

26 November 2009

Our reference
BEVA.10021095

By registered post and email: adjudication@acc.gov.au

Teresa Nowak
Acting Director
Adjudication Branch
Australian Competition and Consumer Commission
GPO Box 3131
Canberra ACT 2601

FILE No:
DOC:
MARS/PRISM:

Dear Teresa

Board of Airline Representatives of Australia Inc – Form FC Application

I act for Board of Airline Representatives of Australia Inc (**BARA**) and now submit an application for revocation of a non-merger authorisation and substitution of a new authorisation on behalf of BARA.

BARA seeks authorisation pursuant to section 91C(1) and sections 88(1A) and 88(1) of the *Trade Practices Act 1974 (TPA)*.

I enclose:

- (a) Form FC "Application for the Revocation of a Non-Merger Authorisation and Substitution of a New Authorisation";
- (b) Schedule A to Form FC;
- (c) Schedule B to Form FC – Confidential version; and
- (d) Schedule B to Form FC – Public register version.

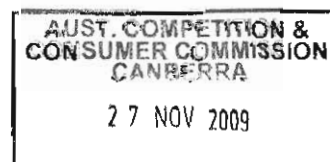
BARA will arrange for the filing fee of \$2500 to be transferred by EFT to the "ACCC Official Administration" bank account today.

I refer to earlier correspondence with you and Darrell Channing confirming BARA's request that the confidential version of Schedule B be excluded from the public register. This request is made on the basis that that version contains commercially confidential information, including sensitive information relating to price and negotiations. A public register version of Schedule B has been included which BARA wishes to have included on the public register.

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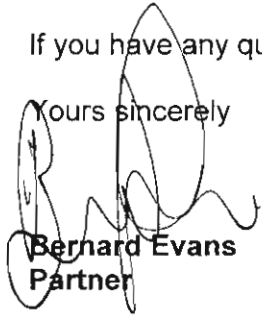
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syddocs 2103272v2 EMCG

If you have any questions, please contact me.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Bernard Evans', written over the typed name.

Bernard Evans
Partner

encl

Form FC

Commonwealth of Australia

Trade Practices Act 1974 — subsection 91C (1)

APPLICATION FOR REVOCATION OF A NON-MERGER AUTHORISATION AND SUBSTITUTION OF A NEW AUTHORISATION

To the Australian Competition and Consumer Commission:

Application is hereby made under subsection 91C (1) of the *Trade Practices Act 1974* for the revocation of an authorisation and the substitution of a new authorisation for the one revoked.

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

1. Applicant

- (a) Name of applicant:
(Refer to Direction 2)

A91200 Board of Airline Representatives of Australia Inc (“BARA”) and its members from time to time.

- (b) Description of business carried on by applicant:
(Refer to Direction 3)

The applicant is an industry organisation representing international airlines in Australia.

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

Level 8, 9 Barrack Street, Sydney, 2000.

2. Revocation of authorisation

- (a) Description of the authorisation, for which revocation is sought, including but not limited to the registration number assigned to that authorisation:

Authorisation, which came into force on 29 July 2005 pursuant to a Final Determination of the Commission dated 7 July 2005, was granted to BARA to negotiate and bargain collectively, on behalf of itself and its member airlines from time to time, with airport operators and providers of other essential airport services at designated international airports (the **Current Authorisation**). The Authorisation Number is A30232 and the Public Register Number is C2004/1102. Authorisation was granted for a period of five years and will expire on 28 July 2010.

The Current Authorisation is an authorisation under subsection 88(1) of the *Trade Practices Act 1974* (the **Act**) to make a contract or arrangement, or arrive at an understanding, a provision of which would have the purpose, or

would have or might have the effect, of substantially lessening competition within the meaning of section 45 of the Act.

- (b) Provide details of the basis upon which revocation is sought:

The Current Authorisation will expire on 28 July 2010 and on that basis the revocation of the Current Authorisation and substitution of a new authorisation is now sought.

3. Substitution of authorisation

- (a) Provide a description of the contract, arrangement, understanding or conduct whether proposed or actual, for which substitution of authorisation is sought:

(Refer to Direction 4)

To negotiate and bargain collectively, on behalf of BARA's member airlines from time to time, with airport operators and providers of other essential airport services at international airports, and agree on terms and conditions of acquisition of such services, including prices, on an airport by airport basis.

Having regard to the passage of the *Trade Practices Amendment (Cartel Conduct and Other Measures) Act 2009*, BARA seeks substitution of the Current Authorisation with an authorisation under subsections 88(1A) and 88(1) of the Act:

- to make a contract or arrangement, or arrive at an understanding, a provision of which would be, or might be, a cartel provision within the meaning of Division 1 of Part IV of that Act (other than a provision which would also be, or might also be, an exclusionary provision within the meaning of section 45 of that Act).
- to give effect to a provision of a contract, arrangement or understanding that is, or may be, a cartel provision within the meaning of Division 1 of Part IV of that Act (other than a provision which is also, or may also be, an exclusionary provision within the meaning of section 45 of that Act).
- to make a contract or arrangement, or arrive at an understanding, a provision of which would have the purpose, or would or might have the effect, of substantially lessening competition within the meaning of section 45 of that Act.
- to give effect to a provision of a contract, arrangement or understanding which provision has the purpose, or has or may have the effect, of substantially lessening competition within the meaning of section 45 of that Act.

- (b) Description of the goods or services to which the contract, arrangement, understanding or conduct (whether proposed or actual) relate:

Essential airport services, more particularly described in **Schedule “B”**.

- (c) The term for which substitute authorisation of the contract, arrangement or understanding (whether proposed or actual), or conduct, is being sought and grounds supporting this period of authorisation:

5 years. Authorisation is sought in relation to ongoing collective negotiations that BARA conducts with airport operators and providers of other essential airport services on behalf of its members.

4. Parties to the contract, arrangement or understanding (whether proposed or actual), or relevant conduct, for which substitution of authorisation is sought

- (a) Names, addresses and description of business carried on by those other parties to the contract, arrangement or understanding (whether proposed or actual), or the relevant conduct:

Current and future members of BARA (see **Schedule “A”** for current members and their addresses). All members are international airlines.

- (b) Names, addresses and descriptions of business carried on by parties and other persons on whose behalf this application is made:
(Refer to Direction 5)

See **Schedule “A”** for list of current members of BARA and their addresses. All members are international airlines.

- (c) Where those parties on whose behalf the application is made are not known - description of the class of business carried on by those possible parties to the contract or proposed contract, arrangement or understanding:

Not Applicable.

5. Public benefit claims

- (a) Arguments in support of application for substitution of authorisation:
(See Direction 6 of this Form)

See **Schedule “B”**.

- (b) Facts and evidence relied upon in support of these claims:

See **Schedule “B”**.

6. 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):
(See Direction 7 of this Form)

See **Schedule “B”**.

7. Public detriments

- (a) Detriments to the public resulting or likely to result from the substitute authorisation, in particular the likely effect of the 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:
(See *Direction 8 of this Form*)

See **Schedule “B”**.

- (b) Facts and evidence relevant to these detriments:

See **Schedule “B”**.

8. Contracts, arrangements or understandings in similar terms

This application for substitute authorisation may also be expressed to be made in relation to other contracts, arrangements or understandings (whether proposed or actual) that are, or will be, in similar terms to the abovementioned contract, arrangement or understanding

- (a) Is this application to be so expressed?

Yes

- (b) If so, the following information is to be furnished:

- (i) Description of any variations between the contract, arrangement or understanding for which substitute authorisation has been sought and those contracts, arrangements or understandings that are stated to be in similar terms:

(See *Direction 9 of this Form*)

Not applicable.

- (ii) Where the parties to the similar term contract, arrangement or understanding(s) are known - names, addresses and description of business carried on by those other parties:

(See *Direction 5 of this Form*)

Not applicable.

- (iii) Where the parties to the similar term contract, arrangement or understanding(s) are not known — description of the class of business carried on by those possible parties:

See paragraph 1 of 3(a) above and **Schedule “B”**.

9. Joint Ventures

- (a) Does this application deal with a matter relating to a joint venture (See section 4J of the *Trade Practices Act 1974*)?

No.

(b) If so, are any other applications being made simultaneously with this application in relation to that joint venture?

Not applicable.

(c) If so, by whom or on whose behalf are those other applications being made?

Not applicable.

10. Further information

(a) Name, postal address and telephone contact details of the person authorised by the parties seeking revocation of authorisation and substitution of a replacement authorisation to provide additional information in relation to this application:

Bernard Evans, Middletons, Level 26, 52 Martin Place, Sydney, 2000.

Dated..... 26 November 2009

Signed by/on behalf of the applicant

.....
(Signature)

.....
(Full Name)

.....
(Organisation)

.....
(Position in Organisation)

DIRECTIONS

1. 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.
2. Where the application is made 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.
3. In item 1 (b), describe that part of the applicant's business relating to the subject matter of the contract, arrangement or understanding, or the relevant conduct, in respect of which substitute authorisation is sought.
4. In completing this form, provide details of the contract, arrangement or understanding (whether proposed or actual), or the relevant conduct, in respect of which substitute authorisation is sought.
 - (a) to the extent that the contract, arrangement or understanding, or the relevant conduct, has been reduced to writing — provide a true copy of the writing; and
 - (b) to the extent that the contract, arrangement or understanding, or the relevant conduct, has not been reduced to writing — provide a full and correct description of the particulars that have not been reduced to writing; and
 - (c) If substitute authorisation is sought for a contract, arrangement or understanding (whether proposed or actual) which may contain an exclusionary provision — provide details of that provision.
5. Where substitute authorisation is sought on behalf of other parties provide details of each of those parties including names, addresses, descriptions of the business activities engaged in relating to the subject matter of the authorisation, and evidence of the party's consent to authorisation being sought on their behalf.
6. Provide details of those public benefits claimed to result or to be likely to result from the contract, arrangement or understanding (whether proposed or actual), or the relevant conduct, including quantification of those benefits where possible.
7. Provide details of the market(s) likely to be affected by the contract, arrangement or understanding (whether proposed or actual), in particular having regard to goods or services that may be substitutes for the good or service that is the subject matter of the application for substitute authorisation.
8. Provide details of the detriments to the public, including those resulting from the lessening of competition, which may result from the contract, arrangement or understanding (whether proposed or actual). Provide quantification of those detriments where possible.
9. Where the application is made also in respect of other contracts, arrangements or understandings, which are or will be in similar terms to the contract, arrangement or understanding referred to in item 2, furnish with the application details of the manner in which those contracts, arrangements or understandings vary in their terms from the contract, arrangements or understanding referred to in item 2.

SCHEDULE "A"

MEMBERS OF BOARD OF AIRLINE REPRESENTATIVES OF AUSTRALIA INC

AEROFLOT RUSSIAN AIRLINES (SU) Level 24, 44 Market Street SYDNEY NSW 2000	CATHAY PACIFIC AIRWAYS LTD (CX) GPO Box 4996 SYDNEY NSW 1042
AEROLINEAS ARGENTINAS (AR) Level 3, 64 Clarence Street SYDNEY NSW 2000	DELTA AIRLINES 10F Philamlife Tower 8767 Paseo de Roxas Makati City 1226 PHILIPPINES
AIR CALIN (SB) Level 12, 403 George Street SYDNEY NSW 2060	EMIRATES (EK) Level 10, 1 York Street SYDNEY NSW 2000
AIR CANADA (AC) Level 18, 264 George Street SYDNEY NSW 2000	ETIHAD AIRWAYS Level 36, Aurora Place 88 Phillip Street SYDNEY NSW 2000
AIR INDIA (AI) GPO Box Q407 QVB SYDNEY NSW 1230	EVA AIRWAYS CORPORATION (BR) PO Box 8, Brisbane International Airport EAGLE FARM QLD 4000
AIR MAURITIUS (MK) C/- Level 10, 43-51 Queen Street MELBOURNE VIC 3000	FEDERAL EXPRESS (FX) PO Box 656 MASCOT NSW 2020
AIR NEW ZEALAND LIMITED (NZ) GPO Box 3923 SYDNEY NSW 2001	GARUDA INDONESIAN AIRWAYS (GA) GPO Box 3836 SYDNEY NSW 1044
AIR PACIFIC LIMITED (FJ) Level 10, 43 George Street SYDNEY NSW 2000	JAPAN AIRLINES (JL) Level 13, 201 Sussex Street (Tower 3) SYDNEY NSW 2000
AIR TAHITI NUI (TN) Level 12, 403 George Street SYDNEY NSW 2000	KOREAN AIR (KE) Level 4, 333 George Street SYDNEY NSW 2000
AIR VANUATU (NF) PO Box Q923, QVB SYDNEY NSW 1230	MALAYSIA AIRLINES (MH) 16 Spring Street SYDNEY NSW 2000
ASIANA AIRLINES (OZ) Level 6, 75 Castlereagh Street SYDNEY NSW 2000	PHILIPPINE AIRLINES (PR) 49-51 York Street SYDNEY NSW 2000
AUSTRIAN AIRLINES (OS) Level 7, 89 York Street SYDNEY NSW 2000	QANTAS AIRWAYS LIMITED (QF) 203 Coward Street (QCA8) MASCOT NSW 2020

QATAR AIRWAYS Level 3, 350 Collins Street MELBOURNE VIC 3000	UNITED AIRLINES (UA) GPO Box 3755 SYDNEY NSW 2001
ROYAL BRUNEI (BI) Ground Floor, 60 Edward Street BRISBANE QLD 4000	VIETNAM AIRLINES (VN) Level 13, 31 Market Street SYDNEY NSW 2000
SCANDINAVIAN AIRLINES SYSTEM (SK) Level 15, 31 Market Street SYDNEY NSW 2000	VIRGIN ATLANTIC AIRLINES (VS) PO Box 6096 ALEXANDRIA NSW 2015
SINGAPORE AIRLINES (SQ) GPO Box 747 SYDNEY NSW 1042	V AUSTRALIA (VA) PO Box 1034 SPRING HILL QLD 4004
SOUTH AFRICAN AIRWAYS (SA) Level 1, 117 York Street SYDNEY NSW 2000	
THAI AIRWAYS INTERNATIONAL (TG) GPO Box 7077 SYDNEY NSW 2001	
TURKISH AIRLINES (TK) Suite 2601, Level 26, Maritime Trade Towers 201 Kent Street SYDNEY NSW 2000	

Restriction of Publication
of Part Claimed

SCHEDULE B

GROUNDS FOR GRANT OF AUTHORISATION

**BOARD OF AIRLINES REPRESENTATIVES OF AUSTRALIA
INC**

[Public Version]

Schedule "B"
Grounds For Grant Of Authorisation
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Summary

On 7 July 2005, the Australian Competition and Consumer Commission (the **Commission**) granted the Board of Airline Representatives of Australia Inc (**BARA**) authorisation to negotiate and bargain collectively, on behalf of itself and its member airlines from time to time, with airport operators and providers of other essential airport services at designated international airports (the **Existing Authorisation**)¹. Authorisation was granted for a period of five years to 28 July 2010 pursuant to the Commission's determination (the **Determination**).

BARA's authorisation is one that only operates in practice when the benefits of collective negotiation by the airlines exceed the costs for both the airlines and the providers of essential airport services. This is primarily because participation is voluntary by all parties. In particular:

- providers of essential airport services are not required to negotiate through BARA; and
- BARA's members are not bound by the terms and conditions negotiated by BARA.

The authorisation does not include boycott activities.

Since 2005, BARA has engaged in numerous negotiations over the provision and pricing of essential airport services. BARA considers that the intended benefits of authorisation are being realised. Airlines have benefited from a meaningful improvement in commercial outcomes, lower transaction costs and more effective and coordinated input into capital programs. Airport operators, Airservices Australia (**Airservices**) and the Bureau of Metrology (**BoM**) have benefited from lower transaction costs and a collective view on the services and facilities required by international airlines.

Given the competitive nature of downstream international aviation markets, consumers have gained from BARA's collective negotiation activities.

Since the Determination, the supply conditions for essential airport services at international airports have remained largely unchanged. Major international airport operators (other than Northern Territory Airports Limited which operates Darwin airport) continue to be subject to prices and service quality monitoring. Airservices is subject to prices notification. Competition between airlines over the provision of essential airport services remains low. As such, there are no significant developments that would contradict the findings of the Determination.

In this application, BARA, on behalf of itself and its members from time to time, seeks a further five year authorisation pursuant to subsections 88(1A) and (1) of the *Trade Practices Act 1974* (the **Act**). BARA considers authorisation should cover all the essential airport services required by international airlines to operate to and from international airports. Essential airport services are broadly described as:

- Aircraft-related services and facilities;
- Passenger-related services and facilities;
- Staff-related access services;
- Essential office and operational accommodation;
- Common user terminal equipment (**CUTE**);
- Airline communications systems;

¹ Authorisation number (A30232).

- Air traffic control services;
- Aviation rescue and fire fighting services (**ARFF**); and
- Aviation weather services.

The providers of at least some of the essential airport services at each airport could potentially vary through time, or additional providers could arise given changing circumstances. For example, in many instances airport operators now provide CUTE services when these services were previously provided by the airlines. Further, additional providers may emerge due to increased government-mandated security requirements. There may also be some limited circumstances where two or more competing providers could deliver some essential airport services.

Therefore, BARA believes any determination granted by the Commission should be made having regard primarily to the subject matter of those negotiations; that is, the providers of essential airport services, rather than the identity of particular providers of those services. Alternatively, the service providers could be specifically referred to as the operators of the International Airports, Airservices and the BoM and other providers of essential airport services from time to time.

It is submitted that either approach is consistent with the terms of subsections 88(1A) and (1) and is, in fact, quite clearly within the terms of subsections 88(10) and (13) of the Act.

However service providers are identified, competition among airlines for those services will remain low.

It may be that some airport operators or other service providers will object to negotiating with BARA for some essential airport services. In particular, some airport operators consider that the provision and pricing of airline office space should be negotiated individually with airlines. As negotiation with BARA is voluntary, no airport operator's commercial negotiation preference is constrained. However, for airport operators that do see benefit in negotiating with BARA, authorisation is necessary for such negotiations to proceed.

In terms of airports, BARA considers that authorisation should cover the current Major International airports as defined in Appendix 1 and Gold Coast Airport (the **International Airports**). In time, Gold Coast Airport may become a more significant alternative to Brisbane Airport for international air travel. However, for this to occur the Gold Coast Airport is likely to need substantial investment and infrastructure upgrading. BARA considers that it can make a positive contribution to such negotiations. Again, the operator of Gold Coast Airport is not obliged to negotiate with BARA over the provision or pricing of any of its essential airport services. However, if the airport operator does see benefit in negotiating with BARA, authorisation is necessary for such negotiations to proceed.

Approval is sought for a five year period.

Without a new authorisation, BARA would cease collective negotiation activities from July 2010. BARA considers that with authorisation:

- more efficient capital, price and service quality outcomes will continue to occur;
- international air transport markets will benefit from the efficiencies generated; and
- there are few or no anti competitive effects.

Further detail of BARA's application is set out in the following sections. They cover BARA's role, its activities to date, market developments and consideration of likely benefits and anti-competitive impacts.

1. Background

1.1 Constitution and representation of BARA

BARA is an incorporated association. A copy of its Constitution is attached (Appendix 3).

The current members of BARA are set out in Schedule 'A' to the application.

BARA represents international airlines and their interests. BARA does not represent the interests of Australian domestic airlines in relation to the acquisition of services from third parties. However, BARA does represent the interests of international airlines in relation to services which are also used by domestic airlines – for example, runways and taxiways and services provided by Airservices and the BoM. The outcomes achieved by BARA in the course of making and pursuing such representations are referred to BARA's members in their capacity as international airlines for their consideration. BARA does not pursue its members that also operate domestic air services to ascertain whether or not they are seeking to obtain different commercial outcomes for those services.

The BARA Rules, however, do permit any airline which operates scheduled air services – passenger and freight – to and from Australia (an on-line carrier) or which carries on business in Australia but does not operate scheduled air services to or within Australia (an off-line carrier) to become a member of BARA. Any airline operating in any way in Australian airspace may choose to be a member of BARA and as such will benefit from the information services about the Australian aviation sector generally.

BARA's 'Vision' is:

To be acknowledged by all member airlines, government, related industry bodies and other aviation industry stakeholders and the media as a pre-eminent industry representative organisation delivering effective industry leadership and providing timely and reliable information on matters affecting the aviation industry.

BARA's 'Mission Statement' is:

To provide a unified voice for airlines in the promotion of the necessary commercial, legislative, administrative, social and environmental framework to facilitate the further development of a viable, efficient and safe aviation industry in Australia.

The role of BARA in pursuing the above is:

- To provide a forum for member airlines to deal with common interests and issues, and
- To represent the interests of member airlines to governments and others interested in the aviation industry.

1.2 BARA's objectives

BARA's objectives are stated as:

- To provide the framework to enable member airlines to improve operating efficiencies and to maximise financial returns from ethical and lawful operations
- To encourage the development of the appropriate capacity of cost effective aviation infrastructure
- To help ensure that aviation regulations are simple, straightforward and internationally harmonised

- To provide information to politicians, public servants, other industry stakeholders and the community at large about BARA policies and the contribution of member airlines to the Australian economy and the tourism and travel industry in particular
- To maintain close liaison with airport owners and operators to facilitate airline access as required to minimise airport charges
- To cooperate with governments, business organisations and other bodies to research issues affecting the interests of member airlines and to achieve an agreed information base on which rational policy decisions can be made
- To ensure member airlines have ready access to appropriately skilled and sufficient industrial relations resources to facilitate workplace relations
- To provide forums for member airlines to learn about and discuss current industry issues
- To encourage maximum membership from among eligible airlines by ensuring the ongoing evolution of BARA to reflect changes over time of airlines' objectives

1.3 How BARA operates

BARA is well known as the peak industry body for international airlines in Australia.

All of BARA's negotiations with industry, government, regulators and other stakeholders are transparent. BARA regularly speaks on behalf of the airlines and provides submissions to government, regulatory authorities and other stakeholders on behalf of the airlines.

BARA does not have any actual or ostensible authority to enter into any agreements so as to bind its members.

1.4 BARA's structure

BARA's 35 members form its General Assembly.

BARA employs a full-time professional Executive Director. The Executive Director is responsible for the day to day affairs of BARA.

The General Assembly is managed by an elected Executive Committee. The Executive Director reports to the Executive Committee.

BARA also has specialist Committees dealing with airport and government charges, industrial relations, infrastructure and security matters. The Executive Director is a member of each Committee, which reports through the Executive Director, to the Executive Committee.

The Executive Committee is responsible for:

- management of BARA's affairs and finances
- formulation of BARA's policies
- oversight of the rules and objects of BARA
- authority over the Executive Director.

There are 13 members of the Executive Committee representing the broad range of members of the General Assembly.

2. A New Formal Application

2.1 Introduction

This is an application for authorisation by BARA, on behalf of itself and its members from time to time, pursuant to subsections 88(1A) and (1) of the Act.

BARA was granted an authorisation by the Commission in 2005, pursuant to a determination dated 7 July 2005 (**Determination**). The Existing Authorisation (A30232) in large part was made in respect of the same conduct as is covered by the current application for authorisation and will expire on 28 July 2010. Accordingly, BARA is applying for a new authorisation.

Continuing authority is sought by BARA to negotiate and bargain collectively with the operators of, and other service providers at, the International Airports and agree on terms and conditions of acquisition of certain services, on an airport by airport basis.

The application covers all contracts and proposed contracts that may result from collective negotiations between BARA on behalf of its members and airport operators and other service providers in relation to essential airport services pursuant to subsection 88(13) of the Act.

Authorisation is sought for a further 5 year period to take effect on 29 July 2010 and to remain in force until 28 July 2015.

2.2 Market definition – a preliminary observation

In the Determination the Commission identified two broad markets:

- the primary market(s) for the supply of essential airport services as supplied by the main capital city airports with some competition between airports at the margin; and
- air transport markets, specifically international regional and point to point passenger transport and international regional freight transport markets.

The Commission also noted that its assessment was not overly affected by possible variations in precise market definition, particularly in taking into account net public benefit.

BARA is comfortable with this approach to market definition and has framed this application having regard to the Commission's views in that regard.

2.3 The "collective acquisition" exception

If it were thought that BARA's conduct amounted to price fixing, which is not suggested, BARA believes it would fall within the "collective acquisition" exception in section 44ZZRV of the Act. BARA believes that its conduct is in fact pro-competitive but makes this application, as it did on the last occasion, for more abundant caution due to:

- the technical nature of the issues possibly arising under sections 44ZZRF, 44ZZRG, 44ZZRJ, 44ZZRK and 45 of the Act;
- the severe penalties for breach;
- the very substantial sums airlines must pay for essential airport services;

- the number of current and potential service providers with whom BARA negotiates; and
- the number of matters, including price, that BARA negotiates with service providers.

BARA also notes the following:

- the structure and activities of BARA are broadly similar to organisations in other countries that represent the interests of international airlines;
- BARA is a representative body for airlines and has no direct financial interest in the subject matter of this application;
- BARA currently represents 35 airlines;
- BARA's membership changes from time to time; and
- the senior management of BARA's member airlines also changes from time to time and for this reason BARA can often provide continuity for the duration of often lengthy and time consuming negotiations in circumstances where individual airlines may not be able to do so.

BARA believes that:

- without the capacity for collective negotiation, constraint on the use of market power by airport operators and other service providers (which in some cases is very substantial) in the primary markets will be reduced;
- with collective negotiation, competition is enhanced with significant public benefit;
- there are other demonstrable benefits to the public from collective negotiation which would outweigh any anti-competitive detriment (assuming such detriment could even be established);
- there will continue to be benefits to the public in granting authorisation: the conduct authorised will benefit not only airports and airlines, but also the public by virtue of more economically efficient management and utilisation of essential airport services (Australia's aeronautical infrastructure). Those benefits will be passed on to the public (i.e. consumers of international air services) by way of lower prices and higher levels of service quality and capacity availability.

Authorisation will ensure that the existing well-established industry practice of collective negotiation, with its inherent public benefits, does not contravene the Act.

2.4 Summary of key points

BARA's submission for supporting the grant of further authorisation is set out in detail in this document. The key points of that submission are set out below.

(a) "Voluntariness"

The underlying principle of the Existing Authorisation and this application for a further authorisation is its strictly voluntary nature. Participation in collective negotiation by all participants is voluntary and, in particular:

- providers of essential airport services are not required to negotiate through BARA; and
- BARA's members are not bound by the terms and conditions negotiated by BARA.

In practice this means that the real benefits of collective negotiation only flow if collective negotiation will yield a better result – typically lower costs and more efficient outcomes – for both BARA members and providers of essential airport services, than would be the case if members and those same providers negotiated on a one-to-one basis.

(b) No boycott activities

There have been and will in the future be no boycott activities organised by BARA. Accordingly, this application does not extend to boycott activities and no authorisation is sought for any such activities.

(c) Demonstrable benefits of collective negotiation

Since 2005, BARA has engaged in numerous negotiations over the provision and pricing of essential airport services. BARA considers that the intended benefits of authorisation are being realised. Airlines have benefited from a meaningful improvement in commercial outcomes, lower transaction costs and more effective and coordinated input into capital programs. Airport operators, including Airservices and the BoM, have benefited from lower transaction costs and obtaining a collective view on the services and facilities required by international airlines.

Given the competitive nature of downstream international aviation markets, consumers have also gained from BARA's collective negotiation activities.

(d) No change in market conditions

Since the grant of the Determination, the supply conditions for essential airport services at the International Airports have remained largely unchanged. The International Airport operators (excluding Northern Territory Airports Limited and Gold Coast Airport Pty Limited) continue to be subject to prices and service quality monitoring. Airservices is subject to prices notification. Competition among airlines over the provision of essential airport services also remains low. As such, there have been no significant developments and that, in BARA's view, should mean that the Commission will not grant an authorisation which is any different to the terms of the Existing Authorisation.

(e) Coverage of authorisation

BARA considers authorisation should cover all the essential airport services required by international airlines to operate to and from international airports. Essential airport services are broadly described as:

- Aircraft-related services and facilities;
- Passenger-related services and facilities;
- Staff-related access services;
- Essential office and operational accommodation for airlines;

- CUTE services;
- Airline communications systems and services;
- Air traffic control services;
- ARFF services; and
- Aviation weather services.

The providers of at least some of these essential airport services at each airport could vary through time and additional providers could arise given changing circumstances. For example, in many instances airport operators now provide CUTE services, services which were previously provided by the airlines. Further, additional providers may emerge due to increased government-mandated security requirements. There may also be some limited circumstances where two or more competing providers could deliver some essential airport services.

Therefore, BARA believes any determination granted by the Commission should be made having regard primarily to the subject matter of those negotiations; that is, the providers of essential airport services, rather than the identity of particular providers of those services. Alternatively, the service providers could be specifically referred to as the operators of the International Airports, Airservices and the BoM and other providers of essential airport services from time to time.

It is submitted that either approach is consistent with the terms of subsections 88(1A) and (1) and is, in fact, quite clearly within the terms of subsections 88(10) and (13) of the Act.

However service providers are identified, competition among airlines for those services will remain low.

(f) **BARA's intentions**

Without a new authorisation, BARA will cease collective negotiation activities from July 2010. BARA considers that with authorisation:

- more efficient capital, price and service quality outcomes will continue to occur;
- international air transport markets will benefit from the efficiencies generated; and
- there are few or no anti-competitive effects.

Further details of BARA's application are set out in the following sections. They cover BARA's role, its activities to date, market developments and consideration of likely public benefits and anti-competitive impacts.

3. BARA's Interactions with Service Providers

3.1 Introduction

BARA has for many years negotiated with airport operators and other providers over the provision and pricing of essential airport services at international airports. This process has been in place since BARA's formation in 1989.

3.2 International airports

Australia's major international airports are not subject to formal price controls, but rather a 'light-handed' prices and services quality monitoring regime. Since 2005, BARA has engaged in numerous negotiations with airport operators over the provision and pricing of essential airport services. A summary of the more substantial negotiations is provided in Table 1. A number of key conclusions can be drawn from the negotiations with airport operators.

First, BARA has negotiated the content of capital programs and international aeronautical charges with all major international airport operators since 2005. This at least implies that the previously alleged anti-competitive nature of BARA's activities is unfounded (in particular, as claimed by the Australian Airports Association)². If airport operators considered that such potential existed, then they could have chosen not to negotiate with BARA, but to deal directly with each of the airlines. That they choose to negotiate with BARA indicates the airport operators have recognised there is value in negotiating collectively.

Second, BARA considers that the protection afforded by the Existing Authorisation has led to meaningful improvements in commercial outcomes. One example has been the 'phasing in' of price increases. This is more than phasing in prices while targeting the same net present value of revenues. Instead, the phasing in represents a genuine reduction in overall prices and revenues. While the 'counterfactual' outcomes will always be debatable, BARA considers that its activities have generated meaningful (but not necessarily substantial) reductions in prices (see section 5.3).

In terms of non-price outcomes, achieving service level agreements with commercial consequences still proves difficult at many (but not all) airports. However, BARA has achieved some improvements, such as general commitments to providing services with all "due care and skill". Further, the terms of negotiated agreements are now generally more balanced and reflect proper negotiated outcomes. For example, indemnity and other legal issues are now usually more balanced, rather than being draconian requirements that only benefited the airport operators.

Third, the ability for all airlines to have the opportunity for input into the provision and pricing of essential airport services has improved since the grant of the Existing Authorisation. In conducting negotiations, BARA ensures that all its members have access to the relevant information and the ability to contribute to the responses put forward to airport operators.

Fourth, as noted by the Commission in the Determination, "collectively negotiated contracts will only be agreed and implemented where both BARA members and airport operators consider it is in their commercial interest to do so"³. The fact that BARA continues to participate in numerous negotiations demonstrates that the Existing Authorisation is generating benefits to

² Australian Airports Association (24 August 2004), Submission to the ACCC.

³ Authorisation A30232, p. 32.

both BARA members and the airport operators that have at least exceeded the costs involved for each party.

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Table 1 Completed and on going price and service negotiations		
Airport/Service Supplier	Issue	Outcomes/Status
Adelaide	Revisions to aeronautical airfield charges 2007-08 and 2008-09.	BARA completed negotiations with terms and conditions for consideration by individual airlines.
Brisbane	Long term pricing agreement, including: - Aeronautical prices; - capital program (excluding second runway)	BARA completed negotiations with terms and conditions for consideration by individual airlines. More even-handed commercial arrangements in place, including mutualised indemnities and liabilities. Prices include a 'phasing in' of international aeronautical price increases.
Brisbane	Second runway	Negotiations continuing. BARA has sought further information and input by airline members.
Brisbane	Airport operator assuming responsibility for delivery of CUTE services at the international terminal.	Price and conditions negotiated. Final outcomes for consideration by individual airlines. CUTE services delivered at a lower cost than the previous airlines' "CUTE Club" arrangement.
Brisbane	Proposed general increases for airlines' office rents	Independent rent review undertaken following BARA objection.

* Part of the "Outcomes/Status" column of Table 1 has been excluded from the register in so far as it contains sensitive price information and information regarding the results of particular negotiations.

*Restriction of Publication of Part Claimed

Table 1 (cont) **Completed and on going price and service negotiations**

Cairns	<p>Terms and conditions of a long term aeronautical services agreement, including:</p> <ul style="list-style-type: none"> - capital expenditure program - service standards (with commercial consequences) - five year price path. <p>Starting point prices for aeronautical services delivered via the aeronautical services agreement.</p>	<p>BARA completed negotiations with terms and conditions for consideration by individual airlines. More even-handed commercial arrangements in place, including mutualised indemnities and liabilities.</p> <p>The cost of a substantial capital program, combined with negative passenger growth, resulted in a large price shock. Cairns Airport agreed to BARA's counter offer that price increases be phased in.</p>
Cairns	<p>Airport operator assuming responsibility for delivery of CUTE services at the international terminal.</p>	<p>Price and conditions of delivery of the service negotiated. Final outcomes for consideration by individual airlines. CUTE services delivered at a lower cost than previous airlines' "CUTE Club" arrangement.</p>
Darwin	<p>Terminal redevelopment – design, scale, timing and cost.</p> <p>Structure of aeronautical charges.</p>	<p>Design, scale, timing and cost negotiations completed. BARA reviewed the development plans and determined the plans were consistent with airline requirements and the expected capital costs were reasonable in the circumstances.</p> <p>Price path agreement for 3½ years commenced on 1 January 2006. Negotiations continuing for new aeronautical charges structure to replace the previous agreement.</p>

* Part of the "Outcomes/Status" column of Table 1 has been excluded from the register in so far as it contains sensitive price information and information regarding the results of particular negotiations.

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Table 1 (cont) **Completed and on going price and service negotiations**

Melbourne	5 year price path for delivery of aeronautical services.	BARA completed negotiations with terms and conditions for consideration by individual airlines. BARA reviewed the pricing proposal and determined that it was consistent with the Government's pricing principles and the ACCC's "building blocks" approach to assessing reasonableness of aeronautical charges.
Melbourne	5-10 year aeronautical capital expenditure program for delivery of aeronautical services required by airlines.	Design, scale, timing and cost negotiations completed. BARA reviewed the development plans and determined the plans were consistent with airline requirements and the expected capital costs were reasonable in the circumstances.
Melbourne	International terminal expansion – design, scale and cost.	Design, scale, timing and cost negotiations completed. BARA reviewed the development plans and determined the plans were consistent with airline requirements and the expected capital costs were reasonable in the circumstances.
Perth	Airfield and terminal redevelopment and consolidation to meet unexpectedly rapid traffic growth.	Negotiations continuing.
Perth	Airport operator assuming responsibility for delivery of CUTE services at the international terminal.	Price negotiated. Negotiations continuing for terms and conditions of delivery. CUTE services delivered at a lower cost than the previous airlines' "CUTE Club" arrangement.

* Part of the "Outcomes/Status" column of Table 1 has been excluded from the register in so far as it contains sensitive price information and information regarding the results of particular negotiations.

*Restriction of Publication of Part Claimed

Table 1 (cont) **Completed and on going price and service negotiations**

Sydney	Terms and conditions of a long term aeronautical services agreement.	BARA undertook protracted negotiations. Terms and conditions provided to individual airlines for consideration. A five year aeronautical pricing agreement was negotiated and established with an agreed starting point price.
Sydney	Capital expenditure program for delivery of aeronautical services required by airlines – specific large projects include ground power and pre-conditioned air, A380 airfield and terminal developments, STAR Project (international terminal redevelopment), runway end safety area (RESA).	Design, scale, timing and cost negotiations for major projects, except RESA, completed. RESA Project cost overruns the subject of further negotiations. STAR Project passenger facilitation issues emerged. After around 12 months negotiation, Sydney Airport Corporation Limited (SACL) agreed to improvements in signage that promotes more efficient access to gates rather than directing passengers through retail outlets.
Sydney	Airport operator assuming responsibility for delivery of CUTE services at the international terminal	Price and conditions of delivery of the CUTE services negotiated. CUTE services delivered at a lower cost than the previous airlines' "CUTE Club" arrangement.
Sydney	Staff car parking – delivery of facilities and costs following expiry of existing agreement.	Interim agreement for staff car parking fees between airport and airlines. Negotiations continuing regarding longer term arrangements.
Sydney	Other proposed new charges.	In 2008 SACL proposed a number of new charges for services which BARA maintained were already provided for under existing lease/rental arrangements. SACL subsequently withdrew the proposed charges.

* Part of the "Outcomes/Status" column of Table 1 has been excluded from the register in so far as it contains sensitive price information and information regarding the results of particular negotiations.

3.2.1 The negotiation process

BARA conducts all its negotiations in an open and transparent manner. The basic process is for BARA to obtain the necessary information (eg, a pricing model containing proposed costs, traffic volumes, rates of return, etc and non-price terms and conditions) from an airport operator on which to assess its particular pricing and service offer. The detailed information is usually reviewed by a limited number of BARA's members. However, all members have access to the information of concern to them (for example, specific capital projects for airlines with a smaller presence in Australia). The confidentiality of the commercially sensitive information obtained from airport operators is preserved by way of confidentiality agreements executed by all BARA and airline personnel who receive the information.

BARA then conducts commercial negotiations based on the information provided. At the conclusion of negotiations, BARA advises its members that the agreement with the airport operator is in a form that it can commend to airlines for their consideration for execution. This does not mean that the price and service offering would necessarily be considered consistent with the outcomes achieved in truly competitive markets. Rather, it represents what BARA considers is the most the airport operator is prepared to compromise against its original offer and to that extent represents a more competitive outcome. BARA members are advised that they should seek their own separate advice to ensure that the terms of the agreement are acceptable for their operations at the airport.

It should be noted that the negotiation process undertaken by BARA does not involve BARA seeking commercially sensitive information from its member airlines. To do so would undermine the transparency of the process, which is a key element in negotiating improved commercial outcomes with airport operators. If an individual airline considers it could improve its commercial outcomes given its specific circumstances, then this is a matter for the airline to pursue. BARA has no involvement in individual negotiations or knowledge of the outcomes of any such negotiations.

3.3 Market developments since 2005

Australia's major international airports are not subject to formal price controls, but rather a 'light-handed' prices and services quality monitoring regime. The Commission is well aware of these arrangements as it is responsible for implementing the monitoring of prices and services quality at Adelaide, Brisbane, Melbourne (Tullamarine), Perth and Sydney (Kingsford Smith) airports. BARA's application for the Existing Authorisation included a brief history of airport economic regulation.

BARA does not consider that there has been any substantial change in the supply of essential airport services since 2005.

Three developments of note are the review by the Productivity Commission (PC) of airport pricing arrangements in 2006, the Government's commitment to produce a National Aviation Policy Statement and the release of the Draft Aeronautical Pricing Show Cause Guideline (Draft Guideline) by the Department of Infrastructure, Transport, Regional Development and Local Government (DITRDLG) in January 2009.

In summary, the PC recommended a continuation of the current 'light-handed' approach to airport price and service quality regulation. The Australian Government has further refined the application of the light-handed approach through the National Aviation Policy Statement process and the Draft Guideline. These refinements have not significantly changed the supply of essential airport services.

3.3.1 Productivity Commission 2006 Review

In March 2006, the Government announced that the PC would undertake a public inquiry into the arrangements for the price regulation of airports. The purpose of the inquiry was to examine the effectiveness of the current light-handed regulatory regime for airport pricing and to advise on any changes to the regime.

The PC concluded that the prices monitoring regime had encouraged commercial negotiations between airports and airlines and that it had been easier to undertake the investment necessary to sustain and enhance airport services. However, it also found that some non-price outcomes had been less satisfactory and commercial relationships between certain airports and their customers had been strained. At Sydney Airport it was observed that negotiations on both price and non-price matters had been protracted⁴.

In terms of constraints on aeronautical prices, the PC concluded that the previously assumed countervailing power of airlines and the negative impact of higher charges for aeronautical services on passenger traffic and, hence, on airports' non-aeronautical revenue, did not appear to be significant. As a consequence, price monitoring and the threat of re-regulation needed to be understood as carrying more of the burden in preventing the misuse of market power⁵.

In response to the PC's Report, the Australian Government decided to continue the current light-handed approach to the regulation of aeronautical prices at the major airports. It accepted the PC's recommendation that Sydney, Melbourne, Brisbane, Perth and Adelaide airports should continue to be subject to price monitoring for a further six years⁶. Price monitoring was removed from Darwin Airport.

The Government also accepted the need for additional review principles, namely that:

- further asset revaluations should not generally provide a basis for higher charges for monitored aeronautical services;
- the parties should negotiate in 'good faith' to achieve outcomes consistent with the pricing principles, including through the negotiation of processes for resolving disputes in a commercial manner; and
- there should be a reasonable sharing of risks and returns between airports and their customers (including those relating to productivity improvements and changes in passenger traffic).

In terms of re-regulation, the Government also accepted that the Minister for Transport and Regional Services, having regard to monitoring reports and other relevant information, should each year be required to indicate publicly either that:

- no further scrutiny of the conduct of the monitored airports was necessary; or
- that one or more airports would be asked to 'show cause' why their conduct should not be subject to more detailed scrutiny through a Part VIIA price inquiry, or other appropriate investigative mechanism.

⁴ PC (2006), Review of price regulation of Airport Services, p. XII and XVII

⁵ PC (2006), p. XVII

⁶ The Hon Peter Costello, Treasurer (30 April 2007), Productivity Commission Report – Review of the price Regulation of Airport Services, Press Release.

While the additional review principles and “show cause” requirements are welcome refinements, they have not, in BARA’s view, significantly altered the supply conditions for essential airport services at major international airports since the grant of the Existing Authorisation.

3.3.2 National Aviation Policy Statement

The Australian Government is developing an Aviation White Paper to guide the aviation industry's growth over the next decade and beyond.

In terms of the economic regulation of airports, DITRDLG has released a discussion paper seeking the views of airports and airport stakeholders, including the travelling public, on whether changes should be made to the regulatory arrangements on monitoring the quality of service at airports⁷. While improving the effectiveness of service quality monitoring will support the existing regime, it does not represent a significant change to the arrangements.

3.3.3 Draft ‘Show Cause’ Guideline

In January 2009, DITRDLG released its Draft Guideline, which is intended to detail how the Australian Government would undertake the ‘show cause’ process recommended by the PC. The Guideline responds to stakeholder concerns that historically there has been a lack of transparency and credibility in the process of investigating an airport’s alleged misbehaviour⁸.

BARA has provided a written submission on the Draft Guideline. BARA considers that the Draft Guideline lacks clarity, in particular as to how the show cause principles will be implemented in practice. BARA considers that the benchmark is a robust and well-understood airports’ prices monitoring regime. A key element of any such regime is a willingness on the part of the Australian Government to intervene and re-impose price controls if an airport operator abuses its market power. In BARA’s view the Draft Guideline does not meet this criterion.

3.4 Airservices Australia

As the Commission would be aware, BARA has long been actively involved in negotiations about the provision and pricing of services by Airservices. BARA was actively involved in the development of Airservices’ 2004 long term pricing agreement with the airlines, an agreement the Commission has previously publicly praised⁹.

Building on its 2004 long term pricing agreement, Airservices is currently consulting with airlines about new prices for its services. In preparation, in August 2008 Airservices sought comment from airlines on the structure of prices for ARFF services. BARA provided a submission to Airservices’ discussion paper. BARA’s submission is available on Airservices website.

Airservices’ proposed capital program is the subject of ongoing scrutiny by individual airline stakeholders and BARA. The ability to influence the nature, timing and scale of Airservices’ investment has yet to be tested. Nevertheless, BARA is confident that its input does at least provide meaningful information to Airservices on the priorities for capital investment.

⁷ DITRDLG (March 2009), Improving the passenger experience: Quality of service monitoring of airports, Discussion Paper.

⁸ DITRDLG (January 2009), Aeronautical Pricing Show Cause Guideline, draft.

⁹ See for Example, Graeme Samuel (14 Nov 2005), Speech to the Australian Airports Association, Airports and Aviation Outlook, p. 3.

Airservices has indicated an intention to hold prices at current levels for around 18 months. This is due, primarily, to the uncertainty over future aggregate domestic and international aviation activity because of the ongoing impact of the global financial crisis on airline travel. However, at some point in the future, BARA expects that Airservices will seek to negotiate a further long term pricing agreement.

The particular economic regulatory arrangements to which Airservices is subject have not changed since 2005. Its pricing is still subject to the prices notification provisions of the Act. Airservices also must notify the Commission of any proposed price increases. The Government also has not introduced any competitive market reforms, such as contestability of ARFF services.

3.5 Bureau of Metrology

The BoM is a good example of how negotiations have been facilitated by the Existing Authorisation. A constant past difficulty in negotiating with the BoM was the lack of appropriate data and analysis by the BoM on its costs and proposed charges. However, recently (and following BARA's ongoing campaign for better information from the BoM) the quality of information has improved substantially. On the whole, BARA is now satisfied with the BoM's level of transparency.

While BARA still has reservations over the level of the BoM's charges, the basis for understanding cost and price increases can now be assessed in a far more transparent and rigorous manner. It is quite possible that the BoM would never have provided information as it does now had it not been for the continual pressure applied by BARA, which in large part is attributable to the authority given by the Existing Authorisation. The improved transparency of information should lead to more robust negotiations and put additional pressure on the BoM to justify its level of charges, possibly leading to lower charges in the future.

3.6 Other providers of essential airport services

It is expected that the vast majority of essential airport services will continue to be provided by the airport operators, Airservices and the BoM. However, the providers of some essential airport services required by airlines may change over time as a result of technological advances, government regulation or other factors. For example, in many instances airport operators now provide the CUTE services which were previously provided by the airlines. Government mandated security requirements are currently provided: firstly, by the Australian Government (which in some instances passes costs on to the airport operators); secondly, by airport operators; and, thirdly, by airlines purchasing services from a third party provider. The Government has the ability to change the way such services are provided in the future.

It is possible that not all new essential airport services necessarily will be provided by airport operators or other existing service providers. Further, it could be the case that some future essential airport services could be delivered by two or more competing providers of a service. BARA submits, therefore, that the coverage of the authorisation should relate to essential airport services themselves, rather than the current providers of each existing airport service.

BARA, therefore, seeks flexibility under the authorisation of its collective bargaining activities to negotiate on behalf of its member airlines with parties not already identified in this application, but who may potentially become providers of essential airport services in the future. To do this, BARA submits the coverage of the authorisation should relate to the "providers" of essential airport services without specifying any individual provider. Alternatively, the authorisation should relate to the International Airports, Airservices, the BoM and other potential providers of essential airport services. Under either option, the intent is to ensure that BARA's authorisation covers those situations where providers change or potential new providers emerge in the future.

4. Conduct to be Authorised

Authority is sought by BARA to negotiate and bargain collectively with the providers of essential airport services. The issues covered in negotiations generally include:

- Services to be provided;
- Service levels (including capacity of services and facilities);
- Consultation;
- Information sharing;
- Pricing principles;
- Fees and charges;
- Capital expenditure;
- General airport operations;
- Allocation rules for common use facilities; and
- Dispute resolution.

It is not considered necessary or practical to identify individually every essential airport service.

Appendix 2 provides a list of commonly understood essential airport services under a number of broad headings. BARA considers that the authorisation should cover all services and facilities generally understood as those essential to conduct international passenger and freight services at international airports.

This practical approach to the coverage of services also assists in situations where, for example, an airport operator might attempt to create new charges for services already covered by existing prices, possibly by identifying a “new” piece of existing airport infrastructure¹⁰. While the airport operator could state it will not negotiate with BARA on the issue of a new, unjustified charge, BARA believes the Australian Government and the Commission should view such conduct as a misuse of market power.

The providers of essential airport services at each airport could potentially vary through time, or additional providers could arise given changing circumstances. For example, in many instances airport operators now provide the CUTE services which were previously provided by the airlines. Additional providers may emerge due to increased government-mandated security requirements. Coverage of the authorisation should relate to the providers of essential airport services, recognising that while the airport operators, Airservices and BoM will provide the majority of services, other potential providers may emerge in the future due to changing circumstances.

¹⁰ See for example, the Australian Competition Tribunal (2005) Re: Application for Review of the Decision by the Parliamentary Secretary to the Treasurer in Relation to the Application for Declaration of the Airside Service Provided at Sydney Airport, p. 333.

International airports covered

BARA considers that the coverage of authorisation should include "Major International Airports" (see Appendix 1) and Gold Coast Airport (the **International Airports**).

BARA did not seek to include Gold Coast Airport in its application for the Existing Authorisation. As noted by the Commission, BARA's collective negotiation arrangements would have only become relevant if and when BARA's international member airlines commenced flying to a particular airport¹¹. While there have in the past been some international flights to Gold Coast Airport from New Zealand there was little interest then from other BARA members in Gold Coast Airport's development and expansion as an international airport servicing several international destinations. BARA believes there is now a real prospect some of BARA's member airlines may be interested in flying to Gold Coast Airport.

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BARA, therefore, requests that its authorisation be extended to Gold Coast Airport. BARA notes that Gold Coast Airport opposed BARA's application for the Existing Authorisation. However, as noted by the Commission, Gold Coast Airport is not in any way obligated or required to negotiate with BARA if it does not wish to do so. However, should the operator of Gold Coast Airport now, or in the future, consider BARA's involvement beneficial, then extension of the authorisation is necessary for this to occur.

¹¹ A30232, p. 31.

5. Competition Analysis and Net Public Benefits of Authorisation

Using its “with and without” test, in 2005 the Commission found that there was likely to be “benefits of substance” from BARA’s collective negotiation activities. These benefits were in the form of transaction cost savings and efficiencies in terms and conditions, which are likely to be passed on to end consumers where international aviation markets are competitive¹².

BARA considers that the net benefits identified by the Commission in the Determination are currently being realised and would continue by the granting of an authorisation for a further five years. Given the continued progressive liberalisation of international air services (for example, additional carriers operating to the United States and to European destinations via the Middle East), international aviation markets are at least as competitive now as in 2005 and, in fact, are most likely much more competitive.

5.1 Market definition

There are two separate, but related markets (or groups of markets) affected by the authorisation. The primary and downstream markets are described briefly below.

5.1.1 The primary markets – essential airport services

Airlines are consumers in these markets. As found by the Commission in 2005 and re-affirmed by the PC in 2006, airport operators have a high degree of market power in the provision of essential airport services. Airservices’ market power is derived from its legislated monopoly position.

In most cases relevant to this application for authorisation, the services in question are abundant. This is due to the fact that Australian aviation infrastructure experiences relatively few capacity constraints. Where there is no rivalry in consumption (that is, where everyone can consume as much as they want independent of the consumption of others) prices play no allocative role. In addition, there is little or no ability for one airline to obtain a commercial advantage over another airline through its use of those abundant service.

Competition between airlines for essential airport services remains low. For example, the master plans submitted by privatised airports, while recognising the need for expansion to accommodate growth, do not forecast capacity constraints in the medium term in the sense that the necessary infrastructure improvements cannot occur before the expected increases in traffic volumes.

The one possible exception is the provision of runway slots at Sydney Airport. However, as noted by the Commission in 2005, capacity constraints and allocation of landing slots at Sydney Airport is dealt with through a legislated demand management scheme¹³.

5.1.2 Downstream markets – air transport markets

The Commission maintains there are three broad markets of relevance in the air transport market: passenger transport; freight transport; and the sale of air travel. Only passenger transport and freight transport are relevant to this application. Whilst competitive intensity varies, these markets are generally competitive.

¹² A30232, p ii.

¹³ A30232, p 30.

BARA's activities do not relate to or affect its members' activities in air transport markets. In particular, BARA plays no role in negotiating incentive agreements between airports and airlines and has no knowledge of the details of specific agreements. Similarly, BARA plays no role in determining the level or type of capacity airlines provide at each airport, how fares are set or flight and holiday packages determined. These are the commercial decisions of individual airlines¹⁴.

5.2 Consideration of potential anti-competitive effects

In 2005 the Commission found that the potential anti-competitive effects of authorisation were likely to be low. BARA considers that the findings of the Commission in 2005 are still relevant today and that will remain the case for the proposed period of the authorisation. This is to be expected, given that the supply of essential airport services has changed little and BARA continues to participate in price negotiations in the same transparent manner since the Existing Authorisation was granted.

The potential for lost efficiencies resulting from collusion are low because:

- competition between airlines for essential airport services is low;
- participation is voluntary;
- there is no boycott activity; and
- BARA plays no role in negotiating incentive agreements between airlines and airports and has no knowledge of the details of such specific agreements where they exist.

Authorisation does not increase the potential for collective activity beyond that authorised. As described in section 3.1, the negotiation process undertaken by BARA with airport operators and other providers of essential airport services does not involve BARA seeking commercially sensitive information from its member airlines. Rather, BARA obtains such information from the airport operators and other providers of essential airport services for review by what is usually a limited number of BARA's members. There is no exchange of information among airlines facilitated by BARA or otherwise about long-term forecasts, except that which is publicly available.

5.3 Public benefits

BARA considers that the intended public benefits of authorisation are being realised. BARA considers that its activities generate a meaningful improvement in commercial outcomes (including price), lower transaction costs, and more efficient infrastructure investment.

For the areas where the Commission did not place any weight on the claimed benefit in BARA's application for the Existing Authorisation (for example, easing the transition to deregulation), BARA has no additional information and, hence, they are not discussed in this application.

5.3.1 Meaningful improvement in commercial outcomes

In any commercial negotiation, a firm with market power offering a contract will seek to secure the most favourable deal for itself. Such contracts would generally be offered on a "take it or leave it" basis with limited, if any, scope by the acquirer to have input into the terms of the

¹⁴ Given the recent issues associated with international freight fuel surcharges (in which BARA had no involvement), the Executive Director of BARA reminds BARA members of its role and their obligations under the Trade Practices Act periodically at committee and members' meetings.

contract. As concluded by the PC in 2006, major international airports retain substantial market power.

BARA does not contend that its collective bargaining arrangements in any way represent a substantial level of countervailing market power. Authorisation will not ensure an effective check on the ability for airport operators to misuse their market power. However, the outcomes of a commercial negotiation are not purely a mathematical function of the market power of the buyer and seller. The quality, preparedness and rigour applied to a commercial negotiation do affect the final outcomes achieved by each party.

With collective bargaining, the ability for airlines to improve their bargaining position can be increased. This can occur in a number of ways. First, the scope for an airport to provide differing information to individual airlines is reduced. The one consistent set of information is subject to rigorous analysis. Analysis and opinions over price and service offering can be exchanged among BARA members, with the potential for a more focussed response to the airport operators.

In addition, BARA provides its opinion about the conduct of major airports when reviews of pricing arrangements occur. BARA's opinion is well respected and it has publicly stated that the conduct of major airports varies widely¹⁵. BARA's respected opinion on airport conduct can potentially provide some check on the misuse of market power by airport operators. This analysis and opinion is only possible when BARA participates in the negotiation process.

BARA considers that its collective bargaining arrangements are capable of generating a meaningful, but not necessarily substantial (i.e. a competitive market outcome) improvement in commercial outcomes. BARA considers that the outcomes achieved with airport operators, Airservices and the BoM described earlier support this proposition. Examples include the phasing in of price increases and improvements to many non-price issues, such as the provision of fairer indemnities and other terms of contract and other legal issues.

The fact that airlines (including major airlines that would still conduct individual negotiations in the absence of BARA) continue to be BARA members is further evidence. If airlines considered that no meaningful improvement in commercial outcomes could be achieved, then the incentive for an airline to become a BARA member would be greatly diminished.

5.3.2 Transaction cost savings

In the Determination the Commission found that BARA's arrangements were likely to result in public benefits of substance in the form of transaction cost savings¹⁶. BARA considers that its activities to date have generated such benefits.

Major Australian airports provide services for dozens of airlines. Major issues (especially in relation to services for international operations) are usually resolved through multilateral discussions. Clearly, whatever the costs incurred by airports in these processes, they would be greater if negotiations were undertaken on a bilateral basis. This would feed through into each airport's cost base and ultimately would be manifested in higher user charges. The fact that airports continue to negotiate with BARA indicates that airport operators are achieving such cost savings.

¹⁵ See BARA's submissions to the Productivity Commission's 2006 review of airport pricing arrangements.

¹⁶ A30232, p. ii.

Similar savings are obtained by the airlines, in particular savings of management time and, on occasion, the need to engage lawyers and consultants. Whilst many international airlines are large organisations, for many their resources in Australia are relatively limited. Non-Australian carriers generally have a relatively small management presence in Australia. Attending to these negotiations would mean they would not be spending time attending to other issues, most of which involve servicing passenger needs or undertaking competitive conduct in downstream markets. As noted by the PC in its 2006 Report, negotiations with some airports can be protracted, especially in the case of Sydney Airport. The ability for carriers with a small presence in Australia to devote resources to protracted negotiations is questionable.

BARA's collective bargaining enables airlines, both large and small, to participate in negotiations about services at Australian airports at significantly less cost than each airline would incur to participate in its own right. Further, BARA's collective bargaining removes the need for airlines to replicate effort and, therefore, reduces total industry transaction costs.

5.3.3 More efficient infrastructure investment

There is a further advantage for international airlines. Many essential airport services are produced by airports jointly for all airlines and consumed by airlines in a non-rival way. To some extent they are a "club good". If airports were required to deal with each individual airline it would be inevitable that expectations about prices, services and contractual terms would vary and, indeed, may be contradictory. BARA's collective bargaining acts to express an industry view, to which the service provider can then respond. If this were not the case, it is possible to conceive of situations where a service provider's rational response to the aggregate requests of airlines would lead to inefficient infrastructure provision and higher prices.

Without BARA, many airports would not be aware of the needs of all airlines and they may be unable to provide infrastructure to meet the needs of these airlines. This is particularly relevant for airlines without a strong presence in Australia. Collective negotiations by BARA allow airlines the ability to present a collective view regarding their infrastructure needs. Infrastructure plans satisfying the needs of all airlines may then be developed. Airports, therefore, have more certainty and timelier infrastructure investment may be made possible.

The Commission's Determination confirmed the potential for BARA to obtain a small, but worthwhile benefit through more efficient infrastructure investment. BARA's activities to date have continued and can continue to provide a mechanism for a collective view from all airlines on infrastructure needs.

5.3.4 Airservices Australia

Public benefit would also result in allowing BARA to continue collective negotiations with Airservices. The same commercial, transaction cost and infrastructure improvement benefits can also be achieved.

5.3.5 Bureau of Meteorology

The arguments above for airports also apply to BARA's dealings and negotiations with the BoM.

5.4 Weighing public benefits against anti-competitive detriment (if any)

BARA's collective bargaining activities create benefits for its members, other airlines, service providers and end consumers. On the other hand, those same activities have no identifiable negative impacts on competitive outcomes in the primary markets. If anything, collective bargaining has a pro-competitive impact in both the primary and downstream air transport markets.

BARA's activities since 2005 have generated net public benefits. The conditions in the primary market have remained essentially the same, while international air transport markets continue to become more competitive through progressive liberalisation. Thus, authorisation should be granted on the basis that BARA's collective bargaining activities create net public benefits.

6. Authorisation Sought

Authorisation is sought in respect of the following:

- (a) For BARA, on behalf of itself and its member international airlines, to:
 - (i) negotiate with the airport operators and providers of other essential airport services at the International Airports and agree on terms and conditions of acquisition of those services, including price, on an airport by airport basis; and
 - (ii) enter into and give effect to the contracts, arrangements or understandings between BARA, its members and providers of essential airport services at the International Airports.

Each airline will determine whether to accept the terms and conditions offered by the respective providers of essential airport services as a result of BARA's negotiations.

- (b) Authorisation will be subject to the following provisions:
 - (i) BARA will not bind or purport to bind any of its members to any terms and conditions of access negotiated with an airport operator or other service provider;
 - (ii) on completion of negotiations, BARA will advise its members that they are not bound by any agreement in principle or otherwise reached with an airport operator or other service provider; and
 - (iii) there will be no collective boycotts organised by BARA.
- (c) Authorisation for a term of 5 years from 29 July 2010.

Appendix 1
Designated International Airports

Article 10 of the *Chicago Convention* requires States to designate airports for international use. This provision is given effect in Australian law by section 9 of the *Air Navigation Act* which provides that the Minister may designate airports as international airports.

The Department of Infrastructure, Transport, Regional Development and Local Government, in consultation with the Australian Customs and Border Protection Service, the Department of Immigration and Citizenship, the Australian Quarantine and Inspection Service, the Civil Aviation Safety Authority and Airservices Australia, categorises each designated international airport according to the facilities available.

The categories of airports are:

- **Major International** - Adelaide, Brisbane, Cairns, Darwin, Melbourne, Perth, Sydney
- **Restricted Use International** - Avalon, Broome, Canberra, Coffs Harbour, Gold Coast, Hobart, Learmonth, Lord Howe Island, Newcastle, Port Hedland, Townsville
- **Alternate International** - Avalon, Canberra, Coffs Harbour, Gold Coast, Learmonth, Newcastle, Port Hedland, Townsville, Alice Springs, Dubbo, Kalgoorlie, Launceston, Rockhampton, Tindal
- **International Non-Scheduled Flight** - Horn Island
- **External Territory International** - Norfolk Island, Christmas Island, Cocos (Keeling) Island

BARA's members, in principle, need to have access to all of these airports. However, for the purposes of the application, authorisation is sought for the Major International airports and Gold Coast Airport.

Appendix 2
Essential Airport Services

When airlines operate at an airport, there are a range of services they need to consume. These are often consumed in common with other airlines. It is important to note authorisation is sought in relation to the services provided at the airport irrespective of who provides them.

These services fall into a number of categories which together constitute the essential airport services for which BARA seeks to be authorised to negotiate.

Aeronautical services

Part 7 of the *Airports Regulations 1997* (Cth) defines “aeronautical services and facilities” (and Direction 29 made under section 95ZF of the Act refers to this definition).

To avoid any confusion, the services described below are provided jointly and in common to more than one airline. Aeronautical services and facilities fall into two broad subsets (these lists should not be taken as exhaustive):

(a) Aircraft-related services and facilities

- runways, taxiways, aprons, airside roads and airside grounds;
- airfield and airside lighting;
- aircraft parking sites;
- ground handling (including equipment storage and refuelling);
- aircraft refuelling (including a system of fixed storage tanks, pipelines and hydrant distribution equipment known as a Joint User Hydrant Installation or JUHI);
- airside freight handling and staging areas essential for aircraft loading and unloading;
- navigation on an airfield (including nose-in guidance systems and other visual navigation aids);
- airside safety and security system, facilities and services (including baggage screening systems and services, rescue and fire-fighting services and perimeter fencing and airside inspection facilities);
- environmental hazard control;
- services and facilities to ensure compliance with environmental laws; and
- sites and buildings used for light or emergency aircraft maintenance.

(b) Passenger-related services and facilities

- public areas in terminals, public amenities, lifts, escalators and moving walkways;
- necessary departure and holding lounges, and related facilities;
- aerobridges and buses used in airside areas;
- flight information and public-address systems;

- facilities to enable the processing of passengers through customs, immigration and quarantine;
- check-in counters and related facilities (including any associated queuing areas);
- terminal access roads and facilities in landside areas (including lighting and covered walkways);
- security systems, facilities and services (including government-mandated security requirements and closed circuits surveillance systems);
- baggage make-up, handling and reclaiming facilities; and
- space and facilities, whether in landside or airside areas, that are necessary for the efficient handling of arriving and departing aircraft (e.g. airline crew-rooms and airline operations centres).

Staff-related access services

Airports levy a range of minor charges in relation to staff access to the airport, including charges for:

- Aviation Security Identity Cards;
- airside drivers licences and training;
- training staff to use airport equipment (particularly aerobridges); and
- staff car parking.

Essential office and operational accommodation

Airlines require accommodation at airports for operational and clerical/customer service staff. These areas are relatively small but need to be close to passenger processing areas and as such the areas occupied may have attractive alternative uses, particularly retail or CIP lounges. These accommodation services tend to be provided under fairly standard leasing arrangements and, whilst they are negotiated directly between airports and airlines, BARA has on occasion had a need to become involved with airports in a general approach to setting rents and negotiating other terms for such areas.

Airline communications systems

Airlines require access to on-airport radio communications systems in order to facilitate the operational activities of customer service staff involved with ensuring the on time movement of passengers and aircraft at the airport. These systems often involve the airport operator in the provision of dedicated equipment for a RF network for a particular airline for the terminal and apron precincts or access to the wider RF network(s) installed by the airport operator. The airport operator generally charges airlines for these facilities separately to general aeronautical charges. The charges can take the form of a licence, lease or rental payment. As with rents/lease payments for essential office and operational accommodation, BARA members from time to time have referred to BARA instances of arguably unjustifiable charges for provision of or access to these facilities and systems.

Common user terminal equipment (CUTE)

CUTE facilities provide the information and telecommunications services that link common user check-in desks to individual airline booking systems and airport baggage handling control systems.

The arrangements for the supply of these services vary from airport to airport and can involve both airport operators and third parties.

Air Traffic Control Services

These services are currently provided by Airservices Australia and include:

- terminal navigation services;
- en-route navigation services.

Aviation Rescue and Fire Fighting Services

These services are currently provided in the main by Airservices Australia.

Aviation Weather Services

These services are currently provided by the BoM, but potentially by others.

Appendix 3
Constitution of BARA

ASSOCIATIONS INCORPORATION ACT 1984 (N.S.W.)
RULES OF BOARD OF AIRLINE REPRESENTATIVES OF AUSTRALIA INC.

PART I - PRELIMINARY

1. NAME:

- 1.1 The association established by these rules shall be called **BOARD OF AIRLINE REPRESENTATIVES OF AUSTRALIA INC.**, hereinafter referred to as **BARA**.

2. OBJECTS OF BARA:

2.1 The objects of BARA shall be -

- (a) to establish a recognised means of communication between Member airlines of BARA and relevant statutory or other bodies whose interests and actions influence or affect those of Member airlines and the aviation industry;
- (b) to represent Members in matters affecting their common interest;
- (c) to collect and disseminate relevant information relating to proposed and existing legislation, judicial decisions, government directives or other action by government instrumentalities, privatised airports, and other bodies affecting airline operations within Australia and the Australian aviation industry and to provide a forum for the discussion of these matters with Members;
- (d) to determine the position of Members on legislative, judicial and administrative actions affecting the provision of air services to, from or within Australia and to discuss, review and take appropriate actions, with relevant organizations or persons;
- (e) to promote and implement measures designed to avoid duplication by individual airlines of airline data, resources and expertise;
- (f) to represent the aviation industry in commercial, economic and regulatory matters as determined by Members;
- (g) to advise and consult with Members on matters concerning the provision of airline services and concerning the aviation industry in Australia;

- (h) to take over the funds and other assets, the liabilities and the operations and activities of the unincorporated association known as Board of Airline Representatives; and
- (i) to do all such other lawful things as are incidental or conducive to the attainment of any of the above objects.

2.2 The income and property of BARA whencesoever derived shall be applied solely towards the promotion of the above objects of BARA, and BARA shall not be carried on for the object of trading or securing pecuniary gain for its Members (within the meaning of Section 4 of the Associations Incorporation Act 1984 (N.S.W.)).

3. **DEFINITIONS:**

3.1 In these rules, except in so far as the context or subject-matter otherwise indicates or requires -

“the Act” means the Associations Incorporation Act 1984 (N.S.W.);

“Ad Hoc Committee” means a Committee established pursuant to rule 28;

“BARA” means Board of Airline Representatives of Australia Inc.;

“business hours” means the hours between and including 9.00am and 5.00pm on any working day of the week commencing at 9.00am on Monday and ending at 5.00pm on Friday;

“Carrier” means an airline which operates scheduled air services;

“Categories” means the six categories of Ordinary Members set out in sub-rule 4.3;

“Chairman” means the person holding office under these rules as Chairman of BARA;

“the Code” means the Companies (New South Wales) Code or any enactment replacing that Code;

“Commission” means the Corporate Affairs Commission of New South Wales or the authority for the time being administering the Act;

“Committee” means any Committee established pursuant to these rules;

“Domestic Carrier” means an airline which operates scheduled air services within Australian territory exclusively;

“Eligible Person” means a person who is eligible to be a Member of the Executive Committee being either a Member’s most senior Australian representative or its alternate representative in each case appointed pursuant to sub-rule 6.1;

“Executive Director” means the person from time to time holding the position of Executive Director of BARA pursuant to a service agreement with BARA;

“Executive Committee” means the body responsible for the management of BARA under and subject to the rules;

“financial year” means the period commencing on 1st July and ending on the immediately following 30th June;

“full-time” means, in relation to an employee of a Carrier or a Member, a person employed for a minimum period of 32 hours per week by that Carrier or that Member (as the case may be);

“General Meeting” means a meeting of Members convened in accordance with rule 32;

“Member” or “Member of BARA” means either an On-line Member or an Off-line Member whose fees are current;

“month” means calendar month;

“Office-bearers” means the Chairman, the Vice-Chairman, the Treasurer and the Secretary of BARA;

“Off-line Carrier” means a Carrier which carries on business in Australia but does not operate scheduled air services to, from or within Australia;

“On-line Carrier” means a Carrier which operates scheduled air services to and from or within Australia;

“On-line Matter” means a matter for decision which in the opinion of the Chairman of the meeting at which the matter arises directly affects the interests or operations of On-line Members but not of Off-line Members;

“Off-line Member” means an Off-line Carrier which is a member of BARA;

“On-line Member” means an On-line Carrier which is a member of BARA;

“Ordinary Member” means a Member meeting the qualifications set out in sub-rule 4.3;

“organisation” includes any form of body corporate and governmental agency or instrumentality, but does not include a natural person;

“Permanent Committee” means a Committee established pursuant to rule 27;

“person” includes natural person, organisation, body politic, firm, unincorporated association or group whether having a separate legal existence or not;

“Public Officer” - the Executive Director of BARA shall be the public officer;

“the Regulation” means the Associations Incorporation Regulation 1985 (N.S.W.);

“Secretary” means -

- (a) the person holding office under these rules as secretary of BARA;
or
- (b) where no such person holds that office - the Public Officer of BARA;

“Special Meeting” means a meeting of Members convened in accordance with rule 34; and

3.2 In these rules -

- (a) a reference to a function includes a reference to a power, authority and duty; and
- (b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

3.3 In these rules, except in so far as the context or subject matter otherwise indicates or requires, a reference to the doing or performing or approval of an act or thing by Members means the doing or performing or approval of that act or thing by the members by resolution in -

- (a) General Meeting; or
- (b) Special Meeting; or
- (c) Annual General Meeting.

3.4 The provisions of the Interpretation Act 1897 apply to and in respect of these rules in the same manner as those provisions would so apply if these rules were an instrument made under that Act.

PART II - MEMBERSHIP

4. MEMBERSHIP QUALIFICATIONS:

- 4.1 A person is qualified to be a member of BARA only if -
- (a) the person is a person referred to in section 15(1)(a), (b) or (c) of the Act and has not ceased to be a member of BARA at any time after its incorporation under the Act; or
 - (b) the person is a person who -
 - (i) is qualified for membership in accordance with the following sub-rules of this rule;
 - (ii) has applied for membership as provided by rule 5; and
 - (iii) has been approved for membership by the Members.
- 4.2 The qualification for membership as an Ordinary Member shall be that the applicant is -
- (A) Qantas Airways Limited or Virgin Blue Airlines Pty Ltd;
 - (B) a Carrier which operates scheduled air services (including as a code share operator) with an annual passenger seat capacity greater than 500,000;
 - (C) a Carrier which operates scheduled air services (including as a code share operator) with an annual passenger seat capacity greater than 250,000, but fewer than 500,000;
 - (D) a Carrier which operates scheduled air services (including as a code share operator) with an annual passenger seat capacity greater than 125,000 but fewer than 250,000;
 - (E) a Carrier which operates scheduled air services (including as a code share operator) with an annual passenger seat capacity greater than 1 but fewer than 125,000;
 - (F) an Off-line Carrier which is represented in Australia by a natural person or natural persons employed by that Off-line Carrier.
- 4.3 With effect from the date of adoption of sub-rule 4.2, the existing Ordinary Members are reclassified in accordance with the Categories.

5. APPLICATION FOR MEMBERSHIP:

- 5.1 An application of a person for membership of BARA shall be made in writing to the Secretary in the form set out in Appendix 1 to these rules.
- 5.2 As soon as practicable after receiving an application for membership, the Secretary shall refer the application to the Executive Committee which shall determine whether to approve or to reject the application.
- 5.3 Where the Executive Committee approves an application for membership, the Secretary shall, as soon as practicable after approval, notify the applicant and request the applicant to pay within the period of 28 days after notification the sum payable under rule 11 by it and set out in the notice.
- 5.4 The Secretary shall, on payment by the applicant of the amount referred to in sub-rule 5.3 within the period referred to therein, enter the applicant's name in the register of Members and, upon the name being so entered, the applicant becomes a Member.

6. APPOINTED REPRESENTATIVES OF MEMBERS:

- 6.1 Each Member shall be entitled, by written nomination served on BARA, to appoint its senior Australian representative to represent such Member at any meetings of Members. Such Member shall, by similar nomination served as mentioned above, be entitled, in the event that the first appointee is unable for whatever reason to represent such member, to appoint an alternate representative for that purpose. Each such appointee must be employed by that Member.
- 6.2 Any duly appointed representative of a Member shall be entitled to attend, speak and vote at such meetings and otherwise to exercise the rights and privileges of membership on behalf of the appointed Member.

7. TERMINATION OF MEMBERSHIP:

- 7.1 A Member ceases to be a Member of BARA -
 - (a) upon winding-up or dissolution of that Member;
 - (b) upon its no longer satisfying any of the relevant criteria for membership of its class or grade as described in sub-rule 4.3 or 4.4 (as the case may be);
 - (c) upon resigning as Member;
 - (d) upon expulsion from membership as provided in these rules; or

- (e) upon failure to pay the membership subscription fee or such other amount payable by that Member to BARA within 28 days (or such longer period as the Members may otherwise determine) after it falls due and the Executive Committee resolving that membership lapse.

7.2 A Member does not cease to be a Member merely by reason of the change of name of that Member.

7.3 The liability of any former Member for any fees, contributions or other amounts due to BARA in respect of that Member's membership shall remain owing and payable by that Member until fully discharged by it.

8. MEMBERSHIP ENTITLEMENTS NOT TRANSFERABLE:

8.1 A right, privilege or obligation which a person has by reason of being a Member -

- (a) is not capable of being transferred or transmitted to another person; and
- (b) terminates upon cessation of that person's membership.

9. RESIGNATION OF MEMBERSHIP:

9.1 A Member is not entitled to resign membership except in accordance with this rule.

9.2 A Member who has paid all amounts payable by it to BARA in respect of its membership or otherwise under these rules may resign from membership of BARA by first giving notice (being not less than 1 month or not less than such other period as the Members may determine) in writing to the Secretary of its intention to resign and, upon the expiration of the period of notice, the Member ceases to be a Member.

9.3 Where a Member of BARA ceases to be a Member pursuant to sub-rule 9.2, and in every other case where a Member ceases to hold membership, the Secretary shall make an appropriate entry in the register of Members recording the date on which the Member ceases to be a Member.

10. REGISTER OF MEMBERS:

10.1 The Secretary shall ensure that a register of Members is established and maintained, specifying the name and address of each person who is a

Member, the date on which the person became a Member and the name of that person's representative or representatives for the purpose of rule 6.

- 10.2 The register of Members shall be kept at the principal place of administration of BARA and shall be open for inspection, free of charge, by any Member during business hours.

11. FEES, SUBSCRIPTIONS AND OTHER AMOUNTS:

- 11.1 Subject to the following sub-rules of this rule, a Member shall pay to BARA, the applicable annual membership fee as set by the Executive Committee from time to time for each of the Categories in four equal quarterly installments before 30 September, 31 December, 31 March and 20 June respectively in each financial year.
- 11.2 The membership fee payable by a Member in respect of membership, or in respect of membership of a particular grade, for a period less than one year (a year for this purpose being deemed to commence on 1st July) shall be apportioned on a monthly basis (to the nearest month). In the case of a Member which obtains membership of the other grade, the Executive Committee shall credit the Member with membership fees already paid by that Member in respect of that year of membership.
- 11.3 An On-line Member shall in addition to the membership fee payable pursuant to sub-rule 11.1 pay to BARA in respect of membership a membership levy in respect of the amount (if any) by which the budget approved by the Members for the operating costs of BARA in respect of a financial year falls short of the actual operating costs of BARA for that financial year as determined in accordance with these rules. In the calculation of such shortfall any surplus over budgeted operating costs in respect of prior financial years shall be taken into account. The membership levy (if any) payable under this sub-rule in respect of a financial year shall be payable by the Members who were On-line Members for the whole or any part of that financial year and the amount payable by each of them shall be the amount of the shortfall divided by the number of such On-line Members. Such membership levy shall be payable 28 days after notification to such On-line Members that it is so payable.
- 11.4 If the Executive Committee or the Members decide that BARA should undertake in any financial year any action or initiative which has not been taken into account in the preparation of the budget of operating costs for that financial year, then the action or initiative shall not be undertaken unless the Members affected by the action or initiative have agreed a formula and a method for the payment of the costs of such action or initiative.

- 11.5 The Ordinary Members may agree to pay a levy or other charge in addition to the annual membership fees to fund any action or initiative which the Ordinary Members agree that BARA is to undertake. If the Ordinary Members determine that the action or initiative is an On-line Matter, Off-line Members shall not be required to contribute to the levy or charge. The levy or other charge is payable 28 days after notification to members of the levy or charge.

12. MEMBERS' LIABILITIES:

- 12.1 The liability of a Member to contribute towards the payment of the debts and liabilities of BARA or the costs, charges and expenses of its winding up is limited to the amount, if any, due and unpaid by the Member of BARA pursuant to rule 11, notwithstanding that any part of such amount becomes ascertainable only after an organisation ceases to be a Member.

13. DISCIPLINING OF MEMBERS AND RIGHTS OF APPEAL OF DISCIPLINED MEMBERS:

- 13.1 Where the Executive Committee is of the opinion that a Member:
- (a) has persistently refused or neglected to comply with a provision or provisions of these rules; or
 - (b) has persistently and willfully acted in a manner prejudicial to the interests of BARA,
- the Executive Committee may, by resolution recommend that the Member:
- (c) be expelled from BARA; or
 - (d) be suspended from membership of BARA for a specified period.
- 13.2 A resolution of the Executive Committee under sub-rule 13.1 is of no effect unless the Executive Committee convenes a meeting of the Members of BARA to be held not earlier than 14 days and not later than 28 days after service on the Member of a notice under sub-rule 13.3, and the Members of BARA confirm the resolution in accordance with this rule.
- 13.3 Where the Executive Committee passes a resolution under sub-rule 13.1, the Secretary shall, as soon as practicable, cause a notice in writing to be served on the Member:
- (a) setting out the resolution of the Executive Committee and the grounds on which it is based;

- (b) stating that the member may address the members of BARA at a meeting to be held not earlier than 14 days and not later than 28 days after service of the notice;
- (c) stating the date, place and time of that meeting; and
- (d) informing the Member that the Member may do either or both of the following:
 - (i) attend and speak at that meeting;
 - (ii) submit to the Members of BARA at or prior to the date of that meeting written representations relating to the resolution.

13.4 At a meeting of the Members of BARA referred to in sub-rule 13.3, the Members shall:

- (a) give to that Member an opportunity to make oral representations;
- (b) give due consideration to any written representations submitted to the Members of BARA by that Member at or prior to the meeting; and
- (c) by resolution determine whether to confirm or to revoke the resolution.

13.5 At a meeting of Members of BARA referred to in sub-rule 13.2 -

- (a) no business other than the question of the appeal shall be transacted;
- (b) the Executive Committee and the Member shall be given the opportunity to state their respective cases orally or in writing, or both; and
- (c) the Members present shall vote by secret ballot on the question of whether the resolution should be confirmed or revoked.

13.6 If at the meeting the Members pass a resolution in favour of the confirmation of the resolution of the Executive Committee, that resolution is confirmed.

PART III - THE EXECUTIVE COMMITTEE

14. FUNCTIONS OF THE EXECUTIVE COMMITTEE:

- 14.1 The Executive Committee is the body responsible for the management of BARA, and, subject to the Act, the Regulation and these rules -
- (a) shall control and manage the affairs of BARA;
 - (b) may exercise all such functions as may be exercised by BARA other than those functions that are required by these rules to be exercised by a meeting of the Members; and
 - (c) has power to perform all such acts and do all such things as appear to the Executive Committee to be necessary or desirable for the proper management of the affairs of BARA.

15. CONSTITUTION AND MEMBERSHIP OF THE EXECUTIVE COMMITTEE:

- 15.1 Subject in the case of the first members of the Executive Committee to section 21 of the Act and also subject to sub-rule 24.1, the members of the Executive Committee shall consist of -
- (a) the Eligible Person of each of Qantas Airways Limited and Virgin Blue Airlines Pty Ltd who are automatically appointed, without any election being necessary;
 - (b) four of the Eligible Persons of On-line Members which operate scheduled air services (including as a code share operator) with an annual passenger seat capacity greater than 500,000;
 - (c) two of the Eligible Persons of On-line Members which operate scheduled air services (including as a code share operator) with an annual passenger seat capacity greater than 250,000, but fewer than 500,000;
 - (d) two of the Eligible Persons of On-line Members which operate scheduled air services (including as a code share operator) with an annual passenger seat capacity greater than 125,000, but fewer than 250,000;
 - (e) two of the Eligible Persons of On-line Members which operate scheduled air services (including as a code share operator) with an

annual passenger seat capacity greater than 1, but fewer than 125,000;

- (f) one of the Eligible Persons of Off-line Members; and
- (g) as an ex officio member, the Executive Director,

each of whom (except for the members referred to in sub-rule 15.1(a) and the Executive Director) shall be elected at BARA's Annual General Meeting pursuant to rule 17.

- 15.2 Each Eligible Person who is appointed to the Executive Committee (either by election or as a result of sub-rule 15.1(a)) must attend personally. He or she may only be represented at a meeting by an alternate upon request to the Chairman to appoint an alternate for that meeting only.
- 15.3 At the Annual General Meeting in each year, half of the Executive Committee members (excluding the members appointed under sub-rule 15.1(a) and the Executive Director) will retire from office with effect from the close of the meeting, but those members are eligible for re-election. No Executive Committee member (other than the Executive Director and the members appointed under sub-rule 15.1(a)) may hold office for more than 2 consecutive years without re-election.
- 15.4 For the purposes of sub-rule 15.3, the Executive Committee members to retire by rotation at any Annual General Meeting are those who have been longest in office since their last election. As between members who have held office for the same length of time, those to retire will be determined by lot unless the Executive Committee members otherwise unanimously agree as to who is to retire.
- 15.5 At the first meeting of the Executive Committee after the Annual General Meeting in each year, the members of the Executive Committee shall elect the office-bearers from among their number in accordance with sub-rule 15.6. The office-bearers hold office until the end of the next Annual General Meeting after their election, but are eligible for re-election. The Executive Committee may fill any casual vacancy in the office-bearers from time to time.
- 15.6 The election of office-bearers shall be conducted by ballot in such usual and proper manner as the Executive Committee directs subject to the following:
 - (a) nominations may be made orally or in writing at the meeting at which the office-bearers will be elected;
 - (b) the office-bearers shall be elected in the following order:
 - Chairman
 - Vice-Chairman
 - Treasurer; and

Secretary;

- (c) except for the Executive Director who may hold the position of Secretary, a person may not hold more than one office; and
- (d) if in respect of any office there is only one person nominated who may be elected, he or she shall be deemed to be elected.

16. QUALIFICATIONS OF COMMITTEE MEMBERS:

- 16.1 Subject to the following sub-rules and to the exception to sub-rule 24.1, a person is eligible to be a member of the Executive Committee only if that person is an Eligible Person.
- 16.2 Notwithstanding sub-rule 16.1, the Executive Director shall be eligible for election as Secretary.
- 16.3 A person is eligible for election as Chairman only if that person is a representative pursuant to sub-rule 6.1 of an On-line Member.

17. NOMINATION FOR ELECTION AS EXECUTIVE COMMITTEE MEMBER AND EXECUTIVE DIRECTOR:

- 17.1 Nominations of candidates for election as Executive Committee members may be made in writing before the Annual General Meeting at which the election is to occur or orally at the Annual General Meeting. A nomination in writing -
 - (a) shall be signed by 2 Members and accompanied by the candidate's written consent (which may be endorsed on the nomination); and
 - (b) shall be delivered to the Secretary either before or at the Annual General Meeting.
- 17.2 Nominations in respect of the office of the Executive Director shall be made in the manner prescribed by the Executive Committee and shall be deemed to be subject to the person elected entering into a service agreement with BARA within a reasonable time of his appointment, in default of which the Executive Committee shall be entitled by resolution on which the Executive Director shall not vote to remove the Executive Director as a member of the Executive Committee.
- 17.3 The election of the Executive Committee members shall be conducted at the Annual General Meeting by ballot in such usual and proper manner as the Executive Committee may direct subject to the following:

- (a) those eligible for election shall be those validly nominated under sub-rule 17.1; and
- (b) if the number of persons nominated for a Category is less than or equal to the number of available positions for that Category, the person or persons nominated shall be deemed to be elected.

17.4 The election of the Executive Director may occur at any meeting of Members, and the election shall be conducted in the manner prescribed by the Executive Committee.

18. CHAIRMAN:

18.1 It is the function of the Chairman to -

- (a) chair meetings of the Executive Committee and of Members;
- (b) act as an ex officio member of all Sub-committees;
- (c) act as spokesperson of BARA in all its affairs with third parties but may delegate such function to an appropriate person or Sub-committee;
- (d) supervise and co-ordinate the activities of BARA; and
- (e) give directions to the Executive Director as may be necessary.

18.2 The Chairman shall delegate such of his or her functions as he or she is unable to perform to the Vice-Chairman.

19. VICE-CHAIRMAN:

19.1 It is the function of the Vice-Chairman to perform such functions as the Executive Committee shall confer upon him or her, and those functions of the Chairman delegated to him or her pursuant to sub-rule 18.2.

20. SECRETARY:

20.1 The Secretary shall, as soon as practicable after being appointed as Secretary, lodge notice with BARA of his or her address.

20.2 It is the function of the Secretary to -

- (a) keep minutes of:

- (i) all appointments of office-bearers and members of the Executive Committee;
 - (ii) the names of persons present at Executive Committee meetings, Annual General Meetings, General Meetings and Special Meetings; and
 - (iii) all proceedings at Executive Committee meetings, Annual General Meetings, General Meetings and Special Meetings.
- (b) receive and deal with correspondence relating to BARA, keep a proper record thereof and distribute such correspondence or records thereof as appropriate to the Executive Committee; and
- (c) perform any other functions required by these rules to be performed by the Secretary.
- 20.3 Minutes of proceedings at any meeting shall be signed by the chairperson of the meeting or by the chairperson of the next succeeding meeting.
- 20.4 The Secretary shall make available for inspection by any Member during business hours, on that Member giving the Secretary reasonable notice, the minutes of any meeting of the Executive Committee.

21. TREASURER:

- 21.1 It is the function of the Treasurer to -
- (a) be responsible for all financial matters concerning BARA including the proper keeping of BARA's books of account;
 - (b) collect and receive all moneys payable to BARA and issue invoices and receipts except that it will not be obligatory to issue receipts;
 - (c) make such payments as may be authorised and necessary
PROVIDED THAT:
 - (i) he or she shall be permitted to pay any sum provided it has first been approved by the Members, either by way of approved Budget or otherwise;
 - (ii) any payments from any account of BARA are made by cheque signed by the Treasurer and counter-signed by any one of the Chairman, Vice-Chairman or Secretary.
 - (d) no later than five business days following the date of receipt of moneys belonging to BARA, lodge all such moneys to the credit of

BARA's account at a bank, which account and bank must be approved by the Members and which account and bank may be changed from time to time as the Members determine;

- (e) keep an accurate account of all receipts and disbursements in a ledger which shall be made available for inspection by Members at any meeting, and to account to Members at any time for any moneys received and disbursed by him or her;
- (f) submit a report on the current financial state of BARA to the Members at any meeting on receipt of a notice from the Chairman issued to the Treasurer at least 7 days prior to the date of such meeting, specifying the exact nature of the reports required;
- (g) prepare and present at each Annual General Meeting financial statements in accordance with the requirements of section 26(6) of the Act including, but not limited to, a balance sheet of assets and liabilities as at the end of, and a statement of income and expenditure and a financial report for, the financial year immediately preceding such meeting;
- (h) ensure that the financial statements submitted to the Members at the Annual General Meeting have been audited by two persons not being Executive Committee members appointed by resolution of Members to conduct such audit; and
- (i) give access to the Executive Director to all financial records to enable the Executive Director to perform the functions required of him or her under these rules and pursuant to his or her service agreement.

22. EXECUTIVE DIRECTOR:

22.1 The Executive Director shall, as soon as practicable after being appointed as Executive Director, lodge notice with BARA of his or her address.

22.2 It is the function of the Executive Director to -

- (a) perform all the functions of the Public Officer of BARA pursuant to Part IV of the Act;
- (b) act as ex officio member of the Executive Committee and a member of such Permanent Committees as is determined in accordance with sub-rule 27.6;

- (c) monitor developments in the Australian aviation industry, evaluate the implications of such developments for Members and recommend strategies and action for consideration by Members;
- (d) establish and maintain contact at senior levels with Commonwealth, State and Territory government departments and agencies as appropriate, with airport operators and other organisations whose actions affect airlines' operations and with the Government and Shadow Ministries to promote BARA's position and views;
- (e) prepare reports and analyses for Members;
- (f) recommend the requirement for special working groups, or advisory committees to undertake specialist examination of matters of importance and co-ordinate the approved work programmes to meet deadlines and objectives set;
- (g) establish contacts with major media representatives covering aviation and tourism affairs;
- (h) arrange meetings of Members in accordance with the requirements of these rules and distribute reports to all Members highlighting action agreed to be taken and the position adopted on issues under consideration;
- (i) maintain up-to-date information on all relevant regulations and legislation pursuant to which charges are imposed on Members by authorities;
- (j) prepare an annual expenditure budget for approval by the Members;
- (k) maintain accounts for audit;
- (l) in all activities undertaken, promote and reinforce the image of BARA as a high-profile, active and responsible body representing the aviation industry in and serving Australia;
- (m) comply with any directives of the Chairman regarding its role as BARA's co-ordinator, negotiator and principal advisor of airport, airways and aviation infrastructure issues involving or affecting commercial aviation to ensure that the interests of Members are effectively protected and their views represented in a consistent and credible manner; and
- (n) comply with the terms and conditions of his service agreement with BARA.

23. CASUAL VACANCIES:

23.1 For the purposes of these rules, a casual vacancy in the office of a member of the Executive Committee occurs if -

- (a) the Member of which that Executive Committee member is the appointee under sub-rule 16.1 ceases for any reason pursuant to these Rules to be a Member or the Annual General Meeting does not elect sufficient Eligible Person of a particular Category to maintain the representation of the Categories on the Executive Committee in the numbers set out in sub-rule 15.1; or
- (b) the Executive Committee member -
 - (i) dies;
 - (ii) becomes an insolvent under administration within the meaning of the Code or any legislation replacing the Code;
 - (iii) resigns office by notice in writing given at least 7 working days prior to such resignation taking effect to the Secretary, or if it is the Secretary who resigns, then to the Chairman;
 - (iv) is removed from office under rule 24;
 - (v) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health; or
 - (vi) is absent without the consent of the Executive Committee from all meetings of the Executive Committee held during any period of 6 consecutive months.

23.2 For the purposes of these rules, the position of Executive Director becomes vacant if -

- (a) any of the events described in sub-paragraphs 23.1(b)(i)-(vi) occurs in relation to the Executive Director; or
- (b) where the Executive Director's service agreement is terminated or is otherwise ended.

23.3 The Executive Committee may appoint an Eligible Person to fill a casual vacancy in the Executive Committee. The Executive Committee must, in the first instance, seek to fill casual vacancies such that the Executive Committee consists of Eligible Persons of Members for each of the Categories in the numbers set out in sub-rule 15.1. In the event that no Eligible Person from the relevant Category accepts an invitation to fill a

casual vacancy, the Executive Committee may then invite an Eligible Person from another Category to fill the vacancy. A person appointed to fill a casual vacancy holds office until the end of the next Annual General Meeting after his or her appointment.

- 23.4 Regardless of anything else in this rule 23, if a casual vacancy arises for the Category referred to in sub-rule 4.3(a) as a result of sub-rule 23.1(b), the new Eligible Person of the Member affected is automatically appointed to the Executive Committee and holds office until he or she ceases to be the Member's appointee under sub-rule 6.1 or sub-rule 23.1(b) applies to that person.

24. REMOVAL OF EXECUTIVE COMMITTEE MEMBERS:

- 24.1 The Members of BARA by resolution remove any member of the Executive Committee (including the Executive Director) from office before the expiration of that person's term of office if such member of the Executive Committee has failed to comply with his or her obligations under these rules or has acted in a manner prejudicial to the interests of BARA and may at the same or another meeting appoint another eligible person to hold office until the next succeeding Annual General Meeting except if the member has been appointed to the Executive Committee under sub-rule 15.1(a) in which case the Member who made the appointment is entitled to appoint another natural person to take the place of the member who has been removed.
- 24.2 Where a member of the Executive Committee to whom a proposed resolution referred to in sub-rule 24.1 relates makes representations in writing to the Secretary or Chairman (not exceeding a reasonable length) and requests that the representations be notified to the Members of BARA, the Secretary shall send a copy of the representations to each member or, if they are not sent, the Member is entitled to require that the representations be read out at the meeting at which the resolution is considered.

25. MEETINGS AND QUORUM:

- 25.1 The Executive Committee shall meet at least monthly at such place and time as it determines.
- 25.2 Additional meetings of the Executive Committee may be convened by the Chairman or Vice Chairman of the Executive Committee.
- 25.3 Oral or written notice of a meeting of the Executive Committee shall be given by the Secretary to each member of the Executive Committee at least 48 hours (or such other period as may be unanimously agreed upon

by the members of the Executive Committee) before the time appointed for the holding of the meeting.

- 25.4 Notice of a meeting given under sub-rule 25.3 shall specify the general nature of the business to be transacted at the meeting and no business other than that business shall be transacted at the meeting, except business which the Executive Committee members present at the meeting unanimously agree to treat as urgent business.
- 25.5 Seven members of the Executive Committee excluding the Executive Director constitute a quorum for the transaction of business of a meeting of the Executive Committee.
- 25.6 The Executive Committee shall not transact any business unless a quorum is present at the start of the meeting. If a quorum is not present at some time within half an hour of the time appointed for the meeting, the meeting shall be dissolved. Once a quorum is established, a meeting may continue although the number of members falls below a quorum if -
- (a) at least five (5) members remain;
 - (b) each member who leaves the meeting consents to the meeting continuing even if a quorum is not present; and
 - (c) the only matters dealt with after a quorum ceases to be present are matters which were either being discussed when the member left the meeting or were listed in the notice convening the meeting.
- 25.7 At a meeting of the Executive Committee -
- (a) the Chairman or, in the Chairman's absence, the Vice-Chairman shall preside; or
 - (b) if the Chairman and the Vice-Chairman are absent or unwilling to act such one of the remaining members of the Executive Committee as may be chosen by the members present at the meeting shall preside.

26. COMMITTEES

- 26.1 The Members shall subject to these rules have the power to establish Committees consisting of the Chairman (ex officio), representatives of Members determined by the Executive Committee, and other persons co-opted by the Executive Committee for the purpose of giving specialist advice or assistance.

- 26.2 The Members may, subject in the case of the Permanent Committees to rule 27 and in the case of Ad Hoc Committees to rule 28, by instrument in writing delegate to one or more Committees the exercise of such of the functions of the Members or the Executive Committee as are specified in the instrument or by these rules, other than -
- (a) this power of delegation; and
 - (b) a function which is a duty imposed on the Members or the Executive Committee by the Act or by any other law.
- 26.3 A function, the exercise of which has been delegated to a Committee under this rule may, while the delegation remains unrevoked, be exercised from time to time by the Committee in accordance with the terms of the delegation.
- 26.4 A delegation under this rule may be made subject to such conditions or limitations as to the exercise of any function the subject thereof, or as to time or circumstances, as may be specified in the instrument of delegation or these rules.
- 26.5 Notwithstanding any delegation under this rule, the members or the Executive Committee (as the case may be) may continue to exercise any function delegated.
- 26.6 Any act or thing done or suffered by a Committee acting in the exercise of a delegation under this rule has the same force and effect as it would have if it had been done or suffered by the Members or the Executive Committee (as the case may be).
- 26.7 The Executive Committee may, by instrument in writing revoke wholly or in part any delegation under this rule.
- 26.8 A Committee may subject to any direction of the Executive Committee meet and adjourn as it thinks proper.

27. PERMANENT COMMITTEES

- 27.1 The Executive Committee may establish such Permanent Committees as it thinks fit. The Permanent Committees will form part of BARA's organisational structure. The Executive Committee may grant permission to, or request that, the Chairperson of a Permanent Committee attend an Executive Committee meeting.
- 27.2 Each of the Permanent Committees shall be subject to the provisions of these rules relating to Committees. Each of the Permanent Committees shall be responsible for activities as determined from time to time by the

Executive Committee, subject to rule 26.2. The terms of reference of each of the Permanent Committees shall be subject to approval by the Executive Committee.

- 27.3 Nominations for Permanent Committee members may be made at such time as the Members of BARA determine and in such form and manner as the Executive Committee determines.
- 27.4 The Members of BARA shall have power to determine whether any nomination to membership of Permanent Committees should be approved or rejected.
- 27.5 The Members of BARA may determine that the Executive Director shall be a member of any Permanent Committee and may in addition determine that the Executive Director hold the office of secretary on any Permanent Committee for any specified period PROVIDED THAT the agreement of the Executive Director is first obtained.

28. AD HOC COMMITTEES:

- 28.1 The Executive Committee may establish such Ad Hoc Committees as it thinks fit. The Executive Committee may grant permission to, or request that, the Chairperson of an Ad Hoc Committee attend an Executive Committee meeting.
- 28.2 Each of the Ad Hoc Committees shall be subject to these rules relating to Committees. Each Ad Hoc Committee shall be responsible for activities as determined from time to time by the Executive Committee, subject to rule 26.2. The terms of reference of each of the Ad Hoc Committees shall be subject to approval by the Executive Committee.
- 28.3 Nominations for Ad Hoc Committee members may be made at such time as the Members of BARA determine and in such form and manner as the Executive Committee determines.
- 28.4 The Members of BARA shall have power to determine whether any nomination to membership of Ad Hoc Committees should be approved or rejected.
- 28.5 The Members of BARA may determine that the Executive Director shall be a member of any Ad Hoc Committee and may in addition determine that the Executive Director hold the office of Secretary on any Ad Hoc Committee for any specified period PROVIDED THAT the agreement of the Executive Director is first obtained.

29. VOTING AND DECISIONS:

- 29.1 Questions arising at a meeting of the Executive Committee or of any Committee shall be determined by a majority of the votes of members of the Executive Committee or Committee present at the meeting when the matter is voted on.
- 29.2 Each member present at a meeting of the Executive Committee or of any Sub-committee (including the person presiding at the meeting) is entitled to one vote but, in the event of an equality of votes on any question, the question shall be referred to the Members of BARA at the next General Meeting or Special Meeting.
- 29.3 Subject in the case of the Executive Committee to sub-rule 25.5, the Executive Committee or any Committee may act notwithstanding any vacancy on the Executive Committee or Committee.
- 29.4 Any act or thing done or suffered, or purporting to have been done or suffered, by the Executive Committee or by any Committee is valid and effectual notwithstanding any defect that may afterwards be discovered in the appointment or qualification of any member of the Executive Committee or Committee.
- 29.5 The Executive Committee or any Committee may meet using any electronic means of audio or audio-visual communication by which each participating member can hear and be heard by all other participating members, including conference telephone and closed circuit television.
- 29.6 To the extent possible, these rules, including notice and quorum requirements, apply to meetings held under rule 29.5 with any changes the context requires.
- 29.7 A resolution passed at a meeting held under rule 29.5 shall be treated as passed on the day and time at which the conference was held.

PART IV - MEETINGS OF MEMBERS

30. ANNUAL GENERAL MEETINGS - HOLDING OF:

- 30.1 With the exception of the first Annual General Meeting BARA shall, at least once in each calendar year and within the period of 6 months after the expiration of each financial year, convene an Annual General Meeting of its members.
- 30.2 BARA shall hold its first Annual General Meeting -
- (a) within the period of 18 months after its incorporation under the Act; and
 - (b) within the period of 2 months after the expiration of the first financial year of BARA.
- 30.3 Sub-rules 30.1 and 30.2 have effect subject to any extension or permission granted by the Commission under section 26(3) of the Act.

31. ANNUAL GENERAL MEETINGS - CALLING OF AND BUSINESS AT:

- 31.1 The Annual General Meeting of BARA shall, subject to the Act and to rule 31, be convened on such date and at such place and time as the Executive Committee thinks fit.
- 31.2 In addition to any other business which may be transacted at an Annual General Meeting and which may be required by these rules to be transacted thereat, the business of an Annual General Meeting shall be -
- (a) to confirm the minutes of the last preceding Annual General Meeting (unless previously approved by a General Meeting held since that meeting);
 - (b) to receive from the Executive Committee, the Permanent Committees and other Committees reports upon the activities of the Executive Committee and of such Committees (respectively) during the last preceding financial year;
 - (c) to elect the relevant members of the Executive Committee; and
 - (d) to receive and consider the financial statements which are required to be submitted to Members pursuant to section 26(6) of the Act.
- 31.3 An Annual General Meeting shall be specified as such in the notice convening it.

32. **GENERAL MEETINGS - CALLING OF:**

32.1 The Secretary shall convene a General Meeting of the Members of BARA at least three times in each calendar year.

33. **NOTICE -GENERAL MEETINGS AND ANNUAL GENERAL MEETINGS:**

33.1 Except where the nature of the business proposed to be dealt with at a General Meeting or Annual General Meeting requires a special resolution of Members (in which case the notice shall be given in accordance with sub-rule 33.2), the Secretary shall, at least 14 days before the date fixed for the holding of any such meeting, cause to be sent by pre-paid post to each Member at the Member's address appearing in the register of Members, a notice specifying the place date and time of the meeting and the nature of the business proposed to be transacted at the meeting.

33.2 Where the nature of the business proposed to be dealt with at a General Meeting or Annual General Meeting requires a special resolution of BARA, the Secretary shall, at least 21 days before the date fixed for the holding of any such meeting, cause notice to be sent to each Member in the manner provided in sub-rule 33.1 specifying, in addition to the matters required under sub-rule 33.1, the intention to propose the resolution as a special resolution.

33.3 A Member desiring to bring any business before a General Meeting or an Annual General Meeting may give notice in writing of that business to the Secretary who shall include that business in the next notice calling a General Meeting or Annual General Meeting given after receipt of the notice from the Member.

34. **SPECIAL MEETINGS - CALLING OF:**

34.1 The Executive Committee may at any time, and shall on the requisition in writing of not fewer than 2 Members, cause the Secretary to convene a Special Meeting of BARA.

34.2 A requisition of Members for a Special Meeting -

- (a) shall state the purpose or purposes of the meeting;
- (b) shall be signed or stated as being signed by the Members making the requisition;
- (c) shall be lodged with or transmitted by facsimile, telex or other means of electronic communication approved from time to time by

Members of BARA for the purposes of giving notices, to the Secretary;

- (d) may consist of several documents in a similar form, each signed by one or more of the Members making the requisition.

34.3 Except where the nature of the business proposed to be dealt with at a Special Meeting requires a special resolution, if the Executive Committee fails to convene a Special Meeting to be held within 10 business days after the date on which a requisition of Members for the meeting is provided to the Secretary, any one or more of the Members who made the requisition may convene a Special Meeting to be held not earlier than 2 business days after that date.

34.4 Where the nature of the business proposed to be dealt with at a Special Meeting requires a special resolution of BARA, if the Executive Committee fails to convene a Special Meeting to be held within 30 days after the date on which a requisition of members for the meeting is provided to the Secretary, any one of the Members who made the requisition may convene a Special Meeting to be held not earlier than 2 business days after that date.

34.5 A Special Meeting shall be convened as nearly as is practicable in the same manner as General Meetings.

35. NOTICE - SPECIAL MEETINGS:

35.1 Except where the nature of the business proposed to be dealt with at a Special Meeting requires a special resolution of BARA, the Secretary shall, as soon as possible before the time fixed for the holding of the Special Meeting, cause to be sent, where possible, by pre-paid post, or where not possible, by e-mail, facsimile, telex or other means of electronic communication approved from time to time by the members for the purpose of giving notices, to each Member at the Member's address appearing in the register of Members, a notice specifying the place, date and time of the meeting and the nature of the business proposed to be transacted at the meeting.

35.2 Where the nature of the business proposed to be dealt with at a Special Meeting requires a special resolution of BARA, the Secretary shall, at least 21 days before the date fixed for the holding of the Special Meeting, cause notice to be provided to each Member in the manner provided in sub-rule 35.1 specifying, in addition to the matters required under sub-rule 35.1, the intention to propose the resolution as a special resolution.

35.3 Subject to the Act, a special resolution may be proposed and passed at a Special Meeting which is convened by notice shorter than is required by

sub-rule 37.2 if the convention of the Special Meeting and the proposal of the resolution are agreed by Members having the right to attend and vote at that meeting who together are entitled to not less than 90% of the total voting rights of all the Members having the right to attend and vote at that meeting.

- 35.4 Subject to sub-rule 38.8, no business other than that specified in the notice convening a Special Meeting shall be transacted at the meeting.

36. PROCEDURE - ALL MEETINGS OF MEMBERS OF BARA:

- 36.1 No item of business shall be transacted at any meeting of Members unless a quorum of members entitled under these rules to vote is present during the time the meeting is considering that item.
- 36.2 At least one-half of the total number of On-line Members or at least one-third of the total number of members present by their respective representatives constitute a quorum for the transaction of the business of the meeting.
- 36.3 If within half an hour after the appointed time for the commencement of any such meeting, a quorum is not present, the meeting shall be dissolved.
- 36.4 Without prejudice to sub-rule 38.3, a Special Meeting shall be dissolved if all the members requisitioning such meeting are not present within half an hour after the appointed time for the commencement of such meeting.
- 36.5 Subject to sub-rules 36.7 and 36.8, only one representative of each Member is entitled to represent that member at a meeting of Members.
- 36.6 A Member may nominate an alternate representative to attend a meeting and enter discussions and vote on any matter.
- 36.7 The Members in meeting may grant permission to a Member for another of its representatives to attend the meeting for the discussion of a particular subject or for the whole or any part of the meeting as an observer.
- 36.8 The Members in meeting may grant permission to any other person to attend the meeting to provide advice, and participate in discussion, on a particular subject but such person will be entitled to remain at such meeting only with the approval of the Members.
- 36.9 Subject to law, members in attendance at a meeting may resolve to consider business at the meeting which has not been specified in the notice convening that meeting.

37. **PRESIDING MEMBER - ALL MEETINGS OF MEMBERS OF BARA:**

- 37.1 The Chairman or, in the Chairman's absence, the Vice-Chairman, shall preside as chairperson at each meeting of Members.
- 37.2 If the Chairman and the Vice-Chairman are absent from a meeting or unwilling to act, the Members present shall elect one of their number to preside as chairperson at the meeting.

38. **ADJOURNMENT - GENERAL MEETINGS AND ANNUAL GENERAL MEETINGS ONLY:**

- 38.1 The chairperson of a General Meeting or an Annual General Meeting at which a quorum is present may, with the consent of the majority of Members present at the meeting, adjourn the meeting from time to time and place to place, but no business shall be transacted at an adjourned meeting other than the business left unfinished at the meeting at which the adjournment took place.
- 38.2 Where a General Meeting or an Annual General Meeting is adjourned for 14 days or more, the Secretary shall give written or oral notice of the adjourned meeting to each Member stating the place, date and time of the meeting and the nature of the business to be transacted at the meeting.
- 38.3 Except as provided in sub-rules 38.1 and 38.2, notice of an adjournment of a General Meeting or an Annual General Meeting or of the business to be transacted at an adjourned meeting is not required to be given.

39. **MAKING OF DECISIONS - ALL MEETINGS OF MEMBERS OF BARA:**

- 39.1 A question arising at a meeting of Members shall be determined on a show of hands and unless before or on the declaration of the show of hands a poll is demanded, a declaration by the chairperson that a resolution has, on the show of hands, been carried or carried unanimously or carried by a particular majority or lost, or an entry to that effect in the minute book, is evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against that resolution.
- 39.2 At a meeting of Members, a poll may be demanded by the chairperson or by not fewer than 3 Members present in person or by proxy at the meeting.
- 39.3 Where the poll is demanded at a meeting, the poll shall be taken:
- (a) immediately in the case of a poll which relates to the election of the chairperson of the meeting or to the question of an adjournment; or

- (b) in any other case, in such manner and at such time before the close of the meeting as the chairperson directs,

and the resolution of the poll on the matter shall be deemed to be the resolution of the meeting on the matter.

- 39.4 The Executive Director shall have the right to attend and speak at all meetings of Members but shall not have the right to vote.

40. SPECIAL RESOLUTION

- 40.1 A resolution of Members is a special resolution if -

- (a) it is passed by a majority which comprises not less than three-quarters of such Members as, being entitled under these rules so to do, vote in person or by proxy at a meeting of which not less than 21 days' written notice specifying the intention to propose the resolution as a special resolution was given in accordance with these rules; or
- (b) where it is made to appear to the Commission that it is not possible or practicable for the resolution to be passed in the manner specified in paragraph (a) - the resolution is passed in a manner specified by the Commission.

- 42.2 A Special Meeting convened by agreement specified in sub-rule 36.3 shall, except to the extent that the Act otherwise requires, be deemed to be a meeting of which notice in accordance with paragraph 40.1(a) has been given.

41. VOTING:

- 41.1 Upon a question arising at a meeting of Members each Ordinary Member shall have one vote, except that, where the question is an On-line Matter, each Ordinary Member which is an On-line Carrier shall have one vote and no Ordinary Member which is an Off-line Carrier shall have any votes.
- 41.2 Subject to sub-rule 41.3, votes shall be given personally or by proxy but no representative of a Member may hold more than 5 proxies.
- 41.3 Where a Member is unable to procure a proxy vote or that its representative votes at the meeting, the member may vote in writing notified to the Secretary PROVIDED THAT such notice is received by the Secretary at least half an hour before the appointed time for the commencement of the meeting.

- 41.4 In the case of an equality of votes on a question at a meeting, the chairperson of the meeting is entitled to exercise a second or casting vote.
- 41.5 A representative of a Member or proxy for a Member is not entitled to vote for that Member at any meeting of Members unless all amounts then due and payable by that Member under sub-rule 11.1 have been paid.

42. APPOINTMENT OF PROXIES:

- 42.1 Each member shall be entitled to appoint the representative of another Member as proxy by notice given to the Secretary no later than half an hour before the time of the meeting in respect of which the proxy is appointed.
- 42.2 The notice appointing the proxy shall be in the form set out in Appendix 2 to these rules.

PART V - MISCELLANEOUS

43. INSURANCE:

- 43.1 BARA shall effect and maintain insurance pursuant to section 44 of the Act.
- 43.2 In addition to the insurance required under sub-rule 43.1, BARA may effect and maintain other insurance.

44. FUNDS - SOURCE:

- 44.1 The funds of BARA shall be derived from membership fees and annual subscriptions of Members, donations and, subject to any resolution passed by the Members of BARA, such other sources as the Executive Committee determines.
- 44.2 All moneys received by BARA shall be deposited not later than five business days after receipt and without deduction to the credit of BARA's bank account.

45. FUNDS - MANAGEMENT:

- 45.1 Subject to any resolution passed by Members of BARA, the funds of BARA shall be used in pursuance of the objects of BARA in such manner as the Executive Committee determines.
- 45.2 All cheques, drafts, bills of exchange, promissory notes and other negotiable instruments shall, subject to sub-paragraph 21.1(c)(ii), be signed by any 2 members of the Executive Committee authorised by the Executive Committee.

46. ALTERATION OF OBJECTS AND RULES:

- 46.1 The statement of objects and these rules may be altered, rescinded or added to only by a special resolution of the Members of BARA.

47. COMMON SEAL:

- 47.1 The common seal of BARA shall be kept in the custody of the Secretary.
- 47.2 The common seal shall not be affixed to any instrument except by the authority of the Executive Committee and the affixing of the common seal

shall be attested by the signatures of 2 members of the Executive Committee at least one of whom must be either the Chairman, the Vice-Chairman or the Secretary.

48. CUSTODY OF BOOKS ETC:

48.1 Except as otherwise provided by these rules, the Secretary shall keep in his or her custody or under his or her control all records, books and other documents relating to BARA.

49. INSPECTION OF BOOKS ETC:

49.1 The records, books and other documents of BARA shall be open to inspection, free of charge, by a Member of BARA during any business hours.

50. SERVICE OF NOTICES:

50.1 For the purpose of these rules, a notice may be served by or on behalf of BARA upon any Member, or by or on behalf of a Member upon BARA, either personally or by sending it by post or transmitting it by facsimile, telex or other means of electronic communication from time to time approved by the Members to the Member at the Member's address shown in the register of Members or to BARA at BARA's registered office (as the case may be).

50.2 Where a document is sent to a person by properly addressing, prepaying and posting to the person a letter containing the document, the document shall, unless the contrary is provided, be deemed for the purposes of these rules to have been served on the person at the time at which the letter would have been delivered in the ordinary course of post.

50.3 In the case of a notice or document served by facsimile or telex, unless the contrary is proved, the notice or document shall be deemed for the purposes of these rules to have been served on the person, in the case of a telex, upon receipt of the answerback of the party to whom it is addressed and, in the case of a facsimile, upon generation of the facsimile transmission report at the close of transmission confirming complete and error-free transmission.

51. SURPLUS PROPERTY:

51.1 At the first meeting of Members of BARA, the Members shall pass a special resolution nominating an incorporated association as the

association in which is to vest its surplus property pursuant to section 53(2) of the Act in the event of the winding up or the cancellation of the incorporation of BARA.

- 51.2 The incorporated association so nominated shall be one which fulfils the requirements specified in section 53(2)(a)-(c) of the Act.