

DEPARTMENT OF TRANSPORT & REGIONAL SERVICES (DOTARS)

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AUSTRALIAFACSIMILE MESSAGE

AVIATION AND AIRPORT REGULATION SUB-GROUP

TO The General Manager Adjudication Branch Australian Competition & Consumer Commission PO Box 1199 DICKSON ACT 2602 Attention: Ms Isabelle Arnaud (Ph 6243 1049)	FROM Kym Foster Director, Policy and Coordination Airport Planning and Regulation Branch Phone: 6274 7968
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FAX NUMBER: 6243 1211**DATE:** 10 September 2004**NUMBER OF PAGES INCLUDING THIS PAGE** four**SUBJECT:** Authorisation Application lodged by the Board of Airline
Representatives of Australia (BARA) - A30232

Dear Ms Arnaud

I refer to your letter of 12 August 2004 providing details of BARA's interim authorisation and authorisation applications. The Department appreciates the opportunity to make a submission on the subject matter and a copy of our Department's submission is attached.

I have posted the original of our submission and you should receive it early next week.

Thank you

Kym Foster

**Australian Government****Department of Transport and Regional Services**

File Reference: L2003/1678

The General Manager
Adjudication Branch
Australian Competition & Consumer Commission
PO Box 1199
DICKSON ACT 2602

**Subject: Authorisation Application lodged by the Board of Airline
Representatives of Australia (BARA) - A30232**

Dear Sir/Madam

I refer to Ms Isabelle Arnaud's letter of 12 August 2004 providing details of BARA'S interim authorisation and authorisation applications. The Department of Transport and Regional Services (DOTARS) appreciates the opportunity to make a brief submission in relation to BARA's authorisation application.

DOTARS notes that BARA is seeking authority to negotiate and bargain collectively with the operators of, and other service providers at, thirty six designated international airports. We also note BARA is seeking authority to agree on terms and conditions of acquisition of certain services, on an airport by airport basis and BARA is intending the authorisation cover all contracts or proposed contracts that may result from collective negotiations under similar circumstances pursuant to ss.88(13) of the *Trade Practices Act 1975* (the Act). Finally, DOTARS also notes that BARA is seeking the authorisation to confirm that its conduct does not amount to price fixing and falls within the "collective acquisition" exception in ss.45A(4) of the Act.

In response, DOTARS wishes to record that the development of an effective and efficient incentive based pricing regime for aeronautical services at Australia's major airports was a critical reform objective of the regulatory regime put in place by the Australian Government as part of leasing the major Federal airports to the private sector.

At the time of privatising the major airports, a prices oversight framework was applied for the first five years that incorporated a CPI-X price cap on 'aeronautical services' at major airports. The framework was, however, intended to be transitional as airport owners and airport users (particularly the airlines) established a more commercial working relationship in an environment where the parties would negotiate directly and resolve prices and investment programmes rather than rely on arbitration or regulatory control.

In May 2002, following consideration of the Productivity Commission's Report: Price Regulation of Airport Services (January 2002), the Government announced its intention to accept the Commission's recommendation that the major airports be made subject to a lighter handed regime of price monitoring for five years. Reliance on regulatory control was considered best used as a last resort to be relied upon only where it is evident that an abuse of market power was actually taking place and required correction through regulatory mechanisms.

In introducing this new regime, the Australian Government endorsed a price monitoring approach for a five-year probationary period to ensure that sufficient time is available to give stakeholders such as BARA and airports the opportunity to demonstrate how they could operate in a commercial environment, unencumbered or affected by specific regulatory control. It has also reduced the number of major Federal airports to be price monitored from twelve to seven. These are important aspects of the lighter handed regime as it intends to provide airports with greater scope to respond to the rapidly changing aviation environment and price and invest more efficiently.

As an added incentive to ensure the transition was made smoothly, the Government reserved the right to bring forward the five-year review or conduct a separate review if it appeared there had been unjustifiable price increases.

DOTARS has examined the BARA authorisation application against this policy framework and the objectives of encouraging commercial negotiations and agreements between airlines and airport owners to achieve agreed pricing and investment outcomes. We consider BARA has an important role to play in representing airlines in consultations and negotiations with airport owners, government and airport stakeholders. DOTARS considers such a role might facilitate an effective and efficient pricing and investment outcome at the major airports.

While making no comment on the competitive or anticompetitive nature of BARA's proposal, DOTARS acknowledges that many international airlines operating to/from Australia have a relatively small management presence here. Therefore, if BARA's authorisation application is agreed to, significant transaction cost savings should be made by these airlines and the airports. We also note BARA proposes in its application that the authorisation, if given, be subject to several restrictions. This appears to ensure that anything BARA negotiates with the airports does not bind BARA's member airlines and that BARA will not organise a collective boycott of the airports.

However, we note that comprehensive commercial agreements addressing pricing and service provision have already been concluded between airlines and the operators of Melbourne, Brisbane, Adelaide and Perth airports, without the need for an authorisation of the type that BARA now seeks.

I trust that the information on the Government's lighter handed prices monitoring regime and other comments provided above will be given due consideration in Australian Competition and Consumer Commission's consideration and determination of BARA's authorisation application.

Thank you for the opportunity to make a submission on the BARA application.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Neil Williams', followed by a horizontal line.

Neil Williams
Assistant Secretary
Airport Planning and Regulation Branch
6 September 2004