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7 January 2010

Ms Jessica Buik
Adjudication Branch
Australian Competition and Consumer Commission
GPO Box 3131
CANBERRA ACT 2601

AIRPORT MANAGEMENT
LEVEL 2, T2
MELBOURNE AIRPORT

LOCKED BAG 16
GLADSTONE PARK
VICTORIA 3043 AUSTRALIA

TEL: (61 3) 9297 1600
FAX: (61 3) 9297 1886

www.melbourneairport.com.au

Dear Ms Buik

Authorisation of the Board of Airline Representatives (A91200)

I refer to the above application.

Melbourne Airport is Australia's second largest international airport accounting for 21% of Australia's international passenger movements and 27% of international freight tonnages handled by Australian airports in the year ending 30 June 2009. Of the 26 international passenger carriers servicing Melbourne Airport, twenty are BARA members and they accounted for 93% of international passengers using Melbourne Airport in calendar year 2009.

The Commission will be aware that we supported the Authorisation A30232 (the "current authorisation") granted in 2005 and the associated interim authorisations granted in 2004. We have reviewed the reasoning that underpins the current authorisation and market and policy developments that have occurred since that time as well as the application now before the Commission. We see nothing in the application or in market and policy developments that in our mind should prevent the Commission from granting the authorisation sought in the application for a period of five years.

As was the case when BARA sought the current authorisation, we support BARA's general contention that the bargaining activity it currently undertakes (which is the conduct it seeks authorised) is highly unlikely to lead to any anticompetitive detriment, especially as BARA specifically is not seeking authorisation of secondary boycotts or matters relating to route development (where its members clearly are competitors) and it does not bind its members to entering into any particular commercial agreement.

Like many other Australian airports, we have had significant, productive engagement with BARA for many years. The constructive approach of BARA has been instrumental in us being able to put in place the arrangements with our airline customers envisaged by the policy positions taken by successive Commonwealth Governments following extensive examination on two

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occasions by the Productivity Commission and most recently in the development of the Government's Aviation White Paper.

Briefly, the benefits flowing from BARA's activities we have seen from direct experience, both before the current authorisation and after it, include:

- Reduction in our costs associated with negotiating with customers.
- Reducing the time and uncertainty in determining an industry wide view as to the capacity and quality requirements of our airline customers.
- Ensuring that the views of all airlines, not just the largest operators, are given proper voice not only during the period of contract negotiation and also on an ongoing basis.

Thus, with there being no anticompetitive detriment associated with the conduct being authorised and there being clear benefits (both to ourselves and airlines) we see no reason for the Commission not to authorise conduct BARA has undertaken for over a decade and is common industry practice throughout the world.

We noted in our submission in relation to the current authorisation that "hard bargaining" can be expected over time and individual airports can be expected to have had different experiences in dealing with BARA and its members. We expect that the Commission may receive similar "war stories" in relation to the application currently before it. However these experiences, whilst perhaps interesting and instructive in developing an understanding of the bargaining conduct of airports and airlines, are not of themselves a substitute for a robust competition analysis. It is our view that the application made by BARA is, by and large, an example of such an analysis.

We note that the authorisation now sought by BARA is slightly different to the current authorisation in two respects. First, it seeks to extend the coverage of the airport locations that BARA is authorised to negotiate collectively at to include Gold Coast Airport. We have no objection to this extension and indeed would see no difficulty in the authorisation covering any airport in Australia that BARA's members operated international services to or from.

The second area is the definition of range of services BARA may negotiate in relation to on behalf of its members. We note that with two exceptions the services that BARA seeks to have included in the proposed authorisation are the same as those contained in the current authorisation. In relation to the first exception, we totally support BARA's desire to align the definition of "aeronautical services" with that contained in Part 7 of the *Airports Regulations 1997* (Cth). In doing so we would draw the Commission's attention to the extensive consultation and analysis of this definition that was undertaken by the Productivity Commission in its 2007 review.

The second exception is the addition of a new class of services entitled "Airline communications systems". Whilst we have no issue with BARA being able to negotiate on behalf of its members in this regard, it needs to be fully understood that this is limited solely to the airlines internal operational

communications and does not extend to areas such as providing value-adding services to its own customers or other persons such as wi-fi internet services being they free or for a charge. We have no objection to the Commission authorising BARA negotiating on behalf of its members in relation to the services as described in Appendix 2 of the application but would request that if the Commission does provide such an authorisation it specifically precludes the sort of value adding services described above.

BARA and similar organisations around the world play a vital role in the efficient provision of aviation infrastructure from which flows significant benefits to both airlines and airports and ultimately the travelling public. The conduct BARA's seeks to have authorised has not been shown to have any anticompetitive detriment and as such should be authorised irrespective of the scale of benefits (which in any event we consider significant).

If you wish to discuss this matter with me further, please don't hesitate to call Carly Phillips, Corporate and Public Affairs Manager, on 03 9297 1804.

Yours sincerely



Chris Woodruff
Chief Executive Officer

Cc: Warren Bennett, Executive Director, BARA