



Non - Confidential Version

Restriction of Publication of Part Claimed

Application for Authorisation

Car rental operators at Cairns Airport

Applicants to the proposed conduct

1. Provide details of the applicants for authorisation, including:

1.1. name, address (registered office), telephone number and ACN

1.2. contact person's name, position, telephone number and email address

Alex Thrift

Associate Director, Policy & Technology, Australian Finance Industry Association Limited

Naveen Ahluwalia

Director - Policy and Regulatory Affairs

1.3. a description of business activities

The applicants for authorisation are:

- WTH Pty Ltd trading as Avis Australia (**Avis**);
- Budget Rent a Car Australia Pty Ltd (**Budget**);
- Hertz Australia Pty Limited (**Hertz**);
- CLA Trading Pty Ltd trading as Europcar (**Europcar**);
- Redspot Head Office Pty Ltd trading as Enterprise, Alamo, National and Redspot (**Enterprise**); and
- Kingmill Pty Ltd trading as Thrifty Car Rental and Dollar Car Rental (**Thrifty**)

(collectively referred to as '**the Applicants**').

See Annexure A for contact details of the Applicants and section 2.1 of Annexure B for further details on the business activities of the Applicants.

1.4. email address for service of documents in Australia.

Ayman Guirguis (Partner, K&L Gates)

2. If applicable, provide details of the other persons and/or classes of persons who also propose to engage, or become engaged, in the proposed conduct and on whose behalf authorisation is sought. Where relevant provide:

2.1. name, address (registered office), telephone number and ACN

2.2. contact person's name, telephone number and email address

2.3. a description of business activities.

The Applicants are also seeking authorisation on behalf of any and all future car rental companies that commence operating at Cairns Airport during the term of the Authorisation.

The proposed conduct

3. Provide details of the proposed conduct, including:

3.1. a description of the proposed conduct and any documents that detail the terms of the proposed conduct

The Applicants propose to collectively bargain with Cairns Airport Pty Ltd (**CAPL**) in relation to the acquisition of space associated with the provision of car rental services at Cairns Airport. Please refer to section 3.1 of Annexure B.

3.2. the relevant provisions of the Competition and Consumer Act 2010 (Cth) (the Act) which might apply to the proposed conduct, ie:

- cartel conduct (Division 1 of Part IV)
- contracts, arrangements or understandings that restrict dealings or affect competition (s. 45)
- concerted practices (s. 45)
- secondary boycotts (sections 45D, 45DA, 45DB, 45E, 45EA)
- misuse of market power (s. 46)
- exclusive dealing (s. 47)
- resale price maintenance (s. 48) and/or
- a dual listed company arrangement (s. 49)

The relevant provisions of the Act that might apply to the Proposed Conduct are:

- cartel conduct (Division 1 of Part IV);
- concerted practices (s. 45); and
- contracts, arrangements or understandings that restrict dealings or affect competition (s. 45).

3.3. the rationale for the proposed conduct

Please refer to section 3.2 of Annexure B.

3.4. the term of authorisation sought and reasons for seeking this period. By default, the ACCC will assume you are seeking authorisation for five years. If a different period is being sought, please specify and explain why.

Authorisation is sought for a period of 10 years. Please refer to section 3.3 of Annexure B.

4. Provide documents submitted to the applicant's board or prepared by or for the applicant's senior management for purposes of assessing or making a decision in relation to the proposed conduct and any minutes or record of the decision made.

The Applicants do not have documents of this nature.

5. Provide the names of persons, or classes of persons, who may be directly impacted by the proposed conduct (e.g. targets of a proposed collective bargaining arrangement; suppliers or acquirers of the relevant products or services) and detail how or why they might be impacted.

Please refer to section 3.4 of Annexure B.

Market information and concentration

6. Describe the products and/or services, and the geographic areas, supplied by the applicants. Identify all products and services in which two or more parties to the proposed conduct overlap (compete with each other) or have a vertical relationship (e.g. supplier-customer).

Please refer to sections 2.1 and 5 of Annexure B.

7. Describe the relevant industry or industries. Where relevant, describe the sales process, the supply chains of any products or services involved, and the manufacturing process.

Please refer to sections 2.3 and 5 of Annexure B.

8. In respect of the overlapping products and/or services identified, provide estimated market shares for each of the parties where readily available.

Please refer to section 5 of Annexure B and Schedule 2 in Confidential Annexure A.

9. In assessing an application for authorisation, the ACCC takes into account competition faced by the parties to the proposed conduct. Describe the factors that would limit or prevent any ability for the parties involved to raise prices, reduce quality or choice, reduce innovation, or coordinate rather than compete vigorously. For example, describe:

9.1. existing competitors

9.2. likely entry by new competitors

9.3. any countervailing power of customers and/or suppliers

9.4. any other relevant factors.

Please refer to section 5 of Annexure B.

Public benefit

10. Describe the benefits to the public that are likely to result from the proposed conduct. Provide information, data, documents or other evidence relevant to the ACCC's assessment of the public benefits.

Please refer to section 7 of Annexure B.

Public detriment (including likely competitive effects)

11. Describe any detriments to the public likely to result from the proposed conduct, including those likely to result from any lessening of competition. Provide information, data, documents, or other evidence relevant to the ACCC's assessment of the detriments.

Please refer to section 8 of Annexure B.

Contact details of relevant market participants

12. Identify and/or provide names and, where possible, contact details (phone number and email address) for likely interested parties such as actual or potential competitors, key customers and suppliers, trade or industry associations and regulators.

Cairns Airport Pty Ltd

Norris Carter
Cairns Airport Pty Ltd
Airport Avenue, Cairns Airport, Cairns QLD 4870
[REDACTED]
[REDACTED]

Sample of off airport car rental operators in Cairns (that are unrelated to the Applicants)

East Coast Car Rental

411 Sheridan Street
Cairns North QLD 4870
1800 327 826

Sixt Car Rental (related entity of East Coast Car Rental)

411 Sheridan Street
Cairns North QLD 4870
07 5555 8908

A1 Car Rentals

141 Lake Street
Cairns City QLD 4870
07 4031 1326
info@a1carrentalcairns.com.au

Sugarland Car Rentals

314 Sheridan Street
Cairns City QLD 4870
07 4052 1300
sales@sugarland.com.au

Atlas Car & Truck Rental

410 Sheridan Street
Cairns North QLD 4870
07 4053 7487

Any other information

13. Provide any other information or documents you consider relevant to the ACCC's assessment of the application.

Please refer to Annexure B and Confidential Annexure A.

Declaration by Applicant(s)

WTH Pty Ltd

Authorised persons of the applicant(s) must complete the following declaration. Where there are multiple applicants, a separate declaration should be completed by each applicant.

The undersigned declare that, to the best of their knowledge and belief, the information given in response to questions in this form is true, correct and complete, that complete copies of documents required by this form have been supplied, that all estimates are identified as such and are their best estimates of the underlying facts, and that all the opinions expressed are sincere.

The undersigned undertake(s) to advise the ACCC immediately of any material change in circumstances relating to the application. The undersigned are aware that giving false or misleading information is a serious offence and are aware of the provisions of sections 137.1 and 149.1 of the Criminal Code (Cth).



Signature of authorised person

DIRECTOR
Office held

ANN DAWSON
Print Name of authorised person

This 28th day of November 2019


Note: If the Applicant is a corporation, state the position occupied in the corporation by the person signing. If signed by a solicitor on behalf of the Applicant, this fact must be stated.

Budget Rent a Car Australia Pty Ltd

Authorised persons of the applicant(s) must complete the following declaration. Where there are multiple applicants, a separate declaration should be completed by each applicant.

The undersigned declare that, to the best of their knowledge and belief, the information given in response to questions in this form is true, correct and complete, that complete copies of documents required by this form have been supplied, that all estimates are identified as such and are their best estimates of the underlying facts, and that all the opinions expressed are sincere.

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Signature of authorised person

DIRECTOR

Office held

ANN DAWSON

Print Name of authorised person

This 28th day of November 2019

Note: If the Applicant is a corporation, state the position occupied in the corporation by the person signing. If signed by a solicitor on behalf of the Applicant, this fact must be stated.

Hertz Australia Pty Limited

Authorised persons of the applicant(s) must complete the following declaration. Where there are multiple applicants, a separate declaration should be completed by each applicant.

The undersigned declare that, to the best of their knowledge and belief, the information given in response to questions in this form is true, correct and complete, that complete copies of documents required by this form have been supplied, that all estimates are identified as such and are their best estimates of the underlying facts, and that all the opinions expressed are sincere.

The undersigned undertake(s) to advise the ACCC immediately of any material change in circumstances relating to the application. The undersigned are aware that giving false or misleading information is a serious offence and are aware of the provisions of sections 137.1 and 149.1 of the Criminal Code (Cth).



Signature of authorised person

VICE PRESIDENT APAC

Office held

EDIN MACNAIL

Print Name of authorised person

This 27th day of November 2019

Note: If the Applicant is a corporation, state the position occupied in the corporation by the person signing. If signed by a solicitor on behalf of the Applicant, this fact must be stated.

CLA Trading Pty Ltd

Authorised persons of the applicant(s) must complete the following declaration. Where there are multiple applicants, a separate declaration should be completed by each applicant.

The undersigned declare that, to the best of their knowledge and belief, the information given in response to questions in this form is true, correct and complete, that complete copies of documents required by this form have been supplied, that all estimates are identified as such and are their best estimates of the underlying facts, and that all the opinions expressed are sincere.

The undersigned undertake(s) to advise the ACCC immediately of any material change in circumstances relating to the application. The undersigned are aware that giving false or misleading information is a serious offence and are aware of the provisions of sections 137.1 and 149.1 of the Criminal Code (Cth).



Signature of authorised person

Managing Director.

Office held

RONALD SANTIAGO

Print Name of authorised person

This 28th day of November 2019

Note: If the Applicant is a corporation, state the position occupied in the corporation by the person signing. If signed by a solicitor on behalf of the Applicant, this fact must be stated.

Redspot Head Office Pty Ltd

Authorised persons of the applicant(s) must complete the following declaration. Where there are multiple applicants, a separate declaration should be completed by each applicant.

The undersigned declare that, to the best of their knowledge and belief, the information given in response to questions in this form is true, correct and complete, that complete copies of documents required by this form have been supplied, that all estimates are identified as such and are their best estimates of the underlying facts, and that all the opinions expressed are sincere.

The undersigned undertake(s) to advise the ACCC immediately of any material change in circumstances relating to the application. The undersigned are aware that giving false or misleading information is a serious offence and are aware of the provisions of sections 137.1 and 149.1 of the Criminal Code (Cth).



Signature of authorised person

MANAGING DIRECTOR

Office held

DAN MEKLER

Print Name of authorised person

This 28th day of November 2019

Note: If the Applicant is a corporation, state the position occupied in the corporation by the person signing. If signed by a solicitor on behalf of the Applicant, this fact must be stated.

Kingmill Pty Ltd

Authorised persons of the applicant(s) must complete the following declaration. Where there are multiple applicants, a separate declaration should be completed by each applicant.

The undersigned declare that, to the best of their knowledge and belief, the information given in response to questions in this form is true, correct and complete, that complete copies of documents required by this form have been supplied, that all estimates are identified as such and are their best estimates of the underlying facts, and that all the opinions expressed are sincere.

The undersigned undertake(s) to advise the ACCC immediately of any material change in circumstances relating to the application. The undersigned are aware that giving false or misleading information is a serious offence and are aware of the provisions of sections 137.1 and 149.1 of the Criminal Code (Cth).



Signature of authorised person

Kingmill Pty Ltd T/A Thrifty Car Rental

Office held

Stephen Short

Print Name of authorised person

This 28th day of November 2019

Note: If the Applicant is a corporation, state the position occupied in the corporation by the person signing. If signed by a solicitor on behalf of the Applicant, this fact must be stated.

Annexure A – Details of the Applicants

Name, address, telephone number and ACN	Contact person's name, telephone number and email address
WTH Pty Ltd trading as Avis Australia ACN 000 165 855 Tower B, Level 1 197 Coward Street Mascot NSW 2020 02 9353 9000	Ann Dawson Director of Network Development & Franchise Relations – Pacific [REDACTED] [REDACTED]
Budget Rent a Car Australia Pty Ltd ACN 007 348 021 Tower B, Level 1 197 Coward Street Mascot NSW 2020 02 9578 1000	Ann Dawson Director of Network Development & Franchise Relations – Pacific [REDACTED] [REDACTED]
Hertz Australia Pty Limited ACN 004 407 087 Level 15 636 St Kilda Road Melbourne VIC 3004 13 30 39	Eoin MacNeill Vice President APAC [REDACTED] [REDACTED]
CLA Trading Pty Ltd trading as Europcar ACN 082 220 399 189 South Centre Road Tullamarine VIC 3043 03 9330 6187	Ron Santiago Managing Director – Australia and New Zealand [REDACTED] [REDACTED]
Redspot Head Office Pty Ltd trading as Enterprise, Alamo, National and Redspot ACN 607 643 416 7 Coleman Street Mascot NSW 2020 02 8303 2293	Dan Mekler Managing Director [REDACTED] [REDACTED]

Kingmill Pty Ltd trading as Thrifty Car Rental and Dollar Car Rental ACN 003 966 649 Level 1 52-60 Kent Road Mascot NSW 2020 02 8337 2700	Stephen Short Network Operations Director
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Annexure B - Submission in support of Authorisation Application

1. Executive Summary

The Applicants propose to collectively bargain with Cairns Airport Pty Ltd (**CAPL**) (the operator of Cairns Airport) in relation to the acquisition of airport space associated with the provision of car rental services at Cairns Airport, including the terms and conditions of the licence and lease agreements.

The primary rationale for seeking to engage in collective negotiations with CAPL is to improve (to an extent) the current inequality in bargaining power that exists between the Applicants and CAPL by virtue of Cairns Airport's natural monopoly characteristics.

The Applicants consider that this inequality in bargaining power has been a significant contributor to the current state of affairs whereby Cairns Airport is the second most expensive airport in Australia for the Applicants to conduct their car rental businesses. This is despite Cairns Airport, while significant, being a regional airport with significantly lower passenger numbers and less sophisticated facilities for landside operators than the major capital city Australian airports.

The Applicants submit that collective negotiations with CAPL are likely to result in a number of important public benefits including:

- redressing the imbalance of bargaining power between CAPL and the Applicants;
- allowing the Applicants to have greater input into the terms and conditions of commercial agreements with CAPL;
- transaction cost savings associated with the Applicants engaging in collective rather than individual negotiations with CAPL; and
- as a result of the above public benefits, costs savings for car rental customers at Cairns Airport.

The proposed collective negotiations with CAPL are likely to result in minimal (if any) public detriments in light of CAPL's current level of bargaining power and the fact that the collective negotiations will be voluntary and open to all car rental operators at Cairns Airport (both present and future). Additionally, there will be no competitive impacts (other than potential pro-competitive impacts) given that the Applicants strongly compete for customers at Cairns Airport and will continue to do so if more favourable terms are collectively negotiated with CAPL.

2. Background

2.1 The Applicants seeking to collectively negotiate

Each of the Applicants provide car rental services for passenger vehicles at both on and off airport locations throughout Australia, including at Cairns Airport. The six Applicants are currently the only providers of on airport car rental services at Cairns Airport.

Avis / Budget

The Avis Budget Group, headquartered in the US, is a global provider of car rental services. In Australia, the Avis Budget Group provides car rental services under three brands: Avis, Budget and Apex.

Avis and Budget both operate at on and off airport locations throughout Australia. At Cairns, Avis and Budget operate at Cairns Airport, as well as off airport in Cairns City – each of these locations are corporate owned sites.

Enterprise

In 2016, Redspot Rent A Car, an Australian-owned car rental company commenced trading as a sub-franchise partner of global car rental company Enterprise Holdings (Inc) across Australia and New Zealand. Redspot Head Office Pty Ltd operates under four airport brands: Redspot, Enterprise, National and Alamo.

Enterprise operates at Cairns Airport under the Redspot, Enterprise, National and Alamo brands and off airport in Cairns City under the Enterprise brand. The on airport and off airport sites in Cairns are corporate owned sites.

Europcar

Europcar Australia is a subsidiary of Europcar International, headquartered in France. Europcar provides car rental services at both on and off airport sites across Australia, including at Cairns Airport and in Cairns City. Europcar's operations at Cairns Airport and Cairns City are part of the Europcar corporate entity.

Hertz

Hertz is a global car rental company that operates across Australia under the brands of Hertz, Firefly and Ace. At Cairns, Hertz operates at Cairns Airport under the Hertz and Firefly brands and at two off airport locations (under the Hertz and Ace brands). Hertz's operations at Cairns Airport and in downtown Cairns are part of the Hertz corporate entity.

Thrifty

Thrifty Australia is 100% owned by NRMA. Thrifty is a provider of car rental services at on and off airport locations throughout Australia. At Cairns, Thrifty operates at Cairns Airport and in Cairns City. Thrifty's operations at Cairns Airport and Cairns City are part of the Thrifty corporate entity.

2.2 AFIA

Each of the Applicants are members of the Australian Finance Industry Association Limited (AFIA). AFIA is the leading industry advocate for Australia's finance sector, representing more than 100 providers across a range of Australian industries. The Fleet & Rental Division of AFIA is the Australian industry body for car rental operators.

2.3 Car rental services in Australia

On airport car rental services cater to passengers arriving at airports. Car rental companies operating at airports must enter into licencing and leasing arrangements with airport operators in order to acquire space at the airport for their operations.

Off airport car rental services refers to all other car rental services that are not provided at airport locations, including those that might be located in close proximity to airports but not within airport terminals.

The key services that airport operators provide to car rental operators to enable them to provide car rental services include:

- access to retail counter space inside the terminal;
- access to car parking bays and booths (for the collection and return of vehicles) outside the terminal; and
- access to other supporting facilities, such as facilities for car cleaning and servicing.

On airport car rental services offer customers the convenience of collecting and returning rental vehicles at the airport without bearing the additional time and expense of travelling to off airport locations to obtain car rental services.

Revenue from on airport car rental services comprises a significant portion of each of the Applicants' revenue and is a fundamental part of each Applicant's business. Based on data collected by AFIA, on average, approximately 50% of revenue from car rental operators in Australia is from on airport operations.

2.4 Cairns Airport

Cairns Airport, operated by CAPL, serves both domestic and international airlines. CAPL is owned by the North Queensland Airports (**NQA**) group, an investment consortium that also owns Mackay Airport Pty Ltd (**MAPL**) (the operator of Mackay Airport). The Australian Competition and Consumer Commission (**ACCC**) previously allowed a Notification to stand that enabled Hertz, Avis, Budget, Thrifty and Europcar to collectively negotiate with MAPL (**Mackay Airport Notification**).¹

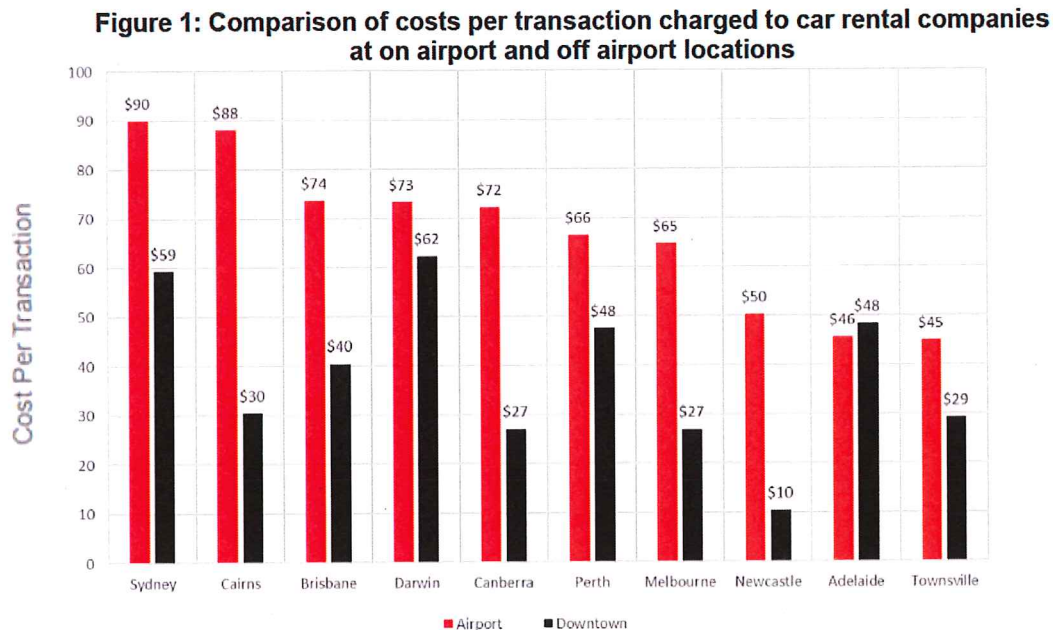
Cairns Airport operates under a 99 year lease from the Queensland Government and is regulated by the *Airport Assets (Restructuring And Disposal) Act 2008* (Qld) (unlike a large portion of Australian airports (including all 'major' airports) which are regulated under the *Airports Act 1996* (Cth)).

Airport operators are natural monopolies, exhibiting monopoly control over the airport infrastructure at the locations at which they operate. Airports in Australia are subject to a 'light-handed' regulatory approach, the effectiveness of which has been questioned by the ACCC on numerous occasions.

This regulation includes price monitoring by the ACCC for major airports. Cairns Airport is not subject to price monitoring nor do services provided to car rental operators fall within the scope of ACCC's monitoring functions.

¹ Hertz Australia Pty Ltd - Collective Bargaining Notification - CB00138 (2009).

As demonstrated in Figure 1 below:²



- on a domestic level, Cairns Airport has the second highest charges to car rental operators of all the Australian airports (despite being only the seventh busiest airport in Australia in terms of passenger volume as recognised in NQA's submission³), behind Sydney Airport which has the highest passenger volumes of all Australian airports;
- at Cairns, the average costs per transaction incurred by car rental operators at Cairns Airport is almost 3 times higher (\$58 higher on average) than costs incurred at downtown off airport locations in Cairns; and
- the difference in average costs per transaction incurred by car rental operators at airport locations compared to off airport locations is greater in Cairns than the nine other Australian cities in the graph.

As recognised in NQA's submission in response to the Productivity Commission Inquiry into the Economic Regulation of Airports, the charging of excessive fees is an indicator of market power.⁴ While market power is not the focus of this application, the Applicants submit that the comparative data in Figure 1 and the substantial increases in fees charged to the Applicants

² The graph was compiled by AFIA based on five of the six Applicants' [redacted] average cost per transaction in the 2018 calendar year, across 10 Australian airport and off airport locations.

³ North Queensland Airport Submission, Productivity Commission Inquiry into Economic Regulation of Airports (7 September 2018) (Page 9) <https://www.pc.gov.au/__data/assets/pdf_file/0018/231426/sub049-airports.pdf>.

⁴ North Queensland Airport Submission, Productivity Commission Inquiry into Economic Regulation of Airports (7 September 2018) (Page 5) <https://www.pc.gov.au/__data/assets/pdf_file/0018/231426/sub049-airports.pdf>.

over the last 10 years (see **Schedule 1**) is reflective of CAPL's market power, as well as the Applicants' lack of countervailing power.

2.5 Contracts between the Applicants and CAPL

The Applicants have each entered into an 'On Airport Car Rental Licence Agreement' (**Licence Agreement**) and various 'Sub-leases' (**Lease Agreements**) (for different leased areas such as retail counters, car parking bays and support facilities) with CAPL. The majority of the relevant current agreements had a 5 year term and are due to expire in early 2020.

The Applicants are seeking to collectively negotiate with CAPL regarding the terms of the Licence Agreement and Lease Agreements. For the purpose of greater specificity, the key terms about which the Applicants seek to negotiate include:

- Minimum Guarantee Payments in the Licence Agreement – being fixed sums for the initial year (that increases on a variable basis each year) that are paid in advance by the Applicants.
- Turnover Percentage Payments in the Licence Agreement – being a percentage of the Applicant's turnover originating from the licenced/leased areas at Cairns Airport.
- Car Parking Fees in the Licence Agreement – being rates on a per-car parking bay basis for the T1 and T2 terminals.
- Rent pursuant to the Lease Agreements.

The above fees generally increase on an annual basis. The Applicants consider that fee increases in recent years have reached unreasonably high levels.

2.6 Nature of individual negotiations between CAPL and each Applicant

While CAPL has been willing to engage in negotiations to a degree with each Applicant during previous renegotiations of the Licence and Lease Agreements, the experience of the Applicants is that:

- the fees charged by CAPL are excessive and are relatively greater than the fees charged by operators of comparable airports; and
- the fee increases proposed by CAPL in each review period are substantial. .

In light of the above, when each Applicant and CAPL seek to negotiate, the "negotiated" outcome is often uncommercial for the Applicant's on airport operations. However, each Applicant is nevertheless compelled to reluctantly accept CAPL's final offer due to the importance to each Applicant's business of obtaining airport space at Cairns Airport.

In addition, it is the experience of some of the Applicants that negotiations can often involve short deadlines with minimal time to consider proposals in detail.

2.7 Correlation between costs at Cairns Airport and prices to car rental customers

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.

In general, car rental rates to customers are made up of a 'base rate' (on a time or kilometre basis) that is competitively set having regard to market conditions, together with additional fees and charges.

Customers are charged a Location Fee that is referable to the cost of operating at particular locations (and is intended to recover these costs partially or in full). Locations such as airports involve higher "costs of doing business" for car rental companies which is reflected in the Location Fee charged to customers.

Schedule 1 provides a summary of the increases in fees payable by the Applicants to CAPL since 2010 and the effect of these fee increases on the Location Fee charged to customers at Cairns Airport.

3. Proposed Conduct

3.1 Description of the Proposed Conduct

The Applicants (including future car rental companies that commence operating at Cairns Airport and wish to participate) propose to collectively bargain with CAPL in relation to the acquisition of space associated with the provision of car rental services at Cairns Airport (including counter space, car parking bays and shared facilities), including the terms and conditions of the Licence Agreement and Lease Agreements (**Proposed Conduct**).

The Applicants intend that the Proposed Conduct will operate as follows:

- The Proposed Conduct will be voluntary – meaning that any of the Applicants can withdraw from the collective bargaining group at any time to engage in individual negotiations with CAPL.
- As stated above, the collective bargaining group will be 'open' – while the Applicants are presently the only car rental companies operating at Cairns Airport, any other car rental companies that commence operations at Cairns Airport can join the collective bargaining group if they wish.
- The Applicants will not engage in any collective boycott activity.
- The Applicants intend to retain an independent third party to negotiate with CAPL, on behalf of the Applicants.
- Notwithstanding the collective negotiations, the Applicants will still enter into separate Licence and Lease Agreements with CAPL.

The Applicants seek Authorisation to collectively negotiate all terms and conditions (both price and non-price) related to the acquisition of airport space and services from CAPL.

In particular, the Applicants seek to collectively negotiate:

- the amount and annual increases for key payment terms in Licence and Lease Agreements, such as the Minimum Guaranteed Payment, the Turnover Percentage Payment, Car Parking Fees and rent;
- terms relating to the operation of the above key payment terms and other payments such as a security bond or bank guarantees; and

- the breadth and scope of definitions such as 'operator's turnover' for the purposes of calculating various concession payments.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

3.2 Rationale of the Proposed Conduct

The primary rationale for engaging in the Proposed Conduct is to improve (to an extent) the current inequality in bargaining power that exists between the Applicants and CAPL by virtue of its natural monopoly characteristics. In doing so, the Applicants are likely to be able to negotiate more favourable and commercially reasonable licence and lease terms, compared to what each Applicant could negotiate individually.

If successful in doing so, the Applicants anticipate being able to offer their car rental customers at Cairns Airport more competitive rates and improved service standards.

3.3 Term of Authorisation sought

The Applicants are seeking Authorisation for a period of 10 years as their agreements with CAPL are due to expire in early 2020 and are expected to have a further five year term.

A 10 year Authorisation period will allow the Applicants to collectively negotiate two sets of agreements with CAPL for the periods 2020-2025 and 2025-2030 respectively (and possibly for the following agreements). This would save the Applicants from having to incur additional cost and time in seeking re-authorisation for the same conduct and maximise the period by which the Applicants can benefit from the efficiencies produced by the collective negotiation process.

The Applicants submit that a period of Authorisation for 10 years is not unreasonable nor excessive having regard to the fact that participation in the collective bargaining group is

voluntary and CAPL remains free to approach and collectively negotiate with each Applicant individually.

3.4 Persons impacted by the Proposed Conduct

The parties or classes of persons that will be impacted by the Proposed Conduct are:

- the Applicants;
- customers who acquire car rental services from the Applicants at Cairns Airport; and
- CAPL.

The positive impact of the Proposed Conduct on the Applicants and their customers is addressed in Section 7 (Public Benefits).

While CAPL will be directly impacted by the Proposed Conduct, the Applicants submit that CAPL will not be placed at a disadvantage given that its monopoly control over the facilities which the Applicants seek to acquire will remain the same, despite negotiating with a collective bargaining group.

Further, it is possible that CAPL may save time and costs through negotiating with a single bargaining group, rather than with six different car rental companies individually.

4. Interim Authorisation

The Applicants are seeking Interim Authorisation by the end of 2019 (or if not possible), by early 2020. The majority of the Applicant's existing agreements with CAPL are due to expire in early 2020 and the Applicants are concerned that the timeframe for the release of the ACCC's final determination for this Authorisation may not allow adequate time to enable them to prepare for and commence negotiations with CAPL. In which case, the Applicants would face a further disadvantage in negotiations.

The Applicants expect that collective negotiations with CAPL will involve substantial preparation and then negotiations with CAPL. Interim Authorisation would allow the Applicants to commence the collective bargaining process as soon as possible in order to maximise the effectiveness of collective negotiations with CAPL.

For the purposes of clarity, the Applicants are seeking Interim Authorisation in order to engage in the negotiation process as soon as practicable, including if required, collectively negotiating to 'hold over' existing agreements on the basis of existing terms (that are commercial in confidence to each party) until the conclusion of the Authorisation process and collective negotiations.. The Applicants do not propose to enter into collectively negotiated agreements until the ACCC has made a final determination.

5. Relevant markets

5.1 Market definition

Consistent with the Mackay Airport Notification, the Applicants submit that the relevant markets for the purposes of this Authorisation are:

- the supply of airport space (including counter space, car parking bays and supporting facilities) at Cairns Airport to car rental companies; and
- the supply of car rental services to customers at Cairns Airport.

In relation to the above markets, the ACCC noted in the Mackay Airport Notification that there is likely to be, at best, limited substitutability between retail space and car parking space offered to car rental companies at Mackay Airport and at other locations. This view is shared by the Productivity Commission which noted in its Final Report into the Economic Regulation of Airports that there are no substitutes to on airport locations for car rental operators.⁵

The same observation applies to Cairns Airport given that there are no other airports in Cairns and customers place significant value on the convenience of being able to pick up and return rental vehicles at the same location at which customers arrive and depart by plane.

The significance to the Applicants' businesses of acquiring airport space at Cairns Airport is evident from the proportion of revenue obtained by the Applicants at Cairns Airport compared to off airport locations in downtown Cairns. This revenue information is summarised in **Schedule 2**.

In relation to the market for the supply of car rental services to customers at Cairns Airport, the Applicants compete vigorously on a number of factors including price, quality of vehicles, quality of customer experience, technology and innovation. While off airport car rental operators in Cairns provide a degree of competitive constraint, it is the experience of the Applicants that customer behaviour is such that customers arriving at Cairns Airport have a clear preference for acquiring car rental services from the airport.

The terms on which each Applicant acquires services and facilities from Cairns Airport has a direct impact on its ability to lower prices or invest back into the business, and therefore each Applicant's ability to compete in the retail market.

The market shares of each of the Applicants for car rental services at Cairns Airport is summarised in **Schedule 2**.

6. Counterfactual

In assessing the likely benefits and detriments to the public from the Proposed Conduct, the ACCC must take into account the likely state of affairs if the Authorisation is opposed.

The relevant counterfactual will be the status quo whereby the Applicants continue to face a significant imbalance in bargaining power in individual negotiations with CAPL for the acquisition of airport space. In recent negotiations between CAPL and some of the Applicants, CAPL has continued to utilise its strong bargaining position by attempting to impose significant fee increases.

Heading into the upcoming re-negotiation of the Licence and Lease Agreements, the Applicants submit that their inferior bargaining position under the status quo will:

⁵ Australian Government, Productivity Commission, Final Report into the Economic Regulation of Airports, 21 June 2019 (Page 20) <<https://www.pc.gov.au/inquiries/completed/airports-2019/report/airports-2019.pdf>>.

- hinder each Applicant's ability to effectively 'push back' on significant fee increases and/or one sided terms; and
- limit the ability of the Applicants to advocate for improved access terms and conditions for shared facilities.

Under individual negotiations, the Applicants will also continue to devote maximum time, costs and resources towards a negotiation process that is unlikely to produce fair, efficient or reasonable commercial outcomes.

7. Public benefits

7.1 Redressing the imbalance in bargaining power between CAPL and the Applicants

Collective negotiation will enable the Applicants to redress (to a degree) the current imbalance in bargaining power that exists between CAPL and the Applicants. This imbalance in bargaining power exists by virtue of Cairns Airport's natural monopoly characteristics and the fact that there are no alternative suppliers of airport space at Cairns Airport from which the Applicants can acquire services. In practical terms, this means that CAPL is not constrained by the fees imposed by lessors at off airport locations or by other airport operators in Australia.

In the Mackay Airport Notification (in addition to the Collective Bargaining Notification submitted by car rental companies in relation to Perth Airport in 2010),⁶ the ACCC acknowledged that the airport operators had considerable bargaining power when negotiating with car rental companies. The Applicants submit that this is equally the case with CAPL.

In the Mackay Airport Notification, MAPL submitted that a fully functioning airport must provide car rental services and therefore MAPL lacks bargaining power due to its reliance on securing car rental operators at the airport.⁷

In response, the ACCC noted that MAPL is not dependent on any particular car rental company operating at the airport. This important distinction is equally applicable to Cairns Airport and creates a situation whereby CAPL has a financial incentive to increase the fees paid by all Applicants on a non-discriminatory basis.⁸

Conversely, car rental operators have limited bargaining power in negotiations with CAPL. For each of the Applicants, 'walking away' from one-sided negotiations is not a commercially viable threat or actuality since each of the Applicants' business operations in Cairns is dependent on accessing space at Cairns Airport. With these circumstances in mind, the fact that each of the Applicants are large and commercially sophisticated businesses bears little relevance.

The Applicants further submit that the ability to collectively negotiate with CAPL levels (to an extent) the current imbalance in bargaining position between the parties..

⁶ Hertz Australia Pty Limited - Collective Bargaining Notification - CB00143 (2010).

⁷ Mackay Airport Pty Ltd - Submission regarding the Collective Bargaining Notification - CB00138 (2009) (Page 5).

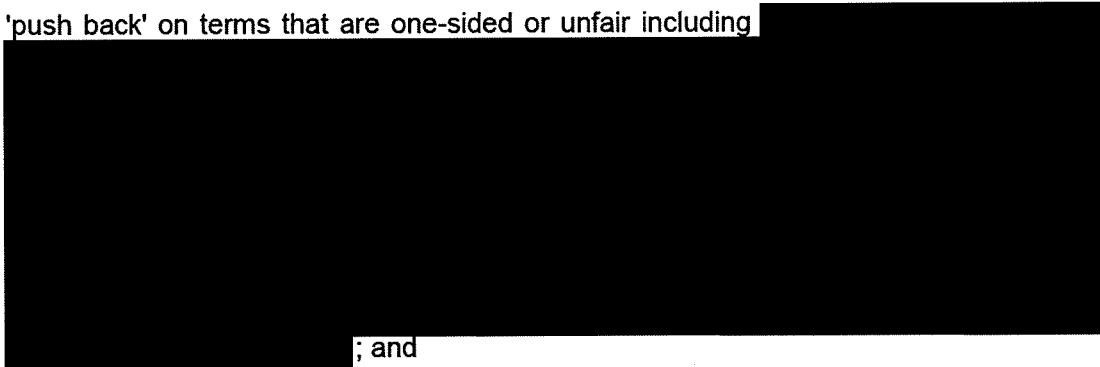
⁸ ACCC Assessment of Collective Bargaining Notification lodged by Hertz Australia Pty Limited - CB 00138 (2009) (Page 9).

7.2 Greater input into Licence and Lease Agreements

As a result of improving the balance of bargaining power between the Applicants and CAPL, collective bargaining will enable the Applicants to have greater input into the terms and conditions of Licence and Lease Agreements and to negotiate more favourable and commercially reasonable terms. In particular, the Applicants expect that collective negotiation will allow the Applicants to more effectively:

- 'push back' on significant and unsubstantiated fee increases that have historically been imposed by CAPL during agreement renewal periods;

- 'push back' on terms that are one-sided or unfair including



- 'push back' on access terms and conditions for shared facilities.

Greater standardisation in the terms and conditions on which the Applicants' acquire services from CAPL will assist in promoting price and non-price competition between suppliers of car rental services at Cairns Airport. This is due to the fact that collective negotiation of the Licence and Lease Agreements with CAPL will reduce the risk that an Applicant is unable to effectively compete because it has acquired the same services from CAPL as other Applicants but on materially less favourable terms than its competitors. Costs savings for car rental customers at Cairns Airport

7.3 Cost savings for car rental customers at Cairns Airport

As detailed in section 2.7 and as evidenced in **Schedule 1**, there is a direct correlation between the fees charged by CAPL to car rental companies and the Location Fees charged to customers of the Applicants at Cairns Airport.

The Applicants submit that cost savings obtained through the process of collective bargaining with CAPL will be passed onto consumers (through lower Locations Fees) given the strong competitive pressures that exist at a retail level between the Applicants at Cairns Airport and the fact that price is the primary factor on which the Applicants compete.

In particular, if the Applicants are able to negotiate lower licence fees, the Applicants submit that they will each be able to lower the Location Fee charged to car rental customers at Cairns Airport.

Alternatively and more realistically, if the Applicants are unsuccessful in lowering the fees payable to CAPL but are successful in minimising the level of fee increases going forward, the Applicants submit that they will each be able to minimise the increase to Location Fees that the Applicants would need to pass on to consumers to recover costs.

In relation to the above points, the Applicants note that 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 a lower overall cost in every circumstance.

Nonetheless, the strong potential for lowering the cost of acquiring rental car services for customers at Cairns Airport in the future is a clear public benefit – both to customers themselves, as well as the broader tourism industry in Cairns. Additionally, lower prices for on airport car rental services at Cairns Airport may similarly encourage off airport car rental operators in Cairns to lower their prices.

The Applicants also envisage that cost savings may be invested back into the business to fund customer experience improvements including new and a wider variety of vehicles, fit out improvements and new technologies.

7.4 Transaction cost savings

Each Applicant devotes considerable time, resources and costs when individually negotiating Lease and Licence agreements with CAPL. [REDACTED]

The Applicants submit that a collective negotiation process with CAPL will allow the Applicants to share the costs of preparing for and negotiating with CAPL, resulting in a public benefit in the form of reduced transaction costs.

8. Public detriments

8.1 Overview of public detriments

The Applicants submit that the Proposed Conduct is likely to result in minimal (if any) public detriment, for the following reasons:

- the Proposed Conduct is voluntary and any Applicant may choose to engage in individual negotiations with CAPL;
- CAPL is not bound to collectively negotiate with the Applicants;
- the collective bargaining group will be 'open' - any other car rental companies that commence operations at Cairns Airport can join the collective bargaining group if they wish;
- there is no collective boycott activity;
- the Applicants which comprise the collective bargaining group are the only car rental companies that currently operate at Cairns Airport meaning that no car rental operator will be disadvantaged by not being part of collective negotiations; and
- the current level of meaningful negotiation between each of the Applicants and CAPL is low.

8.2 No standardisation/lack of incentive to innovate

Further, the Applicants submit that the collective negotiations will not result in standardisation in car rental services offered by the Applicants to customers or a lack of incentive to innovate or improve services. Rather, the Applicants are of the view that collective negotiation will

enhance competition between the Applicants in the supply of car rental services at Cairns Airport by:

- ensuring that an Applicant's ability to compete is not hindered by comparatively disadvantageous terms or unfair treatment; and
- allowing the Applicants to pass on cost reductions onto customers (as detailed in section 7.3), in a manner which each Applicant individually deems the most effective to compete.

8.3 Information sharing protocols

To manage competition law risks throughout the negotiation process, information sharing among the Applicants, and between the Applicants and CAPL, will only relate to the Proposed Conduct. The Applicants do not propose to engage in cartel behaviour in relation to the provision of car rental services at Cairns Airport and will not discuss or share commercially sensitive information relating to downstream prices, customers or operations.

Presently, the Applicants have in place an information sharing protocol to ensure that information is shared only to the extent that it is reasonably necessary for, and related to, legitimate purposes. Each Applicant provide sensitive commercial information to AFIA and K&L Gates only. Sensitive commercial information is either processed through aggregation and anonymisation before it is shared amongst the Applicants, or appropriately redacted so that no Applicant can access confidential information specific to another Applicant.

If Interim Authorisation and/Authorisation is granted, the Applicants intend to implement similar information sharing protocol for collective negotiations to occur.

The Applicants propose to appoint an appropriately experienced, independent, third party representative/valuer to negotiate with CAPL on the Applicants' behalf. It is envisioned that similar to present arrangements, the Applicants will share sensitive commercial information privately with the independent third party and any other information relevant to the Proposed Conduct within the collective bargaining group.

9. Conclusion

The Applicants are of the view that the Proposed Conduct is likely to result in a number of public benefits that will arise from improving the Applicants' bargaining power in negotiations with CAPL.

In light of the minimal (if any) public detriments and the urgency established by the expiration of the Applicants' key agreements with CAPL in early 2020 along with their collective desire to be able to negotiate two sets of agreements, the Applicants submit that Interim Authorisation and Authorisation for a period of 10 years should be granted.