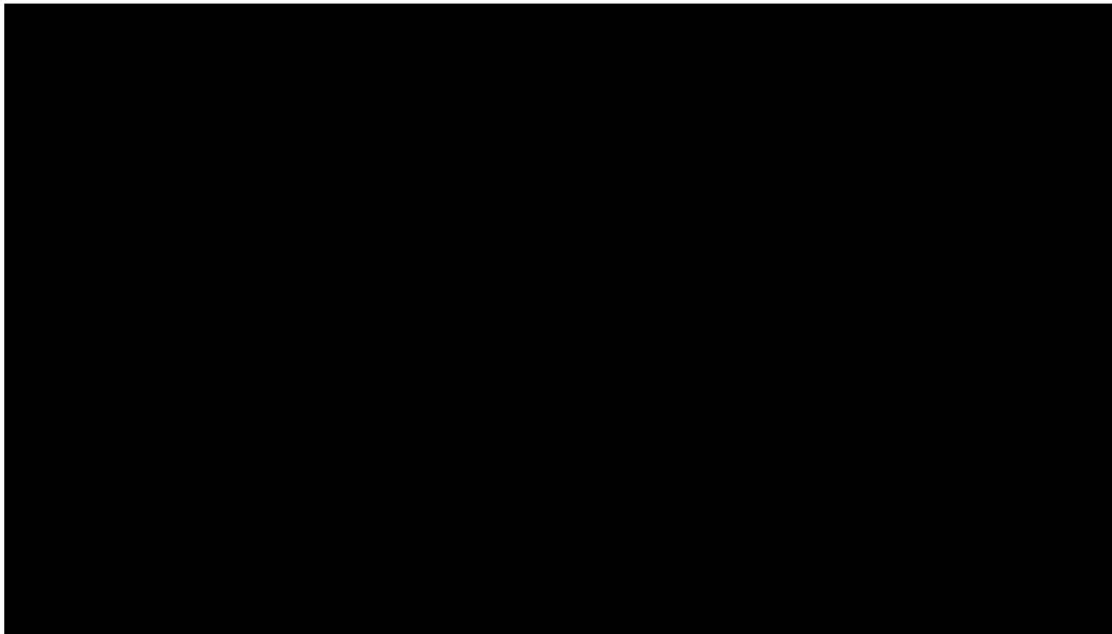
[REDACTED]

- 2.4 Customers travelling to and from Cairns Airport use a number of different modes of transport, of which rental cars is just one. Car rental operators compete with these other services for access to ground space at the airport, and to an extent for customers. [REDACTED]

[REDACTED]

³ Cairns Airport considers that it is reasonable to treat Budget and Avis as the same entity given they both form part of the Budget Avis Group and deal with Cairns Airport as a single entity (see Attachment C).

[REDACTED]



Pricing at Cairns Airport

- 2.5 Cairns Airport offers a number of services to car rental operators at the airport. The key services which Cairns Airport provides are:
- 2.5.1 Dedicated access to front-of-house, retail kiosk spaces inside the terminals.
 - 2.5.2 Dedicated access to rental ready parking bays for the purposes of storing rental cars, which are ready to be rented.
 - 2.5.3 Dedicated access to branded rental parking booths (for the collection and return of vehicles) outside of the terminal.
 - 2.5.4 Access to other 'back-of-house' supporting facilities, such as facilities for car cleaning and servicing.
 - 2.5.5 Overflow Peak period car parking as required.
- 2.6 Consistent with other airports throughout Australia, Cairns Airport charges for these services through a number of different charging arrangements, set out in the licence and lease agreements held with rental operators. These include :
- 2.6.1 A concession charge, in the form of a percentage of total rental revenue from the airport rentals.
 - 2.6.2 An annual car parking fee, for each dedicated car park assigned to the rental operator.

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Restriction of Publication of Part Claimed

- 2.6.3 Annual rent under the lease agreements for the kiosks in the terminal and car parking booths.
- 2.6.4 Rental for back-of-house facilities.
- 2.7 Cairns Airport provides various levels of service to the rental operators, depending on the needs of the operator and their service offering to end consumers. Some rental operators prize premium locations within the airport and are prepared to pay a premium for those locations, whereas others are focussed on the lowest cost offering available.

2.8

[REDACTED]

[REDACTED]

[REDACTED]

Cairns Airport is in the process of redeveloping the airport's domestic terminal precinct and renegotiating charges with users

- 2.9 The domestic terminal at Cairns Airport is currently being expanded to address the high levels of passenger congestion in the terminal. In developing the expansion plans customer feedback showed that airport customers were looking for a place to meet people and have a drink and a meal when they arrive at the terminal. To cater for this need, a new indoor/outdoor café will be built requiring the removal of the indoor car rental counters to make way for this development.
- 2.10 As a result of this in early 2020, Cairns Airport intends to undertake significant works to redevelop its car rental operations as part of its 'T2 Car Rental Enhancement Development Project'.

Restriction of Publication of Part Claimed

- 2.11 Cairns Airport has undertaken extensive consultation starting from about June 2019, with the car rental operators to understand their future facility requirements. In response to strong demand from all rental operators for additional capacity, Cairns Airport has developed reconfigurations to its terminal ground plan and created an initial plan to relocate the operators' front-of-house facilities, increase the number of rental ready bays, and expand back-of-house facilities, to meet the needs of the rental operators.
- 2.12 Following this Cairns Airport has had these expansions costed by a third party planning consultant and quantity surveyor in order to better understand the likely cost and pricing impacts of the upgraded and expanded facilities. Cairns Airport then provided rental operators with pricing (in October 2019) that it anticipated would be needed to deliver the requested upgrades, in order to gauge demand for the additional capacity, by reference to the cost increase. Cairns Airport notes that the prices provided through this process were not on a 'take it or leave it' basis as implied in the Applicants' submission, [REDACTED]
- 2.13 Cairns Airport also asked for feedback on the demand for certain differentiated services, some of which would come at an extra cost, such as undercover parking, parking close to the terminal, special premium bays close to the terminals, and a range of car park options varying from close to the terminal to a longer walk from the terminal. Rental operators also requested boom gates to enable them to provide a 'key in car' service, and cameras to identify the cause of damage.
- 2.14 Since providing this preliminary pricing information, Cairns Airport has sought to consult further with the operators to understand the impact of its proposed pricing on the demand for the services, and confirmed the operators' interest in the expanded and upgraded facilities. While all of the rental operators remain supportive of the proposed expansions and upgrades, coincidentally they have refused to engage with Cairns Airport on an appropriate price, except to say that the prices proposed are too high. The car rental operators have not offered a view on what an appropriate price would be, nor made a counter-offer as to an appropriate price for the services that they have explicitly requested.

Pricing process going forward

- 2.15 Cairns Airport is conducting a competitive RFP process in order to:
- 2.15.1 efficiently allocate the use of ground and terminal space between car rental operators and other uses (such as car parking and taxi stands); and
 - 2.15.2 efficiently allocate the proposed front of house, parking booths and bays, and back-of-house facilities (given that different locations and features are likely to have different values for different operators).
- 2.16 The RFP process is intended to ensure there is price and service competition between the rental operators seeking to operate at Cairns Airport. The amount of additional space allocated to rental operators will depend on the value of that space to those operators.
- 2.17 The RFP process will be an open process allowing for any rental operator to tender and opening up the incumbent operators to competition from other rental operators who currently do not have on-airport offerings.

- 2.18 A competitive RFP process is Cairns Airport's preferred approach for a number of reasons. It will ensure that scarce airport capacity is allocated in the most efficient way possible, promoting the allocative efficiency of the airport. Further, the RFP process will enable contracts to be negotiated with relatively low transaction costs, while still allowing for different terms to be negotiated based on the individual providers' needs reflecting their intended service offerings to downstream car rental customers.

The rental operators' claim that Cairns Airport has the second highest costs per transaction of any airport in Australia is misleading

- 2.19 The Applicants contend that the fees charged by Cairns airport are excessive and are relatively greater than the fees charged by operators of comparable airports.⁶ The Applicants' attempt to substantiate this contention in their Application through a comparison of the average costs per transaction for a selection of operators.⁷
- 2.20 While the methodology for how these costs were calculated is not transparent, we assume that costs per transaction are derived from the sum of all airport charges to the rental operators (including in terminal kiosks, booths, rental ready bays and back-of-house), divided by the number of transactions initiated at Cairns Airport.
- 2.21 If this assumption is correct, then the benchmarks put forward by the rental operators are significantly misleading, and do not establish that pricing at Cairns Airport is excessive or unreasonable, for the following reasons.

Higher costs result from higher rental operator revenues

- 2.22 A benchmark based on cost per transaction ignores the value of the services provided by Cairns Airport to the rental operators and the revenue they derive from operating at the airport. Car rental customers at Cairns Airport have a relatively long length of hire compared to other, more business oriented, airports. This is because Cairns Airport services a higher proportion of leisure passengers who are more likely to hire rental cars for a longer period. As a result the revenue-per-transaction of rental operators at Cairns Airport is higher than at many other airports.⁸ Given that a portion of rental operator fees are from concessions (ie, a percentage of revenues), it therefore makes sense that costs would be proportionally higher per transaction at Cairns Airport. This is not unreasonable or excessive, but simply reflects the longer rentals and correspondingly higher revenue received by the rental operators.
- 2.23 The Applicants' benchmark also implicitly assumes that the price for a customer to rent a car is the same at each airport. This is not the case. Even where two airports have the same 'premium location fee', the cost of renting the same car on the same day can differ significantly.⁹ Rental operators at Cairns Airport often charge at the higher end of the spectrum compared to other airports, resulting in higher revenue for the rental operators and higher concessions for Cairns Airport.¹⁰

⁶K&L Gates *Application for Authorisation – Car rental operators at Cairns Airport* (28 November 2019), section 2.6.

⁷K&L Gates *Application for Authorisation – Car rental operators at Cairns Airport* (28 November 2019), section 2.4, figure 1.

⁸Due to the longer rental periods and higher demand for rental cars.

⁹See Attachment B, which demonstrates that there are significant fluctuations in rental prices depending on when a rental is booked and the rental operator.

¹⁰See Attachment B.

Cairns Airport offers more extensive facilities than other airports which has cost implications

- 2.24 The number and quality of facilities available to car rental operators differs by airport. This is due to a range of reasons and is reflected in the costs to rental operators. For example, at Cairns Airport, rental operators have very large back-of-house and car storage facilities on the airport itself compared with many other airports. This reflects the remoteness and peakiness of demand for rental cars at Cairns Airport.
- 2.25 This means that a comparison of Cairns Airport with other large city airports, which do not offer these services or do not offer them to the same extent, is not an “apples with apples” comparison. Cairns Airport which provides comparatively large amounts of land for back-of-house facilities will naturally have higher operating costs per transaction than airports that do not.
- 2.26 It is also worth noting that there is no compulsion for rental operators to use back-of-house facilities and car storage at Cairns Airport. While some operators choose to rent land from Cairns Airport for this purpose, there are a number of substitutes available. The operators that choose to rent large amounts of land at Cairns Airport do so because it is more efficient (e.g., due to reduced costs of moving cars between locations). This higher level of amenity also means that land at the airport can be expected to attract higher rents than more distant locations.

Comparisons with off-airport operators are misplaced

- 2.27 The Applicants’ comparisons with off-airport locations are irrelevant. Many off-airport locations are in non-premium locations and serve completely different markets (for example, trucks, vans, campers, etc). The costs that rental operators pay in off-airport locations will tend to reflect the next best alternate use value of the land which will vary depending on the location. Cairns Airport is aware of on-airport operators in Cairns renting land in second and third grade locations, often unimproved (for example with no asphalt or hardstand).
- 2.28 It is meaningless to compare the costs at these locations with those at Cairns Airport that provide the footfall and visibility for operators to compete in the market place, and which have high value as alternative uses (such as car parking or retail).

3 The ACCC's previous decisions

This section briefly lays out previous decisions of the ACCC relevant to the Application

- 3.1 The authorisation application seeks to draw the ACCC's attention to the previous decision relating to Mackay Airport, in which the ACCC allowed a collective bargaining notification to stand (**Mackay Decision**).¹¹ The analysis in the Mackay Decision was relatively brief and made a number of assertions which did not refer to specific evidence which supported them.
- 3.2 More relevantly, the ACCC subsequently made another decision, relating to similar conduct at Perth Airport, deciding to block the proposed conduct (**Perth Decision**).¹²
- 3.3 The Perth Decision was far more thorough than the Mackay Decision. While a somewhat superficial determinant of the robustness of the decision, the fact that the page count of the ACCC's Perth Decision is almost double that of the Mackay Decision, provides some indication of the extent of the analysis undertaken by the ACCC in the Perth Decision compared with the Mackay Decision. An examination of the respective decisions shows the ACCC's analysis in the Perth decision is far more extensive and provides a well-reasoned explanation for why the notification should be blocked. Given this, and the fact that the Perth Decision is more recent, the ACCC should give significantly more weight to the Perth decision.
- 3.4 The Perth Airport notification was highly analogous to the circumstances at Cairns Airport. It involved a number of rental operators seeking to collaboratively bargain with Perth Airport in order to increase their bargaining power. The ACCC decided to block the notification on the basis that the conduct would be unlikely to have any effect given that Perth Airport would not negotiate with the collective group, unless there was some benefit in doing so, and even then, would not accept worse terms than it would accept negotiating with an individual, unless there was some corresponding benefit. On this basis, it was unclear that there would be any benefits flowing from the conduct. Further, the ACCC considered that allowing the applicants in that case to collectively bargain would result in the sharing of commercially sensitive information (either intentionally or unintentionally), causing a harm to competition.
- 3.5 Cairns Airport submits that this Application is highly analogous to the Perth Airport notification, and that the ACCC should decide the outcome of this Application in a similar manner. The facts in this matter are sufficiently similar that there is no basis for the ACCC to depart from its position in the Perth Airport decision.
- 3.6 This submission refers to the Perth Airport decision throughout to demonstrate how Cairns Airports' arguments are consistent with the ACCC precedent.

¹¹ ACCC Assessment – Collective bargaining notification lodged by Hertz Australia Pty Ltd (7 December 2009).

¹² ACCC Objection Notice in respect of a collective bargaining notification lodged by Hertz Australia Pty Ltd on behalf of a group of car rental companies operating at Perth Airport (16 July 2010).

4 The net public benefit test

The test which must be applied by the ACCC

- 4.1 Section 90(7) of the CCA provides that the ACCC must not make a determination granting authorisation under section 88 unless it is satisfied that the conduct would result, or be likely to result, in public benefit which outweighs any public detriment.
- 4.2 That is, the ACCC must be affirmatively satisfied that benefits outweigh the costs, and the onus is on the Applicant's to establish a factual basis on which the ACCC can base such a decision.
- 4.3 Cairns Airport submits that there is no basis for the ACCC to find that benefits arise from the Applicants' proposed cartel conduct, as the conduct is unlikely to have any effect, given the commercial reality that Cairns Airport will not negotiate with the proposed cartel.
- 4.4 In any event, even if the benefits asserted by the Applicants were to materialise, they would be outweighed by significant public detriments.

5 Pubic benefits

Speculative nature of claimed benefits

- 5.1 It is well established that the ACCC must not grant authorisation on the basis of benefits that are merely speculative, and which do not have any likelihood of arising based on the commercial reality.
- 5.2 As articulated by the Australian Competition Tribunal in *Qantas Airways Limited*, it is not enough that the claimed public benefit is a theoretical possibility. The Applicants must be able to establish a causal nexus between the proposed authorised conduct and the public benefits being achieved:¹³

...for a benefit or detriment to be taken into account, we must be satisfied that there is a real chance, and not a mere possibility, of the benefit or detriment eventuating. It is not enough that the benefit or detriment is speculative or a theoretical possibility. There must be a commercial likelihood that the applicants will, following the implementation of the relevant agreements, act in a manner that delivers or brings about the public benefit or the lessening of competition giving rise to the public detriment. We must be satisfied that the benefit or detriment is such that it will, in a tangible and commercially practical way, be a consequence of the relevant agreements if carried into effect and must be sufficiently capable of exposition

¹³ *Qantas Airways Limited* (2005), ACompT 9 at 1456

(but not necessarily quantitatively so) rather than "ephemeral or illusory", to use the words of the Tribunal in Re Rural Traders Co-operative (WA) Ltd (supra) at 263.

- 5.3 In the face of Cairns Airport's stated intention to run a competitive RFP process to allocate space at the airport to car rental operators, there is simply no basis to conclude that there is any commercial likelihood or real chance, that collective negotiations with the car rental operators at Cairns Airport would be successful.
- 5.4 Cairns Airport has no intention, nor obligation, to negotiate with the proposed cartel, and as such, any purported benefits said to arise from such collective negotiation are non-existent.¹⁴ Specifically, the authorisation will not increase the operators' bargaining power, nor create efficiencies in the negotiating process.
- 5.5 As such, the ACCC cannot be satisfied that there is a net public benefit, even if the significant detriments are not taken into account.
- 5.6 This is consistent with the ACCC's Perth Decision. In that matter the ACCC determined that Perth Airport (which in that matter was referred to as Westralia) would not negotiate collaboratively unless there was a benefit to Perth Airport in doing so, and that as a result the authorisation would be unlikely to increase the rental operators' bargaining power.¹⁵

Hertz has argued that the arrangements will produce a public benefit by providing group members with a degree of countervailing power in negotiations with Westralia which will be reflected in them being able to negotiate more favourable terms and conditions and that, given competition at the retail level, this will result in lower prices and improved levels of service for consumers.

However, given any such more favourable terms and conditions would be at the expense of Westralia. Given that the voluntary nature of the arrangements mean that Westralia can elect not to participate, or to participate in collective bargaining but not accept any less favourable terms than it would through individual negotiation with each member of the group Westralia would be unlikely to agree to a collectively negotiated arrangement that does not produce mutually beneficial outcomes.

¹⁴ The Applicants' acknowledge that CAPL is not bound to collectively negotiate in the Application at page 25, section 8.1.

¹⁵ ACCC Objection Notice in respect of a collective bargaining notification lodged by Hertz Australia Pty Ltd on behalf of a group of car rental companies operating at Perth Airport (16 July 2010), at 5.121 and 5.122.

- 5.7 Further, the ACCC acknowledged that collective bargaining was unlikely to influence the terms and conditions of access, as Perth Airport would only be likely to negotiate collectively if there was a benefit to it from doing so:¹⁶

Given the voluntary nature of collective bargaining arrangements, the ACCC has also recognised that opportunities for collective bargaining to influence contract terms and conditions will generally only arise if both sides are likely to benefit from collectively negotiating an outcome.

That is to say, where the target of a proposed collective bargaining group has the option of continuing to deal with members of the group individually, there would be no incentive for the target to agree to a collectively negotiated outcome unless the collectively negotiated agreement was going to achieve a better outcome for it than negotiating individually with each group member.

- 5.8 The ACCC also noted that even if Perth Airport did collectively negotiate, the rental operators would be unlikely to secure a better deal:¹⁷

As noted, collective bargaining arrangements can operate successfully where they produce mutually beneficial outcomes for the target and the bargaining group. However, in this case, Westralia has strong viable alternatives to dealing with the collective bargaining group, including dealing with the members of the bargaining group individually. In contrast, if the car rental companies want to provide rental services to customers at Perth airport they have no commercially viable alternative to dealing with Westralia. Given this, the ACCC considers that the car rental companies are unlikely to be able to secure a better deal from Westralia through collective negotiation unless there is an offsetting efficiency or other gain to Westralia that motivates them to offer the car rental companies a better deal. [Emphasis added]

- 5.9 Cairns Airport does not consider that it would derive any benefits from collectively negotiating with the proposed cartel, and has no intention of doing so. Therefore the benefits asserted by the applicants, cannot arise.
- 5.10 Given this, and the ACCC's clear position on this in the Perth Airport Notification, there is clearly no basis for the ACCC to allow the Authorisation.

¹⁶ ACCC Objection Notice in respect of a collective bargaining notification lodged by Hertz Australia Pty Ltd on behalf of a group of car rental companies operating at Perth Airport (16 July 2010), at 5.44 to 5.46.

¹⁷ ACCC Objection Notice in respect of a collective bargaining notification lodged by Hertz Australia Pty Ltd on behalf of a group of car rental companies operating at Perth Airport (16 July 2010), at 5.51.

Claimed public benefits, even if they could arise as a result of authorisation, are not material and are substantially outweighed by the resulting public detriment and significant consumer harm

Cost savings would not flow through to consumers

- 5.11 Even in the highly unlikely circumstances where Cairns Airport did elect to negotiate with the proposed cartel, and this allowed the rental operators to strike a better deal, there is no probative evidence before the ACCC that any cost savings would be passed on to consumers.
- 5.12 Rather, the rental operators will continue to charge what the inelastic airport car rental market can bear in circumstances where car rental supply is restricted by limited airport space and the limited number of participants in the car rental market. Consistent with the ACCC's decision regarding Perth Airport, it is very likely therefore that the Applicants' will, to the extent possible, seek to reduce their input costs without passing these cost reductions onto Australian consumers and thereby increase their profits.

Applicants' argument

- 5.13 The Applicants' submission argues that there is a direct correlation between the fees charged by airport operators to car rental companies and the rental rates charged to customers of the Applicants.¹⁸ Based on this they imply that 'location fees' charged to their customers are based on the recovery of their costs of operating at certain locations, such as Airports.
- 5.14 The Applicants' then go on to argue that cost savings obtained through the process of collective bargaining with Cairns Airport will be passed onto consumers through lower location fees, given the strong competitive pressures that exist at a retail level between the Applicants' at Cairns Airport.¹⁹

Rental fees are not representative costs

- 5.15 The contention by the Applicants' that location fees are directly based on costs is misleading.
- 5.16 The analysis undertaken by Cairns Airport, set out in **Attachments A and B**, shows that car rental prices are driven primarily by demand algorithms rather than premium location fees and that there is no clear link between rental charges and airport costs.
- 5.17 **Attachment A** shows that the premium location fees charged by different rental operators at the various airports are not in line with the average cost per transaction set out in Figure 1 of the Application. Similarly, **Attachment B** shows that the total cost of renting the same car for the same period of time on two different days can vary dramatically, despite no changes in the underlying airport costs. Together these attachments demonstrate that there does not appear to be any strong link between airport costs and the rental charges faced by end consumers. Rather, the charges fluctuate significantly, depending on the demand for rental cars at any given time.

¹⁸ K&L Gates *Application for Authorisation – Car rental operators at Cairns Airport* (28 November 2019), section 2.6.

¹⁹ K&L Gates *Application for Authorisation – Car rental operators at Cairns Airport* (28 November 2019), section 7.3, page 24.

- 5.18 This is acknowledged by the Applicants in their submission, in which they attempt to manage the ACCC's expectations:²⁰

...other components of the rental rates charged to customers can be influenced by factors other than operating costs (such as supply and demand from customers). Therefore, a lower Location Fee may not always translate to lower overall cost in every circumstance.

- 5.19 Premium location fees are typically charged as a percentage of the rental cost, despite the fact that a significant proportion of the fees that airports' charge rental operators are fixed (kiosks, booths, rental ready bays and back-of-house are all provided as fixed property rentals). This means that when demand increases and prices to consumers rise, car rental operators' profits will increase without a proportional increase in costs.
- 5.20 We note that Cairns Airport has not been provided with Schedule 1 of the Application which purports to show a correlation between premium location fees and airport charges. Given this information has not been tested through consultation it would be inappropriate for the ACCC to place any weight on this information. Given the information provided in Attachments A and B to this submission, Cairns Airport is extremely sceptical of any purported correlation.
- 5.21 In any event, even if a correlation could be established, it would be wrong to conclude that any correlation equates to causation, without a clear causal nexus.

Rental operators are unlikely to pass on cost savings

- 5.22 Even if the ACCC accepts that there is some evidence of increased airport charges being passed on to consumers, it does not follow that a reduction in airport costs, in the highly concentrated market for on-airport rentals, would be passed on to consumers.
- 5.23 In 2016, the ACCC accepted a court enforceable undertaking from Hertz Australia Pty Ltd (Hertz) in relation to Hertz incorrectly invoicing and charging customers for pre-existing vehicle damage and, relevantly, failing to pass on spare parts discounts to customers.²¹
- 5.23.1 Hertz admitted that it represented to the customer that repair costs for damage sustained during the customer's rental period was the actual cost to Hertz for repair of that damage.
- 5.23.2 In fact, the cost to Hertz was lower than the amount charged to customers partly because Hertz received spare parts discounts that it did not pass on to those customers.
- 5.23.3 In that case Hertz acknowledged that its conduct was likely to contravene sections 18 and 29(1)(m) of the Australian Consumer Law and undertook to stop the conduct.

²⁰ K&L Gates *Application for Authorisation – Car rental operators at Cairns Airport* (28 November 2019), section 7.3, pages 24 and 25.

²¹ See: <https://www.accc.gov.au/public-registers/undertakings-registers/s87b-undertakings-register/hertz-australia-pty-ltd-s87b-undertaking>

- 5.24 Hertz's refusal to pass on cost savings to customers in circumstances where it constituted a breach of law, clearly evidences that the rental operators are unlikely to pass on cost savings in circumstances where it would not constitute a misrepresentation.
- 5.25 Further, the likelihood of savings not being based on to consumers is further heightened in circumstances where the parties are working collaboratively to bargain with Cairns Airport, and the likelihood of tacit collusions is significantly heightened. Given the capacity constraints for rental operators at Cairns Airport, it is difficult to see how the proposed cartel would have any benefit to the rental operators, if they truly intended to pass on all cost reductions to consumers.
- 5.26 Rather, a more commercially realistic proposition is that the rental operators will continue to price at what the inelastic rental market will bear, keeping any cost savings for themselves. In this case, there is no public benefit, simply a transfer of rents from Cairns Airport to the rental operators.

No material transaction cost savings will arise from negotiating with proposed cartel

- 5.27 The Applicants argue that each rental operator devotes considerable time, resources and costs to individually negotiating agreements with Cairns Airport and that the collective negotiation process will allow the Applicants to share the costs of preparing for and negotiating with Cairns Airport.
- 5.28 Cairns Airport considers that its proposed competitive RFP process will have similar transaction costs to negotiating with the proposed cartel.
- 5.29 Even under the Applicants' proposed model (which Cairns Airport does not intend to engage with) each rental operator will need to consider its position, what facilities it requires and how much they are prepared to pay for them. There will also be costs incurred coordinating the various rental operators and attaining agreement on the proposed approach. The Applicants have provided no evidence which demonstrates that this would result in material cost savings compared to the proposed RFP process.
- 5.30 Arguments for reduced transaction costs will typically be relevant where there is a large number of small, poorly resourced negotiating parties. This is clearly not the case here. There are only five current rental operators at Cairns Airport, who are part of all large national networks who have significant experience in negotiating with airports. As such, negotiation with the proposed cartel is unlikely to materially reduce transaction costs.

6 Public detriments

Price distortions and economic detriment

- 6.1 In contrast to the vague, unsubstantiated benefits asserted by the Applicants, there are clear detriments that will arise if the ACCC allows the proposed cartel.
- 6.2 Cairns Airport's intended process for renegotiating its agreements with the Applicants will allocate terminal space through a transparent and fair market-based pricing mechanism. This market-based pricing mechanism maximises efficiency by ensuring that scarce airport space is put to its highest value use. This requires independent bidding by the car rental companies.
- 6.3 If the proposed arrangement were to have any effect it would not allow for independent bidding, or for different contracts based on differentiated levels of service, blunting price signals for airport space. This will distort prices and mean that scarce airport space will not be put to its highest value use, resulting in economic detriment.
- 6.4 Further, if the Applicants are allowed to form the proposed cartel, there is a significant risk that the services offered by rental operators will become standardised, removing any competition based on differentiated service offerings between the rental operators.

Information sharing as a result of collaboration blunts price signals

- 6.5 In the Perth Airport decision, the ACCC found that the collaborative bargaining would allow the applicants to, intentionally or unintentionally, share sensitive commercial information:²²

...if the collective bargaining arrangements were allowed to proceed, group members would still be able to make common representations to Westralia, either in seeking to vary the terms of agreements, or in relation to other matters.

In doing so, group members would also be able to share commercially sensitive information, intentionally or unintentionally, about their willingness to pay for the car rental facilities, and alternative mechanisms for allocating counter space and parking bays.

- 6.6 Cairns Airport is concerned that the sharing of sensitive commercial information may have already occurred, in order to facilitate the Application. Indeed, it is difficult to see how the need for an application could be identified without sharing sensitive information regarding prices offered to the Applicants and their willingness to pay those prices. The ACCC should be mindful that it does not authorise conduct which would legitimise pre-existing cartel conduct.

²² ACCC Objection Notice in respect of a collective bargaining notification lodged by Hertz Australia Pty Ltd on behalf of a group of car rental companies operating at Perth Airport (16 July 2010), at 5.84 and 5.85.

- 6.7 In the Perth Decision the ACCC explained how sharing information of this nature could blunt the pricing signals that would occur in a competitive environment, resulting in resources not being directed to their most efficient use:²³

Ordinarily, competitive tension between individual businesses generates price signals which direct resources to their most efficient use. The exchange of commercially sensitive information such as price, terms and conditions individual businesses would be willing to accept would reduce the competitive tension between such businesses.

The potential anti-competitive effect of sharing this information is increased by the small number of potential alternative car rental companies to those in the group. In this respect, the ACCC understands that the group represents five of the largest car rental companies in Australia.

- 6.8 This risk is equally applicable to Cairns Airport, where the sharing of commercially sensitive information between the Applicants is likely to blunt price signals and prevent scarce airport space being directed to its most efficient use.

The competitive RFP process will allocate capacity efficiently between rental operators

- 6.9 Cairns Airport's competitive RFP process which will allocate scarce terminal space based on the value of that space to the operator is clearly superior to the collective bargaining approach in efficiency terms. It has the potential to discover individual operators' valuations of the services so that Cairns Airport can allocate scarce airport capacity according to their willingness to pay.
- 6.10 This is an important outcome because despite the high level of concentration in the Cairns car rental market, there is still a degree of competition between individual car rental companies for the services and facilities provided by Cairns Airport. Competitive tension extends to the range, branding and location of each car rental's presence at the airport. Collective bargaining is likely to blunt competition in the downstream market by causing a standardisation of the presence each car rental company has at Perth Airport (as discussed further below).
- 6.11 If Cairns Airport were to engage in collective bargaining it would prevent it from gaining information as to individual valuations of the rental operators within the collective bargaining group. In these circumstances, it is difficult to see how Cairns Airport could efficiently allocate space between the members of the proposed cartel. At best it would have to do so on an arbitrary basis, and at worst it would need to submit to a capacity sharing arrangement between the members of the proposed cartel.

²³ ACCC Objection Notice in respect of a collective bargaining notification lodged by Hertz Australia Pty Ltd on behalf of a group of car rental companies operating at Perth Airport (16 July 2010), at 5.87 and 5.88.

The competitive RFP process will allocate capacity efficiently between different uses

- 6.12 Collective bargaining would also impact the allocation of airport space between rental operators and other uses.
- 6.13 In allocating terminal and ground space, Cairns Airport has to balance good airport planning, the expectations of the travelling public about the services they can access at airports, the relevant relative costs (avoidable and opportunity) and its own legitimate commercial interests.
- 6.14 Prices at Cairns Airport need to reflect the value of those areas in alternative use, namely, retail outlets in the terminal and public car parking in the case of ready bays and signalling a price below which Cairns Airport is not prepared to supply those services.
- 6.15 Cairns Airport is currently in the process of reconsidering its ground transport masterplan and how it can efficiently allocate space different uses. All rental operators at Cairns Airport have expressed a desire to increase their current footprint at the Airport. This expansion comes with an associated capex cost as well as opportunity cost. If Cairns Airport cannot recover revenue that reflects the value of this scarce space, then the space allocated for this purpose, as a matter of economic principle, should be reduced.
- 6.16 The proposed cartel risks inefficient levels of airport space being allocated to rental operators on the basis that it is likely to attempt to negotiate prices on the basis of the lowest willingness to pay of the Applicants. This will result in sub-optimal outcomes, and dead-weight-loss, and in turn, the possibility that rental operators who are willing and able to purchase additional capacity are unable to.

Standardisation of services

- 6.17 While the Applicants assert that standardisation will not occur if the authorisation is allowed, they have provided no evidence, or even an argument, to substantiate this assertion.²⁴
- 6.18 Throughout the redesign process, Cairns Airport has made extensive efforts to provide additional and alternative offerings to rental operators, in order to cater to various needs and demands. The very nature of collective bargaining is inconsistent with the provision of differentiated services, as separate individual negotiations are needed to provide tailored services. If the ACCC were to authorise the proposed conduct it is highly likely that it would result in the standardisation of the services that could be offered to rental operators and in turn to customers in the downstream market.
- 6.19 This harms consumers in the downstream market, by limiting innovation and competition between rental operators, in an already concentrated market.

²⁴ ACCC Objection Notice in respect of a collective bargaining notification lodged by Hertz Australia Pty Ltd on behalf of a group of car rental companies operating at Perth Airport (16 July 2010), at section 8.2.

Increased likelihood of collusion in downstream markets

- 6.20 The proposed conduct will also increase the risk of collusion between the rental operators in downstream markets.
- 6.21 The market for on-airport car rentals is already highly concentrated, with five large players,²⁵ and high barriers to entry (in that there is limited airport space available for additional operators).
- 6.22 If the subsidiaries of Avis Budget Group are treated as a single entity,²⁶ the Herfindahl-Hirschman Index (HHI) value for on-airport car rentals at Cairns Airport is high at 2562 reflecting the concentration in the market.²⁷
- 6.23 It is evident that a degree of sharing commercially sensitive information has occurred between the rental operators currently, in order to facilitate the application for authorisation, and Cairns Airport is concerned that the rental operators have already formed an arrangement not to engage with Cairns Airport in discussions regarding rates. Authorising the proposed cartel conduct would allow further commercially sensitive information to be shared, either intentionally or unintentionally, under the guise of the authorised cartel. This, and the collaborative environment that it will create, will significantly increase the likelihood of collusion, tacitly or otherwise, within the already concentrated downstream market for on-airport car rentals. This could occur in decisions not to pass on cost savings to consumers, not to compete on service offering, or more blatant arrangements to control prices.
- 6.24 It will also be possible for the Applicants to coordinate on non-price aspects of competition in the downstream market under the premise that it relates to upstream negotiations with Cairns Airport. For example, the Authorisation would allow the Applicants to enter into de-facto capacity sharing agreements, by allocating areas within the terminal on the grounds that it is part of the collective negotiations with the airport. Similarly the parties would be able to agree on the level of service that should be sought by Cairns Airport, and in doing so, would determine the level of service offered to their downstream customers. This could result in perverse outcomes – for example, the Applicants could agree to each reduce kiosk space in the terminal on the basis that it would reduce costs without impacting market share if it was done in a coordinated fashion.

Proposed information sharing protocols are plainly inadequate

- 6.25 The Applicants explain that they ‘intend’ to implement vague information sharing protocols to reduce the risk of any collaborative conduct not related to negotiations with Cairns Airport.
- 6.26 This is clearly inadequate to address the risk of collaboration in downstream markets.

²⁵ Given that Avis and Budget are both part of the Avis Budget Group.

²⁶ Cairns Airport considers that it is reasonable to treat Budget and Avis as the same entity given they both form part of the Budget Avis Group and deal with Cairns Airport as a single entity (see Attachment C). Accordingly, Cairns Airport considers it reasonable to consolidate the Avis and Budget market shares for the purpose of calculating the HHI in the circumstances.

²⁷ Based on market shares of Avis Budget Group 40%; Hertz 21%, Thrifty 15%; Europcar, 14%; and RedSpot 10%. This is based on turnover declarations provided by the car rental operators to Cairns Airport.

- 6.26.1 First, the Applicants only propose to apply the information sharing protocol to discussions unrelated to the proposed conduct (negotiations with Cairns Airport).²⁸ Obviously there will be a significant overlap between the information required to inform prices for upstream services and downstream services. Due to the lack of clear delineation it is highly likely that sensitive commercial information, which can be used to influence downstream prices, will be shared under the guise of relating to negotiations with Cairns Airport.
- 6.26.2 Secondly, there is no obligation for the Applicants to introduce such an information sharing protocol. It is highly likely that once the authorisation is approved, that this proposal will fall by the way side, as the Applicants will be shielded from the cartel provisions of the CCA, and will have no incentive to implement such protocols.
- 6.26.3 Finally, even to the extent that the parties do implement information sharing protocols, and operate through an independent third party a degree of information sharing is inevitable, either intentionally or unintentionally, in order to coordinate, and get agreement into the groups bargaining strategy.
- 6.27 In commercial practice, it is not realistic to expect that collaborative bargaining can be effectively undertaken without a degree of commercially sensitive information sharing. This information sharing will soften competition in the downstream market for car rentals to the detriment to the consumers in that market.

7 Interim authorisation

- 7.1 For the same reasons as discussed in this submission, the ACCC should not provide an interim authorisation for the Applicants to operate as a buy-side cartel.
- 7.2 If an interim authorisation was to be allowed, it could result in irreversible harm to be done through the sharing of commercially sensitive information, which could not be undone if the ACCC were to subsequently decide not to authorise the conduct.
- 7.3 Once information is shared, it cannot be unshared. It would be completely inappropriate for the ACCC to grant interim authorisation in circumstances where it has previously found that the same conduct would result in public detriments, and where this harm could be irreversible.
- 7.4 As acknowledged in the Perth Decision, the harm is likely to occur shortly after the authorisation comes into effect:²⁹

The ACCC stated that there is a risk that in the course of discussing appropriate terms and fees, the group members may either intentionally or unintentionally reveal information regarding their willingness to pay for the car rental facilities to each other. In addition, the

²⁸ K&L Gates Application for Authorisation – Car rental operators at Cairns Airport (28 November 2019), section 8.3, page 26.

parties may discuss an alternative mechanism for allocating counter space and parking bays. Because the group members can commence such discussions as soon as the notice comes into force, the damage to Westralia's Request for Proposal process could be realised soon after that time.

- 7.5 The fact that the Applicants do not plan to enter into collectively negotiated agreements until the ACCC has made its final determination misses the point. Once commercially sensitive information has been shared, such as information on willingness to pay, the Applicants could tacitly collude even if the ACCC subsequently refused to grant the authorisation.
- 7.6 Cairns Airport also reiterate the concerns that commercially sensitive information may be shared by the parties already, and an interim authorisation could further accelerate this.
- 7.7 Cairns Airport would also like to raise the apparently cynical timing of the Applicants' Application. Cairns Airport has begun consultation with the Applicants' almost a year before the expiry of their lease and license agreements. The Applicants' have had ample opportunity to submit an application that would allow time for the ACCC to make a decision prior to negotiations commencing. However the Applicants have instead submitted the Application only a two months out from the expiration of the agreements, and used this as an argument to justify an interim authorisation without a full consideration of the facts by the ACCC, on the basis that the Applicants expect collective negotiations with Cairns Airport will involve substantial preparation and negotiations. Cairns Airport submits that in these circumstances this is not sufficient reason to justify an interim authorisation.
- 7.8 If the ACCC decides to grant an interim authorisation Cairns Airport requests, as a matter of procedural fairness, that the ACCC provides written notice and the reasons for its decision at least 10 business days before the interim authorisation comes into effect.

8 Other points

10 year period authorisation period is excessive

- 8.1 While Cairns Airport considers that there is no basis for the ACCC to approve the Authorisation, in the event that it did, that a 10 year period would be excessive.
- 8.2 The Applicants have not provided any justified reason for why the length of their proposed cartel of 10 years is needed to achieve their stated objectives.
- 8.3 It is important to bear in mind that the Applicants are asking the ACCC to authorise the formation of a cartel. A 10 year authorisation period has the potential to create significant harm by entrenching standardised prices, inefficiently allocating terminal and ground

²⁹ ACCC Objection Notice in respect of a collective bargaining notification lodged by Hertz Australia Pty Ltd on behalf of a group of car rental companies operating at Perth Airport (16 July 2010), at 5.70.

capacity, and allowing for significant information sharing over this time thus reducing competition in both the upstream and downstream markets.

- 8.4 As such, if the ACCC is minded to allow the Authorisation, Cairns Airport submits that it should do so for a shorter period of one year. This would allow the parties to attempt to collectively renegotiate their current agreements, and would enable the ACCC to reassess the authorisation for future renegotiations, without allowing the Applicant's to collaborate and share sensitive information during the terms of their agreements.
- 8.5 On 17 December 2019 the ACCC wrote to Cairns Airport to advise that it did not intend to provide a confidential version of the Applicants' submission, as requested.³⁰ The public version of the submission redacts key information, including aspects of the conduct that the Applicants are seeking to have authorised, and a Schedule which the Applicants' argue support the contentions in the Application.
- 8.6 The ACCC's general policy is that information relating to the subject of the application (ie, the proposed conduct) will not be excluded from the public:³¹

Generally speaking, the ACCC will not exclude information from the public register version of an authorisation application or notification where that information is necessary to identify the conduct, arrangements or proposed acquisition the subject of the application or notification.

- 8.7 The reason for this policy is self-explanatory – it is a matter of procedural fairness. Withholding information regarding the full nature of the conduct for which authorisation is sought, has the potential to significantly impede the opportunity for a party, whose interests could be adversely affected by the ACCC's decision, to present a fully considered response to the ACCC.
- 8.8 In this case, withholding the redacted information which forms a substantial portion of 'Section 3.1 description of the proposed conduct' in the application, will impede Cairns Airport's ability to identify the full nature of the conduct which is the source of the application, and will impede Cairns Airport's ability to provide a fully informed submission.
- 8.9 Cairns Airport also notes that there does not appear to be any basis for the Applicants' claim of confidentiality over the information contained in Schedule 1 of the Application. The Applicants' describe the information in Schedule 1 of the Application as:³²
- 8.9.1 a summary of increases in fees payable by the Applicants to Cairns Airport (ie, information that Cairns Airport already has access to); and
- 8.9.2 the impact of those fees on locations fees charged by rental operators to consumers (which is publicly available information as shown in **Attachment A** of this submission).

³⁰ Letter from Daniel McCracken-Hewson to Simon Uthmeyer, dated 17 December 2019.

³¹ ACCC *Guidelines for excluding confidential information from the public register for authorisation (merger and nonmerger) and notification processes* (1 April 2019).

³² K&L Gates *Application for Authorisation – Car rental operators at Cairns Airport* (28 November 2019), section 2.7, page 19.

Restriction of Publication of Part Claimed

- 8.10 Given that Cairns Airport is already privy to the fees it charges the rental operators, and information on the location fees charged by rental operators is publicly accessible online, there appears to be no basis on which a claim of confidentiality over this information can be maintained, insofar as that claim pertains to Cairns Airport. Given the conclusions that the Applicants' seek to draw from the information in Schedule 1 it is important that this information is properly scrutinised through consultation with Cairns Airport.
- 8.11 In the event that the ACCC continues to maintain the confidentiality of the withheld information, it must not place any weight on any information which Cairns Airport has not been afforded an opportunity to properly review and provide submissions on (including in making a decision on whether to grant an interim authorisation).
- 8.12 Cairns Airport reserves its position to make further submissions in relation to the confidential submission.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Attachment A

Analysis of premium location fees

Purpose

- 1.1 This attachment sets out the analysis undertaken by Cairns Airport of the premium location fees charged by rental operators at Cairns Airport, and explains why there does not appear to be a strong link between airport costs and premium location fees.

Approach

- 1.2 Cairns Airport undertook a review of the Premium Location Fees (PLFs) charged by the rental operators. The review was undertaken by sourcing quotes for internet car rental bookings at different locations.¹
- 1.3 The PLFs, which are charged as a percentage of the total price of the car rental, are set out in the table below. Cairns Airport was unable to access any PLF information for Europcar.

Conclusions

- 1.4 Based on the information set out in the table below there does not appear to be a strong link between PLFs charged by the rental operators and the airport cost benchmarks set out in the Application.
- 1.5 There is significant variation in the premium location fees charge by different rental operators, ranging from 16.4% (Redspot) to 26% (Hertz).
- 1.6 If airport costs and PLFs were strongly correlated, it could be expected that the order of the airports in the benchmark cost information provided in figure 1 of the Application would line up with the PLFs charged by the rental operators. This is not the case. While Cairns Airport ranks second in terms of costs according to the Applicants' benchmarks, all operators charged higher PLFs at, at least, 3 other airports. In the case of Hertz there were 5 other airports with higher PLFs than at Cairns Airport. Further, most operators also had a number of other airports with the same PLF as Cairns Airport.
- 1.7 According to the Applicants' benchmark cost information the only airport with higher costs per transaction is Sydney Airport. Despite this, the highest PLF charged by most operators is for Canberra Airport (which was ranked fifth in the Applicants' cost benchmarks).
- 1.8 The highest PLF charged at an airport is between 21% and 36% higher than the PLFs charged at Cairns Airport.

¹ If further information is needed, Cairns Airport has copies of the quotes used to produce this data readily available. This information can be provided on request.

Premium location fees as at 10/11 August 2019

		Avis	Hertz	Budget	Thrifty	Redspot	Average	Min	Max
DARWIN	AIRPORT SURCHARGE	25.00%	25.00%	24.00%	16.19%	15.89%	21.22%	15.89%	25.00%
	CITY SURCHARGE	6.00%	6.00%	5.00%	4.31%	n/a	5.33%	4.31%	6.00%
ALICE SPRINGS	AIRPORT SURCHARGE	24.00%	25.00%	24.00%	16.20%	n/a	22.30%	16.20%	25.00%
	CITY SURCHARGE	0.00%	0.00%	n/a	0.00%	n/a	0.00%	0.00%	0.00%
ADELAIDE	AIRPORT SURCHARGE	21.00%	25.00%	21.00%	16.53%	15.70%	19.85%	15.70%	25.00%
	CITY SURCHARGE	6.00%	6.00%	5.00%	4.61%	n/a	5.40%	4.61%	6.00%
PERTH	AIRPORT SURCHARGE	24.00%	27.00%	24.00%	18.50%	16.07%	21.92%	16.07%	27.00%
	CITY SURCHARGE	6.00%	6.00%	6.00%	4.61%	0.00%	4.52%	0.00%	6.00%
CAIRNS	AIRPORT SURCHARGE	25.00%	26.00%	25.00%	19.14%	16.45%	22.32%	16.45%	26.00%
	CITY SURCHARGE	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
TOWNSVILLE	AIRPORT SURCHARGE	19.15%	20.00%	19.15%	15.51%	12.75%	17.31%	12.75%	20.00%
	CITY SURCHARGE	0.00%	0.00%	n/a	0.00%	n/a	0.00%	0.00%	0.00%
MELBOURNE	AIRPORT SURCHARGE	29.00%	30.00%	29.00%	21.59%	19.73%	25.86%	19.73%	30.00%
	CITY SURCHARGE	6.00%	6.00%	6.00%	4.61%	0.00%	4.52%	0.00%	6.00%
SYDNEY	AIRPORT SURCHARGE	31.50%	32.00%	31.50%	23.05%	19.80%	27.57%	19.80%	32.00%
	CITY SURCHARGE	6.00%	6.00%	6.00%	4.61%	0.00%	4.52%	0.00%	6.00%
BRISBANE	AIRPORT SURCHARGE	25.00%	28.00%	25.00%	19.14%	16.79%	22.78%	16.79%	28.00%
	CITY SURCHARGE	6.00%	6.00%	6.00%	4.60%	4.76%	5.47%	4.60%	6.00%
HOBART	AIRPORT SURCHARGE	19.00%	19.00%	19.00%	15.16%	14.00%	17.23%	14.00%	19.00%
	CITY SURCHARGE	0.00%	6.00%	0.00%	0.00%	0.00%	1.20%	0.00%	6.00%
CANBERRA	AIRPORT SURCHARGE	34.00%	34.00%	34.00%	24.45%	15.85%	28.46%	15.85%	34.00%
	CITY SURCHARGE	6.00%	0.00%	6.00%	3.22%	n/a	3.81%	0.00%	6.00%
AIRPORT SURCHARGE AVERAGE		25.15%	26.45%	25.06%	18.68%	16.30%	22.44%	12.75%	34.00%
CITY SURCHARGE AVERAGE		3.82%	3.82%	4.44%	2.78%	0.79%	3.16%	0.00%	6.00%

Attachment B

Analysis of rental charges at different airports

Purpose

- 1.9 This attachment sets out the analysis undertaken by Cairns Airport of the rental fees charged by rental operators at Cairns Airport and explains why there does not appear to be any link between airport costs and rental charges.

Approach

- 1.10 Cairns Airport undertook a review of the total rental charges charged by the rental operators. This review was undertaken by seeking internet based quotes for the same car, both a week out and a month out, at different locations.² This was repeated for each of the rental operators currently operating at Cairns Airport.
- 1.11 We have also laid out the charges at Cairns Airport compared to the highest charge
- 1.12 This information is summarised on the following pages.

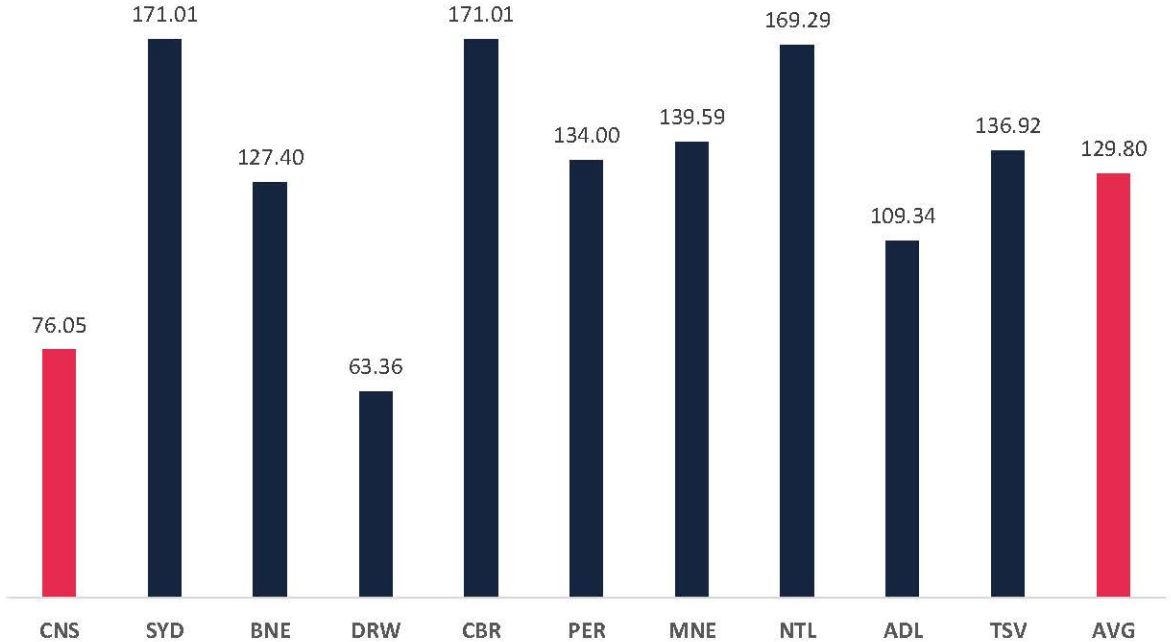
Conclusions

- 1.13 The information set out below clearly shows that the relative prices of hiring a car at different locations, at different times, are highly volatile, despite the consistent nature of airport charges to rental operators.
- 1.14 For example, the cost to rent a Suzuki Swift from Budget on 17 December 2019 is \$76.05, 41% lower than the average cost across all airports in the sample, and the second to lowest cost from the 10 airports sampled.
- 1.15 To rent the same car from the same operator a month out on 15 January 2020 would cost \$134, 38% higher than the average cost across all airports in the sample, and the highest cost of those 10 airports sampled.
- 1.16 This supports the contention that the rental charges faced by end-consumers are driven primarily by fluctuations in demand, not by minor differences in airport charges.
- 1.17 Further, there appears to be a broad consistency in the costs charged by different rental operators in a given location, suggesting that demand algorithms play a strong role in determining the prices offered to end consumers for car rentals.

² If further information is needed, Cairns Airport has copies of the quotes used to produce this data readily available, which can be provided on request.

The Cost of Renting The Same Car
for the Same Period
at Different Airports

Date of Rental: 17/12/19
Operator: **BUDGET**
Car type: Suzuki Swift

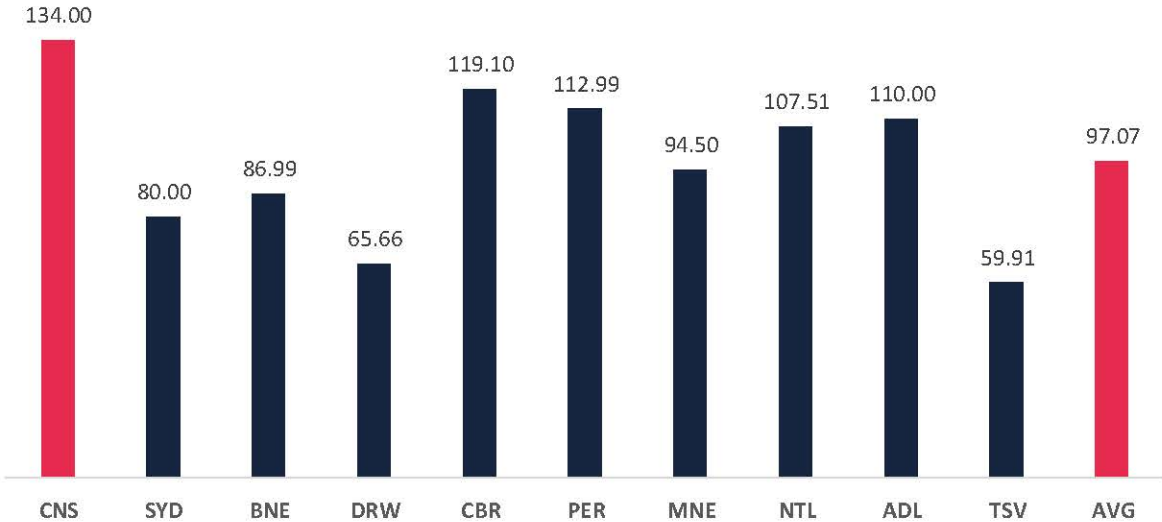


CNS v AVG	-41%
CNS v HIGH	-55%
CNS v LOW	20%

Source: Budget website 10/12/19

The Cost of Renting The Same Car
for the Same Period
at Different Airports

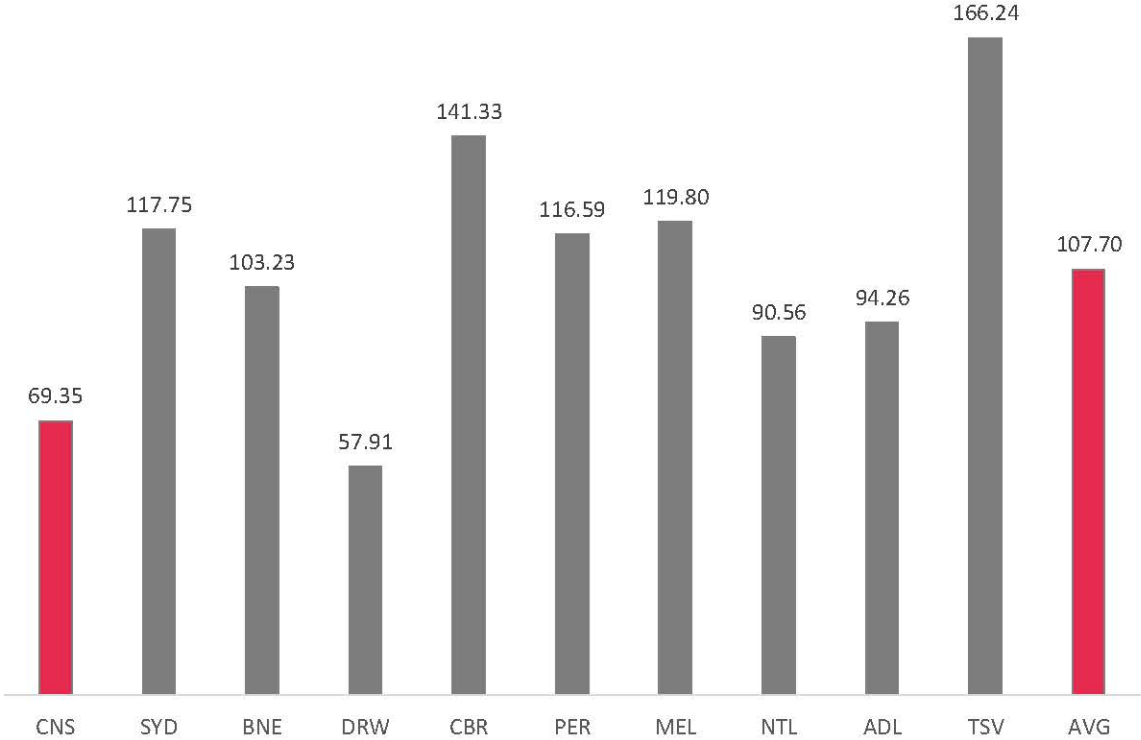
Date of Rental: 15/1/20
Operator: **BUDGET**
Car type: Suzuki Swift



CNS v AVG	38%
CNS v HIGH	54%
CNS v LOW	104%

The Cost of Renting The Same Car
for the Same Period
at Different Airports

Date of Rental: 17/12/19
Operator: REDSPOT
Car type: Kia Rio

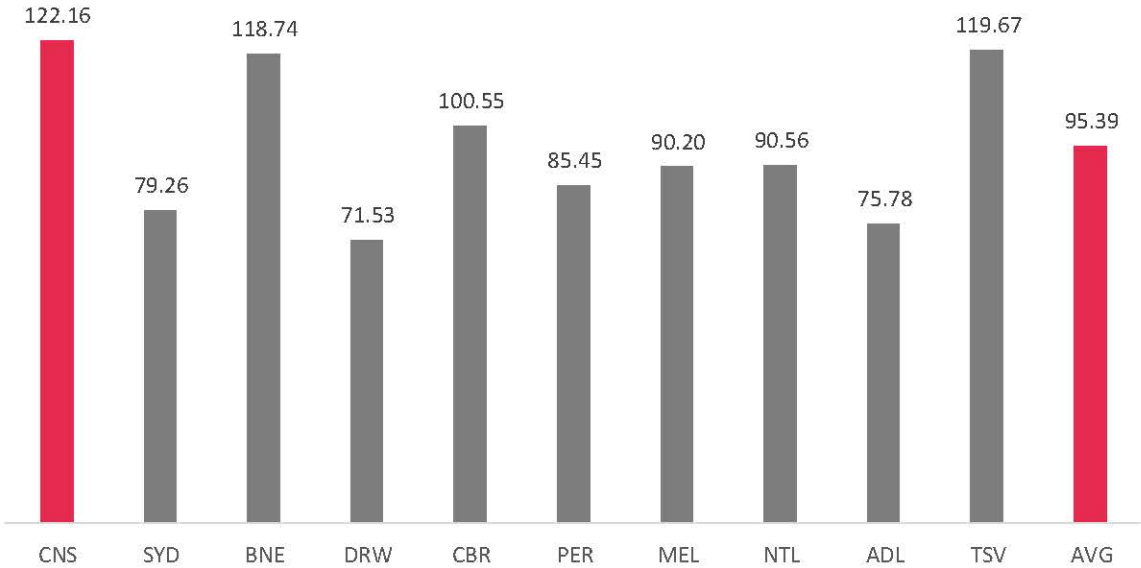


CNS v AVG	-36%
CNS v HIGH	-58%
CNS v LOW	20%

Source: website 10/12/19

The Cost of Renting The Same Car
for the Same Period
at Different Airports

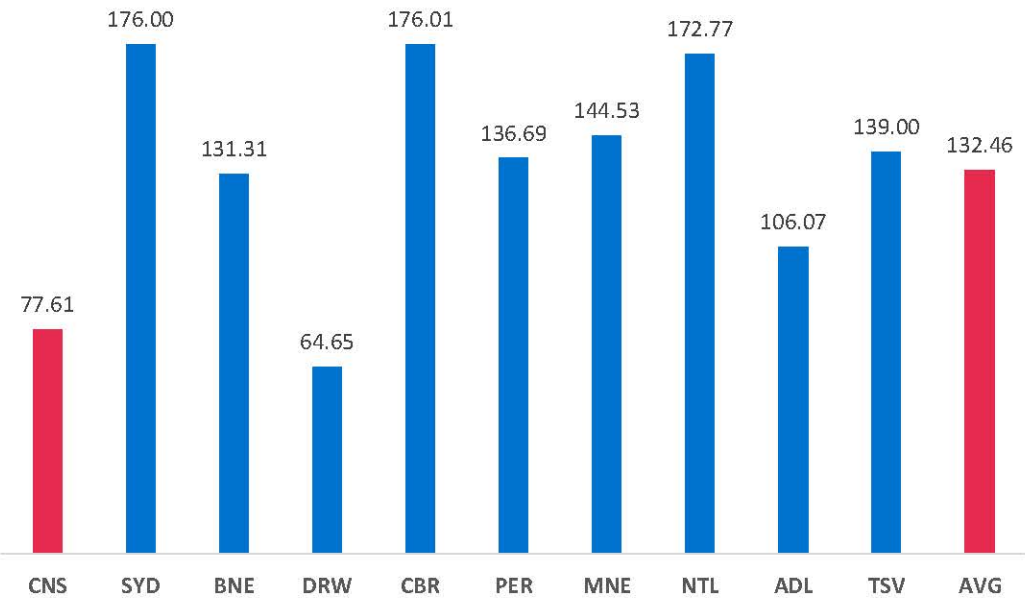
Date of Rental: 15/1/20
Operator: REDSPOT
Car type: Kia Rio



CNS v AVG	28%
CNS v HIGH	2%
CNS v LOW	71%

The Cost of Renting The Same Car
for the Same Period
at Different Airports

Date of Rental: 17/12/19
Operator: **AVIS**
Car type: Kia Rio

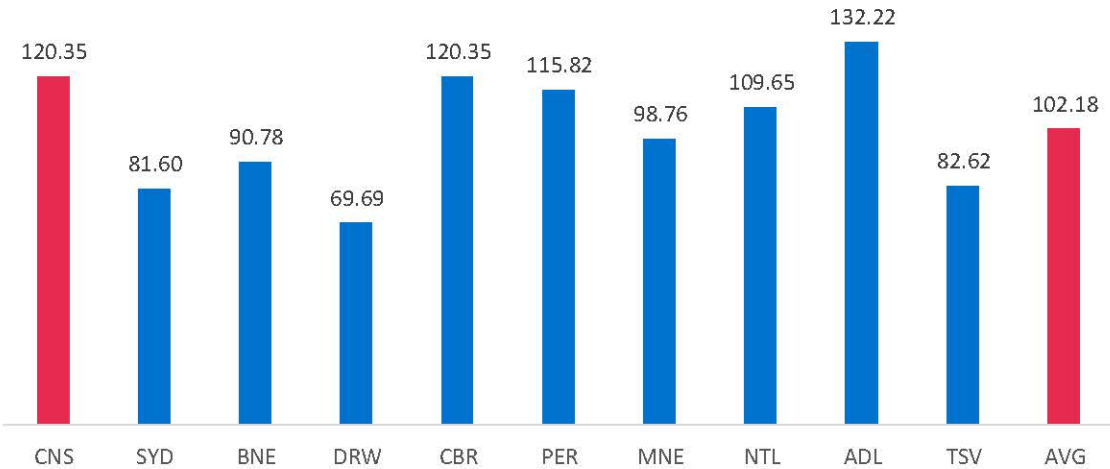


CNS v AVG	-41%
CNS v HIGH	-55%
CNS v LOW	20%

Source: Avis website 10/12/19

The Cost of Renting The Same Car
for the Same Period
at Different Airports

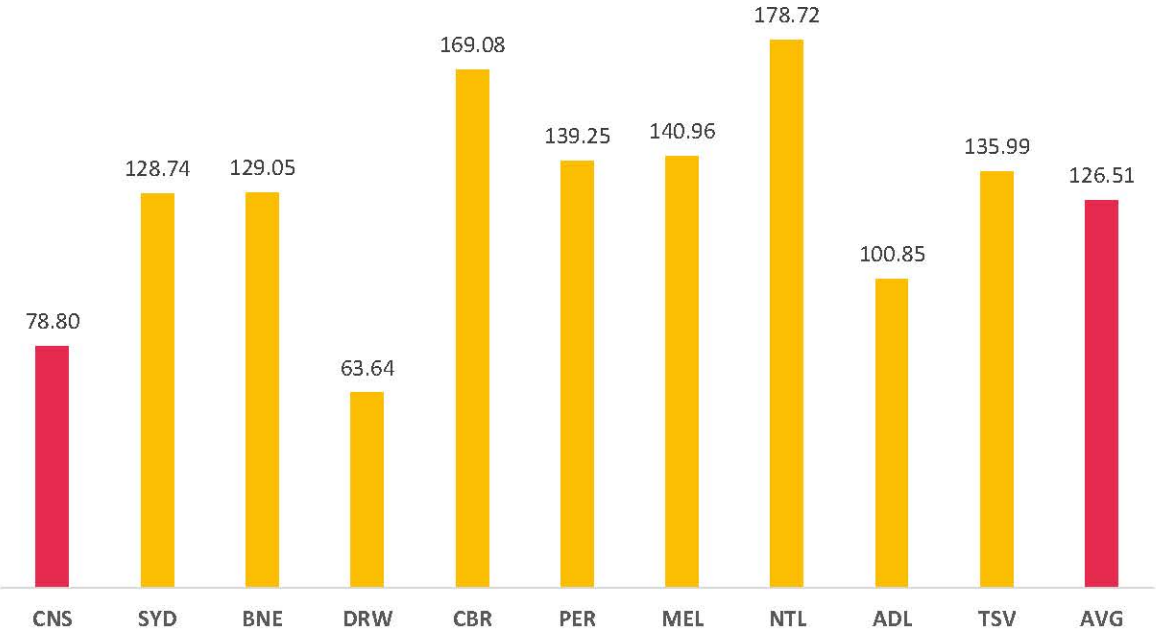
Date of Rental: 15/1/20
Operator: **AVIS**
Car type: Kia Rio



CNS v AVG	18%
CNS v HIGH	-9%
CNS v LOW	73%

The Cost of Renting The Same Car
for the Same Period
at Different Airports

Date of Rental: 17/12/19
Operator: **THRIFTY**
Car type: Toyota Corolla

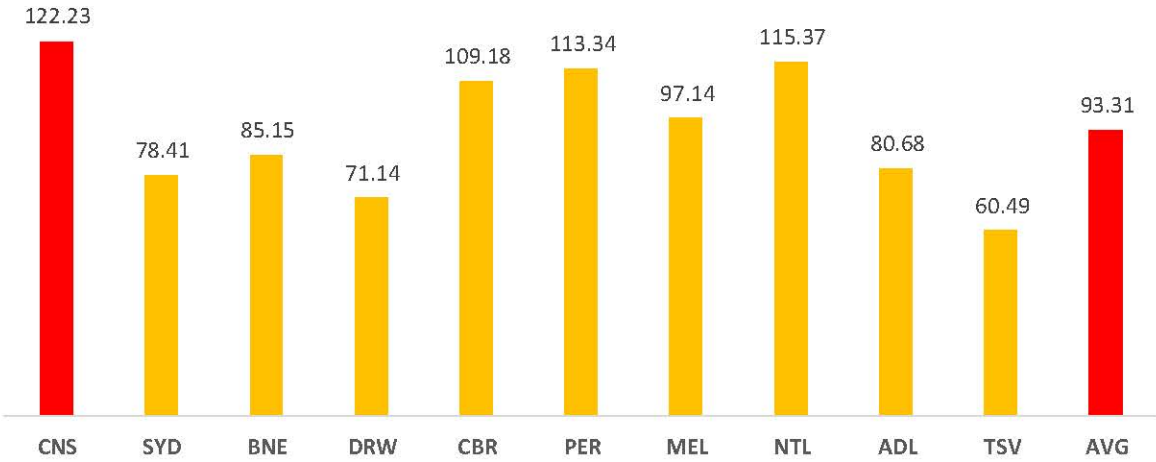


CNS v AVG	-38%
CNS v HIGH	-56%
CNS v LOW	24%

Source: Thrifty website 10/12/19

The Cost of Renting The Same Car
for the Same Period
at Different Airports

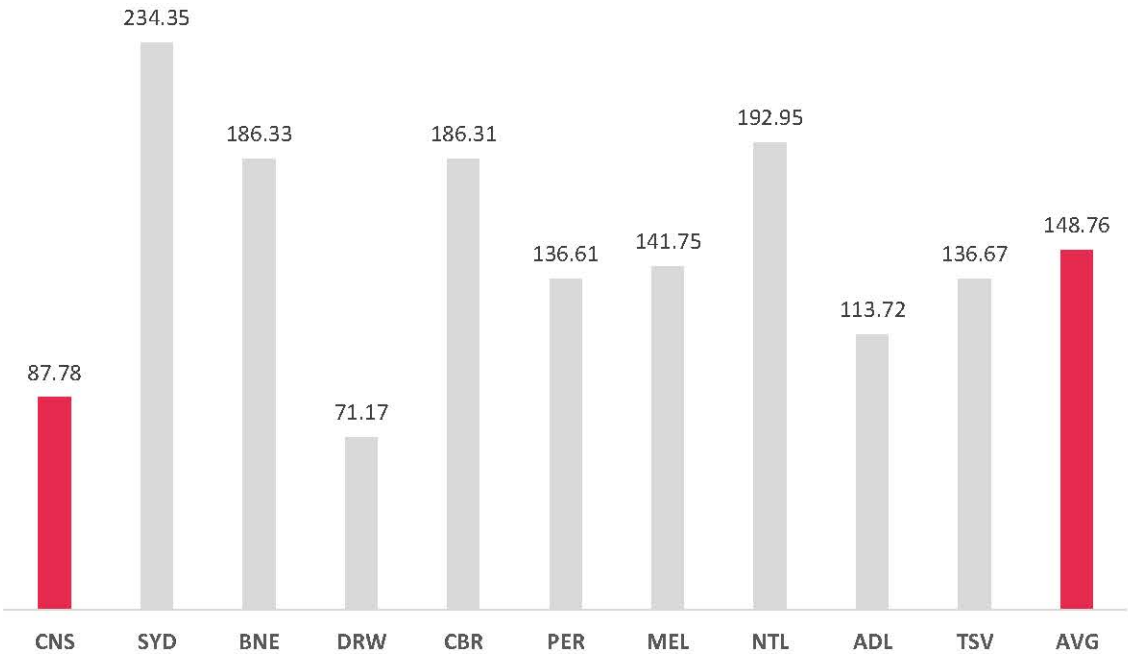
Date of Rental: 15/1/20
Operator: **THRIFTY**
Car type: Toyota Corolla



CNS v AVG	31%
CNS v HIGH	6%
CNS v LOW	72%

The Cost of Renting The Same Car
for the Same Period
at Different Airports

Date of Rental: 17/12/19
Operator: **HERTZ**
Car type: Toyota Corolla

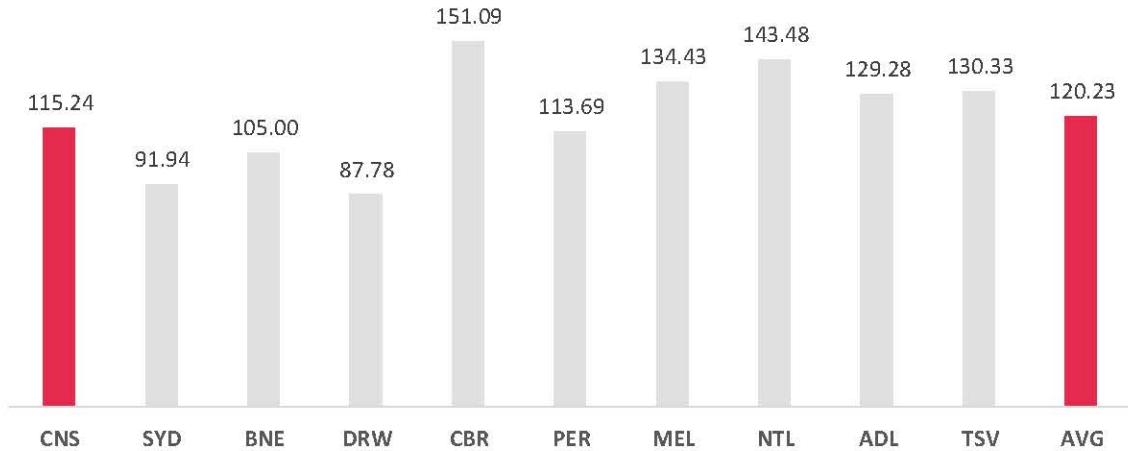


CNS v AVG	-41%
CNS v HIGH	-63%
CNS v LOW	23%

Source: Hertz website 10/12/19

The Cost of Renting The Same Car
for the Same Period
at Different Airports

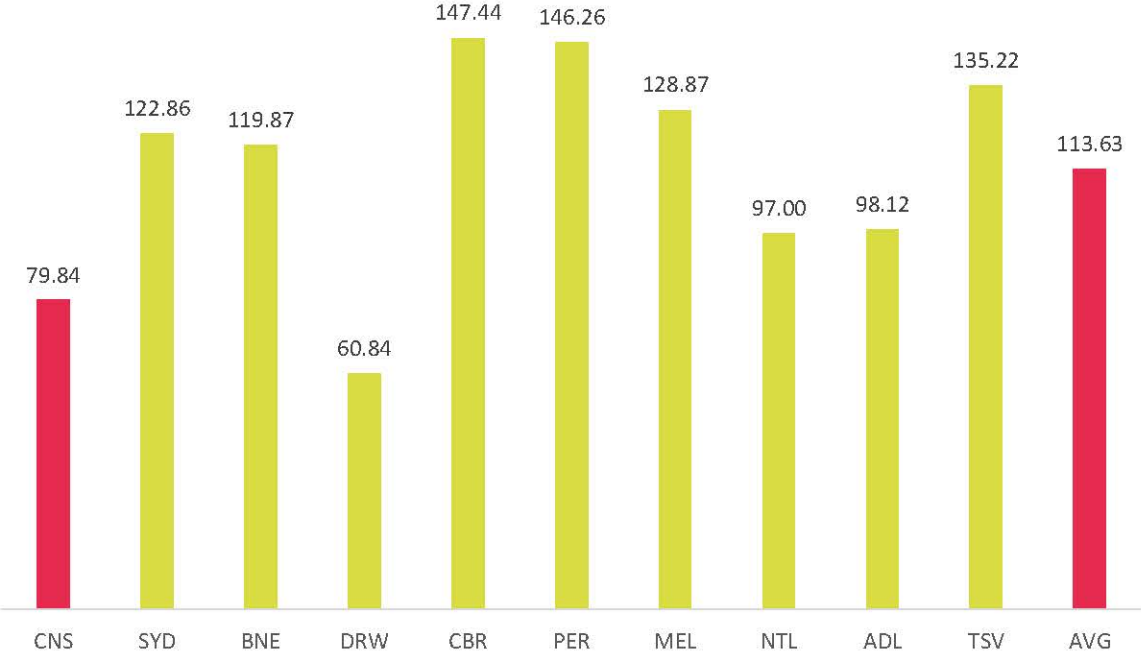
Date of Rental: 15/1/20
Operator: **HERTZ**
Car type: Toyota Corolla



CNS v AVG	-4%
CNS v HIGH	-24%
CNS v LOW	31%

The Cost of Renting The Same Car
for the Same Period
at Different Airports

Date of Rental: 17/12/19
Operator: **EUROPCAR**
Car type: Kia Rio

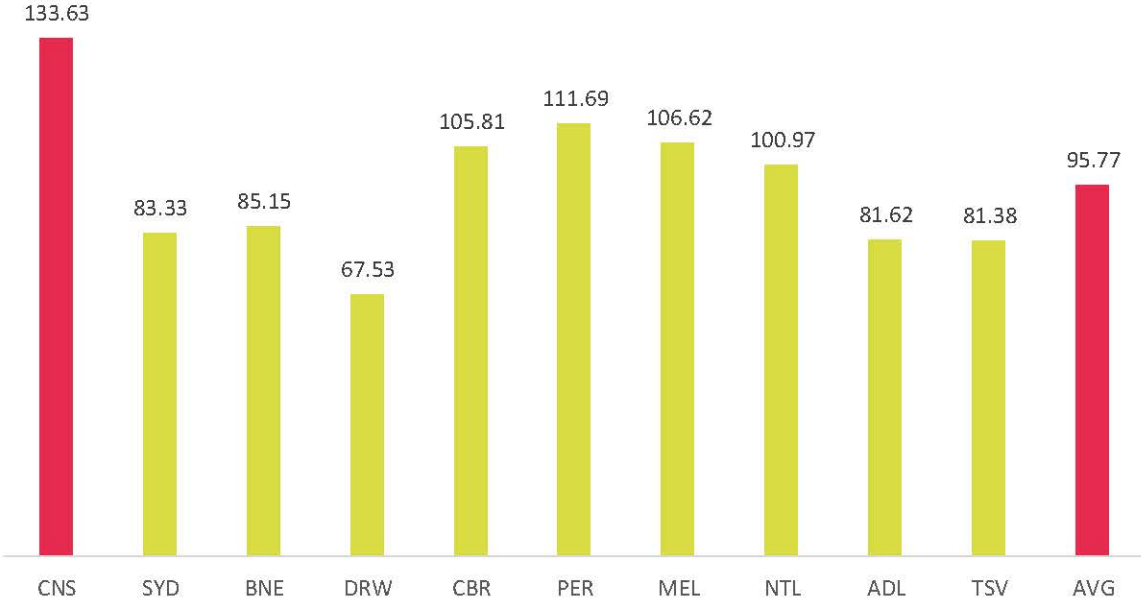


CNS v AVG	-30%
CNS v HIGH	-46%
CNS v LOW	31%

Source: Europcar website 10/12/19

The Cost of Renting The Same Car
for the Same Period
at Different Airports

Date of Rental: 15/1/20
Operator: **EUROPCAR**
Car type: Kia Rio



CNS v AVG	40%
CNS v HIGH	26%
CNS v LOW	98%