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29 April 2020

## **By Email**

Dear Mr McCracken-Hewson

### **Request by car rental operators at Cairns Airport for extension authorisation determination and pre-decision conference**

We refer to the request from K&L Gates to extend the period for the ACCC to determine the Authorisation Application by the car rental operators at Cairns Airport by an additional six months and to delay the pre-decision conference until at least August 2020.

This morning the ACCC requested Cairns Airport's views on the request for delay by no later than 3pm today.

In short, Cairns Airport does not consider that the ACCC should grant either of these requests.

### **The Applicants' requests**

The Applicants request that the ACCC use its ability, under section 90(10A) of the *Competition and Consumer Act 2010*, to extend the period for making a determination on the Application by six months. The Applicants also request that the ACCC adjourn the pre-decision conference that is currently scheduled for 9.30am tomorrow, until at least August 2020.

The Applicants also suggest that they would refrain from engaging in the proposed collective bargaining conduct, which is currently permitted under the interim authorisation, during the interim period – although they would be under no legal obligation to do so.

The purported basis for the extensions requested by the Applicants is that the Applicants have been affected by the COVID-19 pandemic and, as a result, are unable to adequately engage with the ACCC's process.

We note that the Applicants' request came less than 24 hours before the commencement of the pre-decision conference.

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## **The ACCC should not grant the Applicants' requests**

COVID-19 has also had a significant effect on Cairns Airport's business. The authorisation process is an inconvenient distraction. Nonetheless, Cairns Airport has engaged in this process in good faith, in the hope that the process can be expediently concluded, and the matter can be put to bed.

Section 90(10A) is intended to provide the ACCC with additional time where it is needed to make its decision – not to allow an Applicant to operate under interim authorisation indefinitely when they are not in a position to satisfy the ACCC that their application should be granted.

If the Applicants no longer wish to engage with the ACCC's process, the appropriate option is for the Authorisation Application to be withdrawn. Failing this, Cairns Airport considers that there is sufficient information before the ACCC for it to make a final decision and the ACCC should proceed to make its final decision as soon as possible so the matter can be finalised.

## **Interim Authorisation**

On 13 February 2020 the ACCC granted the Applicants interim authorisation, which continues to be in effect, notwithstanding Cairns Airport's view that it could result in material public detriments.

Cairns Airport considers that it would be *particularly* inappropriate for the ACCC to permit the extension of the statutory timeframes, at the request of the Applicants, while the interim authorisation is on foot.

The voluntary commitment by the Applicants not to engage in the proposed conduct is meaningless and offers no assurance to Cairns Airport, nor the ACCC that the parties will refrain from engaging in that conduct.

## **Pre-decision conference**

The pre-decision conference is an opportunity for Cairns Airport to explain its submissions. The fact that the Applicants claim they have not had sufficient time to adequately review Cairns Airport's most recent submission is not relevant and applies equally to Cairns Airport (who has also had competing COVID-19 related priorities and less than a week since the Applicants' most recent submission was made publicly available). Cairns Airport does not intend to focus on rebutting the Applicants' most recent submission. Rather it will lay out its case for why authorisation should not be granted.

The ACCC has provided an opportunity for the parties to provide further written submissions by 14 May 2020, which assuages any concerns that the Applicants will not have an opportunity to review and respond to Cairns Airport's submission.

Given this, and the exceedingly late request for an adjournment, Cairns Airport requests that the pre-decision conference proceed as scheduled.

If you have any questions regarding this letter, please do not hesitate to contact us.

Yours sincerely



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