

11 November 2009

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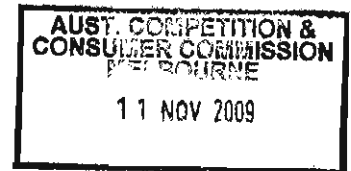
**BY HAND**

Dr Richard Chadwick  
General Manager – Adjudication Branch  
Australian Competition & Consumer Commission  
GPO Box 3131  
Canberra ACT 2601

FILE No:
DOC:
MARS/PRISM:

Dear Sir

**Notification of collective bargaining conduct**



We act on behalf of Hertz Australia Pty Limited (**Hertz**).

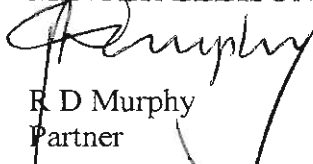
We enclose:

- notification under section 93AB of the *Trade Practices Act 1974 (TPA)*;
- signed consent forms for each of the parties to the collective bargaining notification; and
- a cheque in the amount of \$1000 as payment of the required fees.

Our client on behalf of Kingmill Pty Ltd trading as Thrifty Car Rental, WTH Pty Ltd trading as Avis Australia, Budget Rent a Car Australia Pty Ltd and CLA Trading Pty Ltd trading as Europcar wishes to notify conduct under section 93AB of the TPA. The conduct is set out in the attached Form GA.

If you have any questions in relation to this notification or require any further information, please do not hesitate to contact Simone Cooper of our office.

Yours faithfully  
**MINTER ELLISON**

  
R. D. Murphy  
Partner

Contact: Simone Cooper Direct phone: +61 3 8608 2137 Direct fax: +61 3 8608 1017  
Email: simone.cooper@minterellison.com  
Partner responsible: Richard Murphy Direct phone: +61 3 8608 2075  
Our reference: SDC RDM 30-62788949

Enclosures

**MINTER ELLISON GROUP AND ASSOCIATED OFFICES**  
SYDNEY MELBOURNE BRISBANE CANBERRA ADELAIDE PERTH GOLD COAST DARWIN  
AUCKLAND WELLINGTON HONG KONG SHANGHAI JAKARTA LONDON

# Form GA

Commonwealth of Australia

*Trade Practices Act 1974 — section 93AB*

## NOTIFICATION OF COLLECTIVE BARGAINING

This form is to be completed by applicants proposing to engage in collective bargaining arrangements.

In lodging this form, applicants must include all information, including supporting evidence that they wish the Commission take into account in assessing their notification.

Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the applicant.

Protection provided by the notification extends only to the collective bargaining arrangements described in the form.

To the Australian Competition and Consumer Commission:

Notice is hereby given under section 93AB of the *Trade Practices Act 1974* of intention:

- to make, or to propose to make, a contract containing a provision of the kind referred to in subsection 44ZZRD (2) or paragraph 44ZZRD (3) (a) or (b) of that Act.
- to give effect to a provision of a contract where the provision is of the kind referred to in subsection 44ZZRD (2) or paragraph 44ZZRD (3) (a) or (b) of that Act.
- to make, or to propose to make, a contract containing a provision of the kind referred to in paragraph 45 (2) (a) of that Act.
- to give effect to a provision of a contract where the provision is of the kind referred to in paragraph 45 (2) (b) of that Act.  
(*Strike out if not applicable*)

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

### Section A – general information

#### 1. Applicant

- (a) Name of the applicant:  
(refer to Direction 1)

*Hertz Australia Pty Ltd (ABN 31 004 407 087) (Hertz)*

CB00138

- (b) Description of business carried on by the applicant:  
(refer to Direction 2)

*Hertz is a car rental company providing rental car services at locations across Australia. Hertz operates a company owned car rental business at Mackay Airport.*

- (c) Is the representative of the applicant lodging the notice a trade union, an officer of a trade union or a person acting on the direction of a trade union?  
*(refer to Direction 3)*

*No*

- (d) Address in Australia for service of documents on the applicant:

*C/- Richard Murphy  
Partner  
Minter Ellison Lawyers  
525 Collins Street  
MELBOURNE VIC 3000*

**2. Lodged on behalf of**

- (a) Provide names and addresses of all persons on whose behalf the notification is lodged and who propose to participate in the collective bargaining arrangements:  
*(refer to Direction 4)*

- *Kingmill Pty Ltd trading as Thrifty Car Rental (**Thrifty**);*
- *WTH Pty Ltd trading as Avis Australia (**Avis**);*
- *Budget Rent a Car Australia Pty Ltd (**Budget**); and*
- *CLA Trading Pty Ltd trading as Europcar (**Europcar**)*

*Please also refer to Annexure 1*

- (b) Provide proof of the consent of each of the persons listed at 2 (a) above agreeing to the lodgement of the notification on their behalf:  
*(refer to Direction 5)*

*Please refer to Annexure 2*

- (c) Provide the following information relating to a notification:
- (i) Does this notification relate to a notification previously lodged with the Australian Competition and Consumer Commission and for which a concessional fee is claimed?

No

- (ii) details of the first-mentioned notification, including but not limited to:
  - (A) the name of the applicant; and
  - (B) the date the notification was said to be lodged; and
  - (C) if known or applicable — the registration number allocated to that collective bargaining notification.

*Not applicable*

## **Section B – collective bargaining arrangements**

### **3. Proposed collective bargaining arrangements**

- (a) Provide: the name and address of the target; the name, position and telephone contact details of an appropriate contact at the target; and a description of the business carried on by the target:  
*(refer to direction 6)*

***Target*** *Mackay Airport Pty Ltd (MAPL)*

***Description of business carried on by the target*** *MAPL is an airport operator.  
MAPL operates an Airport in Mackay in Queensland (Airport)*

***Address*** *Po Box 5806  
Mackay Mail Centre  
QLD, 4741*

***Contact person*** *Terry Simpson  
General Manager*

***Contact number*** *07 4957 0201*

- (b) Provide a description of the goods or services which the participants of the collective bargaining arrangements (listed at 2 (a) above) propose to supply to or acquire from the target:

*The participants propose to acquire airport facility services from MAPL. The airport facilities comprise car parks at Mackay Airport and counter space within*

*the Mackay Airport terminal and space for facilities associated with the provision of rental car services at the Airport. The airport facilities are to be acquired through the participant's respective lease and licence agreements with MAPL.*

- (c) Do the participants of the proposed collective bargaining arrangements (see 2 (a) above) reasonably expect to make one or more contracts with the target about the supply to or acquisition from the target of one or more of the goods or services (listed at 3 (b) above)?  
*(refer to direction 7)*

*Yes*

- (d) In relation to (c) above, provide details of the basis upon which that expectation is held including details of past contracts with the target:

*Each participant currently operates a car rental business at the Airport and has acquired the relevant facility services in respect of these businesses at the Airport.*

- (e) Do the participants of the collective bargaining arrangements (listed at 2 (a) above) reasonably expect that contractual payments between the target and each participant will not exceed \$3 million (or any other amount prescribed by regulation) in any 12 month period, and on what basis?  
*(refer to direction 8)*

*Each participant reasonably expects that their contractual payments with MAPL will not exceed \$3 million in any 12 month basis. The basis for this expectation is the value of their previous respective leases and licences with MAPL.*

- (f) In relation to (e) above provide an estimation of the contractual payments expected between the target and each participant in relation to the goods and services (listed at 2 (a) above):

*It is proposed that the contractual payments by each party to MAPL would be a product of the collective negotiation by the participants to this collective bargaining notification.*

- (g) Provide a description of the collective bargaining arrangements proposed including, but not limited to:
- (i) the process by which participants propose to undertake collective bargaining with the target; and

- (ii) the type of terms and conditions expected to be negotiated in collective bargaining arrangements (for example: price; non-price conditions of supply such as contract periods etc); and
- (iii) details of any dispute resolution procedure (if any) proposed between participants throughout the collective bargaining process; and
- (iv) details of any dispute resolution procedure (if any) proposed between participants and the target throughout the collective bargaining process; and
- (v) details of any dispute resolution procedure (if any) proposed to deal with disputes throughout the term of contracts entered into with the target; and
- (vi) details of proposed commencement and duration of contracts to be negotiated with the target:  
*(refer to direction 9)*

*The collective bargaining arrangements that are proposed entail the participants to this notification collectively retaining an independent third party (to be appointed), to negotiate on their behalf the price, term and other conditions at which the rental car companies will acquire airport facility services from MAPL.*

*The type of terms and conditions of the leases and licences expected to be negotiated in the collective bargaining arrangement include price, term, minimum guarantee payments, type and location of facilities.*

*No dispute resolution process between the parties to this collective bargaining notification is proposed because each participant will be at liberty to withdraw from the collective bargaining process if it considers that its interests are not being served by the process.*

*The dispute resolution process between the parties to this collective bargaining notification and MAPL during the collective process is proposed to be either arbitration or expert determination – this is also a matter to be negotiated with MAPL.*

*The dispute resolution process between the parties to this collective bargaining notification and MAPL during the term of the contractual arrangements with MAPL is also a matter to be negotiated - there is no provision for a dispute resolution process in the current leases and licences.*

*MAPL's proposed commencement date for the contractual arrangements with each party was 1 October 2010. Each participant will enter separate leases and licences with MAPL. The expected duration of these contracts is 5 years.*

- (h) Identify any parts of the proposed collective arrangements described in 3 (g) which relate to possible price agreements:

*It is proposed that the independent third party representative will negotiate on behalf of the parties the price at which the parties acquire airport facility services from MAPL.*

- (i) Identify any parts of the proposed collective arrangements described in 3 (g) which relate to a possible or proposed exclusionary provision(s), including but not limited to:

- (i) the nature of the proposed or possible exclusionary provision(s) (for example an agreement to withhold supply of the relevant goods or services to the target); and
- (ii) the circumstances in which the collective bargaining participants would engage in the exclusionary provision(s), including but not limited to:
- (A) details of the events that would trigger any such activity; and
  - (B) details of the process that would be followed in undertaking any such activity; and
  - (C) details of any proposed period of notice to be given to the target prior to the commencement of such activity; and
  - (D) details of any dispute resolution procedure to be applied or offered to the target prior to the commencement of such activity:

*(refer to direction 10)*

*The participants are not proposing to engage in conduct which relates to a possible exclusionary provision. In the event that an agreement cannot be reached with MAPL, each party to the collective bargaining notification will unilaterally determine if it will, or will not, acquire airport facility services from MAPL.*

## **Section C – public detriments**

### **4. Market definition**

Provide a description of the market(s) in which the goods or services described at 3 (b) are supplied or acquired and other affected markets including: significant suppliers and acquirers; substitutes available for the relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions):

*(refer to direction 11)*

*Please refer to Annexure 3*

### **5. Public detriments**

- (a) What will be the likely effect of the notified conduct on the prices of the goods or services described at 3 (b) above and the prices of goods or services in other affected markets? In answering this question please provide facts and information to support the claims made:

*Please refer to Annexure 3*

- (b) What other detriments may result from the notified conduct? In answering this question please provide facts and information to support the claims made:

*Please refer to Annexure 3*

## **Section D – public benefits**

### **6. Public benefit claims**

- (a) Provide details of the public benefits resulting or likely to result from the proposed arrangement. In answering this question please provide facts and information to support the claims made:

*Please refer to Annexure 3.*

## **Section E - authority**

### **7. Contact details**

- (a) Name, contact telephone number and address of person authorised by the notifying parties to provide additional information in relation to this application:



Name *Richard Murphy*  
Address *Minter Ellison Lawyers  
Level 23  
525 Collins Street  
MELBOURNE VIC 3000*

Contact telephone number *03 8608 2075*

(refer to direction 12)  
Dated *11 NOVEMBER 2009*

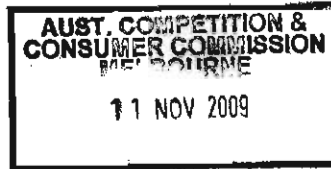
Signed by/on behalf of the applicant

*Richard Murphy*  
.....  
(Signature)

**Richard Murphy**  
(Full Name)

**Minter Ellison Lawyers**  
(Organisation)

**Partner**  
(Position in Organisation)



## DIRECTIONS

1. Where the notice is given by or on behalf of a corporation, the name of the corporation is to be inserted in item 1 (a), not the name of the person signing the application and the application is to be signed by a person authorised by the corporation to do so.
2. Describe that part of the applicant's business relating to the subject matter of the contract, arrangement or understanding in respect of which notification is given.
3. A collective bargaining notification can not be lodged by a trade union or a trade union representative.
4. Where the applicant will be a participant in the collective bargaining arrangements (rather than a representative of participants) the name of the applicant must also be included. Where those persons are corporations, list the corporation's name and address.
5. The applicant, in lodging a notification on behalf of others, must obtain their consent to do so and provide proof of that consent.
6. Where the target is a corporation, provide the corporate name.
7. The collective bargaining notification process is only available to parties that reasonably expect to make one or more contracts with the target about the supply or acquisition of goods or services the subject of the notification.
8. The value of the contract to be collectively negotiated between the target and each participant is not to exceed \$3 million (or such other amount as is prescribed by the regulations) per participant in any twelve month period.
9. To the extent that the collective bargaining arrangements have been reduced to writing, provide a true copy of the arrangement. To the extent that the collective bargaining arrangements have not been reduced to writing, provide a full and correct description of the key terms that have not been reduced to writing.
10. In simple terms an exclusionary provision exists where the proposed contract, arrangement or understanding is made by businesses (at least two of whom are competitors) for the purpose of preventing, restricting or limiting the supply of services to particular persons or classes of persons by all or any of the parties to the contract, arrangement or understanding.

In the context of collective bargaining, an exclusionary provision(s) may include contracts, arrangements or understandings (whether currently in existence or to be made or arrived at during the term of the notification) between collective bargaining participants to limit or restrict their dealings with the target including contracts arrangements or understandings to:

- (a) withhold the supply of goods or services from the target; or
- (b) refuse or decline to acquire the goods or services of the target;

whether such conduct was absolute, limited or subject to certain terms or conditions. This is sometimes referred to as a collective boycott.

11. Provide details of the market(s) likely to be affected by the notified conduct, in particular having regard to goods or services that may be substitutes for the good or service that is the subject matter of the notification.
12. The notification must be signed by a person authorised by the applicant to do so.

## Annexure 1

### Names and addresses of all persons on whose behalf the notification is lodged

<b>Name of persons on whose behalf the notification is lodged</b>	<b>Address of party</b>
<i>Kingmill Pty Ltd trading as Thrifty Car Rental</i>	52-60 Kent Road, Mascot NSW 2020
<i>WTH Pty Ltd trading as Avis Australia</i>	Level 2, 15 Bourke Rd, Mascot NSW 1460
<i>Budget Rent a Car Australia Pty Ltd</i>	Level 2, 15 Bourke Rd, Mascot NSW 1460
<i>CLA Trading Pty Ltd trading as Europcar</i>	157 Mickleham Rd, Tullamarine VIC 3043

## **Annexure 2**

### **Proof of consent of each party on whose behalf the notification is lodged**

Please see next page

**CONSENT FORM**

**Consent to be a party to the collective bargaining arrangement**


I Bryn McGoldrick  
of 52-60 Kent Road, Mascot NSW 2020  
on behalf of Kingmill Pty Ltd t/a Thrifty Car Rental  
on this day Tuesday 10 November 2009

consent to be a party to the collective bargaining arrangement notified to the Australian Competition and Consumer Commission by Hertz Australia Pty Ltd in respect of Mackay Airport Pty Ltd.

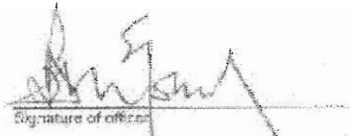
I on behalf of Kingmill Pty Ltd t/a Thrifty Car Rental confirm that:

- \* we do expect to enter into one or more contracts with Mackay Airport Pty Ltd; and
- \* the total value of the transactions conducted with Mackay Airport Ltd will not exceed \$3 million.

Signed for Kingmill Pty Ltd by an authorised officer in the presence of

  
Signature of witness

JOSIE PARKER  
Name of witness (print)

  
Signature of officer

←  
BRYN MCGOLDRICK  
Name of officer (print)

CEO/DIRECTOR  
Title held

**CONSENT FORM**

**Consent to be a party to the collective bargaining arrangement**

I, George Johan Proos

of Level 2, 15 Bourke Road, Mascot, NSW

on behalf of Budget Rent a Car Australia Pty Ltd.,

on this day 9<sup>th</sup> November 2009

consent to be a party to the collective bargaining arrangement notified to the Australian Competition and Consumer Commission by Herlz Australia Pty Ltd in respect of Mackay Airport Pty Ltd.

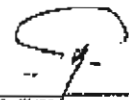
I on behalf of Budget Rent a Car Australia Pty Ltd., confirm that:

- we do expect to enter into one or more contracts with Mackay Airport Pty Ltd; and
- The total value of the transactions conducted with Mackay Airport Ltd will not exceed \$3 million.

Signed for Budget Rent a Car Australia Pty Ltd by an authorised officer in the presence of

  
Signature of witness

**CRESS JOHN DAWSON**  
Name of witness (print)

  
Signature of officer

**GEORGE J. PROOS**  
Name of officer (print)

**MANAGING DIRECTOR**  
Office held

MB\_83221190\_6 (W2003)

CONSENT FORM

Consent to be a party to the collective bargaining arrangement

I, George Johan Proos

of Level 2, 15 Bourke Road, Mascot, NSW

on behalf of W.T.H. Pty Ltd trading as Avis Australia

on this day 9<sup>th</sup> November 2009

consent to be a party to the collective bargaining arrangement notified to the Australian Competition and Consumer Commission by Hertz Australia Pty Ltd in respect of Mackay Airport Pty Ltd.

I on behalf of W.T.H. Pty Ltd trading as Avis Australia confirm that:

- we do expect to enter into one or more contracts with Mackay Airport Pty Ltd; and
- the total value of the transactions conducted with Mackay Airport Pty Ltd will not exceed \$3 million.

Signed for W.T.H. Pty Ltd by an authorised officer in the presence of



Signature of officer



Signature of witness

CRESS JOIK DAWSON

Name of witness (print)

GEORGE J. PROOS

Name of officer (print)

MANAGING DIRECTOR

Office held

W3\_8125172\_1 (1/2009)



**CONSENT FORM**

**Consent to be a party to the collective bargaining arrangement**

I Ronald Santiago

of 157 Middleham Road, Tullamarine, VIC 3043

on behalf of CLA Trading Pty Ltd trading as Europcar

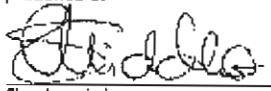
on this day 09 Nov 2009

consent to be a party to the collective bargaining arrangement notified to the Australian Competition and Consumer Commission by Hertz Australia Pty Ltd in respect of Mackay Airport Pty Ltd.

I on behalf of CLA Trading Pty Ltd trading as Europcar confirm that:

- we do expect to enter into one or more contracts with Mackay Airport Pty Ltd, and
- the total value of the transactions conducted with Mackay Airport Ltd will not exceed \$3 million.

Signed for CLA Trading Pty Ltd trading as Europcar by an authorised officer in the presence of

  
Signature of witness

SHARON MUDDLING  
Name of witness (print)

  
Signature of officer

← RON SANTIAGO  
Name of officer (print)

DIRECTOR  
Officer (print)

## Annexure 3

### Supporting submission

#### 1. Background

- 1.1 Hertz, Thrifty, Avis, Budget and Europcar operate car rental businesses at Mackay Airport.
- 1.2 MAPL is the operator of Mackay Airport.
- 1.3 Mackay Airport is the commercial airport located in Mackay.
- 1.4 The parties to the collective bargaining notification have each had lease and licence agreements with MAPL for the purposes of operating their business at Mackay Airport. The car rental counter leases and licenses expired on 30 September 2009.
- 1.5 Hertz received a letter 'summarising' terms of the proposed lease and licence agreements (**Proposed Agreements**) by MAPL on 15 September 2009.
- 1.6 Hertz and the other parties received the Proposed Agreements on 25 September 2009.
- 1.7 The commencement date for the Proposed Agreements was 1 October 2009.
- 1.8 The costs and terms of the Proposed Agreements are a significant departure from the current terms. In particular, prices have increased with expenses previously in the concession fee now payable separately and over and above the concession fee itself.
- 1.9 To date there has been little to no scope to negotiate terms of the Proposed Agreements with MAPL. MAPL has offered its contracts essentially on a 'take it or leave it' basis, offering standard form contracts with little scope for negotiation.
- 1.10 MAPL required the parties to execute the Proposed Agreements in accordance with a truncated timeline. At this stage no Proposed Agreements have been executed.
- 1.11 The parties to the collective bargaining notification wish to continue their operations at Mackay Airport, but on commercially more favourable terms than the Proposed Agreements.
- 1.12 Given MAPL's status as effectively a monopoly provider of airport facility services at Mackay, the parties wish to appoint a representative organisation to negotiate with MAPL on their behalf.
- 1.13 Each party to the collective bargaining notification would enter separate agreements with MAPL should the collective bargaining process prove fruitful.

## 2. Notified Conduct

- 2.1 The notified conduct is proposed to be Hertz, Thrifty, Avis, Budget and Europcar collectively negotiating in relation to matters such as the price and terms at which they will acquire services from MAPL.
- 2.2 Hertz and the other parties to the collective bargaining notification wish to be beyond reproach in the proposed conduct of collective negotiations and to ensure that there is no basis for any argument that the conduct described in paragraph 2.1 may be construed as falling within the prohibition of making or giving effect to a cartel provision and/or making a contract or arrangement or arriving at an understanding that has the purpose or effect of substantially lessening competition. Accordingly, Hertz and the other parties to the notification wish to notify the conduct under section 93AB of the TPA.

## 3. Competition issues

- 3.1 We submit on behalf of Hertz and the other parties to the collective bargaining notification that the Commission should not serve an objection notice because the conduct in question:
- (a) will not adversely affect competition in any relevant market; and
  - (b) will result in public benefits and no identifiable public detriment.
- 3.2 The conduct notified by the parties to the collective bargaining notification comprises the proposed *joint negotiation* by the parties with MAPL.
- 3.3 There is voluntary participation in the arrangements. Should one of the parties to the collective bargaining notification choose to withdraw from the collective bargaining arrangement and negotiate individually with MAPL they may do so at any time.
- 3.4 For the reasons set out below, Hertz submits that the proposed conduct will generate public benefits as set out, below.

### ***Relevant market***

- 3.5 In relation to the collective bargaining notification, the services under consideration are the supply and acquisition of airport terminal and car park space for car rental counters, related car rental facilities and rental vehicle parking at Mackay Airport.
- 3.6 For the purposes of the notification there is no need to analyse the geographical dimension of the relevant market or consider the substitutes potentially available on either the supply or demand sides. It is sufficient to recognise that MAPL is the sole supplier of the services concerned and that there is currently a significant imbalance of bargaining power which the parties to the collective bargaining notification are seeking to redress.

### ***Public detriments***

- 3.7 Hertz believes that the notified conduct causes no identifiable detriment to the public.
- 3.8 The likely effect of the notified conduct on the prices of the services described in paragraph 3.5 will ultimately depend on the success of the negotiations conducted by *the independent third party representative* on behalf of the parties. It is hoped that the product of the negotiations are prices at commercially realistic and reasonable levels.
- 3.9 The collective negotiation by the parties to the collective bargaining notification is only in relation to their acquisition of airport facility services. The collective negotiation in no way affects the parties competing in the supply of their services or in any other market.
- 3.10 The parties' conduct will not involve collective boycott activity.
- 3.11 Hertz submits there are no other detriments that may result from the notified conduct.
- 3.12 Overall, the effect of the conduct, discussed above, in relevant markets is insignificant and is outweighed by benefits.

### ***Public benefits***

- 3.13 The notified conduct is pro-competitive and will generate a number of public benefits, including the following:

- (a) Costs savings for consumers of rental car services.

In an economic climate where tourism revenues are soft, Hertz and the other parties to the collective bargaining notification would be unable to absorb the significant cost increases sought in the Proposed Agreements. Hertz and the other parties would be passing on the increased costs substantially or in their entirety to end consumers of rental car services.

- (b) Enhanced tourism.

Tourism Australia stated this year:

*'The Australian tourism industry continues to face major macroeconomic headwinds... with results suggesting a sharp fall in both international tourism arrivals to Australia and tourism activity by Australian residents in 2009'<sup>1</sup>*

Tourism Australia has recognised that Australia will struggle even off the back of a global recovery as it has less exposure to international business travel. Tourism Queensland's data reflects that the total visitation to the Mackay region of Queensland is also experiencing a reduction in total visitation with at 17% decline in 2009 on the year ended June 2008.

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<sup>1</sup> Tourism Australia, Tourism Forecasting Committee, Forecast 2009, Issue 1, p 1.

Increased airport charges will inevitably be passed on to consumers - both domestic and international visitors looking at Mackay as a possible travel destination. The cost of collecting a car from the airport on arrival and returning it to the airport prior to departure are part of the total cost to be assessed by prospective tourists against other alternative destinations. Higher costs at Mackay are likely to deter some potential visitors, thereby depriving the local economy of their patronage.

(c) Enhanced competitive constraint.

It is submitted that, if MAPL was subject to significant competitive constraint, it would not in the current economic climate propose such significant price increases as in the Proposed Agreements.

If collective bargaining effectively redresses the imbalance of negotiating power at Mackay, airport operators elsewhere may approach similar negotiations in a manner more reflective of competitive constraint.

*Effect of competition in relevant markets*

- 3.14 Hertz does not believe that the proposed conduct will have any adverse affect on competition in any relevant market.
- 3.15 The proposed arrangements in no way impede the ability of participants in the collective bargaining group to individually negotiate their leases and licences with MAPL and thereby tailor their terms as appropriate.
- 3.16 Hertz does not consider that the conduct will distort demand, create barriers to entry or otherwise harm competition in any market. Further information can be provided to the Commission, if requested.

**4. Commission's assessment of other collective bargaining arrangements**

- 4.1 We note that the Commission has previously permitted the following notifications:
- (a) in 2009 PaintRight Ltd<sup>2</sup> notified a proposal to negotiate on behalf of independently owned paint retailers in its banner group with suppliers. The Commission recognised in its decision that such collective arrangements could result in public benefits by generating cost savings. The Commission also recognised that the costs savings at the distribution level were likely to translate into cost savings downstream for end consumers;

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<sup>2</sup> ACCC Assessment, Collective Bargaining notification lodged by Paint Right Ltd, 16 September 2009, Notification no CB00081 & CB00137 (<http://www.accc.gov.au/content/trimFile.phtml?trimFileName=D09+105437.pdf&trimFileTitle=D09+105437.pdf&trimFileFromVersionId=893973>) (Accessed 4 November 2009).

- (b) in 2008 ClubsNSW<sup>3</sup> notified its proposal to collectively bargain, on behalf of its members, with TabCorp Holdings Limited and Sky Channel Pty Ltd. The Commission recognised that the level of competition between the ClubsNSW members would be unlikely to be affected by the proposal, the arrangements were voluntary and the significance of the comparative bargaining position of Tabcorp and Sky Channel vis-à-vis the clubs;
- (c) in 2008 BFC Stores Pty Ltd<sup>4</sup> notified its proposal to negotiate on behalf of BFC owned and franchise owned stores with targets in relation to the price at which the stores can purchase products for on-supply to Australian consumers. The Commission recognised that the arrangement did not limit the ability of the stores to compete in other ways and to the extent that lower prices are passed to consumers that there was a public benefit; and
- (d) in 2007 the Australian Newsagents' Federation<sup>5</sup> on behalf of certain Western Australian members lodged a notification to collectively negotiate contracts with a publisher. The Commission recognised the difficulties posed when parties acquire goods and services from a monopoly provider. In particular that where the current level of negotiation between a member of the proposed bargaining group and the target is low, the difference between the level of competition with or without the collective arrangements may also be low. This imbalance in negotiation positions is likely to be reflected in the terms and conditions of supply negotiated.

4.2 Hertz submits that there are at least, if not more, public benefits associated with its proposed conduct than that notified previously.

## 5. Conclusion

5.1 For the reasons set out above, we submit that the Commission should not serve an objection notice in respect of the attached notification. This is because the notified conduct will cause no identifiable detriment and will generate public benefits.

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<sup>3</sup> ACCC Assessment, Collective Bargaining notification lodged by ClubsNSW, 4 December 2008, Notification no CB00057 & CB00058 (<http://www.accc.gov.au/content/trimFile.phtml?trimFileName=D08+122026.pdf&trimFileTitle=D08+122026.pdf&trimFileFromVersionId=863230>) (Accessed 4 November 2009).

<sup>4</sup> ACCC Assessment, Collective Bargaining notification lodged by BFC Stores, 29 October 2008, Notification CB00009 & CB00056 (<http://www.accc.gov.au/content/trimFile.phtml?trimFileName=D08+111475.pdf&trimFileTitle=D08+111475.pdf&trimFileFromVersionId=874059>) (Accessed 4 November 2009).

<sup>5</sup> ACCC Assessment, Collective Bargaining notification lodged by the Australian Newsagents' Federation, 13 September 2007, Notification no CB00003, (<http://www.accc.gov.au/content/trimFile.phtml?trimFileName=D07+86939.pdf&trimFileTitle=D07+86939.pdf&trimFileFromVersionId=856751>).