



**Australian
Competition &
Consumer
Commission**

GPO Box 520
Melbourne Vic 3001

Level 35, The Tower
360 Elizabeth Street
Melbourne Vic 3000

tel: (03) 9290 1800
fax: (03) 9663 3699

www.accc.gov.au

Our Ref: C2009/1884
Contact Officer: Tess Macrae
Contact Phone: 03 9290 1835

17 November 2009

Dear Sir/Madam

**Collective Bargaining Notification CB00138 lodged by Hertz Australia Pty Limited
- interested party consultation**

Introduction

The Australian Competition and Consumer Commission (the ACCC) has received a collective bargaining notification from Hertz Australia Pty Limited with regard to Hertz, Thrifty, Avis, Budget and Europcar collectively bargaining with Mackay Airport.

The purpose of this letter is to invite your comments as a party who may be interested in providing a submission to the ACCC in relation to these arrangements.

Collective bargaining notification process

The ACCC is the Australian Government agency responsible for administering the *Trade Practices Act 1974* (the Act). The broad objective of the Act is to benefit all Australians by promoting competition and to ensure consumers are treated fairly.

The competition provisions of the Act prohibit certain forms of anti-competitive agreements or conduct including agreements which typically occur during collective bargaining.

Collective bargaining refers to an arrangement where one or more competitors in an industry come together to negotiate terms and conditions (including price) with a supplier or a customer.

While the Act prohibits certain forms of anti-competitive conduct, it does recognise that conduct which may otherwise breach the Act may, in some circumstances, be of benefit to the public. The Act accordingly allows businesses that are considering engaging in anti-competitive arrangements to seek immunity from legal action. One way businesses may

obtain immunity to engage in collective bargaining and collective boycott conduct that may be at risk of breaching the Act is to lodge a notification with the ACCC.

Once a notification has been validly lodged with the ACCC, immunity from legal action in respect of the notified conduct commences 14 days after the notification was lodged, unless the ACCC issues a draft objection notice proposing to prevent the immunity coming into effect.

The ACCC may proceed to remove the immunity provided by a collective bargaining notification where it is satisfied that the likely benefit to the public from the proposed conduct will not outweigh the likely detriment to the public from the proposed conduct.

Collective bargaining notification lodged by Hertz Australia Pty Limited

On 11 November 2009, Hertz lodged a collective bargaining notification concerning Hertz, Thrifty, Avis, Budget and Europcar collectively bargaining with Mackay Airport in relation to the terms and conditions of the acquisition of facilities associated with the provision of rental car services at the airport (including counter space and car park space).

Hertz submits that the notified conduct will generate a number of public benefits including cost savings for consumers of rental car services and enhanced tourism. Hertz submits that the notified conduct causes no identifiable detriment to the public.

The immunity from legal action provided by notification CB00138 will commence on 25 November 2009 provided the ACCC does not issue a draft objection notice proposing to prevent the immunity coming into effect.

The collective bargaining notification lodged by Hertz is available on the ACCC's public register and an electronic copy of the notification can be found on the collective bargaining notification register, available on the ACCC's website at www.accc.gov.au/CollectiveBargainingRegister.

Request for submissions

To assist the ACCC in its consideration of the notification it would be helpful to obtain your comments on the likely public benefits and the likely effect on competition, or any other public detriment, from the proposed arrangements.

The ACCC asks for submissions to be in writing so they can be made publicly available. They are placed on a public register for this purpose.

Persons lodging a submission with the ACCC may request that information included in the submission be excluded from the public register in certain circumstances. Submissions which are excluded from the public register may still be taken into account by the ACCC in conducting its assessment of the notified arrangements. Guidelines for seeking exclusion from the public register are attached for your information.

If you wish to lodge a submission, please address your submission to:

The General Manager
Adjudication Branch
Australian Competition and Consumer Commission
GPO Box 3131
Canberra ACT 2601

Submissions can also be lodged by email to adjudication@acc.gov.au or by facsimile on 02 6243 1211. If relevant, please provide a preferred email address for any future correspondence from the ACCC.

Please ensure that your submission is lodged with the ACCC by **25 November 2009**.

This letter has been placed on the ACCC's public register. If you wish to discuss any aspect of this matter, please do not hesitate to contact Tess Macrae on 03 9290 1835.

Yours sincerely

A handwritten signature in black ink, appearing to be 'GJ', written over the printed name 'Gavin Jones'.

Gavin Jones
Director
Adjudication Branch

Interested Parties
Mackay Airport Pty Ltd
Mackay Tourism Limited
Australian Airports Association